

WEBINAR HANDOUT



Yojana

Gist of Yojana-April 2020

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Webinar Link: <https://attendee.gotowebinar.com/recording/4029942520574978049>

Note : Please open the above link using Google Chrome.

1. Safeguarding Human Rights

What are human rights?

“Human rights are not a privilege conferred by the government. They are every human being’s entitlement by virtue of his humanity.”

- Mother Teresa

- Human rights are the rights which are possessed by every human being, irrespective of his or her nationality, race, religion, sex, etc, simply by virtue of being a human. They are inherent in our nature and without them we cannot live as human beings.
- It allows us to fully develop and use our human qualities, our intelligence, our talents, and our conscience and to satisfy our physical, spiritual and other needs.

Universal Declaration of Human Rights:

- By the Universal Declaration of Human Rights, the nations of the world were specifically exhorted to act as the guardians of human rights.
- As human rights and fundamental freedoms are indivisible and interdependent the United Nations General Assembly adopted two important covenants which dealt with human rights and fundamental freedoms.
- First the **International Covenant on Civil and Political Rights**, 1966 deals with the rights of equality, personal liberty, freedom from arbitrary arrest and detention, freedom of expression and conscience etc.
- Second, the **International Covenant on Economic, Social and Cultural Rights**, 1966 deals with the right to work, the right to fair wages, the right to collective bargaining etc.

Indian Constitution - an embodiment of Human Rights:

- The Constitution safeguards all citizens, individually and collectively, human rights by protecting basic freedoms. These are guaranteed in the Constitution in the form of six broad categories from **Article 12 to 35** contained in Part III of the Constitution.
- These articles prohibit the State from making a law which either takes away or abrogates the part of fundamental rights totally.

Role of Judiciary to ensure Human Rights in India?

- In *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, the Supreme Court opined that gender injustice, pollution, environmental degradation, malnutrition, social ostracism of dalits are various forms of violations of human rights. The presumption of innocence is also a human right.
- In the case of *National Legal Services Authority v. Union of India*, the Supreme Court of India declared transgender people to be a **‘third gender’** and affirmed that the **fundamental rights** granted under the Constitution of India will be equally applicable to transgender people.
- The Supreme Court in *Navtej Singh Johar v. Union of India* gave a historic, and unanimous decision on Section 377 of the Indian Penal Code, **decriminalising**

homosexuality. The court opined that sexual orientation is an intrinsic element of liberty, dignity, privacy and that intimacy between consenting adults of the same-sex is beyond the legitimate interests of the state.

- Thus over the years, human rights jurisprudence has developed allowing the judiciary the power of judicial review of all legislation in India. The main object is to secure the paramountcy of the Constitution in regard to fundamental rights which represent the basic human rights of the people.

National Human Rights Commission

- The National Human Rights Commission (NHRC) of India was established on 12 October, 1993. NHRC is an embodiment of India’s concern for the promotion and protection of human rights.
- One of the main functions of the NHRC is to inquire into complaints of human rights violations and **to promote and protect human rights**. During the last 26 years, the NHRC has endeavoured to protect and promote human rights in the country for the common masses including poor, under-privileged and backward classes.

Challenges in promoting human rights:

Challenges		
<p>India’s socio-economic cultural framework and its colonial past have sprung many challenges in its efforts to promote and protect human rights. The main issues where majority of human rights violations in India take place are as under;</p> <ul style="list-style-type: none"> • Failure in taking action by the police • Unlawful detention • False implication 	<ul style="list-style-type: none"> • Custodial violence • Illegal arrest • Custodial deaths • Encounter deaths • Harassment of prisoners; jail conditions • Atrocities on SCs and STs • Bonded labour; child labour • Child marriage • Communal violence 	<ul style="list-style-type: none"> • Dowry death or its attempt; dowry demand • Sexual harassment and indignity to women • Exploitation of women • Discrimination against persons with disabilities • Discrimination against persons with HIV/AIDS • Discrimination against sex workers etc.

Recent innovations by NHRC to to enhance its outreach:

- Online complaint registration through HRCNet portal and provision for the authorities to upload the reports directly on the HRCNet portal.
- Conducting video conferencing with the States to follow up the submission of reports.
- A dedicated MADAD counter which assists the complainants in filing complaints.

NHRC has a dedicated focal point for Human Right Defenders which extends assistance to them in case they are in distress due to state action. Thus NHRC promotes and protects the human rights of common man in the country and overcomes all the challenges.

Conclusion:

It is the cardinal duty of the state and the non-state actors to work in unison to enable the best promotion and protection of human rights of the common man in the country.



2. Fundamental Duties - Objectives and Challenges

Introduction:

Every right comes with a corresponding duty. Whenever the law recognises that a person has a right, it also means that another person is under a legal duty to comply with that right. The Constitution of India provides for fundamental rights and the duty lies upon the state to protect those rights. Similarly, the Constitution categorically provides for certain fundamental duties enshrined under Part IV A, to be performed by its citizens.

Fundamental Duties:

- The fundamental duties are the mechanism that aims at striking a **balance between individual freedom and social interests**.
- Originally, fundamental duties as such were not a part of the Constitution. These were introduced for the first time in 1976 by the 42nd Amendment of the Constitution after the recommendations of the Swaran Singh Committee.
- While ten of the duties were incorporated in the Constitution of India in 1976, 11th was included in the year 2002 by the 86th Amendment.

Purpose of Duties:

- Nation is made by its citizens. Harold Laski has said that, “rights are related to functions and are given only in return for some duties to be performed”.
- With the lapse of time, degradation of values, particularly values in public life became blatantly evident and the nation felt the need to incorporate values specifically as the Fundamental Duties of every citizen to strive for excellence.

What is expected of citizens by Article 51A?

