HUMAN RIGHT
HUMAN RIGHT

- Basic and inalienable rights inherent in all the individuals irrespective of caste, creed, religion, sex and nationality.

- Mechanism Requires To Protect Human Right.
NHRC- The setting of Institutions is one of the effective means to perform various functions relating to implementation of Human Rights. Such an institution spreads human rights awareness through education, training, Research and conduct empirical investigation.
In 1990, India felt the need of establishing the communion as a positive response to the criticism of foreign government in the context of political unrest and violence in Punjab, Jammu Kashmir and NE.
• NHRC is a Statutory Body enacted by Parliament clause 2 d of this act Define human right by stating that human rights means the right relating to the life, liberty, equality and dignity of individuals guaranteed by the constitution are embodied in the international covenants.
• NHRC is functions to enquire into violation of human rights abatement (कमी) thereof either on its own or petition submitted by an affected party to intervene in any of the preceding pending before the court with the permission of such a court.
NATIONAL HUMAN RIGHTS COMMISSION INDIA

To visit any jail or any institution where person is detained.

• To review safeguards guaranteed by Constitution or any of existing law.
• To study treaties and other international instruments.
POWERS OF COMMISSION IT HAS SAME POWERS ON CIVIL COURT WITH RESPECT TO

1. Summoning and Enforcing Attendance
POWERS OF COMMISSION IT HAS SAME POWERS ON CIVIL COURT WITH RESPECT TO

2. Discovery and Production of Any Document
POWERS OF COMMISSION IT HAS SAME POWERS ON CIVIL COURT WITH RESPECT TO

3. Receiving Evidence on Affidavits
POWERS OF COMMISSION IT HAS SAME POWERS ON CIVIL COURT WITH RESPECT TO

4. Requestioning any Public Record
Investigation power- It may utilize service of any office of central and state government.

NHRC has six divisions – administration, law, investigation, policy research projects and programme, infrastructure and public relation.
MADAD COUNTER

- Important and inevitable part of administration structure of NHRC complaint lending mechanism.
1. NHRC versus state of Arunachal - the commission filed a writ petition for the enforcement of the financial rights of 65000 chakmas.
2. Indian Council of legal aid and advice and other commission took cognizance of a letter from Union minister regarding starvation death in Orissa.
3. Punjab mass cremation order- Commission filed petition before Supreme Court for serious allegation about large scale cremations of encountered body.
4. Abolition of bonded labour.
5. Laid down procedure that police office should enter information about encounter in register.
FAILURE STORIES

• Supreme Court described affidavit filed by commission in relation to Fake encounter as vague.
• Court said Communication relied on magisterial enquiry report which was poor.
• Continued atrocities on SC/ST.
FAILURE STORIES

- Lynching in Jamshedpur.
- Analysis of NHRC
- NHRC recommendation don't percolate to the ground level as NHRC doesn't having backing of protection of human rights Act to the penalize authorities.
The Act does not empower NHRC to Act where human right violation through private parties take place.

The act requires that 3/5th member must be former judges what does not specify whether these judges have proved record of Human right activism.
FAILURE STORIES

• It does not investigate an event if complaint was made more than one year after the Incident.

• Policy related to human right violation by armed forces has been restricted.
PRACTICAL LIMITATIONS

- Non Filing Of Vacancies.
- Dependence on state for finance and administration work.
- Conflict of interest when investigate the office of state officials.
- Toothless Tiger.
WHY NHRC IS TOOTLESS TIGER-

• It is because a NHRC investigates Human Rights Violation case sometimes in remote areas with very limited resources, the evidence collected is put to forensic judicial adjudication by its chairman. But at the end, where NHRC arrives at finding it can only recommend remedial measures.
WHAT CAN BE DONE

• It needs to develop an independent cadre of staff.
• A culture of human rights ought to be promoted through education.
• A M Ahmad Committee- It should we allowed to investigate matter after the expiry of one year.
WHAT CAN BE DONE

- Sub committee on accreditation of GANHRI (Global Alliance of National Human Rights Institutions) - **Global Alliance of NHRC**

- NHRC should publicize vacancies, promote broad consultation.
Justice U U LALIT – Democracy itself would be in peril if mechanism to uphold human right starves.
CONCLUSION

• It is for Parliament to decide whether to confer NHRC with some kind of contempt powers to make authorities implement its recommendation.
APPROACH TO HR PROTECTION

• Traditional approaches to human rights protection and promotion have tended to focus on constitutional Judicial review. Human Rights provisions in the Constitution and interpretation of this law by the courts. Such mechanism directly ensures enforceability of human rights through the direction of the court.
• This method is not without its weakness since the courts in most jurisdictions are inundated by civil, criminal, constitutional, commercial cases, direct focus on human rights issues tend to be weak.
Question

• What should be done?
WHAT SHOULD BE DONE?

1) Education - HR education was a focus point of UN Activities in creating UN decade for HR education (1995 to 2004).
<table>
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| • Universal Periodic Review UPR? What is this? | • The peer based scrutiny of Nations Human Rights Action or situation.  
• The Universal Periodic Review (UPR) is a mechanism of the United Nations (UN) Human Rights Council (HRC) that emerged from the 2005 UN reform process. Commonly referred to as the UN-UPR, it was established by General Assembly resolution 60/251 of 3 April 2006, the UN-UPR periodically examines the human rights performance of all 193 UN Member States. |
Key issues raised by State about India in universal periodic review (UPR) at the UN Human Rights Council (UNHRC):

1) Restriction on Civil Society
2) Discrimination Against Foreign Nationals.
3) LGBT rights
4) Use of AFSPA-
5) Ratification of Convention against Torture
6) Internet Shutdowns
1) RESTRICTION ON CIVIL SOCIETY

- The US, Norway, Australia, Germany raise the issue about the clampdown (शिकंजा कसना) on foreign funds for voluntary agencies.
- India - The Activities of HR defenders and NGO have to be in conformity of the law of land.
2) DISCRIMINATION AGAINST FOREIGN NATIONALS

- After the attack on Nigerian students at Greater Noida Haiti called upon India to bring upon specific law to deal with racial attack.

- India- Criminal Activities can't be is termed racist.
3) LGBT RIGHTS

• Ireland, Sweden, Norway called upon India to decriminalize same sex selection.

• It has been but now practice issues remains.
4) USE OF AFSPA

- The Swiss delegate said India should revise the AFSPA to bring in line with obligation to International covenant on civil and political rights to combat impunity.

- India - the Act is applicable only to a selected International boundaries and only to deal with exigent circumstances like terrorism.
5) RATIFICATION OF CONVENTION AGAINST TORTURE

- Germany asserted that India should ratify CAT and its optional protocol.

- India's law commission is examining the changes required in domestic laws prior to ratification.
6) INTERNET SHUTDOWNS

• Sweden- this is a blocking of website and network disruption occur in entire regions on the pretext of national security, all the communication surveillance requires a test of necessity and proportionality.
WOMEN'S MOVEMENT + NATIONAL COMMISSION FOR WOMEN (NCW)
WOMEN’S MOVEMENT + NCW

- Women's movement are organised efforts made by women's association to bring about equality and freedom for women.
• GAIL OMVEDT gives four kind of movements related to women's which can be called as women's movement and also distinguishes between them.
WOMEN'S MOVEMENT + NCW

1. Moments where women participate- in this moment for men and women together fight some from of oppression.

• Although here issues are concerned with women, she refuses to call them women's movement because this moment did not challenge fundamental structure of operation in family and Society.
MOVEMENTS OF WOMEN
2. Movements of women- There may be movements on general issues (slum improvement, price rise etc.) where women are the only participants. But sole participation of women itself does not make them women’s movements.

According to Omvedt, these movements play a progressive role as they give women participants a chance to experience their own collective strength.
3. **Women’s reform movements** - Example of these movements can be the series of movements on education for women, for abolition of Sati etc. that took place in the pre-independence India.

Although these issues were concerned with women, Omvedt refuses to call them women’s movements because these movements did not challenge the fundamental structure of oppression in family and society.
4. WOMEN'S LIBERATION MOVEMENT

- Women's Liberation Movement are guided by an ideology of fighting the sexual division of labour and patriarchy.

- Women's Movement in India does not stand in isolation and it is an integral part of which other social movements.
Thus women's movement in India can be divided into:

1. Social Reform Phase
2. Freedom Movement Phase
3. Post Independence Phase
1. SOCIAL REFORM PHASE
1. SOCIAL REFORM PHASE

• **Rassundari Devi**; Housewife of Bengal wrote her Autobiography in 1876 (*AMAR JIBON*).

• Her book is a Panasonic description of deplorable conditions of women at the time as well as secret plea to women to stand up from seat of subservience.
1. SOCIAL REFORM PHASE

- Pandita Ramabai;
- Book “HIGH CASTE HINDU WOMEN” is a critique of women’s oppression in religion.
1. SOCIAL REFORM PHASE

- In 1916 Begum of Bhopal founded the “INDIA MUSLIM Women's Conference” with education of women's as prime agenda apart from provisions of other remedial services for women's and changing offensive practices such as polygamy.
1. SOCIAL REFORM PHASE

• Fight for Property Rights for Hindu women was another important aspect of social reform movements; **SPECIAL MARRIAGE ACT 1872** was passed with provisions for divorce and succession of property to women.

**THE SPECIAL MARRIAGE ACTS 1872 (Bangladesh and Pakistan) and 1954 (India)**

Shahnaz Huda
COMPARATIVE FAMILY LAW
1. SOCIAL REFORM PHASE

- WOMEN INDIAN ASSOCIATION was formed in 1879 by Annie Besant demanding the vote and representation of women. It also worked for women's education and supported “CHILD MARRIAGE RESTRAINT ACT 1931 (Sharda Act)”. 
2. FREEDOM MOVEMENT PHASE
According to Geraldine Forbes, the “first Wave of feminism in India was the period between year 1880 - 1940.
2. FREEDOM MOVEMENT PHASE

- In 1904 women's wing was started in “NATIONAL SOCIAL CONFERENCE”
- Women's organizations such as “NARI SATYAGRAHA SAMITI”,
- Ladies Picketing Board began organising mass boycott of foreign cloth.
2. FREEDOM MOVEMENT PHASE

- The Quit India Movement show large scale participation of women like “Usha Devi” started Congress radio.

- In “Indian National Army Rani Jhansi Regiment” of women was created.
3. POST INDEPENDENCE PHASE
According to “Vina Mazumdar”, women's question remain disappeared from the public Arena for over 20 years.
3. POST INDEPENDENCE PHASE

- However from the mid 1960; the birth of new social movement of particulars important is mentioned as-
  - Anti price rise agitation.
  - Navnirman Movement.
  - Rise of Autonomous Organisation.
3. POST INDEPENDENCE PHASE

• Anti Price Rise Agitation.
  - The “Seva Movement” led by “Ela Bhatt” was landmark in the history of contemporary women's movement.

• Women involved in various trades in informal sector were brought together by their shared experiences.

• **Self Employed Women’s Association** was founded as a trade union in 1972 by the noted Gandhian, Dr. Ela bhatt. It is an organization of and for the poor and self-employed women workers.
3. POST INDEPENDENCE PHASE

- The “Navnirman Movement” begin and “student movement” was chiefly against corruption the movement was also a critic of caste system and religious rituals.
- The progressive organisation for women develop in Hyderabad to work towards the gender oppressive structure in society namely sexual division of labour.
3. POST INDEPENDENCE PHASE

- **Towards Equality Report 1974** was a major landmark for women's movement.
- **Towards Equality** was the title of the report of the Committee on the Status of Women in India (1974-75). This 1974 document is said to lay the foundation of women's movement in independent India.
- **Rise of Autonomous Organisation**, rise of Nation wide campaign beginning in 1980 on issues such as - Dowry and rape led to the formation of forum against rape and forum against operation of women.
LAW AND ITS RELATIONSHIPS WITH EMPOWERMENT
According to “Vina Mazumdar”, the women's movement engagement with law can be divided into two wings - the right wing and empowerment wing.
• The right wing reflects to those who have targeted this demand on the state and seek legislature amendment for women advancement.

