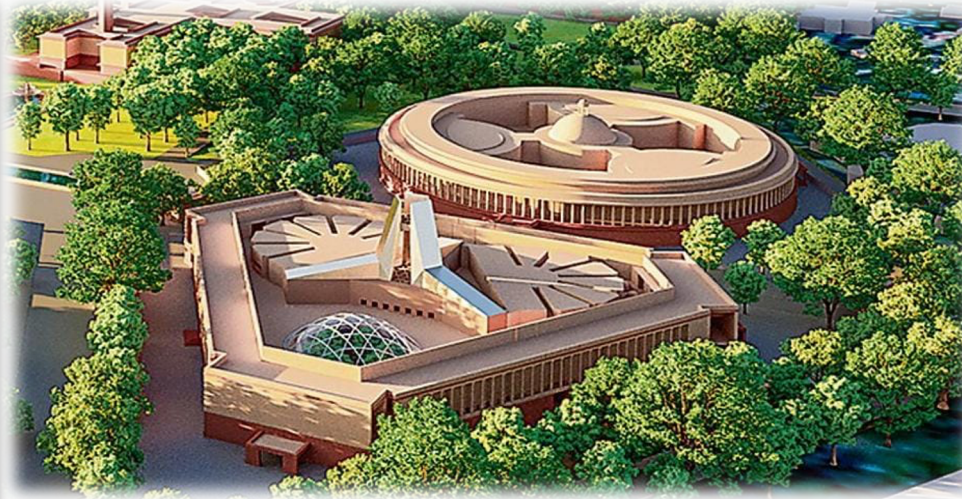
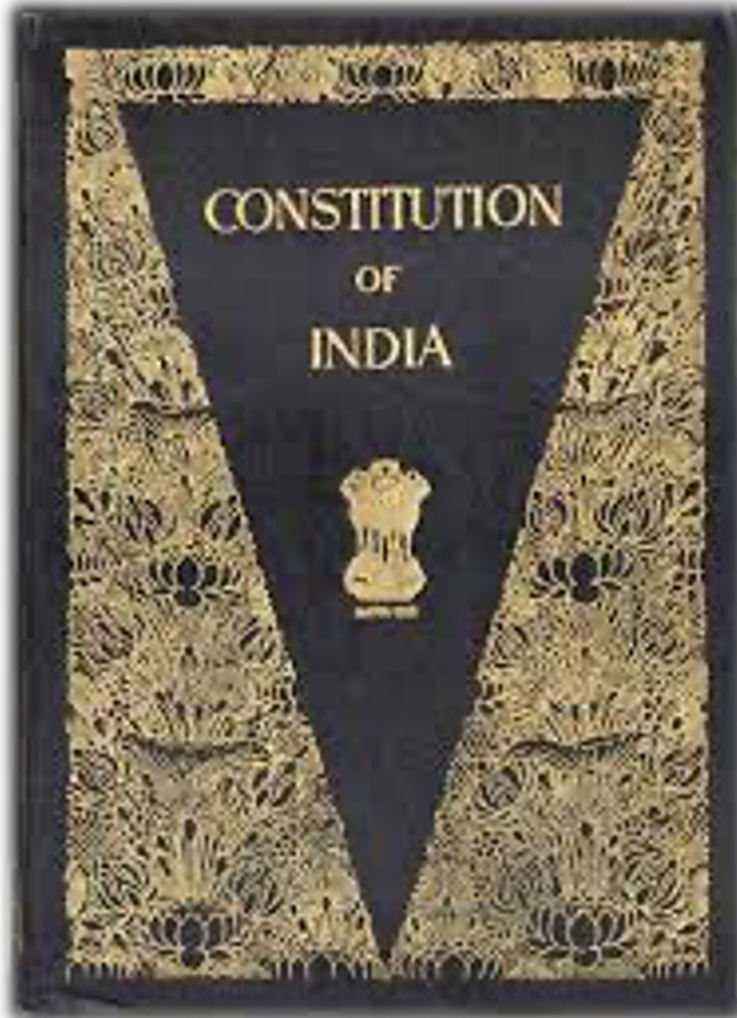


Most Important Topics for Prelims 2023

Part 2



Minorities in India

- Centre's shifting stands on who can grant minority status left the Supreme Court displeased even as the political push for giving Hindus the 'minority' tag in as many as 10 States where the religious community is numerically low turns increasingly strident.
- On March 25, the Ministry of Minority Affairs, in an affidavit, told the court that both the Centre and States had "concurrent power" to notify minorities.
- It had even said that States could also recognise a community as a minority at the individual State level.