- The mandate of Article 51A is obligatory and not mandatory in nature. It simply says that it shall be certain duties of every citizen which they are expected to observe.
- Being a citizen of India, it is a sacred duty of every citizen —to uphold and **protect the sovereignty, unity and integrity of India** and where the need is felt so —to defend the country and render national service.
- With so much diversity in religion, region and languages in the country, the citizens are expected “to promote harmony and the **spirit of common brotherhood** amongst all the people of India.
- Women have always been revered in this country, and it goes without stating that the citizens ought “to renounce practices derogatory to the dignity of women”.

Challenges in enforcement of the Fundamental Duties:

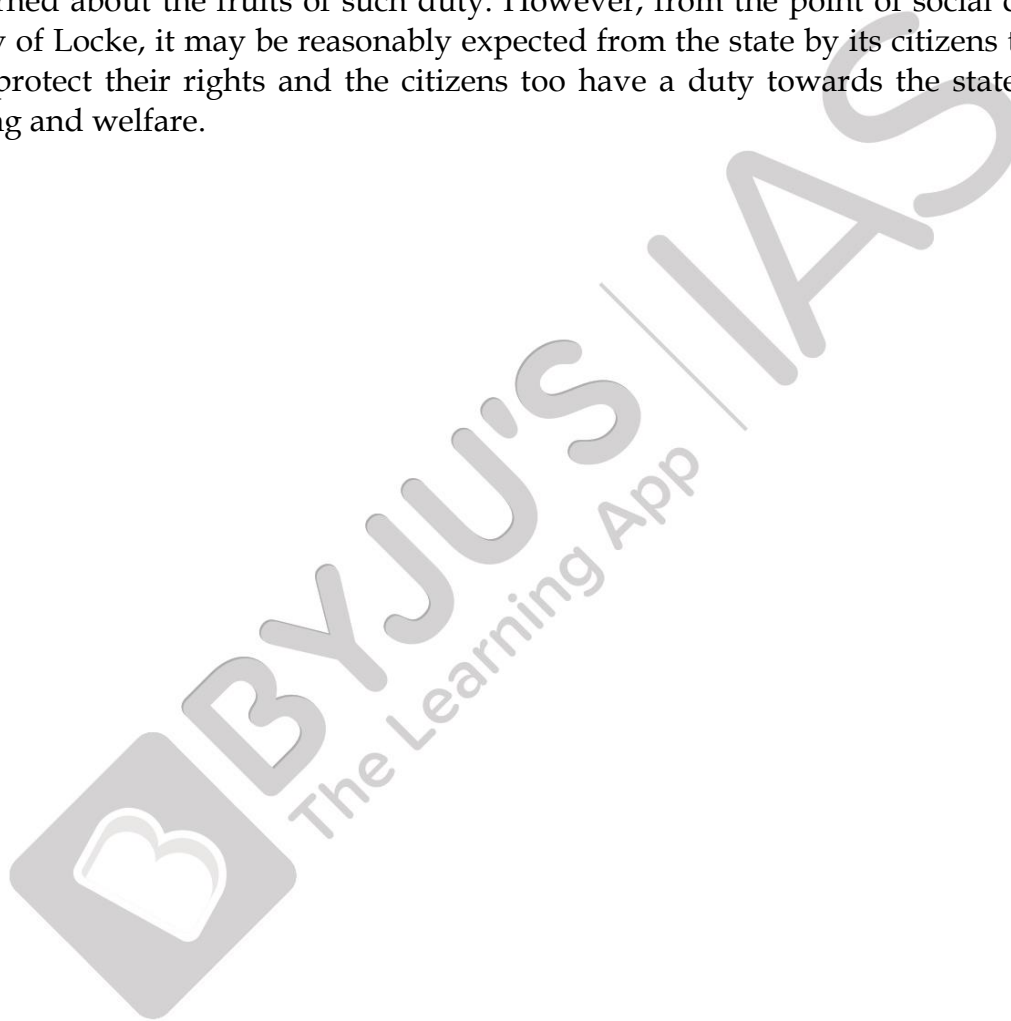
- There is no provision for enforcement of the Fundamental Duties, nor there is any sanction for the violation of the duties under the Constitution.
- These duties are obligatory in nature. But every citizen of India is fundamentally obligated to develop the scientific temper and humanism. He is fundamentally duty-bound to strive towards excellence in all spheres of individual and

collective activity so that the nation constantly rises to higher levels of endeavour and achievements.

- But as the values in public and private are declining, it may be necessary to enact suitable legislation wherever necessary to require obedience of obligations by the citizens. The desired enforceability can be better achieved by providing not merely for legal sanctions but also combining it with **social sanctions** and to facilitate the performance of the task through exemplar, role models.

Conclusion:

Even the scriptures like Gita talks about performance of one's duty and not to be concerned about the fruits of such duty. However, from the point of social contract theory of Locke, it may be reasonably expected from the state by its citizens that the state protect their rights and the citizens too have a duty towards the state for its making and welfare.



3. Drafting of the Constitution of India

Introduction:

The Constitution of India is its *lex loci* i.e. the parent of all laws in the country. The three pillars of Indian State (Legislature, Executive & Judiciary) derive their authority from the Constitution. It was framed by a Constituent Assembly set up under the Cabinet Mission Plan of 1946.

Evolution of the Constitution:

- The British to consolidate their power and sovereignty over India started enacting various laws.
- The Charter Act of 1833, the Governor General of Bengal became the Governor General of India. A Central Legislature was created which made the British supreme rulers of India.
- The Government of India Act 1858 ended the company rule and made the British Crown the ruler of India and has started administering our country through its Government.
- With the Indian Council Acts of 1861, 1892 and 1909 started giving representation to the Indians in the Viceroy's Councils.
- Under the Government of India Act 1919, Legislative Councils came into existence in all the States. The Britishers adopted bicameral structure with separate Central and State Governments. It was for the first time people could elect their own representatives through direct elections.
- The Government of India Act 1935 was one of the most important events in the history of the Constitution as this law divided powers of governance into the Federal List, Provincial List, and Concurrent List.
- The enactment of the Indian Independence Act of 1947 marked the final step in the departure of the British from India.