• The empowerment wing refers to emphasis on empowering women from within themselves.
• In practice there has been cooperation between women movement and state the law of prohibiting pre-natal diagnostic test and domestic violence Act of 2005 are example of laws that have come into existence due to pressure from women's movement.
NATIONAL COMMISSION FOR WOMEN (NCW)
NATIONAL COMMISSION FOR WOMEN (NCW)

- The NCW was set up a statutory body in 1992 under national commission for women Act 1990
WHY IT WAS ESTABLISHED?

• Answer-
  • To review constitutional and legal safeguards for women
  • To recommend remedial legislative measures
Question

• What Are The Events That Led To The Establishment Of NCW?
EVENTS THAT LED TO ESTABLISHMENT OF NCW-

• Answer -
• The committee on the status of women in India (1974) recommended for setting of NCW.
• In 1990 the central government held consultation with NGO and social worker regarding structure function.
Question

• What are the functions of NCW?
SECTION 10 OF NCW ACT PROVIDES THAT (FUNCTIONS OF NCW)

1. Investigate and examine all matters relating to the safeguards provided for women under Constitution.
SECTION 10 OF NCW ACT PROVIDES THAT (FUNCTIONS OF NCW)

2. Present report annually to the central government
3. Look into the complaint and take Suo Moto notice of matters relating to
   A. Deprivation of women's right
   B. Non compliance of Policy decision
SECTION 10 OF NCW ACT PROVIDES THAT (FUNCTIONS OF NCW)

4. Undertake promotional and educational research in sphere of women's empowerment.
CONTRIBUTION OR EVALUATION

• On international women's day 2000, NCW and CII held a conference (Confederation of Indian Industry) to explore ways in which strategies for development of women.

• For the implementation of supreme court guidelines on sexual harassment at workplace the commission has been holding meeting with PSU, PSB, hospitals etc.
Ms Bhanwari Devi Gang Rape Case -

The commission Suo Moto took the case of Ms Bhanwari Devi and extended support for appeal to the court.
CONTRIBUTION OR EVALUATION

- Shanti Devi Of Barmer-
  - Her pension was stop for 2 years and was declared dead.
  - NCW represented the matter to concerned department for redressal.
CONTRIBUTION OR EVALUATION

• The NCW was asked by government to give recommendations on amendment related to 497 section of IPC 1860 that deals with adultery.
• NCW recommended to make it civil offence.
LACUNA IN ITS WORKING

- It is a purely **Advisory Body**.

- No independence - financial and administrative both.

- Absurd statement made by NCW chairperson **Mamta Sharma**.
LACUNA IN ITS WORKING

• NCW was silent when Sonali Mukherjee Acid Victim” attack was running from pillar to post.

• Athlete Pinki Pramanik faced public humiliation when she was charged with rape NCW was absent at that time also.
thank you
NATIONAL COMMISSION FOR SOCIA LLY AND EDUCATIONALLY BACKWARD CLASSES (NCSEdBC)
How to Approach

NCBC

Why it has been set up
Composition
Function
Analysis
NATIONAL COMMISSION FOR SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES (NCSEdBC)
Why it has been set up?
What are the changes made, important articles that has been amended
Perspective - Indira Jaisingh & Satish Deshpande
Issues associated with it.
Politics of Reservation

- Articles
  - Article 340
  - Article 15
- National commission to Backward Classes
ARTICLES - CONSTITUTIONAL PROVISIONS FOR BACKWARD CLASSES

Article 340-
It provides for appointment of the commission to investigate the conditions and difficulties faced by socially and educationally backward classes.
Article 15
The state shall not discriminate against any citizen on the grounds only of religion, race, cast, sex, place of birth.
In 1992 supreme court in Indra sawhrey case had directed the government to create the permanent body to entertain examine and recommended the Inclusion of various backward classes for the purpose of benefit and protection.
FUNCTIONS AND POWERS

• The commission considers inclusion and exclusion from the list of communities notified as backward for the purpose of reservation
• It tender the needful advice to the central government as per section 9(1) of NCBC Act 1993
• It has power of civil court.
FUNCTIONS AND POWERS

- NCBC has not been empowered to look into grievances of persons of other backward classes under Article 338 (5) read with Article 338 (10) of the Constitution. NCSC is competent authority to look into all the grievances, rights and safeguards.
COMPOSITION

• Section 3 of the Act provides that Commission shall consist of five members chair person who is or has been judge of Supreme Court and high court, a social scientist, two persons who have special knowledge in matters relating to backward classes and a member necessary who is in the rank of secretary to government of India.
ANALYSIS OF NCBC

- Firstly-
- Under Article 15(4), backward castes are not entitled to reservation only SEBC.

- SEBC has not been defined.
ANALYSIS OF NCBC

• Secondly-
• Number of SEBC in many states are not considered a SEBC for Central government services.
ANALYSIS OF NCBC

• Thirdly-
• Even in state certain caste are considered SEBC only if they are from certain district.
CONTEMPORARY ISSUES

- Rising Agitation - Example Jat, Patidars, (Socio Economic)
CONTEMPORARY ISSUES

• Continuation pressure on Central and State Government to amend list of Backward Classes.

• In this backdrop the Bill was introduced as 123rd CA Bill.
The Bill was passed after dropping clause 3 to which for amendments has been introduced.

1) One Member from Minority and One Woman

2) State recommendation Binding.
1. It seeks to insist a new Article 338 B, in the Constitution which provides to NCBC its composition mandate.
2. Insert a new Article 342 - A which empowers President to notify the list of SEBC in case of state President will do so in consultation with governor.
1. Making it constitutional amendment means that it can't be amended by simple majority in parliament.
2. Secondly and more significantly the earlier provisions says “the President may appoint,” Article 342 A says “President appoint”.
SATISH DESHPANDE

• New Backward Class Commission Perpetuates (चिरायु बनाना) an Older Truncation (काट-छांट) of exclusion and discrimination.
• The political benefit of this move is that it denies opponent's a free ride on demands of Jats, Kapus, Patidas.
ISSUES WITH NEW COMMISSION

• Article 338 B incorporated similar to Article 338 and 338 A except for subclass 5c that clause reads “to participate and advise on the planning process of socio economic development of SC and ST”.

• But in 338 B the words used “to advise on social economic dev of SEBC”.
• A new sub clause 26 C has been added under Article 366 which when added with Article 342 A would make it clear that only Union government would have power to determine if the cast in SEBC.
JUSTICE AK RAJAN NEW SUB CLAUSE

- Another important task calling for attention of leader in categorization of SC or BC into backward forward most and extremely backward caste. the Bill does not mention if NCBC recommendation with respect to Increasing and exclusion in the list will be binding.
- The Bill is silent on the expertise of member included under commission.
WAY OUT

• Empowerment through scholarship and educational loans.

• Common moral code based on constitutional norms should be binding on all parties.
CASE STUDY- TELANGANA

• Telangana assembly Increasing the reservation of OBC muslim in jobs and education from 4 % to 12% asks centre to include 62% reservation in the state.

• Against SC ceiling of 50% of reservation.
The Union cabinet has approved a proposal to set up a panel to examine subcategory Action of socially and educationally other backward caste. Today there is no sub categorisation in the central list.
CASE STUDY - TELANGANA

- The commission will examine the extent of an equitable distribution of benefits of reservation among the caste or community included in broad category of OBC.
thank you
Reservation
Question

• What is the rationale behind Reservation Policy?
RATIONALE BEHIND RESERVATION POLICY

• The underline theory for the provision of reservation is under representation of identifiable groups as a legacy of Indian caste system.

• The framers of the Constitution believe that due to caste system SC and ST were historically oppressed and denied equal opportunity.
RATIONALE BEHIND RESERVATION POLICY

• The Constitution lays down 15% and 7.5% of vacancies to the government aided educational institute for jobs in government sector is reserved for SC and ST candidates respectively for a period of 5 years after which situation was to be reviewed.
Concept of SC ST OBC

- SC
- ST
- OBC
As there is no definition of scheduled caste in the Constitution according to Article 341 (2)-:

The President may with respect to any state or Union territory after consultation with governor specify castes, races or tribes which shall for the purpose of Constitution be deemed to be SC.
After independence, the Constitution of India made a provision (Article 342) specifying the social groups which are to be treated as ST for official purposes.
The Constitution use the qualifying phrase socially and educationally in Article 15(4) the first obstacle before the state was to define backward classes as SC and ST are listed on separate categories, identifying backwardness purely on the basis of caste was unjustifiable as groups.
The Constitution provide for appointment of a Commission to investigate the condition of backward classes (Article 340).
The Kakasaheb Kalekar Commission was appointed in 1953 with the following terms of appointment-
1. To determine test by which particular plan for group of people can be called as backward.
2. To prepare a list of such backward communities for whole of India
The Kakekar Commission submitted its report to the government in 1955, but the test recommended by commission appear to the government too vague.
Thus centre finally decided in 1961 not to draw up in any list for OBC and advised the state to draw their own list using economic rather than caste criteria.

Karnataka rejected the criteria of caste, List of backward class based on the criteria of caste and economic standing.
MANDAL COMMISSION RECOMMENDATION

• Before Mandal Commission Recommendation, there were 8 state which has made reservation for backward classes on the basis of caste.
B.D MANDAL
COMMISSION
B.D MANDAL COMMISSION

• The commission relying on 1931 census figure determine that OBC where 52% of total population.

• The commission adopted 11 Criteria is all to determine the type the backwardness of caste /clan- 4 Social Criteria, 3 Educational Criteria and 4 Economic Criteria.
Reservation of 27% jobs and also in educational institutions
MAJOR RECOMMENDATIONS

27% reservation for Promotion.
MAJOR RECOMMENDATIONS

Carry over period of 3 years for reserved quota.
MAJOR RECOMMENDATIONS

Age relaxation for OBC similar to that of SC and ST
INDIRA SAWHNEY VS UNION OF INDIA

- Nine judge bench in Indira Sawhney v/s Union of India laid down following points which summaries law on the issue of reservation in government employment.
1. The reservation contemplated in Article 16 (4) should not exceed 50%.
ISSUE OF RESERVATION IN GOVERNMENT EMPLOYMENT

2. For getting reservation, class must be backward and should not be adequately represented in state.
3. Reservation to post under 16 (4) is confined to initial appointment only.
4. Identification of backward class is subjected to judicial review
ISSUE OF RESERVATION IN GOVERNMENT EMPLOYMENT

5. Creamy layer should be excluded from the list of beneficiaries
RESERVATION IN EDUCATIONAL INSTITUTION

- Article 15 (5) is added in “93rd Amend.
- Act it permitted to make special provisions by laws for advancement of SC, ST, OBC with respect to admission in educational institution.
BACKGROUND

• SC in Unnikrishnan case held that education can't be treated as trade. this was the first case SC called for introduction of RTE.

• Government realized that reservation in public employment can be effectively insured through reservation in education.
OBSERVATION IN UNNIKRISHNAN

• Right to education only extend to children upto the age of 14 years.
TM PAI FOUNDATION CASE

- it deals with right of non-minorities to establish and administer educational institution under Article 19 (1) g and 21.
- The court permitted state or university to devise an appropriate MACHINERY to ensure that no capitation fee was charged.
INAMDAR CASE
INAMDAR CASE - THE COURT HELD

1. The two committees for monitoring admission procedure and determining fee structure are regularly measures.
INAMDAR CASE - THE COURT HELD

2. Every institution is free to device its own structure subject to limitation that there can be no profiteering
• In order to gain effect to 15 (5) the centre United central education institution reservation in admission Act 2006 providing a quota for 27% to candidates belonging to OBC..

• * SC in Ashok Thakur vs Union of India validated 93rd Amendment Act.
Section 12 of RTE Act requires all school board state funded and private to accept 25% intake of children from disadvantage groups.
SC in Society for unaided private school in Rajasthan vs UOI held introduction of quota.
PRATAP BHANU MEHTA
Educational policy should enable every student to realize full potential regardless of social and financial services. Robust school Education and School program or better than quota system. forecloses any possibility of intelligent targeting.
Reservation In Employment
ARTICLE 16(4)

- Article 16(4) enable state to make special provision of reservation in appointment in favour of any backward class of citizen.
ARTICLE 16(4A)

- By “77 Amendment Act” to remove limitation with respect to reservation in promotion prohibited by SC (After Indra Sawhney v. Union Of India 1992 case).
81st Amendment Act

- It added new provision in “Article 16” that empowers the state to consider unfulfilled reserved vacancies of a year as separate class of vacancies in brief, it ends 50% ceiling on reservation in backlog vacancies.
82ND AMENDMENT ACT

- Lowers the qualifying marks for promotion
AJIT SINGH VERSUS STATE OF PUNJAB

- SC upheld reservation in promotion but directed to introduce catch up rule.