Minorities in India

- “States can also declare a religious or linguistic community as a minority community within the said State,” the Ministry had said.
- Hardly two months later, a “superseding” affidavit filed by the same Ministry on May 9, reversed its own position.
- This time, the Ministry claimed that the Centre alone was vested with the power to notify a minority community.
- The three-page affidavit said Section 2(f) and Section 2(c) of the National Commission for Minorities Educational Institutions Act, 2004, and the National Commission for Minorities Act, 1992, respectively, passed by the Parliament, empowered the Centre to notify a minority community.



Minorities in India

- **Article 29:**
 - It provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.
 - It grants protection to both religious minorities as well as linguistic minorities.
 - However, the SC held that the scope of this article is not necessarily restricted to minorities only, as use of the word 'section of citizens' in the Article includes minorities as well as the majority.

Minorities in India

- **Article 30:**
 - All minorities shall have the right to establish and administer educational institutions of their choice.
 - The protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29).

Minorities in India

- **Article 350-B:**
 - The 7th Constitutional (Amendment) Act 1956 inserted this article which provides for a Special Officer for Linguistic Minorities appointed by the President of India.
 - It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.

Minorities in India

- **Q. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to? (2011)**
- **It can establish and administer exclusive educational institutions.**
- **The President of India automatically nominates a representative of the community to Lok Sabha.**
- **It can derive benefits from the Prime Minister's 15-Point Programme.**
- **Which of the statements given above is/are correct?**

Minorities in India

Q. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to? (2011)

- 1. It can establish and administer exclusive educational institutions.**
- 2. The President of India automatically nominates a representative of the community to Lok Sabha.**
- 3. It can derive benefits from the Prime Minister's 15-Point Programme.**

Which of the statements given above is/are correct?

- (a) 1 only**
- (b) 2 and 3 only**
- (c) 1 and 3 only**
- (d) 1, 2 and 3**



Writs



Habeas Corpus- 'To have the body of'

- Ordered by the court to a person who has detained another person, to produce the body of the latter before it to examine the cause and legality of detention.
- It can be issued against both public authorities as well as private individuals.
- It is not issued where the **(a)** detention is lawful, **(b)** the proceeding is for contempt of a legislature or a court, **(c)** detention is by a competent court, and **(d)** detention is outside the jurisdiction of the court.

Mandamus- 'We Command'

- It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.
- It can also be issued against any **public body, a corporation, an inferior court, a tribunal or government for the same purpose.**
- It cannot be issued **(a)** against a private individual or body; **(b)** to enforce departmental instruction that does not possess statutory force; **(c)** when the duty is discretionary and not mandatory; **(d)** to enforce a contractual obligation; **(e)** against the president of India or the state governors; and **(f)** against the chief justice of a high court acting in judicial capacity.

Prohibition- 'To forbid'

- It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- Can be issued only against judicial and quasi-judicial authorities.
- It is not available against **administrative authorities, legislative bodies, and private individuals or bodies.**

Certiorari- 'To be Certified/ informed'

- It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case on grounds of excess of jurisdiction or lack of jurisdiction or error of law.
- It can be issued against **judicial, quasi-judicial authorities and administrative authorities** (since 1991).
- It is also not available against legislative bodies and private individuals or bodies.

Quo- Warranto- 'By what authority'

- It is issued by the court to enquire into the legality of claim of a person to a public office.
- It can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution.
- It cannot be issued in cases of ministerial office or private office. Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.


A close-up photograph of a wooden gavel, showing the head and handle. The wood is polished and has a warm, brown tone. The head features several horizontal ridges. The handle is smooth and tapers slightly. The background is dark and out of focus.



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Directive Principles of State Policy

Amended DPSP's

42nd Constitutional Amendment, 1976:

- **Article 39A:** To provide free legal aid to the poor.
- **Article 43A:** Participation of workers in management of Industries.K1M
- **Article 48A:** To protect and improve the environment.