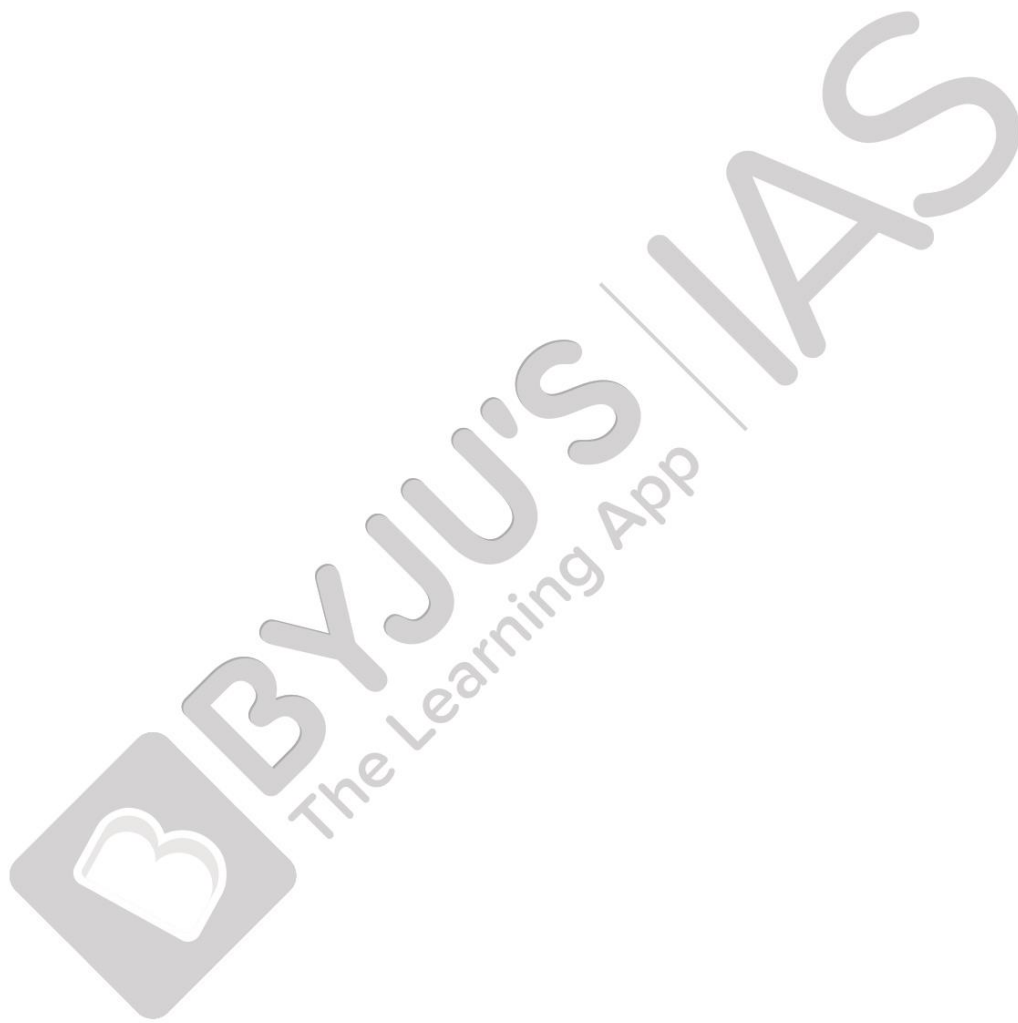
Constituent Assembly:

- The Constituent Assembly of India came into existence as per the provisions of Cabinet Mission Plan of May 1946. Its major task was to facilitate **transfer of sovereign power from British authorities to Indian hands**.
- This Assembly served as the first Parliament of India. The exercise for drafting of the Constitution with Dr. B.R. Ambedkar as the Chairman of the Drafting Committee who is often called the father of the Indian Constitution.
- It took help from many non-members and eminent public figures for focussed deliberations.
- After more than two years of deliberations, the Constituent Assembly finally approved the Constitution on 26 November, 1949, which is now celebrated as Constitution Day. The Constituent Assembly formally adopted the Constitution on 26 January, 1950 to make our country a Sovereign Republic.

Conclusion:

The Constitution of India is a unique and most comprehensive document representing the aspirations of our diverse population. It has very beautifully laid

down various principles and acts on how the authority of the Government of a country should be exercised.



4. The Indian Parliament: Performance and Challenges

Introduction:

The Parliament plays a central role in the Indian system of representative governance, affecting all aspects of the lives of citizens. It has done a remarkable job for seventy years, helping manage internal tensions of perhaps the most diverse set of people in any country. Many social reforms and economic progress have been led by Parliament.

Functioning of Parliament:

- Over the years, the Parliament has been meeting for fewer days. Figure 1 shows that the number of sitting days has declined from 125-140 in the 1950s to about 70 days in the last twenty years.