- **Catch up Rule** -
  - It means that if a senior candidate of general category is promoted after SC, ST candidate he would regain seniority over the persons promoted ahead of them.
AJIT SINGH VERSUS STATE OF PUNJAB

- Government negates catch rule and introduces promotion with consequential seniority by “85th Amendment Act.”
1. Government has to ascertain that class is not adequately represented.
2. Government should ensure efficiency in administration should not be compromised
The Supreme Court in its verdict in U.P. Power Corporation Ltd vs Rajesh Kumar & Ors quashed Section 3(7) of the Uttar Pradesh Public Servants (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and Rule 8A of the U.P. Government Servants Seniority (3rd Amendment) Rules, 2007, in total disregard of guidelines in Nagaraj Case. Failure of the U.P. government to provide data showing “compelling reasons”, “backwardness” and “inadequate representation”
ARTICLE 35A
QUE. WHAT IS ARTICLE 35A?

• Answer-
  It is a constitutional provision that allows Jammu and Kashmir assembly to define permanent resident of state.
Que. Who are the permanent residents?

• Answer-
  It is defined as a person who was a state subject on May 14, 1954 or who has been residing in state for a period of 10 years and has lawfully acquired immovable property in the state.
QUE. WHAT ARE THE SPECIAL ADVANTAGES TO PERMANENT RESIDENT?

• Answer-
  They have privilege in public sector jobs, acquisition of property in state, scholarship and other public aid and welfare.
**QUE. WHY ARTICLE 35 A WAS inserted?**

- **Answer-**
The 1952 Delhi agreement entered in between Pandit Nehru and S. Abdullah which extended Indian citizenship to the state subject of Jammu and Kashmir.
WHAT'S WRONG IN INCLUSION OF ARTICLE 35A?

• The parliamentary route of law making was bypassed when the President Incorporated Article 35A in the Constitution?

• whether President has power to modify the Constitution?

• These two questions were raised during its Incorporation.
WHAT ARE THE ANSWERS OF THESE QUESTIONS?

• 5 judges bench of SC in March 1961 judgment in *Puran Lal lakhanpal vs President of India* observe that President may modify an existing provision in the Constitution under Article 370.

• The judgment is silent as to whether President can without the parliament’s knowledge introduce a new Article.
Que. WHY IT IS IN NEWS?

- A writ petition filed by NGO “We the citizen” challenge the validity of Article 35A.

- Arguments made by NGO:
  - The Constitution makers didn't intend Article 370 to be a tool to spacing permanently amendment like Article 35A in the Constitution.
Que. WHY IT IS IN NEWS?

- Article 35A is against very spirit of oneness.
- Article 35A is in direct violation of Article 14, 19, 21 of Indian Constitution.

- Second petition filed by Charru Wali Khanna stating Article 35A restrict right to property if a native women Merry to man not holding permanent resident certificate.
ANALYSIS

• It is pointed out that since Article 35A is only a classificatory provisions and doesn`t in itself for any special powers, seeking to scrap it is pointless because any such Action must also include all over the presidential orders of 1954 some of which extended to several provisions of Indian Constitution to Jammu and Kashmir.
Historian Srinath Raghavan “questioning the validity of Article 35A has no bracing on the right of state subjects. Nor can the presidential orders of 1954 be questioned without questioning the validity of other provisions of Indian Constitution it extended to Jammu and Kashmir.”
ANALYSIS

- Any debate on Article 35A must necessarily include the larger debate over Article 370.
Conclusion:

• On a concluding note we can say that the matter is sensitive and requires participation of several stakeholders and requires a larger debate.
• On the other side it is necessary to provide confidence to the residents of J&K that any alteration in status quo will not take away their rights but will boost Jammu and Kashmir's prosperity and it will open doors for more investment, new opportunities, new employment etc.
• No doubt the Article 35A that was incorporated about several decades ago requires a relook.
thank you
RIGHTS TO PRIVACY
WHAT IS RIGHTS TO PRIVACY?

- Article 12 of UDHR 1948 and Article 17 of international covenant on civil and political rights legally protect against arbitrary interference with one's privacy.
WHY THE MATTER IS IN NEWS?

• The trigger is the government Aadhar scheme which collects personal details and biometrics to identify beneficial for government welfare schemes.

• A bunch of petition was filed in SC arguing that there is a breach of privacy.
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<th>Question</th>
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<tr>
<td><strong>Why Does It Matters?</strong></td>
<td><strong>The risk of personal information falling into the hands of private players and service providers.</strong></td>
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<td>Question</td>
<td>Answer</td>
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<td>• What Government Can Do?</td>
<td>• Government should set up a robust data protection mechanism.</td>
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Perspective Of Judges On Right To Privacy

Justice S A Bodbe

Justice D Y Chandrachud

Justice Chamleshwar
Justice S A Bodbe,
if a man has to die with dignity he has
to have some privacy
Justice DY Chandrachud,
Privacy is not an elitist concept, it affects masses.
Justice Chamleshwar,

In a republic founded on a written Constitution it is difficult to accept that there is no fundamental right to privacy.
Other Side Of The Debate

Attorney General KK Venugopal

Senior Advocates Sundarsam

Soli Sorabjee
Attorney General KK VENUGOPAL,
Privacy is not a single homogeneous right but rather as a bunch of right spread over the Constitution.
Senior Advocates Sundarsam,
Privacy is not a fundamental right but only a concept.
Soli Sorabjee counter centre`s stand that privacy is not explicitly mentioned in the Constitution and thus not a fundamental right. He said right to freedom of press is also not mentioned in Article 19 1 but it in deducted likewise privacy can also be deducted from other fundamental rights.
Three Stages of Judicial Understanding on Right to Privacy.

1. MP Sharma vs Satish Chandra
2. Kharak Singh Case
3. Ks Puttuswamy Versus UOI
1. MP SHARMA VS SATISH CHANDRA (1954) – Related to Dalmia group companies:

- Right to privacy cannot be read into the provision of Article 20 (3) of Indian Constitution - protection against self incrimination.

- The judgment does not adjudicate on whether a right to privacy would arise from any other provisions of the rights guaranteed by past present including Article 19 and 21.
2. KHARAK SINGH CASE (Kharak Singh vs The State of U P & Others-1962)

Petitioner Kharak Singh was challaned in a case of dacoity, but was released as there was no evidence against him. Uttar Pradesh Police subsequently opened a “history sheet” against him and brought him under “surveillance”. This was done in exercise of the powers under Chapter XX of the Uttar Pradesh Police Regulations.

In his writ petition, Singh challenged the constitutional validity of Chapter XX, and the powers conferred upon police officials thereunder on the ground that they violated his fundamental rights under Articles 19(1)(d) — right to freedom of movement — and 21 — protection of life and personal liberty.

• In this case right to privacy was recognized implicitly- the right of privacy is not a guaranteed right under our Constitution.
3. KS PUTTASWAMY VERSUS UOI

• Privacy is constitutionally protected right which emerges primarily from the guarantee of life and personal liberty under Article 21 of the Constitution.
3. KS PUTTASWAMY VERSUS UOI

- Privacy has both a normative and descriptive functions.

- At normative level privacy sub serves those eternal values up on which the guarantees of life, liberty and freedom are founded.
3. KS PUTTASWAMY VERSUS UOI

- Privacy has both positive and negative content. The negative content restraint the state from committing an intrusion upon the life and personal liberty of the citizen.
3. KS PUTTASWAMY VERSUS UOI

At descriptive level, privacy element of entitlements which lie at the foundation of liberty.

- Privacy safeguards individual autonomy and recognise the ability of individual to control vital aspect of his or her life.
3. KS PUTTASWAMY VERSUS UOI

• It positive content imposes an obligation on state to take all necessary measures to protect the privacy of individual.
DIFFERENT FACETS (पहलू) OF PRIVACY
DIFFERENT FACETS OF PRIVACY

- BIOMETRIC
- CONSENT OR CHOICE
- DATA MINING
- GOOGLE
- ONLINE SHOPPING
Apart from the welfare schemes in which it is used to validate a beneficiary identity, India is pushing it for a host of other services.

A large respiratory of biometric information can be used as a tool of mass surveillance.
CONSENT OR CHOICE

• 9 Judges bench in privacy case said nobody would like to be told by the state as to what they should eat or how they should dress.
DATA MINING

- Data is a new natural resource, Uber taxi company has no vehicle, Facebook social site does not develop its content.
Companies such as Google, Facebook, Uber, have more data on users than the government of their countries.
• As justice SK Kaushal said children around the world create perpetual (लगातार) digital footprints on they learn there abc as apple, Bluetooth, chat followed by download email, Facebook, Google, Hotmail, Instagram.”
• **Information control**: Justice DY Chandrachur mention three internationally accepted aspect of privacy. Spatial control, decisional autonomy, informational control.

• **Spatial control denotes** the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress. **Informational control** empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.

• The 3rd fact is particularly relevant in today's era of ubiquitous (देशव्यापी) data survivalance.
• Buying online leaves electronic footprints that can be created to reach conclusion on the nature of an individual habits. (Online Profiling)
• The SC Judgment has clearly established the vertical application of right to privacy against state.

• Application against “Non State Actor” has been left open to case by case adjudication.
REMARK

• Next part of the debate is to enact “Data Protection Law”.
thank you
TRIPLE TALAQ
WHAT IS THE BACKGROUND OF THE CASE?

- Shah Bano Begum case (1985)
WHAT IS “TALAQ E BIDAT” INSTANT TRIPLE TALAQ?

- Instant Triple Talaq is the unrestrained power of the husband which disturbs and conflicts with the constitutional value of Equality and Dignity.
WHAT IS THE MINORITY VIEW?

• “Talaq e Biddat” is integral part of Islam and hence protected by Article 25 of the Constitution.
• Justice JS Khehar was of the view that Triple Talaq is the integral part of Islam.
WHAT IS THE MAJORITY VIEW?

• Justice Nariman was of the view that “Talaq e Biddat” is not essential part of islam and does not protected under Article 25.

• the court in Sharmin ara vs State of u p and other held that triple Talaq lacks legal sanctity.
CONTROVERSY IN RELATION TO ARTICLE 13

• Constitutional court in India have been of the view that only codified laws can be checked on the anvil of Article 13 and be declared as null and void.

• In Shayara Bano Case the question arose whether triple divorce is codified or uncodified law within the meaning of section 2 of application Act 1937.
CONTROVERSY IN RELATION TO ARTICLE 13

• Analysis – this has not been considered by the Judiciary to discuss - thus, it is interpreted as -- 1937 act can be declared as laws in force within the meaning of Article 13 (3) (B).
• Justice Narsiman has just mentioned that 1937 Act recognize instant triple Talaq as Statutory Right and hence it comes under the Ambit of judicial security under Article 13.
CONTROVERSY IN RELATION TO ARTICLE 13

• Uncodified personal laws are exempt from constitutional scrutiny. The SC should have decided to do away with artificial distinction between codified and uncodified laws.

• The Bombay High Court in state of Bombay versus narasu Appa Mali (1952) held that personal laws are not laws meaning under Article 13 (1).
CURRENT SITUATION

- The SC set aside the practice of instant triple Talaq saying it was a violative of Article 14 and 21 of the Constitution.

- The SC's ruling was restricted to constitutional validity of triple talaq, and it did not go into other issues of polygamy and nikah halala under Muslim personal law.
Parliament passed the Muslim Women (Protection of Rights on Marriage) Bill 2019. The Bill would ensure gender equality and gender justice to Muslim women.

- **Objective:** The Bill would help in protecting the rights of married Muslim women and prevent divorce by practice of ‘talaq-e-biddat’ by their husbands.

- It declares the practice of triple talaq as **void and illegal.**

- It makes this offence punishable with **imprisonment up to three years and fine.**
• It provides for **payment of subsistence allowance** to married Muslim women and dependent children.

• It proposes to **make the offence cognizable**, if information relating to the commission of an offence is given to a police officer by the married Muslim woman upon whom talaq is pronounced or by any person related to her by blood or marriage.