44th Constitutional Amendment, 1978: It inserted Section-2 to Article 38 which declares that; “The State in particular shall strive to minimize economic inequalities in income and eliminate inequalities in status, facilities and opportunities not amongst individuals but also amongst groups”.

Directive Principles of State Policy

Amended DPSP's

86th Amendment Act of 2002:

It changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A (TAPAS MAJUMDAR COMMITTEE).

- **97th Amendment Act 2011 :**

Article 43B

The State shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Inter State Council

- Recently, the Inter-State Council (ISC) has been reconstituted with the Prime Minister as Chairman and Chief Ministers of all States and six Union Ministers as members.
- The Inter-State Council will have ten permanent invitees: ten union ministers.

Inter State Council

- The government has also reconstituted the Inter-State Council's standing committee, with **Union Home as Chairman.**
- The Chief Ministers of Andhra Pradesh, Assam, Bihar, Gujarat, Maharashtra, Odisha, Punjab, and Uttar Pradesh are also members of the Inter-State Council's standing committee.

Inter-State Council:

- Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states.
- The President can establish such a council if at any time it appears to him that the public interest would be served by its establishment. He can define the nature of duties to be performed by such a council and its organisation and procedure.

First suggested by the Administrative Reforms Commission to promote cooperative Federalism.



The Sarkaria Commission on Centre-State Relation (1983-87) made a strong case for the establishment of a permanent Inter-State Council.



The Janata Dal Government headed by V. P. Singh established the Inter-State Council in 1990.



- Even though the President is empowered to define the duties of an inter- state council, Article 263 specifies the duties that can be assigned to it in the following manner:

Enquiring into and advising upon disputes which may arise between states;

Investigating and discussing subjects in which the states or the Centre and the states have a common interest; and

Making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.



Composition of the ISC:

- The present composition of the Council is as follows:
 - **Prime Minister Chairman**
 - **Chief Ministers of all States Members**
 - **Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly and Governors of States under President's Rule as Members**
 - **Six Ministers of Cabinet rank including Home Minister in the Union Council of Ministers to be nominated by the Prime Minister as Members**
- Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council.



Composition of the ISC:

- The Council is assisted by a secretariat called the Inter-State Council Secretariat.
- This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.



Emergency Provisions

Rule 267 of Rajya Sabha

- The Rajya Sabha rule book defines “Rule 267” under “suspension of rules” as an instance where “any Member, may, with the consent of the Chairman, move that any rule may be suspended in its application to a motion related to the business listed before the council of that day and if the motion is carried, the rule in question shall be suspended for the time-being.”

Pardoning power of President / Governor

- Supreme Court (SC) held that the Governor's power to pardon overrides Section 433A of Code of Criminal Procedure (CrPC).
- Earlier in January 2021, in a case of mercy petition, the SC noted that the Governor cannot reject the state's recommendation but there is no time prescribed to take a decision.

Pardoning power of President / Governor

- **Pardoning Power Overrides 433A:**
 - SC held that the Governor of a State can pardon prisoners, even before they have served a minimum 14 years of prison sentence.
 - The Governor's power to pardon overrides a provision in the CrPC Section 433A which mandates that a prisoner's sentence can be remitted only after 14 years of jail.



Pardoning power of President / Governor

- Section 433A states that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.
- Section 433-A cannot and does not in any way affect the constitutional power conferred on the President/Governor to grant pardon under Articles 72 or 161 of the Constitution.



Pardoning power of President / Governor

72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence

against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor ^{1***} of a State under any law for the time being in force.



Pardoning power of President / Governor

161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.



Parliamentary Privileges and Privileges Committee

- Privileges Committee
- Lok Sabha – 15 members
- Rajya Sabha – 10 members
- Nominated by presiding officers
- Breach of Privilege versus Contempt of House

Parliamentary Privileges and Privileges Committee

Home / Cities / Lucknow News / Uttar Pradesh assembly sends retired IAS officer..

Uttar Pradesh assembly sends retired IAS officer, five policemen to one-day custody in 2004 breach of privilege case

By [Umesh Raghuvanshi](#) , Lucknow

Mar 03, 2023 11:07 PM IST



They were sentenced for the breach of privilege of the then member of the House, Salil Vishnoi, in Kanpur Nagar district on September 15, 2004. Vishnoi was a BJP MLA from Kanpur at the time. He is a BJP MLC now.