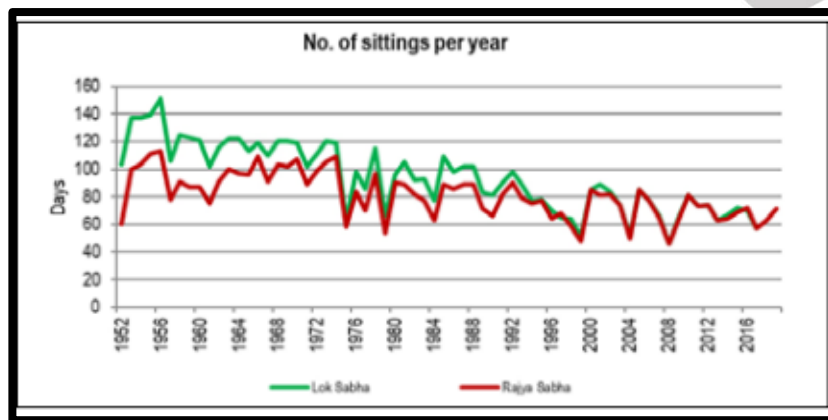


Figure 1 - No of sittings per year.

- Also, disruptions have further reduced the amount of time available for discussion in Parliament. During the period of the 15th Lok Sabha, one third of the scheduled time was lost to disruptions. In the 16th Lok Sabha many bills were passed without any discussion. (Figure 2)

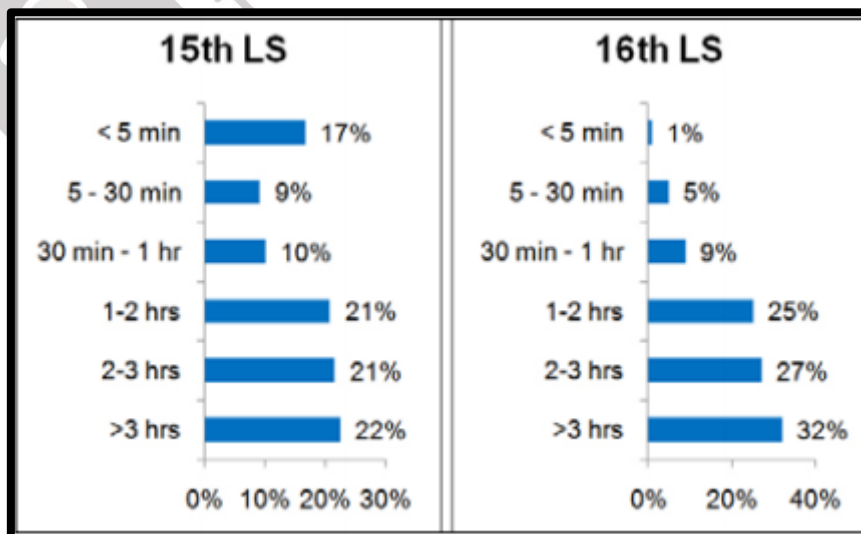


Figure 2 - Many Bills are passed without much discussion

Areas of reform:

The Anti-Defection Law:

- The Tenth Schedule of the Constitution was added in 1985 through the fifty second amendment. In brief, it provides for the disqualification of an MP if he defects from his party or if he does not vote in accordance with the whip issued by his party. Parliament is a deliberative assembly and the tenth schedule reduces the role of the member to just **follow the instructions given by the party leader**.
- It appears that the anti-defection law has weakened the power of Parliament to oversee the work of the executive. Therefore, it is **time to revisit this provision** in the Constitution and consider whether it should be repealed.

Recorded Voting:

- This brings us to the issue of accountability of Members of Parliaments to their constituents. Based on the voting records of legislators on various issues people can know about positions taken by legislators on various issues and people can judge their morale which helps in voting choices of citizens at the time of elections.
- Unlike the United States or the United Kingdom the voting records of legislators are not available to citizens of India except for bills that amend the Constitution. Therefore, it is time to revisit this provision and create transparency.

Committee System:

- Given the vast amount of work and range of topics, it becomes difficult to examine all issues in detail in a house of over 500 members. Therefore, Parliament has constituted several committees, each typically having 20-35 members, to scrutinize various issues and make recommendations to the full House. The percentage of bills referred to committees has declined in recent years. (Figure 3)