• The offence is **made compoundable** with the permission of the Magistrate at the instance of the married Muslim woman upon whom talaq is pronounced.

• It further provides for **hearing the married Muslim woman** upon whom talaq is pronounced, before the accused is released **on bail by the Magistrate**.
WHAT IS CAG?

- The institution is the guardian of public Purse and control entire financial system of the country.
• Its duty is to uphold the Constitution of India and laws of parliament in the field of financial administration.

• This is the reason Dr BR Ambedkar said that CAG is most important office under Constitution of India.
From where does CAG owe its power?
FROM WHERE DOES CAG OWES IN POWER?

- The Constitution Article 149 authorize Parliament to prescribe duties and powers of CAG accordingly Parliament United CAG duties powers and conditions of services Act 1971.
1. It Audits the accounts related to all expenditure from CFI and CF of state
WHAT IS THE FUNCTION

2. He audits accounts expenditure from CFI and public accounts of India
WHAT IS THE FUNCTION

3. He also audit the receipt and expenditure of centre and each state.
**Question**

- Question. What are the different kinds of audit done by CAG

**answer**

- legal and regulatory audit (obligatory)
- Propriety (उपयुक्तता) Audit (discretionary).
Also you can talk about

Financial Audit (Based on specific criteria)

Compliance Audit (adherence to regulatory guidelines)

Performance Audit (independent examination)
• The first two are based on certain applicable regulations, procedures and standards, the way performance audit is conducted deserves special mention due to methodology and approach.
PERFORMANCE AUDIT

• It is primarily intended to evaluate the value of money of the output and outcome.
• It asks 2 question-
  • Are things being done in the right way.
  • Are the right things being done.
NOW WE WILL DISCUSS DIFFERENT ISSUES

1. The Constitution visualises CAG to be comptroller and auditor general. However in practice, CAG is fulfilling the role of auditor general only.
NOW WE WILL DISCUSS DIFFERENT ISSUES

He has no control over issue of money from CFI and many department are authorised to draw money by issuing cheques without specific authority from CAG.
NOW WE WILL DISCUSS DIFFERENT ISSUES

2. There “Secret Service Expenditure” is a limitation on Auditing role of CAG. In this regard CAG cannot call for particulars of Expenditure incurred by executive agencies.
NOW WE WILL DISCUSS DIFFERENT ISSUES

3. Mode of Appointment
Highly internalized + highjack by IAS officer recommendations there should be selection committee comprising of PM, LOP, H. Ministers.
NOW WE WILL DISCUSS DIFFERENT ISSUES

4. He is responsible to the parliament. There has been demands to make it accountable to parliament.
ANALYSIS

• PAC member suggested that committee should be consulted before the appointment of CAG and it should be part of legislature like in UK and Australia. And CAG should be responsible to Parliament.

• In India Constitution is Supreme not Parliament. the CAG meant to be autonomous according to Constitution.
This is a strange demand given that under the CAG (duties, powers and conditions of services) Act is to hold the executive accountable.
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<tr>
<th>Question</th>
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<tr>
<td>• What is the issue with making CAG accountable to Parliament?</td>
<td>• An extreme situation may arise, if Parliament control by a majority of members of a single ruling party, prevents an Audit scrutiny of transactions.</td>
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ANALYSIS

• The present constitutional structural ensures independence of CAG to go into the entire gamut (विस्तार) of audit functions where public interest is involved.

• This view is supported by judicial pronouncement in some cases including SC in Association of “unified tele service provider versus Union of India case”.
• If Constitutional Amendment is necessary it could be to amend Article 149 to define powers of CAG broadly.
CAG
Lecture: 2
5. Should CAG Question Policy Decision
The Gujarat state government has launched a Rupees 9700 crore project for developing an international financial service city at Ahmedabad.

CAG has made certain remarks about policy decision on that basis PIL was filed.
CASE STUDY

• SC dismissed the petition.

Shashikant Sharma

- Demonetization is a policy decision.
- CAG will not question it. We will look into other aspects of demonetization such as how much it impacted the revenue of RBI or it's dividends.
6. Can CAG audit private companies?
1) **Natural Resources** (such as spectrum) belongs to people, whenever union, state local, bodies or private entities are exploiting natural resources- They are accountable to people and Parliament
2) Every unlawful gain by company is a loss to CFI. Therefore CAG has right to audit money trails. In case of DISCOMS, tariffs collected would form part of CFI and hence CAG audit was permissible.
CAG- PAC RELATIONSHIP
The CAG submits Three Audit Reports-

- Audit report on appropriation accounts.
- Audit report on public sector undertaking.
- Audit report on finance account.
CAG- PAC RELATIONSHIP

- The PAC then examines these reports. It does so, not only from legal point of view to discover technical irregularities, but also from point of view of economy (मितव्ययता), propriety (उपयुक्तता), and prudence to discover instances of corruption, waste, loan and efficiency.
The Parliament should adopt a charter or convention outlining broad contours (रूप-रेखा) of cooperation between CAG and PAC.
DEMAND OF CAG

• It wants department should respond to its request for information within stipulated time frame.
DEMAND OF CAG

• It also wants that disclosure of Audit Report by Government be made mandatory, as sometimes government delays disclosure.
1. LPG ISSUE- The reports says 92% subsidy savings where due to fall in global oil prices not because of DBT.
2. LEAKAGE OF REPORT- Leakage of CAG report in public domain before it is laid to the house is an act of gross (अनौचित्य)impropriety.
COMPARISON WITH OTHER COUNTRIES.

CAG IN UK

CAG IN AUSTRALIA
The office of CAG was created by exchequer (राजकोष) and Audit Department Act 1866, which combines the foundation of controller general of exchequer with those of commissioners of audit.

CAG authorizes issue of money to departments.
• New Zealand in all these countries CAG is jointly selected by the PM and the chairman of the committee of public accounts and appointments to be ratified by house of commons.
• 1. The book suggested external audit of the office of CAG on the pattern of UK on the principle that the agency which audits other outfits should itself demonstrate professional soundness and efficiency.
2. The book emphasizes the need for strengthening PAC and COPU (Committee on Public Undertakings (India)) and suggest following measures:-

- The PAC and COPU should be made a constitutional institution with clearly defined duties and functions.
• The life of a committee should not be one year, as at present and it should be made coterminous with the life of Parliament.

• The PAC or COPU should find time to examine all reports of CAG within one year of their submission to Parliament or state legislature.
• There should be statutory provision prescribing dates of submission of appropriation accounts and finance account duly certified by CAG to Parliament

• With regard to defence purchase, the book suggest pre audit by CAG of such deals beyond a specified value before the conclusion of the deal to avoid controversies at the latter stage.
• What is unfortunate is that CAG does not have legal power to enforce action on his findings to enforce recovery of loss of government money due to negligence of delinquent officials.
The Book brings out the position in this matter in other countries like Japan, New Zealand, France where supreme audit institutions have been vested with powers of investigation in forcing recovery of loss of government money.
• The CAG of India is the CAG of union government and also of the states.

• The state accountant General (AG) under the CAG does not have any legal status.
The book suggests that the state AG should be given the legal status equivalent to a judge of high court, like in UK and Australia.
thank you
WHY ELECTION COMMISSION?

• To conduct free and fair election.
SPECIAL CONSTITUTIONAL PROVISIONS?

• 1. Article 324 of the constitution provides that the powers of superintendence, direction and control of election to Parliament, state legislature, office of President of India and office of Vice President of India.
What Are The Powers And Functions Of Election Commission?
The power can be divided into three categories:

1. Administrative
2. Quasi Judicial
3. Advisory
1. ADMINISTRATIVE

a) To determine the territorial areas of electoral constituencies throughout the country on the basis of delimitation commission Act of Parliament.
1. ADMINISTRATIVE

b) To prepare and periodically revise electoral rolls and to register all eligible voters.
1. ADMINISTRATIVE

c) To notify the dates and schedule of election and to scrutinize nomination paper.
2. QUASI JUDICIAL

- To Act as a court for settling disputes related to granting of recognition to political parties.
2. QUASI JUDICIAL

- To appoint officers for inquiring into disputes relating to electoral arrangements.
3. ADVISORY

To advise President on the matters related to disqualification of the members of Parliament
ISSUES IN THE NEWS

ISSUES IN NEWS
CRIMINALIZATION OF POLITICS
CRIMINALIZATION OF POLITICS

• 1. Data - As Per Data Analyzed By ADR (The Association for Democratic Reforms) With Respect To 16th Lok Sabha.
  • 185/543 have declared criminal cases against them.
  • 21% of them and accused of heinous crime.
  • 31% of MLA out of 4032 have criminal cases against them.
SAFEGUARDS AVAILABLE

• Rule 4A of conduct of election rules, 1961 - this expects candidate to fill Form 26 i.e., that is affidavit giving criminal antecedents (पिछला जीवन).
SAFEGUARDS AVAILABLE

• After SC judgment, it is incumbent on candidate to declare her criminal antecedent -why
• Non disclosure will make election null and void under section 101 of RPA 1951.
RECOMMENDATION

• Election Commission of the view that affidavit to be countersigned by political parties.
RECOMMENDATION

• Law Commission - Recommended for creation of Quasi judicial tribunals that would move beyond domain of criminality and evaluate fitness of candidate on certain standard
• SECTION 8 OF RPA
There are 3 subsections imposing different penalty
section 8(1)- If convicted for crimes related to laws in
section 1, he/she will be disqualified for “6 Years” after
the date of release
SECTION 8 OF RPA

Section 8 (2) “6 years disqualification” from date of conviction and other 6 year form date of release
Section 8(3)- for any crime punishment is minimum “2 years person will be subjected to disqualify for “6 more years from date of release”.”
WHAT THE REPRESENTATION OF THE PEOPLE ACT SAYS

SECTION 8(1) A person convicted for promoting enmity between different groups, rape, terrorist acts, insulting national flag etc. stands disqualified for six years on mere conviction.

SECTION 8(2) A person convicted for hoarding, dowry offences etc. incurs disqualification if he is sentenced to at least six months for the offences. The bar continues for six years after release from jail.

SECTION 8(3) A person convicted of any other offence incurs disqualification if he is sentenced to an imprisonment of not less than two years. The disqualification continues till six years after release.

SECTION 8(4) Protects sitting MPs and MLAs from being disqualified under the above provisions. If they file an appeal within three months, they can continue as a member of the House till the completion of the term or till the decision on appeal, whichever is earlier.
SUGGESTION OF ELECTION COMMISSION

• As a precaution, above situation should prevail only in those cases which is filed “6 Month” before election to prevent misuse by opponent.
“LILY THOMAS CASE”

• Supreme Court has declared section 8(4) of RPA “Ultra Virus” which makes difference between candidate and sitting MP/MLA, MLA with respect to disqualification with objective of cleaning political system.

• It is contrast to earlier position when convicted members held on their seats until they are executed on Judicial remedy.
“JAN CHOWKIDAR CASE”

• SC held that person in Police or judicial custody does not have right to vote under sec-62 (5) of RPA, 1951. Such person will also not be allowed to contest in election.

• Government was quick in bringing amendment in RPA introduced in Rajya Sabha on 27th August, passed by Lok Sabha on 6th September 2013.
thank you
POLITICAL FUNDING
POLITICAL FUNDING

• RPA-Sec 29 (c) of RPA requires that all political parties to furnish annual statement of contribution in excess of 20,000 to ECI, giving the names and address of donors.

• FINDINGS OF ADR (The Association for Democratic Reforms) - More than 75% of funds raised by parties have come from unknown sources.
1. The Election Commission imposes a limit on total campaign expenditure that is 70 lakh for Lok Sabha and 16 lakh to 40 lakh for states, but there is no stipulated limit on what political parties can spend on behalf of their candidates.
2. 6 National and 51 recognized regional parties together had an income of Rupees 11,337 crore but only 1835 crore named donors.
3. SC rejects the plea to make it mandatory for parties to declare source of funds. There is no illegality in the exception made to political parties out of tax net.
POLITICAL FUNDING

- **FINDINGS OF ADR (The Association for Democratic Reforms)** - More than 75% of funds raised by parties have come from unknown sources.
CONTEMPORARY DEBATE
ANNOUNCEMENT IN THE BUDGET

• Ceiling of rupees 2,000 amount of cash donation, that a political party can receive from one person in a year.