Lok Sabha: Rahul Gandhi has replied to breach of privilege notice, says Congress

Last Updated: Feb 16, 2023, 01:04 PM IST

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Synopsis

The Congress leader replied to the Lok Sabha Secretariat on the notice served on him on a Privilege Motion by BJP MP Nishikant Dubey and Parliamentary Affairs Minister Pralhad Joshi, sources in his party informed further.



ANI

[Congress MP Rahul Gandhi](#) on Thursday sent a reply to a breach of [privilege notice](#) over his remarks on Prime Minister [Narendra Modi](#), informed Congress sources on Thursday.

In his speech in the Lok Sabha on February 7, Rahul made several allegations against the government over the Hindenburg-Adrow.

Rahul allegedly made 'unparliamentary' remarks against PM during his address in the Lok Sabha on the [Motion of Thanks](#) to the President's joint address to the Parliament.



Parliamentary privileges can be classified into two broad categories:

Collective Privileges: These privileges that belong to each House of Parliament collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.



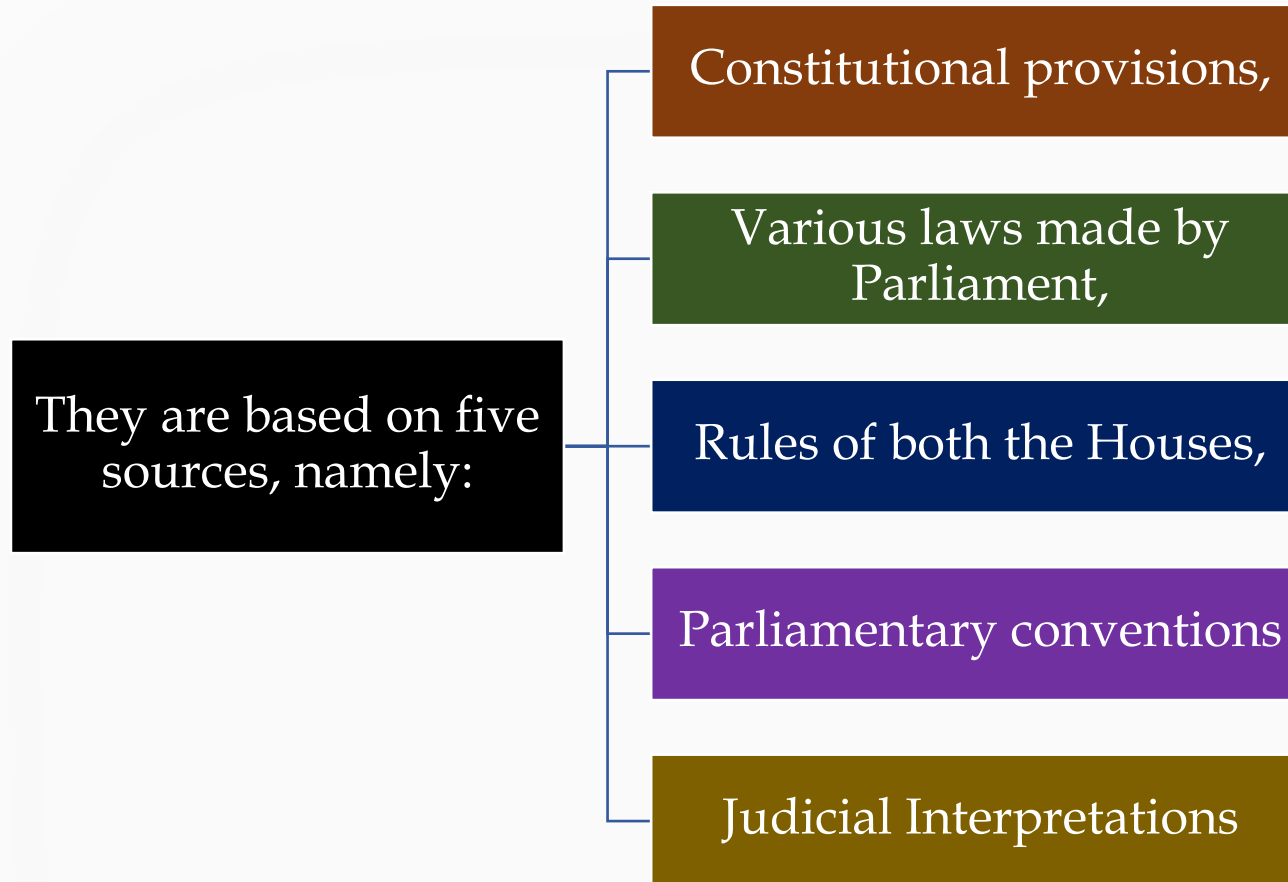
Parliamentary privileges can be classified into two broad categories:

Individual Privileges: The privileges belonging to the members individually are:

1. They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases. (Section 55 of cpc)
2. They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.