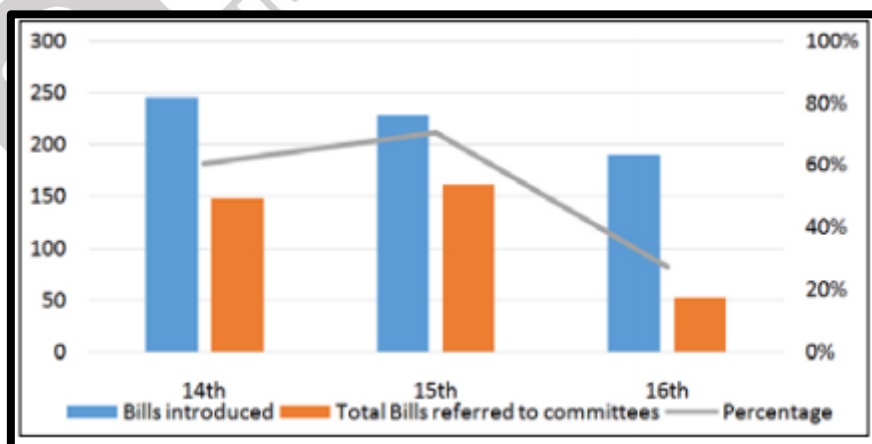


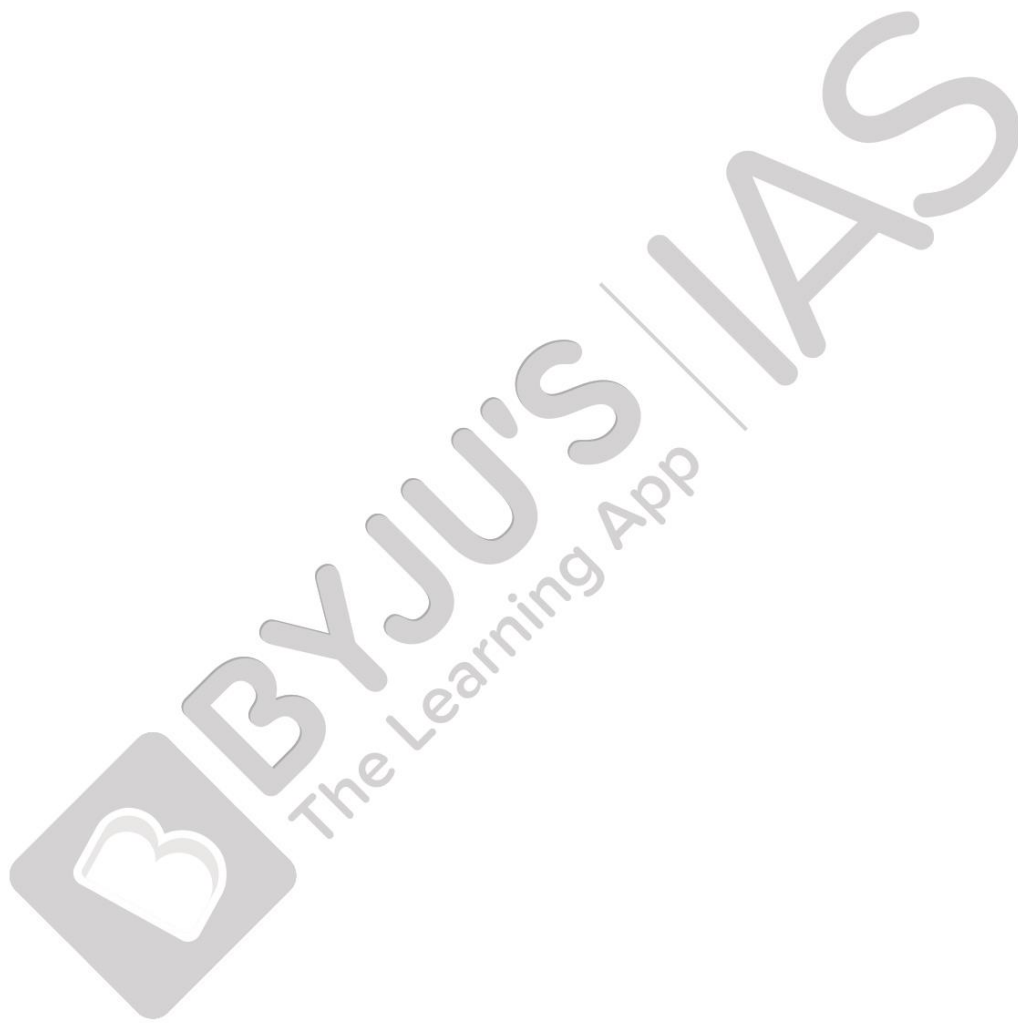
Figure 3 - Fewer Bills being referred to Committees in recent years

- There is a need to strengthen the working of parliamentary committees. They do not have expert research staff to assist the members. Often important bills are not

referred to these committees; it may be time to revisit parliamentary processes to make scrutiny by committee a mandatory step before passing the bills.

Conclusion:

Though Parliament plays a central role in the Indian system of representative governance there are ways in which its effectiveness can be improved. These include revocation of the anti-defection law, making recorded voting mandatory and strengthening the committee system.



5. Panchayati Raj System

Evolution of Panchayati Raj System:

- The Constituent Assembly preferred a two-tier system of governance. There was no specific reference to the villages and their governance.
- But post-independence the Balwant Rai Mehta Committee for the first time recommended for statutory representative bodies at the village level which can represent the entire community.
- National Development Council was established on the basis of the principle of democratic decentralisation, which spread the word '**Panchayati Raj**' into the mainframe of discussion about rural development.
- The Ashok Mehta Committee, 1978 is the one which recommended for introducing the Panchayati Raj as a Constitutional institution through an amendment.
- The **64th Amendment Bill** was introduced stating that, "Panchayat Raj is an important facet of democracy and its constitutional protection is must for their functioning as representative institutions of the people". But the bill failed to take the shape of amendment legislation.

73rd Constitution Amendment Act:

- In the year 1992-93, 73rd and the 74th amendments were brought into the Indian Constitution which recognised local self-governance as the third stratum of government.
- **Objectives of 73rd Amendment Act:** To introduce direct elections for Panchayats, reservation of seats for the SCs and STs in proportion to their population for membership of Panchayats and office of Chairpersons; reservation of not less than one-third of the seats for women.
- Devolution of the State Legislature's powers over Panchayats with respect to economic development and social justice, created financial powers for the Panchayats through grants-in aid from the consolidated fund of State.