• Political parties would be entitled to receive donation by cheque or digital mode.

• Electoral bonds.

• Filling income tax limit within prescribed time limit.
ANNOUNCEMENT IN THE BUDGET

- The existing limit of rupees 20,000 on anonymous donation as per section 23 of RPA has been left untouched.
ANNOUNCEMENT IN THE BUDGET

• The ministers has merely proposed a traditional clause that limits cash donation from one source to Rupees 2,000 in one year.
ELECTORAL BONDS
ANALYSIS

• Anyone who wants to donate to a political party will be able to purchase bonds from authorized bank.
• However once purchased, these bonds will be like bearer bonds and will not contain the name of eventual beneficiary.
ANALYSIS

• So, the donor bank would know about who brought, how much of electoral bonds, but not the name of party which received it.
Why Political Funding Is Going On?
WHY POLITICAL FUNDING IS GOING ON?

- Dumping ground of accounting money with future gains, identity is hidden, thus favorable route for Hawala.
- Section 13 of IT Act provides exemption.
WHY POLITICAL FUNDING IS GOING ON?

• Changes introduced by the amendment to “Finance bill of 2017”.
• As of now, companies can only contribute up to 7.5% of their average net profits in the past 3 financial years to political parties.
• The government has brought up amendment to do away with this.
To create national electoral fund and political parties can request for funds from this NEF.
SUGGESTION

Law Commission- Corporates should seek “Shareholder approval at annual general meeting before donating Fund”
ISSUE OF DUAL CONSTITUENCY
ISSUE OF DUAL CONSTITUENCY

• Subhash Kashyap- “It is an insurance policy whose premium is paid by citizen of India”
ISSUE OF DUAL CONSTITUENCY

- Section 33 of RPA allows person to contest election from maximum of two constituency.
ARGUMENTS AGAINST

1. It allows candidate to remains MP, MLA if it loses 1 seat
2. If he managed to win from two seats, section 10 of RPA becomes applicable and vacating of one of the two seat results in by-election.
ARGUMENTS AGAINST

3. It undermines representative process, a candidate rejected by the voter in one constituency can still make decisions that affect whole country.
Amendment from section 33(7) permit candidates to stand from only one constituency.
STATE FUNDING

- Political parties funding comes from 3 C’s - corporate, criminal, contactors with promises of favours in return.
Political Parties funding comes from 3 C’s:

- Corporate
- Criminal
- Contractors
Indrajit Gupta Committee

• Talks for partial state funding of elections for the purpose of reducing illegitimate and unnecessary funding of elections expenses.
KEY ISSUES

• Complete state funding is not feasible
• Which is better cash or kind in State Funding?
• Tarkunde Committee suggested for ‘kind’ that is giving printing cards with registered numbers of voter making available school rooms and halls.

• It would result in mushrooming of parties.
WHY IT IS DIFFICULT TO GO FOR POLITICAL FUNDING?

• The funds that a political party advances to its party candidates in an election, vary from one candidate to another.
• It is believed that MLA spends on an average of about “Rs 5 crore” and legal limit is “20 to 28 lakh”.
PAID NEWS

humanity is our mission,
public welfare is our goal,
money is nothing!!
It is required to put strong regulatory framework in place including internal elections and accounting procedures.
WHAT IS PAID NEWS?

• Defined by Press council of India- Any news for analysis appearing in any media (print on electronic) for a price in cash or kind is considered “Paid News”.

• Paid news misleads the public and hampers the ability of people to form correct opinion.
WHAT IS PAID NEWS?

• Paid news causes undue influence on voters and also affect RTI.
Appointed “media certification and monitoring committee” at district and state level for checking paid news.
ECI sought support of Press council of India.
Paid news is not an offence yet, the EC has recommended to amend RPA 1951 to make publishing of paid news an electoral offense.
RECOMMENDATION OF “20TH LAW COMMISSION”
RECOMMENDATION OF “20TH LAW COMMISSION”

- The issue of Paid News and Political Advertisement should be regulated by RPA, by defining “Paying for News”, “Receiving Payment for News”.

1. EC demands like CAG its budget should be charged on CFI.
DEMANDS OF ECI

2. Need Secretariat so that it should not depend on DoPT to appoint officials
3. Sought financial freedom from Law Ministry like CAG and UPSC it wants its urgent needs to charge CFI.
4. Amend RPA to give powers to postpone or countersign poll on grounds of use of money power
MAJOR DEBATE

- Power of contempt - Whether to give or not?
Question

• Why Election Commission is demanding for his power?
• The Election commission has sought to empower itself to punish anyone being human being “disobedient and discourteous (अभद्र)” towards its authority.
Election Commission has given these instances of wild allegations. Example – A. Kejriwal calling it “Dhritarashtra”.

ANSWER
WHY IT SHOULD NOT BE GIVEN?

- The Contempt power that the ECI is seeking has itself gone through major challenges in the recent decades.
WHY IT SHOULD NOT BE GIVEN?

- In, Rajesh kumar vs High court of MP.
- Justice RV Raveendran remarked that “It is possible that it is done to uphold the majesty of courts.
- But judges like everyone else will have to earn respect.
- They can’t take respect by demonstration of power.
WAY FORWARD

- The solution is two fold - Making EC fully Independent and giving it more disciplinary power over the political parties.
To provide two commissioner from removal, except through impeachment as provided by constitution from “Chief Election Commission”.
Art 324 (2): Appointment by president

The system of appointment of election commissioner must change.
It should be like collegium system.
LEGALIZING MODEL CODE OF CONDUCT
What is MCC (Moral Code of Conduct)
MCC (MORAL CODE OF CONDUCT)

• MCC is a set of guidelines issued by Election Commission for conduct of political parties and candidates mainly with respect to speech on polling day and political booth.
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<tr>
<td>• What are the Obligation?</td>
<td>• To create a label playing field for all political parties.</td>
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IMPORTANT ISSUES

• Guidelines on Election Manifesto

• The SC in its Judgement of “Subramanyam versus government of TN” has directed the election commission to frame guidelines with regard to content of election manifesto.
• Although law is obvious that promises in election manifesto cannot be constructed as “Corrupt Practice” under section 123 of RP Act, reality cannot be ruled out that freebies disturbs level playing field.
LEGALIZE IT OR NOT
ARGUMENTS FOR

Parliamentary standing committee on law and Justice is in favour of legalizing.
1. Most of the stipulations (शर्तें) of MCC are already contained in various laws and are therefore enforceable.
• 2. Violation of secrecy of voting, causing enmity among communities are covered under RP Act.
ARGUMENTS AGAINST

It will increase litigation
ARGUMENTS AGAINST

It has a potential to erode the credibility of ECI
ARGUMENTS AGAINST

SC verdict- “Harbans Singh Jalal Case”
ARGUMENTS AGAINST

The increase in quantum of punishment in case of violation which is already backed by laws.
ARGUMENTS AGAINST

Use of whip office to regulate activities on working of Political Parties.
OPINION–POLL, EXIT POLL
Question

• What is exit poll and how it is different from opinion poll?
• An opinion poll is a pre-election survey to gather view on a range of election related issues.

• An exit poll is conducted after the election.
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<tr>
<td>• Why is the Election Commission oppose to media coverage of opinion polls and exit polls during Multiphase Election?</td>
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Both the polls can be controversial if the agency conducting them is perceived to be biased.

Critics say that the projection of the surveys can be influenced by choice, wording and timing of questions.
• This is highly probable that both the kind of polls are motivated and sponsored by their rivals.
Question

• When did Election Commission first attempted to place curbs on such Surveys?
• The Election Commission held its first consultation with political parties in 1997. In the meeting of representatives of most National and state parties said that these polls were unscientific and suffered from bias in size and nature of samples.
Then in 1998, Election Commission issued guidelines under Article 324, prohibited newspaper and news channels from publishing results of election surveys in States.
Question

• But why in the current Election Commission ban limited to Exit Poll?
After the success of 1998 Election Commission, tried to invoke these guidelines again ahead of Lok Sabha polls in 1999.

But sections of media refused to follow it, forcing election Commission to move to the court.
The matter was referred to apex court, which observed that election commission can't enforce such guidelines in the absence of statutory sanction.

In 2004 Election Commission moved to law ministry and ask to amend Section (126A ) the recommendation has been accepted.
SIMULTANEOUS MULTIPHASE POLLS
CASE STUDY

• Besides Lok Sabha election in 2014, polls to about 15 state assemblies were held between March 2014 to March 2016.
HISTORY

• The first general election to Lok Sabha and all state legislative assemblies were held together in 1951, 1952 continue till 1967
Question

• What are the issues associated with Simultaneous Elections?
Impact on development programmes and governance due to imposition of MCC.

A) Analysis done by Niti Ayog

B) Massive Expenditure

C) Other issues

D) 79th Report of Parliamentary Standing Committee

E) Engagement of security forces
A) ANALYSIS DONE BY NITI AYOG

• In Year 2014, Governance and Development activities due to the imposition of MCC remained largely suspended for about seven months.
B) MASSIVE EXPENDITURE

- A) cost for year 2014 Lok Sabha election was Rupees 3870 crore.
C) ENGAGEMENT OF SECURITY FORCES

- Considering that 2 to 5 state assemblies go for polls at every 6 month, this situation leads to lock in of CAPF (Central Armed Police Forces).
D) OTHER ISSUES

- Frequent elections disrupts public life - Parliamentary standing committee.
- Frequent election perpetual caste religion community issues.
E) 79TH REPORT OF PAC

- Committee suggest two phase poll in which states divided into two groups.
- One for which elections would be in the middle of current Lok Sabha and another where election will be held at end of the current Lok Sabha.
NATIONAL COMMISSION FOR MINORITIES
INTRODUCTION

• National Commission for minorities was set up in 1993 as a statutory body with purpose of instilling a sense of confidence among religious minorities that law of the land and the constitutional provisions as respected by States.

• It was established under “National Commission for minorities Act 1992”.
Today there are six minority groups under National Commission for minorities Act 1992.

- Muslims
- Sikh
- Jains
- Buddhist
- Zoroastrian
- Christians
INTRODUCTION

• Aggrieved persons belonging to the minority community may approach state commission for minorities or can send their representative to “National Commission for Minorities” after exhausting all the remedies available to them
Through constitution do not define the word minority and only refers to minorities and speak about those based on religion and language.
The rights of the minority have been spelt out in details in constitution.
• There are two sets of rights of minorities which can be placed in-
THERE ARE TWO SETS OF RIGHTS OF MINORITIES WHICH CAN BE PLACED IN-

A) Common Domain: Those Rights applicable to all citizens of the country
THERE ARE TWO SETS OF RIGHTS OF MINORITIES WHICH CAN BE PLACED IN-

B) Separate Domain: These Rights are applicable to minorities only and are reserve to protect their identity.
PREAMBLE SAYS THAT OUR STATE IS SECULAR

• This is specially in relevance to religious minorities, also there is mention of all Indians to be secured by Liberty of thought, Expression, Belief, Faith and Worship and equality of status and opportunity.

• Example: Common Domain.
PART 3 OF CONSTITUTION (FUNDAMENTAL RIGHTS)

Article 14 - Right to Equality before law equal protection of law
PART 3 OF CONSTITUTION (FUNDAMENTAL RIGHTS)

Article 15 - Prohibition of Discrimination against Citizen + Affirmative actions
PART 3 OF CONSTITUTION (FUNDAMENTAL RIGHTS)

Article 16 - Equality of opportunity in case of employment and Prohibition of Discrimination on Ground to Religion etc. + Affirmative Action
PART 3 OF CONSTITUTION (FUNDAMENTAL RIGHTS)

Article 25 - Freedom of Conscience
PART 3 OF CONSTITUTION (FUNDAMENTAL RIGHTS)

Article 27 and 28 - Educational Rights
PART 4A

- Promote harmony and preserve rich heritage of composite, culture, special relevance
PART 4

Article 38 (2): State to eliminate Inequality in Status, Facilities and Opportunities amongst a Group of People or Individual
Article 46: State to promote with special care the educational and economic interest of the weaker sections of the societies apart from SC or ST.
PART 3
(FUNDAMENTAL RIGHTS)
ARTICLE 29(1) OR (2)

- Rights to conserve distinct language, script and culture, Restriction on denial of admission to any educational institution included or maintained by State on ground only of religion or language etc.
ARTICLE 30 (1,2)

- Rights to all linguistic and religious minorities to establish and administration educational institution of their choice.