- The Indian Parliament, till now, has not made any special law to exhaustively codify all the privileges.



Suspension of MP/MLA

- Recently, Lok Sabha has suspended four (Member of Parliament) MPs and Rajya Sabha also suspended 23 MPs as they were disrupting the proceedings of the house.

Rules of Procedure and Conduct:

- **Rule 373:** The Speaker can direct a member to withdraw immediately from the House if he finds the member's conduct disorderly.
- Members so ordered to withdraw shall do so forthwith and shall remain absent during the remainder of the day's sitting.
- **Rule 374:** The Speaker can name a member who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing the business thereof.
- And the member so named will be suspended from the House for a period not exceeding the remainder of the session.
- A member suspended under this rule shall forthwith withdraw from the precincts of the House."

Suspension of MP/MLA

- **Rule 374A:** Rule 374A was incorporated in the Rule Book in December 2001.
- In case of gross violation or severe charges, on being named by the Speaker, the member stands automatically suspended from the service of the House for five consecutive sittings or the remainder of the session, whichever is less.
- **Rule 255 (Rajya Sabha):** Under Rule 255 of the General Rules of Procedure of the Rajya Sabha, the presiding officer of the House can invoke suspension of the Member of Parliament.
- The Chairman as per this rule can direct any member whose conduct in his opinion was not right or was disorderly.
- **Rule 256 (Rajya Sabha):** It provides for suspension of members.
- The Chairman can suspend a member from the service of the Council for a period not exceeding the remainder of the Session.

Suspension of MP/MLA

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- The Chairman as per this rule can direct any member whose conduct in his opinion was not right or was disorderly.
- **Rule 256 (Rajya Sabha):** It provides for suspension of members.
- The Chairman can suspend a member from the service of the Council for a period not exceeding the remainder of the Session.

Disqualifications:

Under the Constitution, a person shall be disqualified for being elected as MP:

1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).

2. if he is of unsound mind and stands so declared by a court.

3. if he is an undischarged insolvent.

4. if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign State.

5. if he is so disqualified under any law made by Parliament.



- The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):
 1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
 2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
 3. He must not have failed to lodge an account of his election expenses within the time.
 4. He must not have any interest in government contracts, works or services.
 5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
 6. He must not have been dismissed from government service for corruption or disloyalty to the State.
 7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
 8. He must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.
- On the question whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinion of the election commission and act accordingly.



Defection and Disqualification:

- The anti-defection law is contained in the 10th Schedule of the Constitution. It was enacted by Parliament in 1985 and came into effect on 1st March 1985.
- For a long time, the Indian political scene was besmirched by political defections by members of the legislature. This situation brought about greater instability in the political system.
- The infamous “Aaya Ram, Gaya Ram” slogan was coined against the background of continuous defections by the legislators. The purpose of the law is to curb political defection by the legislators.
- The anti-defection law deals with situations of defection in Parliament or state legislatures by: (i) members of a political party, (ii) independent members, and (iii) nominated members.



Governor

Union Territory and Delhi Special Case

- **69th Constitutional Amendment Act and tussle in Delhi over control of postings and transfers of civil servants belonging to All India Services serving in Delhi.**

- The status of Delhi being a Union Territory under Schedule 1 of the Constitution but named the 'National Capital Territory' under Article 239AA, engrafted by the Constitution (69th Amendment) Act.
- The 69th amendment to the Constitution of India inserted Article 239AA, which declared the Union Territory of Delhi to be administered by a L-G who works on aid and advice of the elected legislative assembly.
- However, the 'aid and advice' clause pertains only to matters on which the elected Assembly has powers under the State and Concurrent Lists With the exception of public order, police, and land.
- Further, the Article 239AA also notes that L-G has to either act on the aid and advice of the Council of Ministers, or he is bound to implement the decision taken by the President on a reference being made by him.
- Also, Article 239AA, empowers the L-G to refer a difference of opinion on 'any matter' with the Council of Ministers to the President.