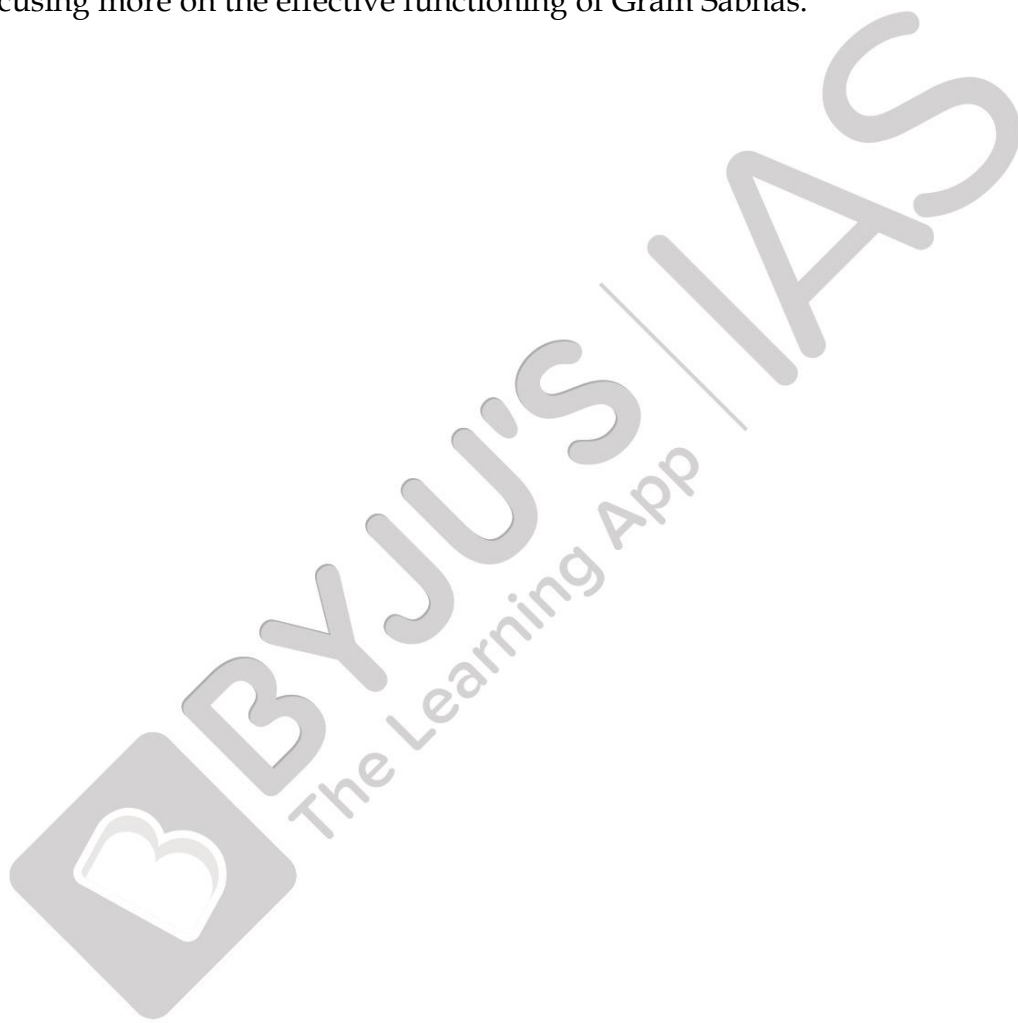
Post 73rd Amendment:

- The incorporation of Panchayat Raj system into the constitutional framework **brought the disadvantages section of population into the mainstream** social and political empowerment through 2.4 lakh Panchayats and 2.8 million elected representatives, among them over 30% were women, 19% were SC, 12% were ST and also OBCs in proportion to the population in the most States.
- The digitisation process of Gram Panchayats brought in **transparency and good governance principles** into the Panchayati Raj system. Ombudsman, Social Audit, Model Accounting System, Panchayat Performance Assessment initiatives were introduced to develop discipline and progress within the institution.
- Policies such as Mahatma Gandhi National Rural Employment Guarantee Act (**MGNREGA**) were introduced which mandates Panchayats as the planning and implementing agency. Backward Region Grant Fund (BRGF) has been introduced as a financial backup for the Panchayats for promoting decentralisation.

Way forward:

Despite the progress the Panchayati Raj system made in last 17 years, since 1993, there are many agendas, which are yet to be implemented for achieving full Swaraj as desired by Mahatma Gandhi:

- Providing sufficient staff, office space and infrastructure.
- Removing the word 'Discretion' [Article 243G] and **creating mandatory obligation upon the States for democratic devolution.**
- Implementing the Provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA) to address the demands of the tribal population living in rural areas.
- Special focus to be laid down on North Eastern States, 6th Schedule Areas.
- Focusing more on the effective functioning of Gram Sabhas.



6. Checks and Balances

Introduction:

The Constitution of any democratic country seeks to establish the fundamental organs of the government with well-defined duties and specific powers, making them answerable to the people. Accountability is ensured through periodic elections and internal checks and balances. Checks and balances within governmental institutions are necessary to **constrain the government from abusing its power**.

The Spirit of Constitutionalism:

- The Constitution's main purpose is not merely to confer powers on the various organs of the government, but also to restrain those powers. It envisages checks and balances and puts the powers of the legislature, executive and judiciary under restraint.
- The very **essence of constitutionalism** is that no organ of the state may arrogate powers to itself, beyond what is specified in the Constitution.
- In India, the **Constitution is the ultimate sovereign** and if anything goes beyond the provisions of the Constitution, it will automatically be considered as null, void and unconstitutional.

Functional Overlap: Legislature and Executive - The Indian Constitution does not strictly follow the principle of separation of powers. The executive is part of the legislature and is responsible for it.

- The President (Article 123) or the Governor (Article 213) has the power of making ordinances when both houses of the legislature are not in session, which has the same status as that of a law of the legislature.
- Article 311 allows the executive to hold an enquiry into charges against any person holding a civil post under the Union or the State and to award punishment.
- The legislature performs judicial functions as Parliament 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).
- Executive is dependent on the legislature while it performs some legislative functions in the form of **subordinate legislation**.
- The legislature which controls the executive and can even remove it, also performs some executive functions such as those required for maintaining order in the House.
- The **power of impeachment of judges** is reserved to Parliament although it ultimately depends on parliamentary majority. The functional overlap prevailing under the Indian Constitution also allows the executive to perform key legislative and judicial functions.
- The most unusual form of legislative powers granted under the Constitution to the executive are listed under emergency provisions (Articles 352, 356 and 360).

The Role of Judiciary in checks and balances:

- The judiciary with its power to judicial review takes a call on the acts of omission and commission of the legislature and executive, in the context of the constitutional provisions and the well-established principles of the rule of law, based on the concept of 'fairness'.
- The application of **judicial review** to determine constitutionality of the legislation and to review the executive decision sometimes **creates conflict** among the three pillars of democracy. But the Constitution speaks through the Supreme Court while judging the constitutional validity of laws enacted by the Parliament.
- Article 32 of the Constitution makes the Supreme Court **the guardian of the inviolable fundamental rights** guaranteed to citizens for the protection of which it can issue writs. Even High Courts enjoy this power under Article 226 for the protection of not only fundamental rights but also other legal rights.

Judicial Activism Vs Overreach:

- Judicial activism is a judicial response to a situation warranting immediate remedial measures. It is an affirmative concept that has to be marked by promptitude, diligence and consistency.
- In recent decades, the judiciary has been frequently charged with overstepping (judicial overreach) into the arenas of other wings by interpreting laws in a particular way.
- In the name of upholding the rule of law and the independence of the judiciary, some judgments of the Apex Court clearly breach the boundary line usurping the role assigned to the legislature and the executive. For example, the Supreme Court acknowledging legislative vacuum in **Vishakha vs State of Rajasthan** laid down guidelines for protection of women from sexual harassment at workplace.
- Similarly, in *D. K. Basu V. State of West Bengal*, the Supreme Court gave detailed guidelines to be observed while making arrests, defined the arrestee's rights including the right against torture.

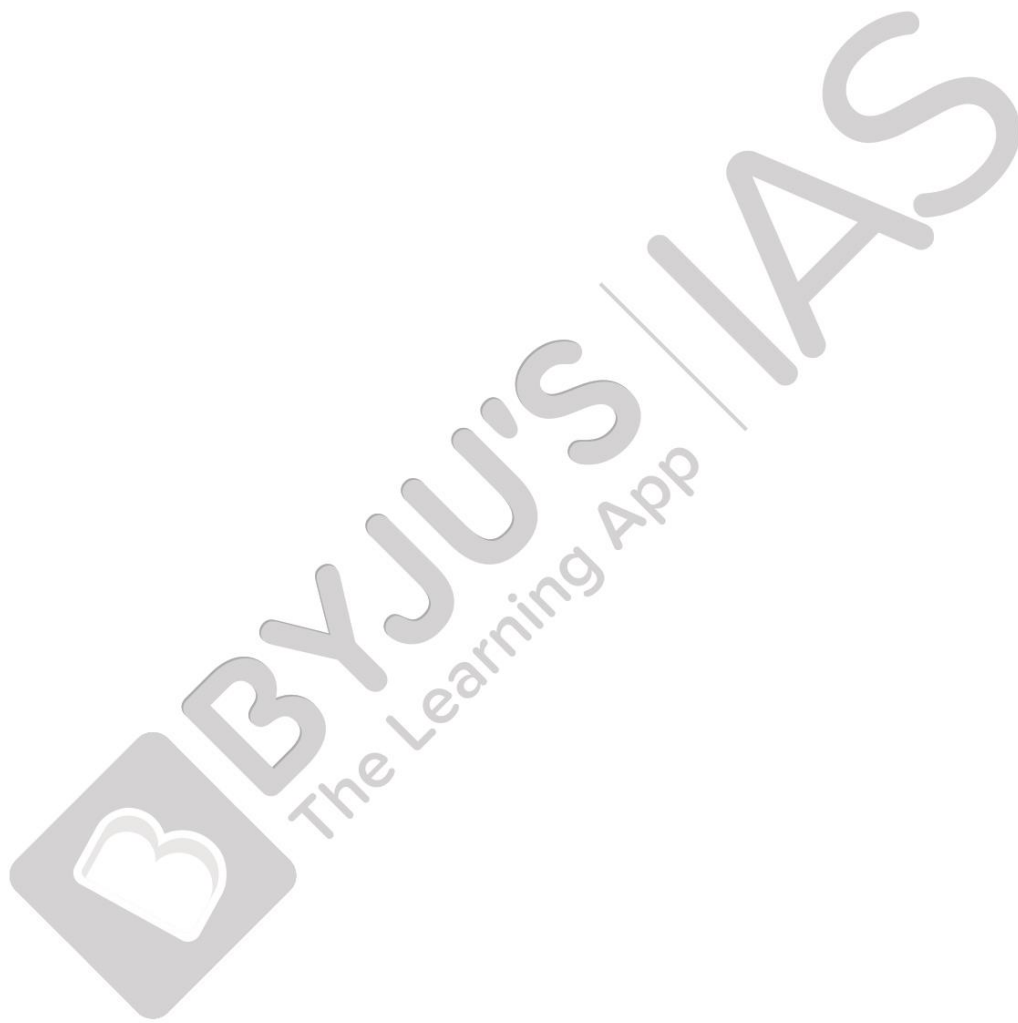
Good governance:

- The Apex Court armoured with the weapon of Article 142 has come out proactively to dispense justice to those who are deprived of it due to various social, educational and economic backgrounds. It has become the voice of the poor and the voiceless.
- Though the judiciary usurps its assigned role it does it to uphold good governance. But good governance necessitates **balance among the three pillars of government** - executive, legislature and judiciary with effective checks over one another.
- So the three wings need to brainstorm on how to move forward in the changed scenario to realise the agenda of Sabka Saath, Sabka Vikas, Sabka Vishwas.

Conclusion:

The judiciary, legislature and executive are the three pillars on which the effective functioning of the Government rests. A balance as opposed to conflicts is very

necessary to achieve the ultimate public welfare and smooth functioning of the constitutional machinery.



7. Gender Rights: Reflection, Commitment and Action

Introduction:

After over seven decades of Indian Constitution, it is fitting to reflect upon the commitment and action of the Government of India in achieving the goal of creating gender equality in the Indian society.

Constitutional Provisions Promoting Gender Equality:

- Preamble: Socialism, equal distribution of opportunities and resources, social justice, assuring the dignity of the individual.
- Article 14: Equality before law and equal protection of laws.
- Article 15(1): Prohibition of discrimination on the grounds of sex.
- Article 15(3): Empowering State to make special provisions for women and children.
- Article 16(2): Equality of opportunity in matters of public employment; prohibition of discrimination on the grounds of sex.
- Article 39(a): Secure, men and women equally, the right to an adequate means of livelihood.
- Articles 243D (3) & (4) 243T (3) & (4): Reservation of seats for women candidates in Panchayats and Municipalities.

Legislative Provisions Promoting Gender Equality:

- The Hindu Succession Act, 1956
- The Maternity Benefit Act, 1961
- Dowry Prohibition Act, 1961
- The Protection of Women from Domestic Violence Act, 2005.
- The Prohibition of Child Marriage Act, 2006
- The Protection of Children from Sexual Offences (POCSO) Act, 2012
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

There are other legislations also which directly or indirectly provide for gender equality.

Other Initiatives of Government of India:

- Pan India - Emergency Response Support System (ERSS), single internationally recognized number - 112 for all emergencies with artificial intelligence to identify the location of distress.
- Technology based smart policing and safety management.
- Cyber-crime reporting portal specific to women and children to report obscene content.
- National Database of Sexual Offenders (launched on 20th September 2018) for facilitating the investigation and tracking the habitual sexual offenders.
- Launched 'Investigation Tracking System for Sexual Offences (ITSSO)' on 19th February 2019 to monitor and track time-bound investigation of sexual assault cases according to Criminal law (Amendment) Act, 2018.

Goals for Gender Equality in India:

- Advancement, development and empowerment of women.
- Creative conducive and protective environment for women through political, social and economic policies.
- Social re-engineering to do away with the discriminatory and derogatory practices prevalent in India.
- Elimination of discrimination and all forms of violence against women and the girl child.
- Encouraging women to enter into all fields of employment and commerce.

Commitment:

India ratified the following international instruments related to gender equality:

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Political Rights of Women, 1954
- The Declaration on Elimination of Violence against Women (DEVW) 1993
- UN Women
- UN Security Council Resolution on Women, Peace and Security

The government introduced special measures to combat human trafficking of women and girls, sexual harassment and domestic violence. In January 2015, the Government of India introduced **Beti Bachao, Beti Padhao** initiative to create awareness about the importance of females in the society and save and empower them with education.

Action:

- India is committed to achieve the Sustainable Development Goals (SDGs), which offer opportunities for historical transformation of gender equality.
- Overcoming the traditional social setup of limiting the women within the four corners of the household, and bringing the women into the mainstream of the labour force will increase the percentage of skilled workforce.
- Various schemes have been introduced to expose the women towards skill and employment programmes, special subsidies are given through micro finance services pan India, specifically targeting the rural women.





8. Schemes and Policies for Minorities

The Government is implementing various schemes for the welfare and upliftment of every section of the society including minorities especially economically weaker and downtrodden sections all over the country. It includes schemes for the six centrally notified minority communities namely, Buddhists, Christians, Jains, Muslims, Parsis and Sikhs like

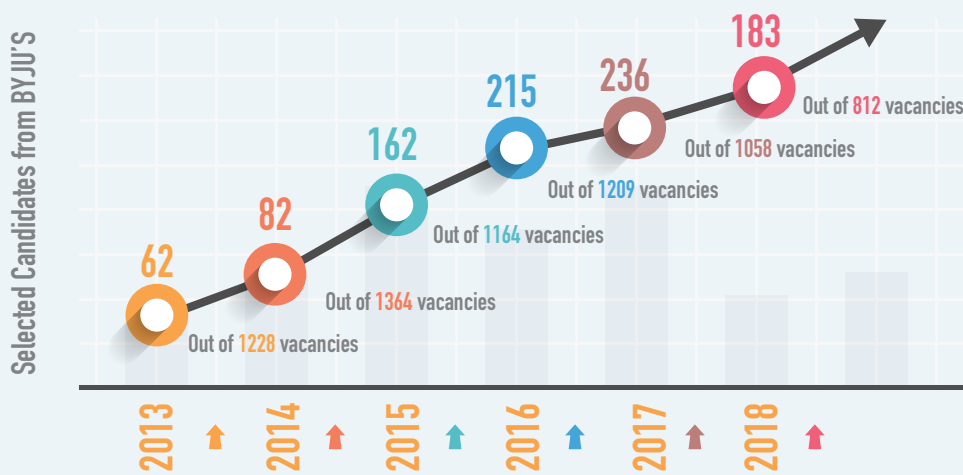
- Pre-Matric Scholarship Scheme, Post-Matric Scholarship Scheme, and Merit-cum-Means based Scholarship Scheme for educational empowerment of students.
- **Maulana Azad National Fellowship Scheme**- Provide fellowships in the form of financial assistance
- **Naya Savera**- Free Coaching and Allied Scheme - The Scheme aims to provide free coaching to students/ candidates belonging to minority communities for qualifying in entrance examinations of technical/ professional courses and competitive examinations.
- **Padho Pardesh**- Scheme of interest subsidy to students of minority communities on educational loans for overseas higher studies.
- **Nai Roshni** - Leadership development of women belonging to minority communities.
- **Seekho Aur Kamao** - Skill development scheme for youth of 14 - 35 years age group and aiming at improving the employability of existing workers, school dropouts etc.
- **Pradhan Mantri Jan Vikas Karyakram** (PMJVK) is Implemented for the benefit of the people from all sections of the society in identified Minority Concentration Areas for creation of assets in education, skill and health sectors.

In addition to the above, the Government also implements schemes for strengthening State Waqf Boards and coordinates arrangements for annual Haj pilgrimage.

CSE 2018

11 Ranks in top 50	28 Ranks in top 100	183 Ranks in the final list
		
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