- No discrimination from receiving Aid from state.
ARTICLE 350A:

- Instruction in mother tongue at primary stage.
ARTICLE 350 B:

• Provision of special officer for linguistic minorities.
INDIAN MULTICULTURALISM INTERWOVEN IN THE CONSTITUTION
INDIAN MULTICULTURALISM INTERWOVEN IN THE CONSTITUTION

• All the above provisions points out that not only National integration and communal harmony is the common thread that inter woven the Indian society but also-
Common thread that inter wave the-

- Multi- Religious
- Multi- Cultural
- Multi- Linguistic
- Multi- Racial
- Society of India
PROTECTION OF WEAKER SECTION IN INDIA PLURASTIC SOCIETY

• The social pluralism is the need for the upliftment of all sector of weaker section either on the basis of the number or Socio -Economic Education status of any particular group.
• Thus constitution leaves a room for making special provision for religious and linguistic minorities SC or ST or OBC etc.
NATIONAL COMMISSION FOR MINORITIES (NCM)
GENESIS OF NATIONAL COMMISSION FOR MINORITIES

• The setting up of National commission for minorities was envisaged in Ministry of Home Affairs resolution of 1978, which mentions that despite safeguards provided in the constitution and laws in force, there persist among the minorities the feeling of inequality and discrimination.
GENESIS OF NATIONAL COMMISSION FOR MINORITIES

- To preserve secular tradition and promote national Integration, Government of India attaches highest importance to the safeguards provided by constitution, their enforcement and implementation.

- Thus, is of the view that institutional arrangement is urgently needed for above mentioned task.
FUNCTIONS OF NATIONAL COMMISSION FOR MINORITY

- Under section 9(1) of National commission for Minorities Act 1992, commission is required to perform following functions.

- Evaluation of progress of development of minorities.
FUNCTIONS OF NATIONAL COMMISSION FOR MINORITY

• Looking into complaints regarding deprivation of rights and safeguards of minorities and taking it up to authority.

• Conducting studies Research and Analysis on the problems arising out of discrimination against minorities on the issue of socio-economic and educational development of minorities.
FUNCTIONS OF NATIONAL COMMISSION FOR MINORITY

- Monitoring of working of constitutional safeguards and laws in force.

- Making recommendations for effective implementation of safeguards.
Composition of National commission for Minorities

Chairman
Vice Chairman
Five Members
COMPOSITION OF NCM

National Commission for Minorities

• Chairman
• Vice Chairman
• Five Members- Members to be nominated by the Central Government, including chair person from Minority Community.
REFORMS OF NATIONAL COMMISSION FOR MINORITIES

- National Commission for minorities must be given constitutional status to instill greater confidence among minorities and to make commission more effective in safeguarding their interest.
There are certain powers available to National Commission for Scheduled caste and National commission for Scheduled Tribes which are not available to National commission for Minorities, that is as follows:
CERTAIN POWERS NOT AVAILABLE TO NATIONAL COMMISSION FOR MINORITIES

A. They have the power to investigate into matters related to safeguards provided by constitution and laws enacted.
CERTAIN POWERS NOT AVAILABLE TO NATIONAL COMMISSION FOR MINORITIES

B. Power of enquiry in case complaint is made about deprivation of right and safeguard of SC/STs.
CERTAIN POWERS NOT AVAILABLE TO NATIONAL COMMISSION FOR MINORITIES

Currently National Commission for minorities have power to look into with regard to specific complaints but power of inquiry is quasi-judicial power is actually needed.
C. “National Commission for minorities” unlike NCSC, NCST do not have power to participate and advise on the planning process of socio economic development with respect to weaker sections of society and evaluate progress of their development and state and union.
• Regular tabling on annual report in front of Parliament report was laid in 1995, 1996.

• Thus MPs were denied to go through recommendations of Commission in these reports.
• National Commission for minorities Act 1992 do not set up by any time limit for laying down the report.

• Commission to get power of Civil Court as at present summons issued by the commission are not allowed for Central or State Government.
RECOMMENDATIONS OF NCM

• CSR allocation of 20% for minorities.
RECOMMENDATIONS OF NCM

- NHRC maybe recommended to take out the issues of formation of strict laws to control riots and immediate action to taken to fix responsibility on the culprits.
Politics and police officers in some cases are responsible for polarization of forces on ethnic lines. Thus, depolarization of police and political leadership is necessary to improve the system.
Prompt action in registration of FIRs, timely action, filling of charge sheet and speedy trial are essential to restore the faith of minorities.
Complaint filed by minorities to be monitored by higher police authorities.
Police complaint authority needed to be set up and in state where it exist needed to be strengthened.
POLICE AND MINORITIES

Enhance representation of minorities in police recruitment without quality compromise
Capacity of minority educational institute in India there are state which have not established minority commission yet.
RECENT ACTIVITIES

- **Dadri Lynching Case** (Mohammed Akhlaq-UP), according to their report on incident and calling it an Accident would be an understatement.
Panel said that “it was disturbing that responsible persons coverage on Such Spots after the incident and make irresponsible statement further inciting the atmosphere”.
thank you
The first Commission for scheduled caste and Scheduled Tribes was set up in August 1978 with the Chairman and four other members.
The commission for scheduled caste and Scheduled Tribes was renamed as National commission for Scheduled caste and Scheduled Tribes and was set up as a National Advisory Body to advise the government on broad policy issue and levels of development of scheduled caste and Scheduled Tribes.
• Consequent upon the Constitution (89th Amendment Act 2003) the erstwhile National Commission for SC and ST has been replaced by these two following commissions-
National Commission for SC and ST has been replaced by these two following commissions:

- National Commission for Scheduled caste
- National Commission for Scheduled tribes.
As enumerated in Article 338 (5) the following are the functions of commission.
FUNCTIONS OF NATIONAL COMMISSION FOR SCHEDULED CASTE

To investigate and monitor safeguards and their working provided to Scheduled caste.
FUNCTIONS OF NATIONAL COMMISSION FOR SCHEDULED CASTE

To enquiry into complaints with respect to the provision of rights and safeguards of Scheduled Caste.
To participate and advise on planning process of socio economic development of scheduled caste and to evaluate their progress.
FUNCTIONS OF NATIONAL COMMISSION FOR SCHEDULED CASTE

To present Parliament report of working of safeguards annually.
NCSC has power of Civil Court.
SAFEGUARDS TO SCHEDULE CASTE
Safeguards to Schedule Caste

- Social Safeguards
- Educational Safeguards
- Political Safeguards
- Service Safeguards
Social Safeguards

- Article 17
- Article 23
- Article 24
- Article 25
ARTICLE 17:

Provision of Untouchability
ARTICLE 25- (2) (b)

Hindu religion institution open to all sections of Hindus
ARTICLE 23

Abolition of Bonded Labour
ARTICLE 24

Abolition of Child Labour
Social Safeguards

- Article 23
- Article 24
- Article 46
EDUCATIONAL SAFEGUARDS

- Article 15(4) :- State to make special provisions for advancement of SEBC’s and SCs. This provide reservation for SC in educational institutions.
POLITICAL SAFEGUARDS

- Reservation of seats in local bodies, state assemblies and Lok Sabha.
Political Safeguards

- Article 243
- Article 330
- Article 332
ARTICLE 243

Local Bodies (Panchayat and Municipality)
ARTICLE 330

Lok Sabha
ARTICLE 332

State Assembly
5. Service Safeguards

- Article 16 (4)
- Article 16 (4A)
- Article 335
Protection of Civil Rights 1955 (An Act to prescribe punishment for the preaching and practice of “untouchability”)
SC or ST prevention of atrocities Act 1989
Preservation of Bonded Labour 1976
The employment of manual scavengers, construction of dry latrines prohibition Act 1993
thank you
CIVIL LIBERTIES AND HUMAN RIGHTS MOVEMENT
WHAT ARE CIVIL RIGHTS?

- Rights which one considered necessary for leading a civilized existence are called as civil right.

- For example right to Life, Liberty, Property Equality Before Law, Right against arbitrary arrest are considered as civil rights.
WHAT ARE CIVIL RIGHTS?

• Civil rights are based on the philosophy of liberalism. The basic purpose of civil rights is to check the arbitrary existence of power by the executive and to maintain the rule of law.
WHAT ARE CIVIL RIGHTS?

- India freedom movement was not just a freedom movement as national movement. It was one of the longest civil rights movement.
- Nationalist mostly demanded basic freedoms like - freedom of press, gender representation in assembly, agitation against Rowlett Bill was also an example of civil right movement.
Pt. Nehru was one of the prominent civil right activist on 7 November 1936 Indian civil liberties union was established the initiative of Pt. Nehru.
• Rabindranath Tagore was made president and Sarojini Naidu was made working president. Pt. Nehru promise that there will be no black law in independent India.
WHAT ARE CIVIL RIGHTS?

- Constitution of India is a regulatory document. It is perhaps the first constitution which incorporate the spirit of human rights.

- In India fundamental rights are also available for non citizens. Indian constitution also has a scheme of social and economic rights.
WHAT ARE CIVIL RIGHTS?

- It was unfortunate that provision related to preventive detention laws has been incorporated in the constitution and that too in part III of the constitution.
WHAT ARE CIVIL RIGHTS?

• Article 22 to provide certain protection to the person detained on preventive detention, however these protections are just for the namesake. In other countries preventive detention laws are applied only during emergency like war but in India preventive detention laws can be applied during normal times. This has seen misuse of preventive detention laws against political opponents.
WHAT ARE CIVIL RIGHTS?

- India even continued with colonial law like Section 124 A dealing with sedition. Section 124 A outlaws any speech, return, written or verbal, sign or visible representation or otherwise which aims to bring hatred, contempt or excite or even attempt to excite disaffection towards government established by law in India.
WHAT ARE CIVIL RIGHTS?

- In above case the penalty that it is non bailable, non compoundable offence which may result into 3 years or life imprisonment with or without fine.
- The Government of Nehru became the first government to use preventive detention laws which was used against the Communist leader like AK Gopalan.
WHAT ARE CIVIL RIGHTS?

- There has been the decline of rule of law and the rise of police state in India after independence there was a growth of Executive high Headedness, corruption.
WHAT ARE CIVIL RIGHTS?

- Towards 1970, we see the beginning of the new phase of Civil Rights Activism in the country by this time the Nostalgia (उदासी) of freedom movement was over.
- Economic failure of the government on surface growth of anti price rise agitation. Jayaprakash Narayan Called for total revolution. He even appealed to armed forces not to obey the orders.
WHAT ARE CIVIL RIGHTS?

- Government imposed emergency even on the grounds of internal disturbance government call for committed Bureaucracy and committed Judiciary, emergency was the darkest hour far from India's democracy.

- It was trial period for Democracy.
WHAT ARE CIVIL RIGHTS?

• Fortunately democracy survived.
• Not only democracy survived, it has strengthened the democracy in India.
• There was proliferation of civil rights organization like citizens for democracy, Association for democratic reforms, People's Union for Civil liberties led by lawyers like Shanti Bhushan.
WHAT ARE CIVIL RIGHTS?

• After emergency Judiciary also became an active participant in India Civil and Human Right Movement.
HUMAN RIGHTS MOVEMENT IN COUNTRY
HUMAN RIGHTS MOVEMENT IN COUNTRY

• From 1980 around the world, there has been growth of the consciousness of human rights.

• In case of India also a new phase of activism started. Civil society working with judiciary has led to the beginning of new face of human right activist.
• Activist just like PN Bhagwati institutionalized PIL. PIL proved a revolutionary step in providing access to justice to the marginalized section.

• SC which has been earlier reluctant with respect to directive principles became the champion of social and economic rights (39A).
HUMAN RIGHTS MOVEMENT IN COUNTRY

• It has given wide and substantive interpretation to right to life to include rights like- right to education, health, clean environment and right to life not just animal existence but to live with dignity.

• **Globalization** has increased the number of advocacy group in India. government of India have also establish institutional mechanism like NHRC and right to information.
HUMAN RIGHTS MOVEMENT IN COUNTRY

- UN HRC conducts universal periodic review UPR of member countries.
- GOI has not been able to meet the targets which it has taken up after first review.
I) Large Number of Under Trial
II) Poor Situation in Prisons
III) Human Rights violation by members of armed forces insurgency affected areas APSPA
SOME OF THE PROMINENT HUMANS RIGHTS CONCERN IN INDIA ONE

IV) Extremely Slow Judicial System
V) Presence of Colonial or like IPC Section 124 A.
VI) Misuse of Preventive Detention Laws against Political Opponents
SOME OF THE PROMINENT HUMANS RIGHTS CONCERN IN INDIA ONE

VII) Caste and Religion Based violence and Exclusion
SOME OF THE PROMINENT HUMANS RIGHTS CONCERN IN INDIA ONE

VIII) Negative Sex Ratio
SOME OF THE PROMINENT HUMANS RIGHTS CONCERN IN INDIA ONE

Ix) Hunger
HUMAN RIGHTS MOVEMENT IN COUNTRY

- Above analysis show that human rights activism has not resulted into any qualitative improvement.

- India's commitment toward protection of Human Rights is made of rhetoric then reality.
Question

• What Are The Weakness In Human Rights Movement?
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• According to prof. Upendra Bakshi there is no human rights movement in India.

• What we find is not human rights movement but human rights industries.
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• Advocacy group employee management graduates rather than social activist.

• These organizations act with corporate approach rather than the attitude of social service.
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• They lack legitimacy in the country because their approach have been biased, they have raised issue like human rights violation by members of armed forces but hardly talked about human rights violation by militant organization of innocent civilians on killing of members of armed forces Para military forces by militants.
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• According to Human Right activist Nandita Hakpar human right movement in India has to work within the define limits.

• Indian state does not tolerate any activism going beyond the periphery of Nationalist discourse.
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• Whenever government adopts zero tolerance towards terrorism it ends in zero tolerance towards human right.

• It is to be noted that so long India will continue to suffer threats to territorial.
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• Integrity there will always be a justification with the government when laws like APSPA.

• However to enhance the credibility of India it is necessary that government brings reform in NHRC, gives greater powers to NHRC with respect to inquiry on Human Rights violation even by the members of armed forces.
WEAKNESS IN HUMAN RIGHTS MOVEMENT

• Government has to ensure discipline among Law Enforcement Agencies.

• There is also an urgent need for Police Reform, Prison Reform, Judicial Reform, Criminal Justice System Reform.
thank you
Environmental Movement

Revolve around Two Issues

1. Development
2. Democracy
ENVIRONMENTAL MOVEMENTS

Revolve around the issue of development and democracy. Environmental Movement in India and around the world have challenged the model of development.

- In case of India environmental movement are one of the movements by the weakest section of the society. Participants are tribal and people whose life is dependent on nature.
India has a long history of environmental movement the tribal revolts against the British colonialism where earliest environmental movement.
ONE OF THE NOTED ENVIRONMENTALIST IN INDIA

• Ramachandra Guha has made comparison between environmentally's in North and South.

• Environmentalism in Northern countries is led by the scientist whereas environmentalism in South is led by the poors and ignorant.

• Environmentalism of north is full stomach.
ONE OF THE NOTED ENVIRONMENTALIST IN INDIA

- We have to salute the fighting spirit of tribals in Odisha Who dare to challenge Global Giants like Vedanta and POSCO.
- Indian environmental movement challenge the development strategy of the Indian state.
- Ramchandra Guha has analysed Indian environmental Movement in three phases.
Ramchandra Guha has analysis Indian environmental Movement in Three Phases

- Phase 1 - 70's
- Phase 2 - 80s
- Phase 3 - 1990
PHASE 1 (1970)

• In his book *The unquite Woods* traces the origin of the [Modern Environmental Movement](#) to the [Chipko Movement](#) in 70s in Centre Himalayas where women played the prominent role environmental movement has added a new dimension to India's democracy.
PHASE 1 (1970)

- Also poses ideological challenge to the dominant notions of meaning content and patterns of development in India. In 70s environmental movement was seen as Interloper. at that time India was Aspiring to catch with the western countries conservation of nature was considered as the luxury of rich Nations.
PHASE 1 (1970)

- Guha also calls 70s as an age of environmental innocence. During 70s, environmentalists like Sunderlal Bhahuguna, Chandi Prasad Bhatt were seen as CIA agents.
PHASE 2 (1980)

- 80s is marked by the growth of environmental consciousness, environmental issues started getting media attention.
- Prominent environment journalist like Anil Agarwal Nagesh Hegde and Shekher Kathak bring attention of the government in 1982
- It has set up Department of Environment which was letter on upgraded into full fledged Ministry.
PHASE 3

- In 1990 there was growth of professionalism in Environmental Movement.
- The positive aspect was professional scientist and social scientist started taking environment as an area of research. Indian institute of science in Bangalore started centre for ecological science.
PHASE 3

• On the other hand there has been the growth of NGOS including foreign NGOS.

• Environmentalism got more complicated.

• Environmental degradation now increased many times with the introduction of new economic policy.
PHASE 3

• Reforms have been neither pro poor nor pro environment and it is one of the major reasons for rise of left wing extremes.

• Environmentalist where earlier attacked as CIA agents but now dismissed as old socialist guys.
PHASE 3

- It is unfortunate that Ministry of Environment made project clearance a formality resulting into high level of air pollution and depleted ground water.
• According to Ramachandra Guha polluted skies, dead river, disappearing forest, displaced peasants and tribals is what we see around us 40 years after Chipko Movement. India Today is a Basket Case of environmental tragedies.
In his Book 'The fissured land and ecological history of India' co-outhered madhav Gadgil.

Ramchandra advocates empowerment of people, proper valuation of natural resources and knowledge dissemination.
Ramachandra Guha has identified 3 standards in the Indian Environmental Movement.
Ramachandra Guha has identified 3 Standard in Indian Environmental Movement

- Crusading (जंग छेड़े) Gandhians
- Appropriate Technology
- Ecological Marxist
CRUSADING GANDHIANS

• The challenge the development model and suggest alternative approach based on Indian tradition.
APPROPRIATE TECHNOLOGY

• It represents those section which focus on technological solutions to ecological issues.
ECOLOGICAL MARXIST

• They are working at Grassroot Level and support Radical Democracy.
We can say that it is unfortunate that today it is believed that technology is a solution to human problem but Technology cannot be a substitute to a political will and social action. what is required is not change in technology but change in value system.
• **Sunita Narayan** of Centre of Science and Environment has also analyzed Indian Environment Movement.

• She categorizes Indian movement as utilitarian conservatism and Western movement.
• As protecting conservatism she gave the “Concept Of New Environmentalism”.
According to Sunita Narayan, environment is not about protecting tigers or planting trees. It is about democracy.
• We have to had the most of development which make people as custodian of natural resources.

• New environmentalism calls for ideas without dogmas and idealism which is practical. she has highlighted the following weaknesses of environmental movement.
• The biggest weakness is “Fire Fighting Approach” they have not been able to strategies themselves.

• Environmental activity may have been successful in closing few plants and industrial units but they have not been successful in changing the developmental policy in India.
• Till environment does not become the issue of electoral democracy its impact is going to be Limited.
She also mention challenges faced by the environmental Movement in India
She mentioned challenges faced by environmental movement in India.

i) Lack Of Resources
SHE MENTION CHALLENGES FACED BY ENVIRONMENTAL MOVEMENT IN INDIA

ii) Lack Of Expertise
iii) Bureaucratic Apathies
SHE MENTION CHALLENGES FACED BY ENVIRONMENTAL MOVEMENT IN INDIA

iv) Corruption
SHE MENTION CHALLENGES FACED BY ENVIRONMENTAL MOVEMENT IN INDIA

v) Crony Capitalism (Mining Barons are MP And MLA)
vi) **Global Environmental Rules 1996** By The Countries Of North Rather Than South.
According to Sunita Narain, environment is not just about Ecology; it is about social ecology.
thank you
PLANNING AND ECONOMIC REFORM
1. NEHRUVIAN AND GANDHIAN PERSPECTIVE
GANDHIAN MODEL
GANDHIAN APPROACH TO DEVELOPMENT

• Gandhi was not an economist in conventional sense. He has not given any systematic views on the model of development to be adopted by India.

• We get the blueprint of Gandhian ideas of development in his book Hind Swaraj.
GANDHIAN APPROACH TO DEVELOPMENT

• He was the critic of western model of development and believe that if we adopt the same model, at least 1 more earth are needed.

• The fundamental Idea - Gandhian approach to development was the principle of nonviolence and swararaj.
GANDHIAN APPROACH TO DEVELOPMENT

- Non violence towards industrialization.
- As there was no industry and no activity without certain violence, he wanted to minimize it. He believed that violence in any form breeds greater violence.
1. Wealth without Work
2. Pleasure without Caution
3. Knowledge without Character
7 SIGNS OF GANDHI

4. Commerce without Morality
5. Science without Humanity
6. Worship without Sacrifice
7 SIGNS OF GANDHI

7. Politics without Ethics
At the time of independence Indian like S.N. Agarwal, Shriman Narayan have proposed Gandhian plan. Key ideas of Gandhian plan were

1. Reform of agriculture
2. Revival Of Cottage Industries
1. REFORM OF AGRICULTURE

• This will address The Hunger and unemployment government should focus on land reforms co-operatives and rural credit
2. REVIVAL OF COTTAGE INDUSTRIES

- It will not only provide supplementary income but also will be the way to address the requirement of clothing.
GANDHIAN APPROACH TO DEVELOPMENT

• Thus the focus of Gandhian plans was to fulfill the basic necessities as a priority.

• There is a misunderstanding that Gandhi was against machines and industrialization Gandhi was not against machines.
Gandhi was only against the imitating the western model in Indian situations
CONCERNED WERE

1. Machine should not be turned against human being
2. Mechanization results into accumulation of wealth and increases exploitation.
GANDHIAN APPROACH TO DEVELOPMENT

• Thus Gandhian approach was to make Indian villages a self sufficient entities.

• He was for the revival of village Republic as he believes that India lives in villages without revival of villages the goal of Swaraj remains incomplete.
• Gandhian approach was not adopted we can see the consequences of the neglect of Gandhian approach.

• The economic model which we have adopted to catch up with western countries has been unsustainable with full of conflicts.
GANDHIAN APPROACH TO DEVELOPMENT

• The developmental model has resulted into imbalance growth and widening of the gap between India and Bharat.
NEHRUVIAN MODEL
NEHRUVIAN MODEL

• Nehru was also not an economist, Nehru was modernist. He was impressed by the achievement of USSR.
NEHRUVIAN MODEL

• He wanted to make India a modern and scientific society. He described his philosophy as progressive socialism and wanted India to be a society based on socialistic pattern.
NEHRUVIAN MODEL

• Nehru's real approach towards the development strategy can be understood from the second five year plan which was based on Nehru Mahalanobis model.
WHY INVESTMENT IN HEAVY INDUSTRIES

• a) It will promote Capital Formation.
WHY INVESTMENT IN HEAVY INDUSTRIES

• b) it will make India independent of the following imports of essential goods.
WHY INVESTMENT IN HEAVY INDUSTRIES

• c) India can exercise more autonomy in other areas and protect itself from bargaining by western countries.
1. Investment in Heavy Industries
2. Nehru introduced centralized planning despite the fact that centralized planning goes against the spirit of federalism.
3. Nehruvian model neglected consumer industries in India were to make sacrifices in short term for a better life in long term
4. Nehru was not against agriculture reforms but he believed that industrialization will create more demand for agricultural goods and industrialization will provide fertilizers, equipment for promotion of agriculture.
5. Nehru knew that his model would create a shortage of the basic commodities, hence, he introduced physical control on and fiscal control on administered pricing.
6. In order to avoid income disparities Nehruvian model has put state in the commanding heights of economy and kept private sector weak to check accumulation of wealth
7. Public sector will not only address the concentration of wealth it will also be providing employment
Nehruvian policies could not address the structural weaknesses of Indian economy. Rationing has resulted into black marketing. Public sector where not working on economic logic, it was producing poor quality of goods at a higher price.
Nehruvian model was import substitution and export promotion however India could not produce such manufactured goods which can be exported.
Impact

Nehrurian models resulted into India becoming licence permit kota raj which ultimately made India an inspector raj.
Impact

Successors of Nehru have not made correction despite understanding the weaknesses they continued with more populist policies like garibi hatao.
Impact

Garibi hatao remain rhetoric in pre reform period as good as 45% of Indian population was living Below Poverty Line.
LIBERALISATION OF INDIAN ECONOMY
Planning and Public Sector

- Planning is a feature of socialist countries; the idea of planning is to determine the priorities and to go for the best possible use of resources.

- The objective of planning is higher growth and balanced development.
PLANNING AND PUBLIC SECTOR

- Planning has resulted into state achieving the commanding heights in the economy.
- PSU and other public sector were the major service provider.
- Public sector with the exception of few PSU started showing the weaknesses of the model.
It developed certain structural problems like over manning, low work ethics, low capacity utilization, excessive expenditure, fiscal deficit, absence of rational pricing policy and negative rate of return.
PLANNING AND PUBLIC SECTOR

• Above policies became unsustainable. India come under the financial crisis. Country was left with the foreign exchange which would pay the bill of imports only for a week.

• The credit of India was in question (sovereign debt crisis) ultimately India was forced to change.
Liberalization of Economy
LIBERALISATION OF INDIAN ECONOMY

• India was known as “Caged Tiger” it was credited that if case is broken then India will run at the speed of free Tiger. It showed the potential of Indian economy which has been changed by populist policies.
It is unfortunate that India took so long to make structural adjustment. India waited for crisis to happen. One of the major situational factors which has accelerated the crisis was the Gulf War and the disintegration of the USSR.
• According to Amartya Sen
Contrary to the prediction the spirit of tiger was not realized. There is a lack of consensus Among scholars as to whether external factors and internal factors led to the change in the economic policy there is also a debate on the consequences of new model.
• According to Bimal Jalan it is good that at present there is no debate over the desirability of Reform, now all major parties agree that there is no alternative.
IMPACT OF LIBERALISATION

Liberalization, Privatization and Globalization in India: Economic Reforms That Changed India
IMPACT OF LIBERALISATION

- Reforms have done well in some areas and have neglected some areas.

- **Reform and poverty alleviation** - the percentage of population living below poverty line in 1983 was 44.5% and absolute number was 323 million.
IMPACT OF LIBERALISATION

- In 1993-94 immediately after Reform there was a marginal increase in number of poor below poverty line which become 43.5 and in terms of number 404 million.
IMPACT OF LIBERALISATION

• Between 1993 - 94 to 2004 - 5 based on Tendulkar committee estimate poverty decline 43.5 person to 37.2 percent in terms of number there was a addition it became 407 million.
IMPACT OF LIBERALISATION

- Between 2004-5 to 2011-12 there is a faster decline from 37.2 percent to 21.9% based on Tendulkar Committee for the first time even absolute number declined from 407 million in 2004-2005 to 269 million in 2011-12.
IMPACT OF LIBERALISATION

- Even 269 million is a huge number and the situation of people just above poverty line is also not qualitatively very different. We do not have good record in delivering basic services like education, health, sanitation, clean drinking water.
IMPACT OF LIBERALISATION

• If we went to reduce poverty to the truly marginal level, we require 8% rate of growth of economy for next 20 years with unskilled population and unhealthy population we cannot achieve the target.
IMPACT OF LIBERALISATION

• The another failure of reform is that it has not resulted into growth of employment opportunities and whatever employment has been created is of bad quality.
IMPACT OF LIBERALISATION

- Indian economy has moving to middle income status India is bound to face challenges of getting stuck in middle income trap if we have not design our reforms carefully.
II. End Red Tapism
SUGGESTION

III. Invest in Human Capital
IV. Reform Factor Market
V. Inclusion by Jobs
VI. Rehabilitate State Capacity
VIEWS OF AMARTYA SEN
• Uncaging The Tiger has not resulted into Tiger like sprint.
VIEWS OF AMARTYA SEN

• It has not resulted into corresponding transformation in the living standards, progress on social indication have gone down in comparison to pre Reform period.

• Stagnation in Agriculture.
VIEWS OF AMARTYA SEN

• The growth of job in service sector had not resulted into the benefit of the ground level because people lack skills.

• There is also increase in poverty in so-called bimaru state (Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh. It was coined by Ashish Bose in the mid-1980s).
VIEWS OF AMARTYA SEN

• The problem of Hunger amidst planet exist. He appreciates China.

• China has invested in basic human capability and has been in a position to take the benefit of globalization.
CONCLUSION: merging India, economics, politics and Reforms there is no doubt that reforms release creative energy accelerated growth and productivity but India's record in social integration is among the bottom countries. It would be a grave mistake if we do not go for critical reform.
LAND REFORM IN INDIA
PURPOSE

• Eradication of Rural Poverty and Hunger
PHILOSOPHY OF LAND REFORM

- Based Socialist Idea of Redistributive Justice.
• There was a huge participation of present in national movement and land reforms was one of the promise of congress.
• According to Daniel Thanner, India is the most interesting case study in land reform considering the largest body of land reform legislation and extremely large number of poor and hunger.
WHAT DOES LAND REFORM ERADICATE IN INDIA?

• in case of India Land Reforms main institutional reforms: leaders aiming at addressing the concentration of wealth and giving land to landless.
I. Directive principle Article 39 B and C make it a constitutional obligation on Indian state to address the concentration of wealth and economic resources.
II. 44th Amendment Act repealed Right to Property.
III. 9th Schedule introduced by first Amendment Act contains large number of Land Reforms legislation
Types Of Land Reforms.

1. Zamindari Abolition
2. Tenancy Reforms
3. Land Ceiling
4. Distribution of Surplus Land
5. Consolidation Of Land Holdings And Establishment Of Cooperatives
1. ZAMINDARI ABOLITION

- This is only successful aspect of Land Reforms however success is not very substantive because most of the Zamindar got heavy compensation became tenants, brought land under self cultivation and increasing the capital in rural Industries like Rice Mill.
2. TENANCY REFORMS

- Ideas was to give security to tenants. Tenancy reforms are also comparatively successful, the most successful effort has been in Kerala and West Bengal.
3. LAND CEILING

- Land ceiling was very crucial for line distribution but land ceiling remain one of the most weakest aspect law with loopholes came into existence. people protected their land by dividing joint family, benami transfer and even gave formal divorce to the wife to protect land.
Distribution of surplus land was the most important aspect of land Reform. To address poverty one of the vision of land Reform was land to Tiller. However, there is very limited distribution that has taken place even government up till now has not been able to distribute whatever they have acquired.
5. CONSOLIDATION OF LAND HOLDINGS AND ESTABLISHMENT OF COOPERATIVES

• It was the next logical step even Cooperative movement has been a failure. Whatever Cooperative movement has came into existence for example in Maharashtra it is not Cooperative but joint stock company of rich farmer.
5. CONSOLIDATION OF LAND HOLDINGS AND ESTABLISHMENT OF COOPERATIVES

• Since 1998 the type of developmental model India has adopted has adversely affected even the interest of rich farmers, agriculture has been worst affected by liberalization.
5. CONSOLIDATION OF LAND HOLDINGS AND ESTABLISHMENT OF COOPERATIVES

• Agricultural Growth has stagnated. Rural areas are suffering from the problems of Hunger and malnutrition even when produced grains is getting rotten in warehouses.
CAUSES OF THE FAILURE

1. Lack of political will
2. The presence of Dominant Caste in Congress.
3. Lack of organize Peasants Movement in the Country
CAUSES OF THE FAILURE

4. Lack of Land Records
CAUSES OF THE FAILURE

5. Corruption
GUNNAR MYRDAL

- Gunnar Myrdal called India a soft state and that is a reason that even persons like Nehru fail to achieve success in land reforms.
• Atul Kohli: state in India lacks political and organizational capacity to confront the power of propertied class.
• Atul Kohli gives the example of Kerala and west Bengal where land reforms could be successful because of the ideology of political party and because of base of Communist Party was among poor on the other hand despite rhetoric Congress continue to be the party of dominant class.
Francis Frankle: the accommodative policy pursued by Indian state has jeopardized the national agenda.
• Sudhi Kaviraj and Pranav bardhan both believe that state in India expresses the interest of the bourgeoisie class. There has been unenthusiastic implementation because of this disproportionate influence of the propertied classes.
1. The importance of land reform in any redistributive strategy have lost the imagination. In contemporary times it appears an outdated approach.
SUGGESTIONS

Hence there is a responsibility of intellectual class to bring the agenda of land reform in public sphere and matter of public reasoning.
2. It is the responsibility of civil society organizations and landless labourers to create pressure of government.
3. Government of India should start taking the issue seriously because failure of land reform failure to address rural poverty and hunger has resulted into left wing extremism.
4. There is a need to strengthen legal machinery addresses loopholes, maintain land records, utilize NGO for identification of beneficiaries.
5. Government constituted Lok Adalat to dispose of old legal disputes
6. Prevent Agricultural Land Transformation for non Agriculture uses.
thank you
GREEN REVOLUTION

The Green Revolution in India refers to a period when Indian agriculture was converted into an industrial system due to the adoption of modern methods and technology such as the use of high yielding variety (HYV) seeds, tractors, irrigation facilities, pesticides, and fertilizers. It was mainly found by M.S. Swaminathan. This was part of the larger Green revolution endeavor initiated by Norman Borlaug, which leveraged agricultural research and technology to increase agricultural productivity in the developing world.
PURPOSE

- To make India self sufficient in the production of food grains.
• Production Centric approach based on philosophy of capitalism. It resulted into the use of high yielding variety seeds, fertilizers, pesticides, implements. Thus, it is capital intensive it also cause intensive use of land.
Green revolution started in 1961 at intensive agriculture development programme IADP. Initially 14 district we are selected for an experimental basis and later on extended to 114 district in the form of intensive agricultural area programme in 1965.
OUTCOME

- It make India self sufficient in food grain production since there is a substantial increase in output. It is treated as a Revolution. agricultural growth increase at the rate of 3 to 5% per annum which was an encouraging state of growth considering colonial period.
• According to VKRV Rao the games of Green revolution come at the substantial social and political cost, it has increased the gap between rich and poor.
• It has increased rural indebtedness because small and marginal farmer had to borrow to purchase supplement and seeds. It has reversed the process of land Reform small and marginal farmer actually lost the land.
According to economics like GS Bhalla and GK Chadda, green revolution has increased the agricultural and wages total income of four times and has strengthened the organic power of workers.
• On the other hand economics like SS Grewal suggest that there was no increase in the real wages there was inflation in the rates of food grains, there has been decline in living standards, machination displaced labour resulting to migrate labour it started creating social unrest. It destroyed traditional dependence between a farmer and labourers.
• **Rudolph and Rudolph**: they have analyzed the political effect of Green revolution as it gave rise to Bullock capitalist, strengthen the role of caste in Indian politics.
Other Scholars like TK Omen, Usha Patnaik, Pranav Bardhan all focus on the poor distributive aspect giving rise to frustration and unrest.
• Vandana Shiva in her Book *Violence of Green Revolution* publishing 1993 mention about the negative impact
According to former President K R Narayanan if we will neglect the task of Land Reforms it will give rise to counter revolution, which has already started in rural areas. Green revolution should not end up giving rise to red revolution.
ANALYZE

- Analyze the Political Economy Of Growth And Distributive Justice In India Structure
1. India is a Welfare State
2. Directive Principles specially Article 39 B and C
3. Indian state adopted the role of developmental state under Pt. Nehru
4. However, India's achievement with respect to eradication of poverty and human development indicates has not been encouraging, there is a lack of regional imbalance and inclusive growth.
5. Political Scholars have analyze the politics of economic growth in India some of the prominent views can be expressed as-
6. Hamza Alavi had suggested that post colonial state negotiate on behalf of the three propertied classes.
ANALYSE

7. Gunnar Myrdal emphasize on poor capacity of India calls India a soft state.
Atul Kohli mentions the problem of the crisis of governability faced by the Indian state. Crisis of governability is a result of lack of stable alliances, poor capacity, and poor policies.
9. Sudipta Kaviraj suggest that Indian states are the interest of Bourgeoisie Class.
Thus above analysis highlights the class character of Indian state and lack of will and capacity.
• Rodalph and Radolph calls Indian status as "Polymorphous (बहुरूप)" like Hindu God hence it kept on balancing different section of the society.