Centre vs Delhi govt again

WHAT THE Act PROPOSES

- The term "Government" in any law by the legislative assembly will mean "Lieutenant Governor"
- The assembly shall not make rules or committees to consider day-to-day administration or conduct inquiries
- Rule or committee made before the new amendment comes into force "shall be void"
- Before taking any executive action, opinion of the L-G shall be obtained by a general or special order
- L-G shall have power to reserve for consideration any Act, and any of the matters outside the purview of the powers conferred on the legislative assembly



Act will define responsibilities in line with the constitutional scheme of governance of national Capital, as interpreted by SC

— AMIT SHAH, UNION HOME MINISTER

DELHI GOVT'S RESERVATIONS

- Article 239AA says legislature can make laws on any matters on state and concurrent list except for issues relating to public order, police and land.
- SC's Constitution bench in 2018 recognised assembly's right, and said Union has exclusive powers only in the above 3 issues.
- SC said L-G should work with aid and advice of council of ministers
- SC order clarified that L-G has not been entrusted with any independent decision-making power
- While any matter of dispute can be sent to President, the SC said it does not mean every matter should be

After being rejected by people of Delhi, BJP seeks to drastically curtail powers of elected govt. Act is dilution of SC judgment.

— ARVIND KEJRIWAL, CM



GNCTD Act 2021

- It amended Sections 21, 24, 33 and 44 of the GNCT of Delhi Act, 1991
- According to the legislation, the "government" in Delhi means the "Lieutenant Governor."
- The city government will now mandatorily have to take the opinion of the L-G before taking any executive action.
- The Act defines the responsibilities of the elected government and the L-G along with the “constitutional scheme of governance of the NCT” interpreted by the Supreme Court in recent judgements regarding the division of powers between the two entities.

GNCTD Act 2021

- It will also seek to ensure that the L-G is “necessarily granted an opportunity” to exercise powers entrusted to him under proviso to clause (4) of Article 239AA of the Constitution.
- This particular clause provides for a Council of Ministers headed by a Chief Minister for the NCT to “aid and advise the Lieutenant Governor” in the exercise of his functions for matters in which the Legislative Assembly has the power to make laws.
- It will also provide for rules made by the Legislative Assembly of Delhi to be “consistent with the rules of the House of the People” or the Lok Sabha.

Electoral Bonds

- **Prelims Facts about Electoral Bonds :**
 - Redeemable within 15 days
 - Eligibility – Registered Political parties who have secured at least 1% votes in last Lok Sabha, State Assembly elections.
 - No upper limit on number of bonds that can be purchased
 - Non encashed amount is deposited in PM Relief Fund.

Criminal Procedure Identification Act 2022

- Passed in April 2022 and came into effect in August 2022.
- Replaces Identification of Prisoners Act 2020 authorising police officers to take measurements of people convicted, arrested or facing trial.

Criminal Procedure Identification Act 2022

- **List of details that can be collected :**
- (i) palm-print impressions, (ii) iris and retina scans, (iii) behavioural attributes such as signature and handwriting, and (iv) other physical and biological samples such as blood, semen, hair samples, and swabs, and their analysis.

Criminal Procedure Identification Act 2022

- **Persons whose details may be taken :**
- all convicts, arrested persons, as well as persons detained under any preventive detention law.
- Arrested persons will not be obliged to give their biological samples unless they have committed an offence against a woman or a child, or an offence punishable with a minimum of seven years of imprisonment.

Criminal Procedure Identification Act 2022

- **Retention of details:**

The details collected to be retained in digital or electronic form for 75 years from the date of collection.

The record may be destroyed in case of persons who: (i) have not been previously convicted, and (ii) are released without trial, discharged, or acquitted by the court, after exhausting all legal remedies

Criminal Procedure Identification Act 2022

- **Resistance to give details**

Will be considered an offence under the Indian Penal Code, 1860

Permits the collection of details about specified persons by either a prison officer (not below the rank of Head Warder), or a police officer (in charge of a police station, or at least at the rank of a Head Constable).

Rule-making power extended to the central government: