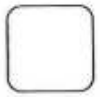
Book No. 

A4

NOTE BOOK

Name :
Subject :
Contact :

(14/Nov/2023) (#102)

Making of the Indian Constitution

Constitution

A Constitution is broadly a set of rule (written or unwritten) that seeks to -

- establish the duties, powers & functions of various institutions of the govt.
- it should regulate the r/s b/w them.
- it should define the r/s b/w state and indi-dual.
- and it should inevitably constitute the highest law of the land.

It is widely agreed that one reason for having constitution is the need to restrict the exercise of power as modern states are excessively powerful and hence the constitution should have the idea of constitutionalism.

Constitutionalism in a narrow sense is the practice of limited govt. ensured by the existance of a constitution. More broadly, it is said to exist when the state power is appropriately fragmented through mechanism -s like Bill of Rights, Separation of Power, Bicameralism, federalism and Secularism. Having a codified constitution is also an effort for creating a limited govt.

It generally draws a line for all the institutions. In case of absence of codified constitution parliament is sovereign.

Constitutional Morality

The idea that was at the heart of constitutional project of Ambedkar because acc to him, it is the most important factor determining both functioning as well as the survival of the cons.or
It is a set of conditions to which agents in a constitutional setting must subscribe.

These include the following:

1) Self Restrain (George G.)
Paramount reverence (respect) to the form of constitution and obedience to authority.

2) Freedom
Unrestrained censure (criticism) of the govt.

3) Acceptance of Diversity

4) Inherent suspicion of "Any claims of singularly & uniquely reflect the will of the people".
for Amb., it was inherently opposed to the idea of both constitutionalism and constitution
↳ Hero worship.
(Eg: Durga Mata G.)

A codified constitution's strengths and weaknesses

Strengths:

- Major tenets and cons.onal provisions are firmly established protecting them from tempering by transient majority (majority that will change)
- The power of legislature is constrained cutting its sovereignty.
- Non political judges pulleys the constitions against alteration that goes against the basic idea.
- Individual liberty is more securely protected & [illegible] is generally kept at bay.

- For colonial countries, first exercise of self determination i.e. Sovereignty.

Weaknesses :-

- It is more rigid & less responsive to change.
- The constitutions are inevitably biased because they endorse one set of values or principles in preference to others meaning that they may precipitate more conflicts than they resolve.
- Provisions enshrined in customs & conventions may be widely respected and they might overpower the constitutional provisions.
- With a codified constitution, constitutional supremacy resides with non-elected judges rather than publicly accountable politicians.

British Acts

1600 → Charter

Regulating Act 1773 / Pitts India Act 1784 / CA 1813/1833/1853

Gov. General

[GoI
Council of India

1857

1861 / → 1892/1909 / → Representation

↓

1919/1935 → Responsible

System of Portfolio

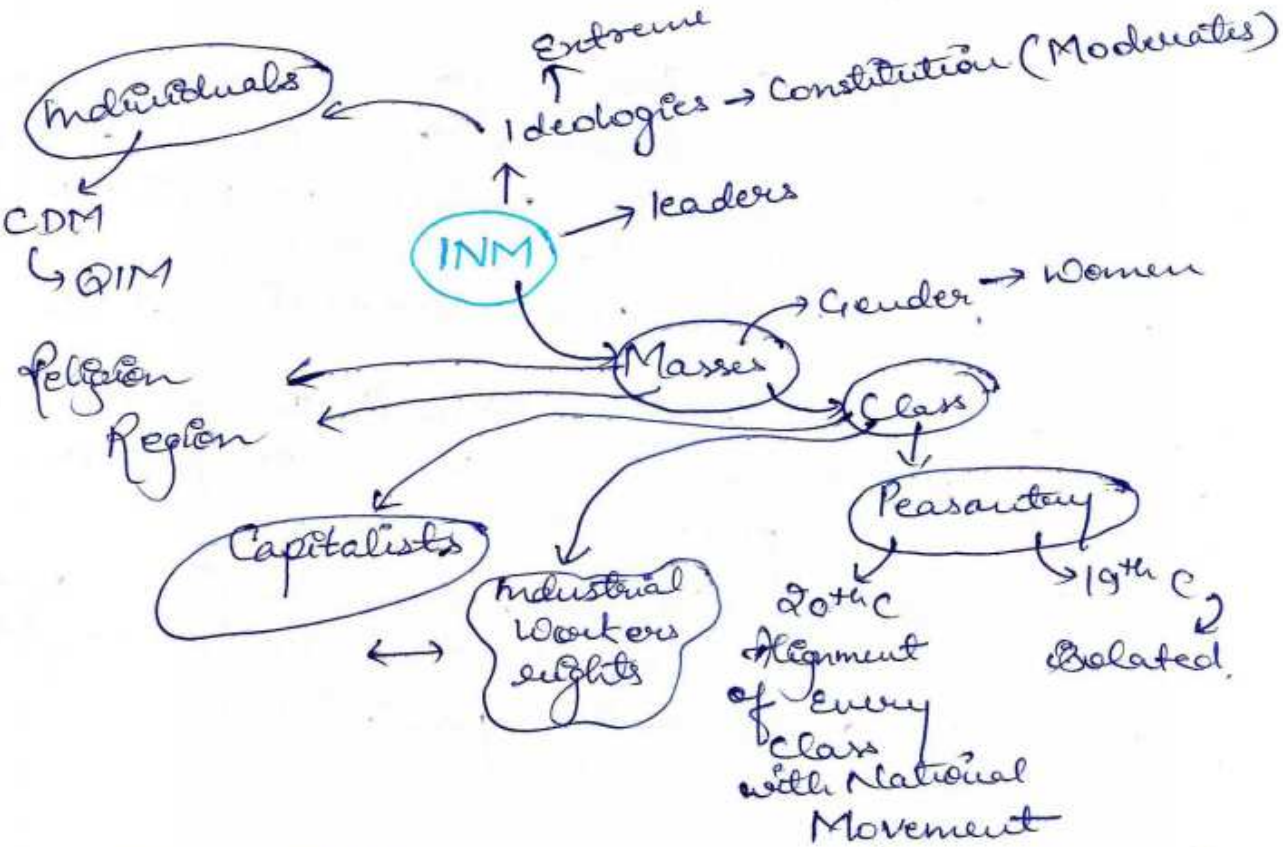
Constitution Assembly → sovereign in creation?

-ve

1. Sovereign → ×
2. General Assembly → One Party Assembly → One Party country
3. Mandate → indirect → MLAs → 5 y.
4. Referendum
5. Frequently amended.

+ve

Congress Typically of Brahmins



State differentially intervenes in religious matters

Pseudo Secularism

Mandate in Moral Sense

Question of Referendum goes away

15/Nov/2023 #103

TEXT → Most diverse → Largest contentious → Ethnicity → Religion → Democracy → Lingual diversity, Caste

hierarchical society
↳ Equality

Social structure, Caste, patriarchy } Society Ancient → Modernity

diff things

Eg: German nation → homogenous society

Subcontinent → Except India, all have state religion

Criticisms

↳ Un-Indian
K Hanuman -Shapp → VEENA/SITAR → English Orchestra

→ Anti Indian
d N Sahu → Expelled core idea of Gandhi

d N Mishra → not only Slavish imitation rather Slavish surrender to the west

CARBON COPY OF 1935 Act
↳ federation

we have taken from → BRITAIN → Parliamentary democracy / Rule of Law
- (Supremacy of law
- (equality before the law
- (independence of judiciary

USA → Rights

CANADA → Centralising tendencies

Irish → DPSPs

Affirmative Action USA India

Distance from Indian Society
Madhav Khosla

success

'Touchstone'

Closest to the Indian way of life.

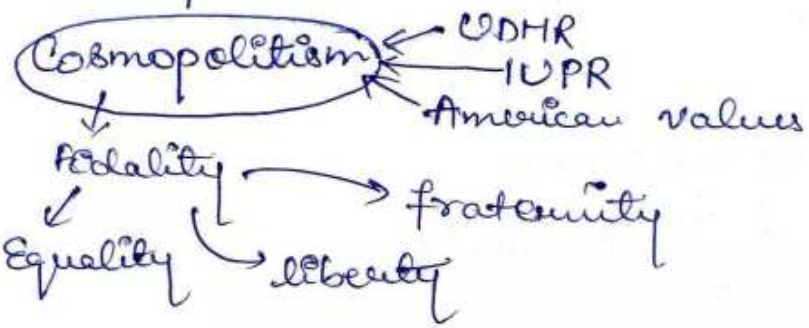
Constitutionalisation of Indian way of life.

Art. 21 Religion → life

Eg: Socialism not included

Derivative Eclecticism

'Inspiration' → Universal



China → Japanese → fight among themselves

Eg: Best Car / Best Indian Car

Indian Constitutional law

Pratap Bhanu Mehta → Global Consti.al law

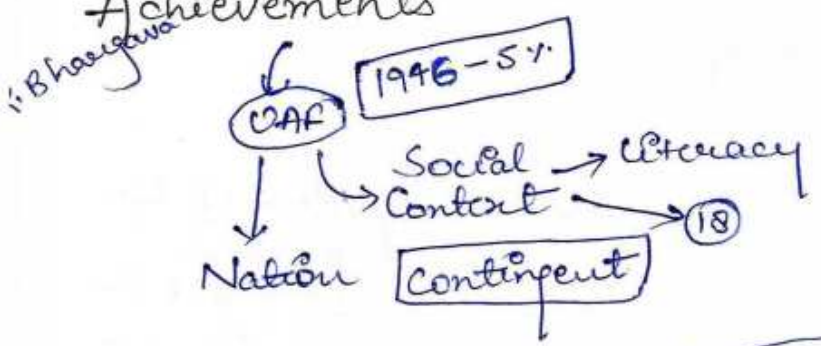
Situated at cross-current

Madhav Khosla

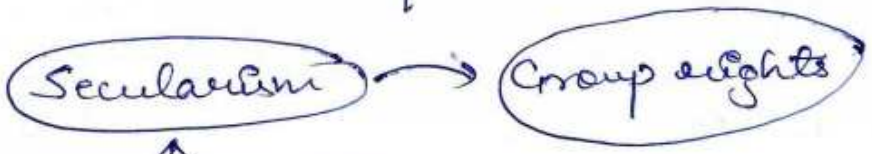
To be free means to be free

Achievements

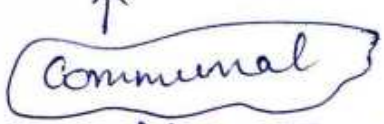
1. Bhargava



UAF → presuppose equality



Art. 29, 30



Mutually conflict

Liberal Individualism

(Asymmetric Federalism)

Universalism
eg: Citizenship

Questions raised on legitimacy and representativeness of the Constituent Assembly :

In 1922, Gandhi promised that, "Swaraj will not be the free gift of Britishers rather it will be the expression of Indians." In 1934, CWC (Congress Working Committee adopted a resolution that Constituent Assembly will be elected based on IAF. In the words of Churchill, "it was the assembly of Brahmins", the assembly was neither elected by the people nor it was determined on the bases of terms of references (ToR) and so the question really is "who is this," WE THE PEOPLE". The following observations raised questions over the legitimacy of the CA to frame const^{n} for a sovereign India.

The fact that it was based on Cabinet Mission Plan shows that it was indeed the 'pre-gift' of the British. Also the members of CA were not directly elected, rather they were indirectly elected by the members of Provincial Legislative Assemblies (PLAs) on a very limited franchise of 5% of the total population.

Even the members of PLA did not have mandate to elect the members of CA. We cannot ignore the fact that some of the members are also nominated by the Princely States. Unlike other countries the final constitution wasn't put to referendum to know the will of the people.

The CA had overwhelming representation from upper

existence, ... for more than two times.

Although these reasons are factually accurate they don't prove that constitution of India doesnot reflect the will of the people because acc. to Pratap Bhanu Mehta, holding election at that time would have continued the chaos not just because of partition & ensuing violence but also because of lack of institution to conduct free and fair elections.

Acc. to R. Bhargava, Granville Austin is right in saying that CA was one party assembly in one party country but also the fact that India was congress and congress was India.



(The widest social & political coalition)

Apart from that, congress coopted the very few members of other parties.

Also all the substantive provisions of CoI were adopted by consensus and finally, NCWRC didn't recommended any far-reaching changes to radically alter any basic constitution test.

This is a long settled debate after the Keshava Nanda Bharati Case where the majority judgement said that we have to accept We the People as we the people.

Criticisms of Indian Constitution (Charges levied on it)

The Indian Constitution when it was promulgated labelled under the charges of being un-Indian, or anti-Indian. In the final debates of CA, we noticed the criticism that constitution

bear little resemblance to Indian way of life.

Laxmi Narayan Sahu -
The ideals on which this draft const.n is framed has no manifest relation to the fundamental spirit of India.

Loknath Mishra
Our const.n is a slavish imitation of the west & even more slavish surrender to the west.

K. Hanumanthaiah
We wanted the music of Veena or Sitar but here we have the music of English Orchestra.

Supporting the argument of being Un-Indian, the const.n expelled even the political theory of Man from whom so much of nationalist movt. drew its authority, instead it represented acc. to many commentators, the amalgation of many sources & traditions.

Sources

Privileges

Self work

even though the const of India has the power authority of nationalist mout behind it, it ran the risk of being vulnerable to two specific charges.

1) The practical acquisition was that it was not a constitution suited to Indian needs and even was unworkable in Indian case.

2) The theoretical charge was that the const^n represented a kind of Derivative Eclecticism

Denying the first charge, Madhav Khosla says that Indian Const^n has not only endured but has also consolidated into Indian psyche to the extent that it has become the part of national identity. It has become the 'touchstone' most frequently invoked by Indian people belonging to any side of political dispute. Madhav Khosla argues that the resolution of deep political, Social and economic dispute that the const^n has enabled would not have been possible if it were 'unIndian' or 'anti-Indian'. (Pre-1991 to Post-1991). And finally, Constitutionalisation of "Indian Way of Life" where every religious, Social, Lingual, environmental dispute becomes a constitutional dispute shows that this text has always been very close to Indian Society.

Charge on Derivative Eclecticism

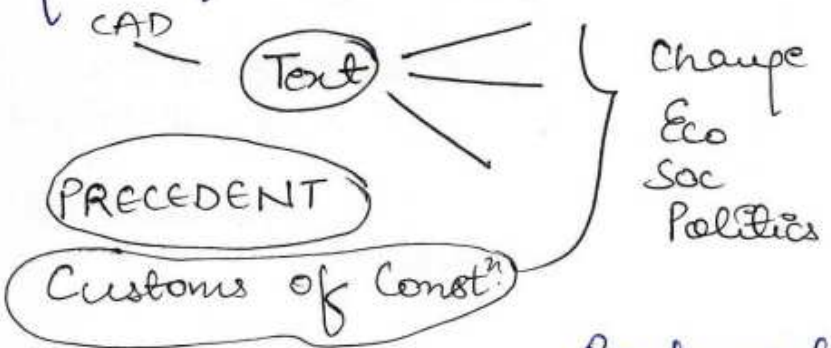
Ambedkar countered within the CA by saying" the only new thing if there can be any in a const^n framed so late in the day are the variations made to remove the faults and to accomodate it to the needs of the country."

Acc. to Pratap Bhanu Mehta, the const^n of India is the unique experiment in the field of

constitutionalism because unlike other countries where revolution led to the formation of Const^{n}, the Col tries to give rise to the revolution and so it is in a significant sense a 'cosmopoli-tan const^{n}'. It was cosmopolitan because of its fidelity (its commitment) to liberty, equality and fraternity but it is even more cosmopoli-tan in the sense that its texts & principles have been situated at major cross-currents of Global Constitutional law.

The charges of Derivative eclecticism occludes what is interesting about Col because the Col from its very promulgation has been a flag bearer of universalism. In fact INM was self-conscious about the need to rise above nationalism as Madhav Khosla has rightly put, "to be free was not to be bound by a particular tradition or a specific political contract."

In any constitutional tradition, there is a tension how the text positions itself b/w the authority derived from the past and its utility for the future.



Backward looking aspects are still relevant

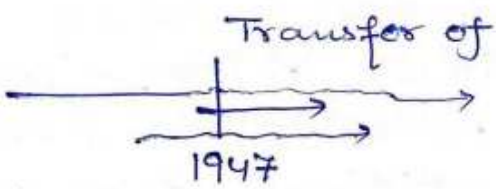
Indian const^{nal} law is fascinating for the way in which the backward looking aspect of law (like the debates, the original text) are frequently invoked in creative reinterpretation of the const^{n} to make it serve the changing needs.

Conclusion

26/Nov/2023 (#104)

UAF → Complete discontinuity from past.

Legacy → Something that has been carried forward



Patel → Fresh

Sedition
CSE
Governor
Criminal Jurisprudence
Education System

Indian economy colonial → gems and jewellery
Exporters of finished good & exporter of raw materials.

Official secrets Act ← exemption RTI
Preventive detention part of FRs (only liberal country)

Rote learning → They only wanted clerks
Bureaucracy (US → Mayor)

Caste as -ve or +ve ? Debatable

Census → Caste
→ NAME → Caste, Write it on paper

Dominant Caste

If not, then no separate electorate being asked and no Affirmative action.

Except Africa, least integrated
because of policies being carried out by British and carried forward by US
Lord Curzon → preferential treatment to Nepal
Partition is also responsible for least-integrat-ion of the region.

Transformative achievements of Const of India - (Rajeev Bhargava)

→ UAF

It is a no mean achievement to have committed ourself to UAF specifically in the backdrop of widespread belief that traditional hierarchies in India are solidified and more or less inalienable. Acc. to Bhargava, we transitioned from contingent principle of inclusion (restricted to only those qualified to rule) to categorical principle of inclusion (to be an adult member in a society is sufficient enough ~~for~~ qualification).

Bhargava also uses the same argument to show that the ground idea of nation precedes the state.

→ To reinforce and recount forms of liberal individualism (implicit in our commitment to civic liberties). In a context ladden with values that are hostile to individual autonomy.

Against the background of communalism re-imagining secularism to provide for group rights indicated that framers of the constitution were more than willing to face the challenges of what more than 5 decades later has come to be known as multiculturalism (Pranci)

Secularism → Principled distance

A constitutional commitment to caste based Affirmative actions programmes shows how far ahead India was compared to other nation (USA, 1964 - grounds: diversity)

objective → different

Equidistance and Principled distance in religion (Secularism)

By introducing articles like 370, 371, 5th & 6th schedule, the Indian Const.n ingrained a-syemmetricism into the const.n and indirectly incorporated differentio -l citizenship.

dual citizenship

And finally the trust of Col in Political deliber -ation is unparalleled (it provided for future constitutional recognition of currently invisible → visible organised and unorganised group of people).

Limitations

- It produces a very centralised idea of unity (citizenship). → a single aspect
- It has ignored important idea of gender justice. (does not have enough)
- It lacks safeguards to ensure minimal represen -tation of minorities in the assembly.
- Acc. to Upendra Baxi, India has created "Rightless people" because the const.n of India gives rights with one hand and takes it away from the other.

Preamble
FR — DPSP
DPSP

DPSP / FR

Fraternity — Casteism

से तो Behave है। -ve way

We the people of India

Externally independent → Lockean Contract

Sovereign → Internally Supreme → Limited State

Intern'l Suprem

Eg: Nagaland

borders human ✓
Goods & Services ✗

Supranational organisations — Commerce
Goods & services

Political sovereignty

→ EC, death penality
→ HRs
→ Environmentalism

Cultural sovereignty
Nation is based on differences and similarity
Eg; India : Coal
homogenisation.

IGOs
dent on pre-existing sovereignty

Civic rights movements

Civic society → NGOs
Internet
Globalisation
Secessionist movt.
Countries like India are more sovereign

Socialist
Fabian socialism
39(b), (c)
Redistribution
Land reforms
Natural Resources
Minor mineral
Major Mineral
State get out from economic system one by one
Progressive taxation
State led model of Economy
Eg: Madhy pradesh village
one way to (L)
(L) (P) (G)
Trickled down ⇒ redn/quality
Way to exercise socialism has changed

Secular

Art for Secul. Art (14) 15 16 | 25 26 27 28 29 30

Without Secularism, there cannot be democracy!

↳ End domination of religion also

↳ It is liable for inter-religious domination
intra-religious domination

Char-Dham highways!

Democracy
By
OF
For

→ Procedural

large free and fair elections
Smooth Transfer of Pow
Acceptance of Result
Independent Judiciary

Electoral bond

Wealth
Criminalization of Politics
Assembly

× Deliberation → Public

MEDIA → free
×

Substantive part missing

compromising on procedural part also now!

legacies - Pdf

17/Nov/2023 (#105)

Unclouse highus arbitrator

Preamble

The term Preamble means preliminary or introductory state-ment especially attached to a legal document. The Preamble to the Col records the aims and aspirations of the people of India and also describes the nature of the state. It is primarily based on the objective resolutions written by JL Nehru. However the meaning & implications of the terms contained in Preamble are evolving over time. Apart from that, there are significant challenges which are being faced by these core values in their application to the current Indian state & society.

Sovereign

In its simplest term, it is the principle of absolute or unlimited power. A Sovereign state is internally supreme and externally independent.

The interconnectedness that globalisation has brought is multidimensional and operates through distinctive political, economical and cultural processes.

The rise of international trade and capital markets has limited the ability of the state to control their domestic economy as international capital markets prevents states from pursuing independent macroeconomic policies (capital flows (FDIs, FIIs), exchange rates & bond yield).

There is a strong indication that the impact of globalisation is most felt through the extent to which politics everywhere are essentially market driven narrowing the ideological differences

among different political parties (BJP, Congress have same economic outlook). The rise of International organisations as a key new actor has also impacted the sovereign-ty of states (UN, IMF, WTO). In one sense, these institutions are products of State sovereignty because they were created through voluntary agreements among it's member states but in another sense it fundamentally contradicts conventional understanding of sovereignty.

A new international law and jurisprudence has developed globally which has placed major limitations on states even in their domestic policies. For eg: in form of HRs discourse, it is openly concerned with the relationship b/w a state and its citizens. It also increasingly guides the policies driven by environmentalism.

And very recently NSAs have come to influence the content and scope of both domestic laws & International laws.

Globalisation has also impacted the cultural element of sovereignty as it has homogenized cultures. One of the chief implication of this weakening of cultural distinctiveness is that it has undermined the capacity of the nation states to garner political allegiance.

Socialism (inserted by 42nd Constitutional Amendment)
As to why it was not included since the beginning was answered by Amb. in the debates.

What should be the policy of the state & how the society should be organised in its social and economic sides are matters which must be decided by the people themselves acc. to time & circumstances. It can't be laid down in the const.n itself because that is destroying democracy altogether.

state and most shared an understanding of history in which the movement for separation of religion & state was an integral part of a project of democratization of the state. However, it was not included in the preamble because of its multiple interpretations.

However that does not mean that the Indian Const^{n} compromised on this value rather it re-invented the idea itself. The Indian secularism in the words of Rajeev Bhargava is the result of particular historic context & political bargain and hence he categorises Indian secularism as one which symbolises principled distance.

Indian secularism is concerned with ending inter religious & intra-religious domination over social, economic and political spheres.

Democracy

Successful democracy is a holistic idea that encompasses both procedural aspect (political equality, free & fair EC conducting free & fair elections, peaceful transfer of power, multiparty system) and substantive aspects (Deliberation, press freedom political accountability)

Both aspects are complimentary and dependent. They reinforce and interfere with one another. So far, it has been largely agreed that procedural part in India functions quite well (Transfer of Power, multiparty system, EC)

But substantive democracy continues to be missing as development promises are seldom kept, there is a clear decline in the role of parliament as law makers and also as accountability mechanism to keep executive undercheck. All this

the DPSP incorporated socialist ideals in the form of Art 39(b) and 39(c) (concentration of material resources and operation of economic system).

In DS NAKARA Vs Union of India; SC held that the basic framework of Socialism in India is to provide a decent standard of life to the people.

However, the adoption of LPG shows that we might be deviating from our form of Socialism. The LPG reforms have diluted the Socialist credentials of Indian State in a lot of ways.

Current indices
OXFAM
Social-Economic caste census)
Write them while studying

The limitations of the neo-liberal economic model are being realised & the ideals of inclusive growth or Sabka saath Sabka Vikas has been brought back into the fold of policy making. India has adopted rights based framework, to achieve the same objectives that Art. 39(b) and (c) set out for.
work
primary educa
information

Secularism (inserted by 42nd Constitutional Amendment)
When the preamble to the Const^n was discussed in the CA debates over the incorporation of the word 'Secularism' it took large portion of time.
Shefali Jha explains that all members agreed on the necessity of establishing a Secular

on human development indicators, poor state of rural infra and agriculture, corruption, lack of intra-party democracy criminalisation of politics.

Political Scientist Rajni Kothari discusses on 'crisis of institutions' that it has enabled over emphasis on leaders.

While elements of substantive democracy still leaves alot to be desired, it is worrying that the procedural aspects of democracy are weakening (electoral bonds, weakening of EC, use of CIA (central investigating Agencies) against the opposition parties)

Justice → Caste
→ Gender
↓ ↓
Region Religion
} Social Capital

Art 19(1)

Equality, liberty gives way to Justice

Economic Justice primarily comes from Social Justice!

Liberty paves way for freedom

Equality of status & of opportunity + Equal Protection of law

Eg: Education

Lack of labour and intent
Merit → itself a social creation
result of discrimination

Art. 14(1)
Art. 18

Eg:
Dalit → UPSC
Nutrition → Malnutrition

Amb. Equal Protection → Equals equally, unequals unequally

Criminal Jurisdiction

→ Identity Card

Horoscope → What India aspired for

Soul → Essence

Jewel Set → Most valued, precious, enhancing beauty of the const^{n}.

Keystone →  → crucial role

Preamble is the Keystone of Const^{n}, key to the nation.

Republic

India has a republic form of govt. as the head of state is elected and not a hereditary monarch. It implies that the people have the authority to choose the head of the state for a fixed period of time.

Good, Bad by Modi Car, Driver Google Map
State Govt Preamble

Justice

Justice in broadest sense is the concept that individuals are to be treated in a manner that is equitable and fair. A society in which justice has been achieved would be one in which individuals receive what they 'deserve'. Justice is the first virtue of the social system and no state exist if people perceive that it is unjust. Preamble deals with justice in a comprehensive manner taking into account social, economic and political aspects.

Social Justice

In India social injustice had been present in terms of discrimination based on caste & gender. The Const not only prohibits discrimination on ascriptive identities (caste, colour, race & sex) but also provides for affirmative actions in favour of

Economic Justice

The DPSP (39(b) and (c)) aim to provide economic justice by allowing equitable distribution of resources. The Const^{n} also contains many other social & economic rights like right to adequate wage. right to work, appropriate level of nutrition.

Political Justice

The Col tries to counter political injustice (majoritari-anism, marginalisation of vulnerable or weaker sections by adopting OAF, Independent EC, Reservation to SC/ST communities in assemblies) and the commit-ment to political justice has continued by the latest Constitutional amendment extending assured political representation to women. (Nari Shakti Vandan Adhiniyam).

Though mentioned separately yet social, economic & politi-cal justice form an integrated idea.

Liberty
Equality (discussed later)

Fraternity

By fraternity is understood as a spirit of brotherhood the promotion of which is absolutely essential in our country which is composed of people of many social backgrounds. The phrase 'dignity of individual' signifies self respect & loss of fraternity compromises with the later (stereotypes, discrimination & ill-treatment on the basis of identities), loss of fraternity also compromises unity (emotional concept) and integrity (territorial concept) (tendencies towards/of regionalism, commu-nalism, casteism, linguism as a threat to

fraternity).
Only by following fraternity, we can counter these tendencies so that to ensure that India remains united & integrated.

Importance of Preamble

Justice Khanna has said that preamble has following utilities:

i) Reference can be made to the preamble for the purpose of constrain meaning when the constitutional provisions are ambiguous.

ii) The preamble can also be used to shed light on and clarify obscurity in the language of the legislation.

However when the language of an article or section is plain and suffers from no ambiguity, no reference can be made to the preamble.

Commentaries on the Preamble

Palkhiwala:
Identity card of our const^{n}.

KM Munshi:
Horoscope of our Sovereign democratic Republic.

Pt. Thakurdas:
Soul of the const^{n}.
Jewel Set of the const^{n}.
Proper yardstick with which one can measure the worth of the const^{n}.

Ernest Barker:
Keynote of Const^{n}.

Sir Alladi K. Ayyar:
Preamble expresses what we have thought for so long.

In Berubari Union Case (1960), SC held that preamble is like a lighthouse or a key to open the minds of CA where there is ambiguity.

Is Preamble part of Const^{n}. , Amendable or not ?

↳ 24.4.61

20/Nov/2023 (#106)

Religion
25 - 28
cultural
29 - 30

12
13
14] Equality
18

19] Freedom
21] liberty

Liberal individualism

State → Society

Acts in conjunction overlaps each other

Bases for all → 14, 19, 21

Trinity of Values

CENTRAL
↙ Executive
↓
Parliament
↙ RS
↓ LS
↳ President

FR → I deals with genes and other species

local → other line departments
↘ Panchayats
↓
Municipalities

State
↙ Govt.
↘ LEG.
↙ LA
↘ Gover.

Other authority → Provides for future modification

~~If other authorities~~, then autonomous bodies

PK BISWAS
→ Functions
→ Finances
→ Administrative

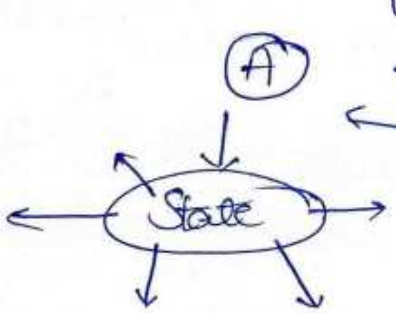
BCCI

BCCI → State?

BCCI → Selection of Team
↳ Corporate functioning

Broadcasting

Instrumentality of State > FUN > FIN > ADM



Art. 13

Pre constitution

13(1) → eclipsing clause

13(2) → Severability Doctrine

← 1950 → 28th Jan

↳ 26th ↳ 24th

→ Reservation → Depressed Class → 1950 → C. Door

Art. 15 Super Imposed

↳ Art. 15(4)

Eg:

Sedition under eclipse

Sev. Reservation → OC

→ No Basis to OC

↳ 15(7)

↳ Passage of the 85th

Art. 14

Equality Before Law

Rule of Law → law is supreme

→ Everyone is = before law

↓

Arbitrariness

1. supremacy of Law → Art. 20/21/
2. Equality befor the law → Rights
3. Predominance of law

Const.

Independent Judiciary

Equal Protection of law

Equals equally unequal unequally

Just fair reasonable

Intelligible differentia

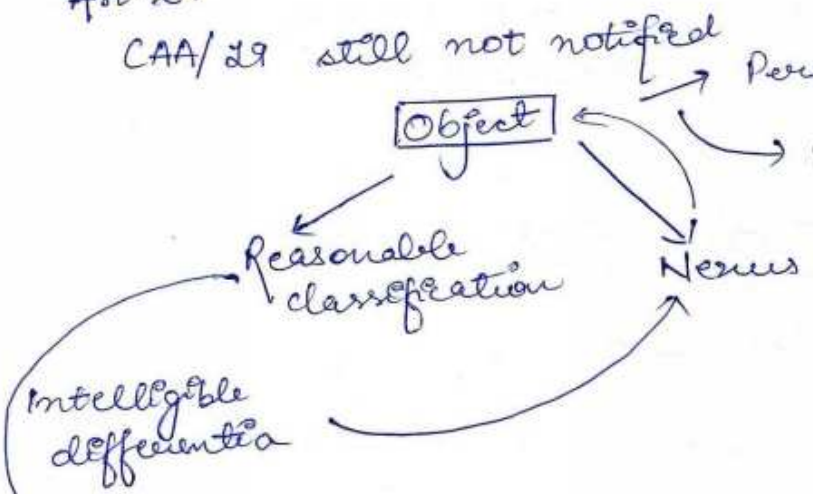
OBJECT

Reasonable classification

Nexus

Section 377
Art. 14

CAA/19 still not notified



BPL → Universal
↓
not only for Indians!

Bhutan
China → VIGH
→ BUD
Pak → H/M/C/S
→ Shia
Afgh.
SL
Myanmar
Bangladesh
Nepal

Cow slaughter law
Objective: Safe rural economy.

The CoI under Part III provides for 'Fundamental Rights'. They have evolved because of Constl Amendts, Judicial Interpretations and also by the virtue of them acting in conjunction.

Art. 12

In this Part, Unless the context otherwise requires, "the state" includes the Govt. and Parliament of India and the Govt. ~~or~~ and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Govt. of India

The devise of an inclusive definition makes it clear that the CA didn't wish to fossilise the list of actors against whom FRs could be claimed - This

- other authorities which acc. to Tranath Padmanabhan is like an Accordion which is capable of contextual stretches and compressions in its meaning.

Under PK BISWAS, the SC developed financial, functional and administrative control theory to test whether a particular body can be categorised as 'other authorities' under Art. 12.

This conception was a product of its time driven by the philosophy of Nehruvian Socialism where any 'other authority' would be inevitably financially, functionally and administratively controlled by the state but this test is failing to meet the challenges of neo-liberal state.

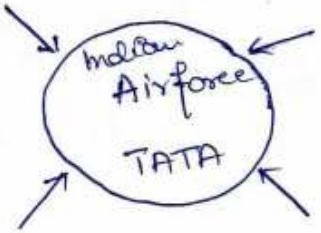
The PK BISWAS test is all or nothing approach to Art. 12. It is over inclusive because it renders open to challenge any action taken by entities even if they be actions taken in purely commercial domain.

It is under inclusive because many actors without a formal 'functional, financial, administrative control over them but wielding significant power over citizens due to direct or indirect state authority would be able to get away in respect of all their actions despite the public impact caused by them.

CENTRAL STATE SOCIETY

A + B + X → P/P/A

Other authorities



Art. 13 Laws inconsistent with or in derogation of the FRs — (1) All laws in force in the territory of India immediately before the commencement of this Const., in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The state shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—
(a) "law" includes any ordinance, order, bye-laws, rule, regulation, notification, custom or usage having in the territory of India the force of law;
(b) "laws in force" includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Const. and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[1][(4) Nothing in this article shall apply to any amendment of this Const. made under article 368.]

Unconstitutionality of the Statutes

Art. 13(1) refers to Preconst. laws while 13(2) refers to Post Const. laws.

A law is void (devoid of any legal force) to the extent of inconsistency.

Doctrine of eclipse (DoE)

In BIHKHAJI DHAKARS, the SC devised DoE that a preconst. law inconsistent with FR wasn't wiped out altogether after the commencement of the Co1. The law in question will be regarded as having been eclipsed for the time being by the relevant FR. If the relevant FR is amended the effect would be to remove the shadow and bring it back to life.

Doctrine of Severability (DoS)

[illegible] provisions which automatically come to life even after the FRs has been amended.

Art. 14 Equality before law.- The state shall not deny to any person equality before the law and or the equal protection of the laws within the territory of India.

Art. 14 consists of 'Equality Before the law' and 'equal protection of the laws'.

Equality Before the law comes from A.V. DICEY's rule of law which consists of following:

Supremacy of law - implies that a man maybe punished for a breach of law but nothing else (Art. 26).

Equality Before the law - means equal subjection of all to the ordinary law of the land administered by ordinary law codes.

Predominance of the law - The primacy of the rights of individuals is the result of the rights of individuals as defined and enforced by independent judiciary (evolution of FR along with Independence of judiciary) shows that India also has this III element of rule of law.

Equal Protection of the law:

It means all persons in similar circumstances should be treated alike both in privileges conferred (Affirmative Actions) and liabilities enforced (seperat

criminal laws).

~~Basis of classification under 14~~

The provision corresponds to equal protection clause of US constitution. It postulates application of same laws alike and w/o discrimination to all persons similarly situated.

Basis of Classification under Art. 14

→ **Intelligible Differentia:**

The criteria shouldn't be arbitrary, evasive or artificial rather ~~the~~ it should be based upon some real and substantive distinction.

→ **Nexus:**

The differentia adopted must have a reasonable connection (nexus) with the object sought to be achieved.

→ ~~Reasonable~~ **Objective:**

The objective should be a substantial value enshrined in the Const.

S + E

≈≈≈ → SC/ST

Caste → Geography

21/Nov/2023 (#107)

Art. 73 CBI

Dominant Caste → OBC

Rohini

Reservation → Monolith

→ at the base of the 'We the people'.

→ Compromises merit

385

Sunset (Reser < 15 / 16)

Social historical injustice

Inclusivity

→ Vote bank

Reify → Caste (solidify)

15(3) – Women, Children

15(4) – Socially & Educationally

– SC and ST

15(5)

15(6) – EWS → wider than 16

14 is more wider

Public employment

16

16(4)

16(5)

16(6)

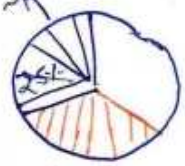
Dominant caste as OBC

Socio → Jats
→ Patidars
→ Marathas
→ Kappus

Numeracy

→ Tellers } Money
→ GR

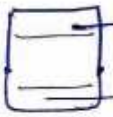
1° Jatis



2nd

1/3rd → Profession
↓
0 representation

Sub Categorisation



→ Privileges

→ Dispriviliges



Baby Boomer generation

Relative Deprivation

↙ Affirmative Action

↘ Under Agriculture

Rohini Comm.
2600 Jatis

Rohini Comm.

→ 1931 → Old/out
→ Pop^n
→ x Princely States
→ Regional Variations

Debates around Equality

Demand of reservation by dominant class

Eg: Jats in UP, Kapus in Andhra Pradesh, Marathas in Maharashtra, Patidars in Gujarat

They are demanding reservation mainly because of structural transformation of economy, under performing agriculture and fragmentation of land holdings. Apart from that, lack of investment in technical skills have resulted into shrinking opportunities in private sector. At the same time, success of affirmative action has resulted into relative deprivation. Their anxiety seems to be based more on perception rather than empirical evidences.

Sub-categorization of OBC

Benefits of reservation of OBCs has reached only very few sub-castes (850 Sub-Castes have no representation in public employment)

41% of the muslims are muslims from OBC (Sachar Comm.) whose socio-economic conditions are comparable to those of SC and so Rohini Comm. has recommended Sub-categ.n of OBCs. The govt. has taken no step (yet to take any decision on the report)

However, Sub-categ.n faces a lot of legal challenges. The commission has based its recommendation on population census -on figures from Pre-constitutional era whereas the latest 2011 census data was available. For eg: More than 500 castes have been added to central list of OBCs in last two decades. There is a lack of information regarding both social and educational backwardness of these castes. → So how to trust the data. Now no more 2600 etc ~ 3100

There is also significant variation within castes from one state to another as far as backwardness is concerned.

→ Transgender

Economy → Axis of Deprivation

↳ Non → SC
→ ST
→ OBC
} 8 Lakh

4/5 → (72-80)

Reservation for local in jobs

↙

Social { ↑ migration → society dilutes local population

Differentiatial treat →

EWS

103rd CA inserted Art 15(6) and Art 16(6) in the const^n to allow reservation for EWS among the general category (excluding SC, ST and OBC). SC under Janhit Abhiyan Case has upheld the validity of 103rd CA.

Aguments in favour of EWS ranged from need for new depri-vation criteria, extension of AA (Affirmative action) to Muslims and Christians and multiple observations of SC (saying social deficiencies may exist beyond the concept of caste).

Keypoints of SC verdict under Janhit Abhiyan:

- Reservation on economic criteria alone did not violate the basic structure.
- SCs earlier jurisprudence 'Economic criteria cannot be sole basis for determination of backwardness' is restricted to SEBCs.
- Exclusion of SC, ST, OBC was a part of reasonable classification necessary to avoid double benefit.

50% rule also applied only to SC, ST, SEBC and not to General category.

However, some concerns have been expressed regarding confusing reservation with poverty alleviation programme because poverty can be alleviated through other means.

The only way to counter historical deprivation is Affir. Also it violates the basic substantive principle of ~~principle~~ equality by excluding SC, ST and OBC communities.

This was also supported by the minority judgement.

The income criteria has already been questioned as it will result in excessive coverge of socially advaced classes.

It also undermines the idea of social capital.
→ self
→ enabled through social network ← self limit
→ build
→ Ed. helps in building social network.

SC will send debates.

Scholarly Opinions —

SC: Reservation is not the matter of right

Ramchandra Guha:
Debates around reservation generate more heat than light.

Suhirth Parthasarathy
There is unquestionable value in general policy of reservation because it attacks caste based inequities that have proved so damaging to our society; but through ever expanding theme of reservation we have lost sight of what our aims were in the first place.

Pratap Bhanu Mehta in 'The Message of Social Justice' writes Reservation has been limited to counting heads than ending discrimination.

India needs strong AA programmes particularly for Dalits and some deeply marginalised OBCs but post Mandal, the logic of social justice discourse has rarely focussed on ethical issues of discrimination Instead it has been reduced to a simple formula of distribution of govt largesse based on caste identities.

Acc. to Yogendra Yadav, the reservation policy was not a wasteful journey entirely.

Jayati Ghosh counters the idea of merit as a false one. She writes the most common argument against reservation that it compromises on 'merit' She counters it by reasoning that drawing upon a wider social base increases the diversity and ∴ quality of institutions.

Secondly, there are good reasons to be skeptical regarding the extent to which current systems of selection are genuinely merit based (now that we know that merit is more often

Satish Deshpandey [illegible] reservation" raising questions about their lack of understanding of Indian Social Contract.

The way forward is suggested by Pratap Bhanu Mehta in form of making quality education available to all, creation of public goods in which all can participate, the design of welfare schemes in such a way that enables income enhancement and most importantly an expanding economy that creates mobility that do not require the framework of caste.

Yogendra Yadav recommends that reservation needs to be streamlined in a way that it should be intellectually sound (EWS), administratively and financially viable, politically defensible and above all morally justifiable.

Observations on EWS

Harish S. Wankhade has questioned EWS as there are no surveys or reports to demostrate that poorer sections of upper caste face structural discrimination or exclusion.

Satish Deshpandey has gone as far as to say that Tauhit Abhiyan Judgement has performed 'Antyesthi' (last rites) of reservation as an instrument for the redressal of caste discrimination.

(22/Nov/2023) (#108)

29(1)(a)

All citizens shall have the rights –

to freedom of speech and expression

anywhere – is not mentioned within the territory of India.

M. Gandhi case:

Right to travel abroad

Right to receive information

Press → Newspaper (Cartoon Eg:)

Public

Wide term
- Novel
- Feature film
- Painting

Silence

Right to Vote XFR
Right to Cast ballot VFR

Silence is itself expression

X forced to listen

X forced to speak or expressed

NOTA

Eg: Polling ~~state~~; four candidates

Newspaper / public / (cartoon duty)

RTI is just a procedure to enable FR

Public Acts

Positive steps to Parliamentary tasks

Right to access to internet.

Threats to FoSE

Defamation

Press/Media – ~~FAKE~~

Hate speech
153(A)
295(A)

Problem is being sold out.

124(A)
Sedition
State / Govt

Fake deep

Video edit
Discrimination
Heckler's veto

UAPA
threat
19(c)(d)

CoC
Contempt of Court

Corporatization

Civic offender

Politicization

Criminal offender

Cross-media ownership

Monopoly of SMG (Social-media Giants)

Kanhaiya Kumar
↳ Akali

Monopoly of Social Media

Karni Sena

Civil defamation

Criminal defamation

Anti-defection
Anti-dissent

Some Censorship

The real damage to the anti-caste discrimination dimension has been done by unanimous opinion that economic criteria alone may be used to determine eligibility for reservation. (Satish Deshpandey)

Any illusion that this is a step forward in the fight against poverty can easily be laid to rest if you compare the EWS scheme to any of our poverty alleviation scheme (Eligibility limit for EWS of Rs. 8 Lakhs per Annum is more than 22 times the amount that is used to identify the poor)

Claims of SC Muslims and SC Christians

Zoya Hasan explains that at the time of Independence, the AA has not been extended to Muslims & Christians under SC category for two main reasons: One of the reasons is that in absence of caste system among these religions, there was no (covert) open social discrimination suffered by them to justify AA. And also because it could have been incompatible with secularism

Satish Deshpandey says that despite a near consensus that there is no rational or moral reason to treat Dalits of diff religions differently, no govt has addressed this issue because of political reasons.

Caste Census → SC will give at the end

Art 19. Protection of certain rights regarding freedom of speech, etc.-
(1) All citizens shall have the right -
a) to freedom of speech & expression;
b) to assemble peaceably and without arms;
c) to form associations or unions [or co-operative societies];
d) to move freely throughout the territory of India;
e) to reside and settle in any part of the territory of India; [and]...

Analysing the scope of Art. 19(1)(a), SC through various landmark judgements has read many rights from this Art.

i) Freedom of Press.
ii) Right to Receive Information. (Both about Public Acts which became RTI and Acts which are imp. for people)
iii) Right to Silence. (I can't be forced to listen and can't be forced to expressed)
iv) Right to Travel Abroad.
v) Right to picketing and demonstration (peaceful & non-violence)

Utilising these rights which were deciphered from Art. 19(1)(a), SC has ushered in the Era of Electoral reforms.

i) Combining FR to cast ballot with the right to silence, SC mandated inclusion of NOTA (none of the above) option in the PUCL VS Union of India case

ii) In ADR Vs Union of India, the court ruled that candidates of Lok Sabha and Rajya Sabha and also all Legislative Assemblies will have to release their criminal antecedents, educational qualification and financial assets.

Press freedom:

SC has provided sacrosanct status to Press/Media as an industry. Considering it as the 4th Pillar, it has scuttled all steps by the governments to regulate or curtail press freedom. It is imp. to note that while Press freedom is explicitly mentioned in American Const^n. It is a derived right in India.

23/Nov/23 (#109)

Veto post ~~differentiation~~ discrimination

India 2
Republic of Hurt Sentiments

BN Rao → US

Art. 21:

Procedure est. by law,

Just, fair and reasonable

Art. 22 — Preventive Detention Act 1950

Art. 21

A K Gopalan

AKG — 19(1)(c)(d)

[A.K. Gopalan Vs Union of India]

Right to property

Freedom of Speech & Exp. const.

Association rights constra.

Movement constrained

Profession const.

19(2) reasonable restrictions

→ Reasonable
→ Just & Fair

SC for Indian
→ or
SC of India
→ calling bandh

EBL

Art. 14

EPL

(no procedure)

Against which

12 → STATE (FR)

13 → Functions operate

Not going to test the to test

'EFFECT' rather golly. 'OBJECT'

Compare 19 with 21, personal liberty → massive liberty — 19 liberty.

Indira Gandhi

RC Cooper case 'EFFECT' 'OBJECT'

M. Gandhi [Passport]

19(1)(a) → abroad
19(1)(b) →

Art. 14 discretionary

From here onwards. SC going to look Procedure as just, fair and reasonable

Procedural due process

753

SUBSTANTIVE LAW → IPC

PROCEDURAL LAW → CRPC

↓ Criminal law (Amendment) Act 2023
- Amend 164 IPC
↓
Attending SEC(1) R. Prof PSIR classes will be a criminal

SEC(11)
SHO → 'RP' classes →

IPC
Section 302. Punishment for murder
1 month → life imprisonment → Death penalty

TOIL 1978

punished with death
Imprisonment for life

Eg:

6 people	2 people
Knife	Rape

Rarest of Rare Cases

(14)

Right to Marry
377
Privacy
Death penalty
Free legal aid
Dignity
Life personal liberty
PEL
PDP (PEL + Just/fair/Reasonable)
Livelihood Shelter
Human existence
clean environment
How 32 diluted
Case of Aruna Shah
(Substantive)
Section 377 → Striking down
→ Homosexuality

freedom of speech and expression is essential as it creates 'market place ideas', promotes democracy, acts as a watchdog and it promotes 'truth'. On the other hand POSE is essential to the development of autonomy of an individual expression of ~~Social~~ Identity. However, the POSE is under threat in India because of various reasons

Media and Press Freedom

Acc. to TRAI report on (state of Media) in India, 4 main threats have been identified.

i) Monopoly of social Media Giants over news content
ii) Red incidences of 'Cross Media Ownership' in collusion -ou with political leaders commanding media houses.
iii) Corporatization of Media which has led to loss of editors freedom.
iv) Fake news phenomena which has irreparably damaged the credibility of Media

As a result TRAI recommends (has recommended) restricti -ons on media in the form of

- limitations on cross media ownership.
- Laying norms of financial transparency.
- Upper limit on corporate control & shareholding.
- and laying heavy penalty on fake news.

Sedition

Gandhi called it a Prince of all the sections of British lawsfor rules.

'Essence of Democracy' lies in 'criticism of the govt.', KM Munshi within CA;
Upendra Bakshi in 'A seditionless future' argued that most immediate step that should be taken is the modification of sedition law so that only very senior police officers can file cases under 124(A).

Acc. to Suhrith Parthasarthy, the misuse of sedition is heavily tilted against the marginalised sections of society or their advocates. Recently SC has put Section 124(A) under eclipse and also the draft Bharatiya Nyaya Sanhita under section 150 provides for sedition like provisions w/o using the word & it is in consonance with the reasonable restrictions put under Art. 19(2)

Hate speech

Many provisions of Indian Penal Code like Section 295 of IPC, 153 (IPC) penalized promoting enemity b/w different groups on grounds of religion, race, place of birth, residence, language, etc. There are many other provisions also like Section 297, 298 and Section 505 of IPC which intend to achieve almost the same.

Law commission in its 267th report has observed that Hate Speech is generally is an incitement of hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation & religious belief.

Professor Sanjay Srivastava commenting on the fuzzy use of hate speech provisions said "We want our modernity to be purely technical and not social and cultural."

That is infact the demand is made through these provisions manifesting India as a 'republic of hurt sentiments.'

It is difficult to redress issues arising out of 'hate speech' is because on one hand it is difficult to define it but we in any way, try to define it, it would constitute 'viewpoint discrimination' as the legal system punishes some viewpoints more than others. It also ends up creating phenomena of 'Heckler's veto' where miniscule minority gets a veto over free speech.

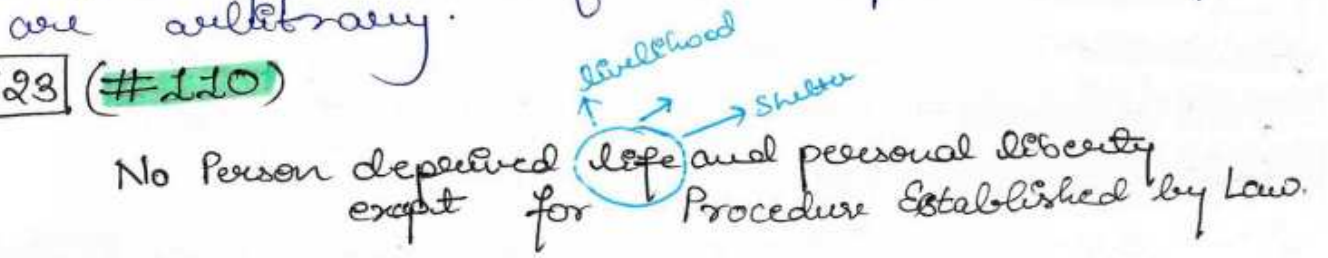
Lower conviction rates for these provisions indicate that process itself is the punishment for which it is used.

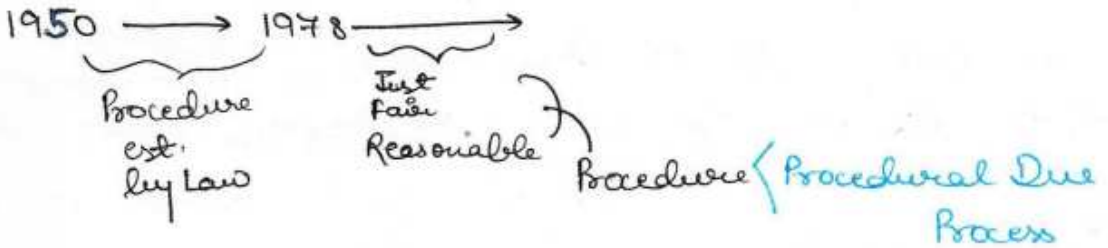
Pratap Bhanu Mehta argues that a good regime on

speech requires 3 things:
→ Max. legal protection for speech.
→ Political Culture that resists competitive communal mobilisation.
→ strong social norms that have a sense of delicacy & judgement where we understand that the enjoyment of freedom sometimes also requires the good sense not to use it.

India doesnot have any of the 3, infact India's legal culture and application of State power in speech cases are arbitrary.

25/Nov/23 (#110)





Art. 21

Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except acc. to procedure est. by law.

The original reading of this article in 1950 meant that deprivation of life & personal liberty can be carried out by the state through procedure in the form of law. There were no restrictions on what these procedures could provide for as long as they were a result of a valid law. This came into question in 1950 itself in the form of AK Gopalan Case.

AK Gopalan; 1950 (mutual exclusivity theory)
The validity of Preventive Detention Act, 1950 was challenged by attempting to establish a link b/w Art 19 and 21. The underlined purpose was

no previous case came in language ... of Preventive Detention Act. It was argued that when a person was detained, his several rights under Art. 19 were impacted. Thus, any law or procedure putting restrictions on liberty must be reasonable. Also all the procedures should stand the test of Art. 14 as well.

Rejecting the argument, the court pointed out that Art. 21 should be held as excluding the freedoms dealt within Art. 19. We are not going to judge a law on the basis of its effect rather what is the objective to create the law.

R.C. Cooper Case - (1970) (Breakdown of Exclusivity & emergence of effect)

The court stated that from now on, it would investigate effect of any legislative act rather than looking at the objective with which it had been formulated.

Maneka Gandhi (The new approach)

Re-interpretation by the court of the expression P.E.L used in Art. 21, it would no longer mean that (& procedure est. by law) law could prescribe some semblance of procedure however arbitrary or fanciful, to deprive a person of his personal liberty. It now means that procedure must satisfy certain conditions in the sense of being fair & reasonable.

The court reached this conclusion by holding that Art. 21, 19 & 14 form a trinity and are not mutually exclusive but are interlinked and hence reasonableness must be projected in the procedure under Art. 21.

Life and Personal liberty

The SC in its activist 'avtaar' (mode) has widened the scope of 21 by quoting SC judgement Munn Vs Illinois 'by the term life here, something more is meant than mere animal existence'. The inhibition against its deprivation extends 'to all those limbs and faculties by which life is enjoyed'

Another dimension to Art. 21 was added by Justice Bhagwati when he said, 'We agree that Right to life includes right to live with human dignity and all that goes along with it'. Thus any state action which deprives a person of 'human existence' and 'of dignity' is liable to be struck down under Art. 21. But it can be saved if it is deprived through P.E.L. where procedure is just, fair and reasonable.

Towards Substantive Due Process

In last 40 years, SC has observed in the Era of Substan Due Process w/o ever clearly stating this trend in judgement. The expansion of terms life & personal liberty under Art. 21 of the Const.n serves two purposes:

i) it brings within the purview of Art. 21, govt. actio -s that do not have anything to do with arrest or detention.

ii) the expanded definition of the term life & personal liberty has been used by the court to help it figure out whether a substantive law is substantively fair or not (Abhinav Chandra - chud)

Eg: CRIMINAL AMENDMENT, 2023 → GANJA

SEC (1) → 'IPC' Dealing → Crime
Bhartiya Nyaya Sanhita →

Marijuana slang!

SEC (2) → Bhartiya Danda Sanhita (BNS)

Various rights from Art. 21

i) Right to live with dignity

Case Laws • Francis Coralie

• Bandhua Mukti Morcha VS UT of Delhi

• Maneka Gandhi

Human dignity includes facilities of reading, writing and to express oneself along with physical attributes like shelter and clothing.

ii) Right to livelihood

Case Laws • Olga Tellis and • Sodan Singh

No person can live w/o means of living.

iii) Right to Clean Environment

• Vellore Citizens Welfare Forum Vs Multiple MC Mehta judgements.

Art. 21 includes right to life of dignity in healthy environment with proper sanitation & free from pollution

iv) Right to Education

• Mohini Jain

Right to Education is an essential part of persons dignity

Criminal Jurisprudence Reforms.

Right to legal Aid and Right to speedy Trial under Hussain Ara Khatoon. (1979)

Right against Sexual harassment at workplace - Vishaka. (1997)

Right to die with dignity - Aruna Shanbaug case (2011)

The SC allowed passive euthanasia under exceptional circumstances and also permitted 'living will' of a patient to withdraw medical support in case if person goes into

irreversible vegetative state.

Right to privacy

Case: Puttaswamy case (2017)

Under Art. 21, Right to privacy is a FR as held by nine judges Const^{n}. bench in this case. SC pronounced 'privacy' to be a distinct & independent FR under Art. 21. SC held that it was not a naked right against physical invasion or a derivative right under Art. 21 but one that covered the body & mind, including decisions, choices, information & freedom.

Significantly SC also held that just like any other right, it was also not absolute and it can be restricted when such invasion on privacy meets following 3 requirements.

→ legality
There should be a law to infringe privacy.

→ need
defined in terms of legitimate State aims

→ proportionality
which ensured rational nexus b/w the objects and the means adopted to achieve them.

K.S. Puttaswamy judgement became the ground for various other judgements which are as follows:

i) Right to choice of intercourse
Navtej Singh Johar (2018) declared Sect. 377 of IPC as null and void on the grounds of privacy. Thereby striking down criminalization in same sex relations b/w consulting others.

ii) Right to choose life partner
Shakthi Vahini (2018) Case, SC has held right to choose

this is applicable both within and outside the institution of marriage.

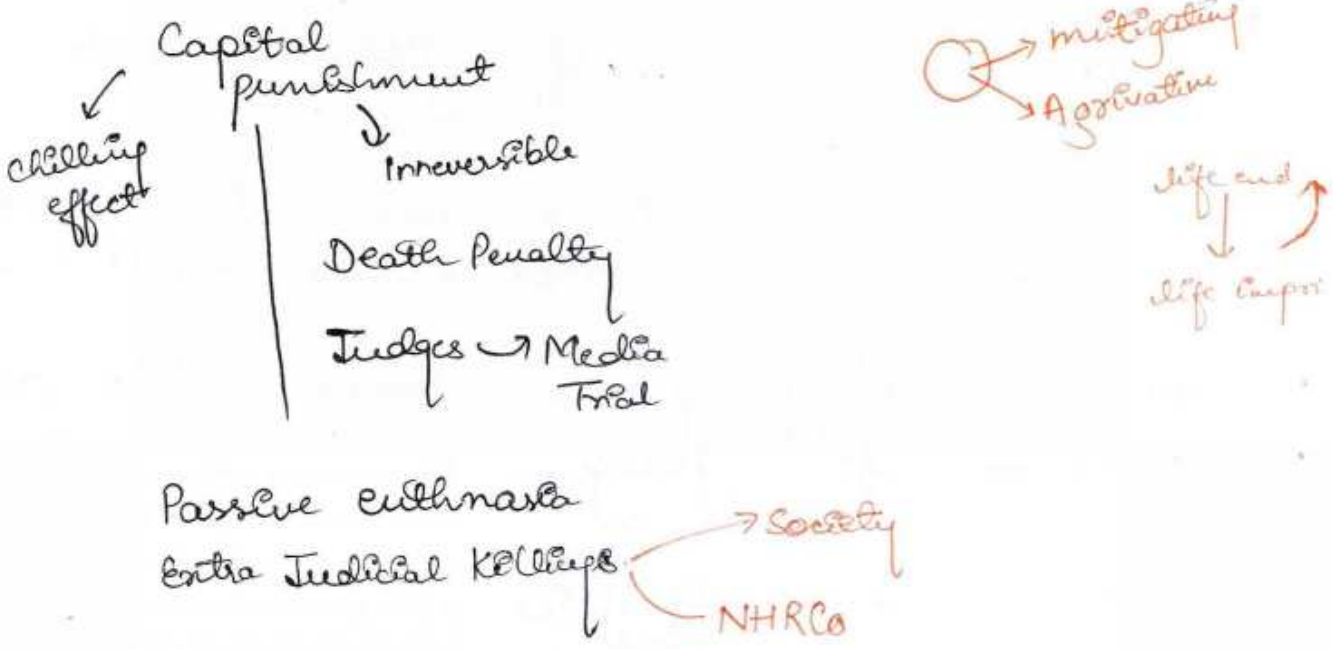
Decriminalization of Adultery

Joseph Shine case (2018)

It deprives of women of her autonomy, dignity and privacy.

India Young Lawyers association case, SC upheld, the right of women aged b/w 10-50 yrs. to enter into Sabrimala temple post disclosure of menstrual status violates the right to privacy of women.

The SC while widely interpreting Art. 21 has made sure to find basis in international conventions (UDHR, ICCPR) and DPSP. The interpretation of DPSPs have been enabled through doctrine of harmonious construction.



Passive euthanasia
Extra Judicial Killings → Society, NHRCo

Capital Punishment
Passive Euthanasia
Extra Judicial Killings

27/Nov/23 (#111)

Enigmatic SECULARISM → 'ism' – Ideology

Hostile → fundam → Dictator → Unable to respond

anti-thetical to pluralism itself

Hypocrisy

Secular society among non-secular people?

Rise of Idea of Nationhood (State sovereignty) ← Religion

Secularisation of Society (Renaissance)

Religion should go out of public discourse.

Rational thinking

Choices

Religion

Non-religious society → style religion

Reduction of religion to private sphere

Secularisation

Inter-religious marriages → Secularisation of society.

Public
(A) – (B)
interest of the state
Public – Religious
religion vanishes, state blind to religion

Private
(A') → transcendental
Religious
you allowed for fundamentalism to grow.

One set of arguments come from public sphere → this is against the idea of democracy

France → 38% Christians (Adherent)

While trying to counter monopoly, it itself is becoming hegemony.

Bifurcates society into two.

Can also say threat to FoSE

UCC → natural outcome

even Personal laws are public concerns

Historical Evolution of Secularism in India → 25-28 religions → 29-30 minority rights → 14/15/16

Wall of Separation Problematic
Equality of All religions (Problematic → Majoritarianism → Hindu
Majoritarianism → Reforms
Reforms → Minority Rights
Minority Rights → Wall of Separation

Idea of Group rights → Why Secularism?

GANDHI

Christian Missionary

↳ Most prominent face → Openly religious

↙ BSY. Automatically connected

↘ normative (future India x antithetical)

Acceptance of religions

Sarva Dharma Sambhav

- Preferential treatment to minority entity into religion.
- "

Problems faced by Indian Secularism

Reforms

↳ Minority appeasement

Indian Pol. Space

↓

Communalism

Akheel Bilgrami

Achin Vanaik

Ashish Nandy

↳ 1984
1992
2002

T.N. Madan

Religion is imp.

Religion can play

South Asia except India.

Catch them young

Reformation of Civic Society

Secularism & Equality

1956
2007
↳ pro-parity rights

custom → FR

Hindu Civil Code

↑ Art. 44 → UCC

Utmost Sovereign

↓

UCC

R. Bhargava → Equi-distance
principled-distance
↳ depends on matter

Hindu religion is ready for reform

Gender ~~Muslim Pers. law~~ ~~Christian " "~~ ~~Parsi " "~~

SC Judgement → 14, 15
12, 13 ↳ customs

Shah Bano Case

→ Formal Equality | Substantive Equality

Caste Religion

Focus on fundamental values

State of India → Carrier of reform

Eg: LGTBQ Society

Hindu Reform → Part of the Project

Dowry - Dowry Act ; Domestic → Domestic → Reducing distance b/w state & religion

28/Nov/2023 (#112)

loss of both religion and polity/politics in India

Jizya tax!

Secularism

It is an ideology to determine the r/s b/w state & individual/group on one hand and state and religion on the other hand. ~~The~~

The Christian protestant movement resulted in exclusion of religion from the public sphere and its confinement to private sphere. Thus, Western Secularism denotes:

- → Separation of personal and political - The idea of secularism is linked with the idea of sovereignty of State
- → freedom of conscience.
- → Religious neutrality

Secularism is linked to the rise of Nation state when it was realised that religion has given rise to endless wars in Europe. Hence, the new Nation States had to decouple themselves from Religion to allow for peaceful societies. It is also a natural outcome of enlightenment which provided for secularisation of the society (declining hold/dominance of religion in decision making)

Thus Secularism is a result of nationalism and Secularization.

The operation of this model of Secularism in Europe for more than 200 years has allowed the following problems to emerge in the western societies.

1) By trivalising faith, secularism is hostile to

ii) It annexes [illegible] & [illegible] public domain.

iii) It fights religious hegemony and in the same breadth it tries to est. itself as the soul basis of adjudicat-on in public life. Hence it is hypocritical.

iv) Critics also argue that deep down it is a conflict generating ideology.

v) Modern secularism is a child of style religion societies, and hence unfit to respond to multiculturalism.

Historical Evolution of Secularism in India

Only few would contest that religious sensibilities still dominate individual and collective lives to a great extent. In this context M. Gandhi (Mahatma) looked for a principle that could bind people who subscribed to diff. faiths together and which could weld them into a mass movement. This principle he found in the Doctrine of Sarva Dharma Sambhav (equality of all religions). Given his religiosity, the notion of Sarva Dharma Shambhav was not only a pragmatic principle designed to bring people together, it was also a normative principle that recognised the value of religion in people's life.

State ↔ Religion

↓

No state

→ citizenship

Israel – Jew

(22) constrained by (14) (15)

In PSIR : 2

No state religion

India i.e. Bharat

Manifestation of Art. 25(1) protected by Art. (19)
Art is religion in India

25(2)(a) →

Indian Secularism → counter inter and intra religious dominance.

In absence of 26, one sect demanding it's the only sect of that particular language.

Fee is against service
Tax is different

Fee allowed] religion
Tax allowed ×

Haj Subsidy

Ayodhya → Dev Deepawali } How?
Punjab → Guru Nanak

They come not from 27, they have been protected under cultural practise.

Cultural practises → no entitlement on donations.

State of India → not sponsor Shishu Mandir and such

State openly neglects secularism

Halal certification shows/or it is a guarantee

that the food is prepared in accordance with Islamic law and is unadulterated.

so in effect the meaning [illegible] in the Indian context added one more dimension to the generic concept of Secularism i.e. not only the recognition of faith but equal treatment of all faiths. Following from the dominant understanding of Secularism as Sarva Dharma Sambhav, the Indian Secularism does not insist on the wall of separation b/w religion and state. This was stamped by SR Bommai judgement: stating "Secularism was the part of basic structure and role of the constitution could not be infringed in any way."

Acc. to the judgement, "secularism is more than a passive attitude of religious tolerance. It is a +ve concept of equal treatment of all religion". For these reasons court upheld the dismissal of 4 state govt. ruled by BJP and the imposition of presidents rule in these states for the defence of secularism; and that brings us to the first critic to of Indian Model of Secularism in its inability to respond to communalisation of society.

Communal riots not only violates FRs to life and dignity and property in a major way, they also endanger the FR given under Art. 25.

Regrettably, the communalisation of society has been paralled by the communalisation of politics (State involvement in 1984, 1992, 2002).

The inability of the state to prevent Comm.al riots and the role of state officials in fomenting communalism has raised questions on the credibility of Indian Secularism.

Responding to these criticism, Scholars like Ashish Nandy and TN Madan wonder whether Secularism

in any form is possible w/o secularisation of society.
Ashish Nandy argues that since the modern state seeks to dominate individual and collective lives, it not only banishes or removes rival ideologies such as religion to the periphery. It hierarchies the two domains by treating religiosity as an inferior way of life. This impoverishes understanding within modern public sphere as well as inhibits dialogues b/w the two spheres which might otherwise have proved enriching for both.

Second:
Because religious identities have been exiled to the 'closet' they come to be frozen in time. The problem is that religious identities which are regarded as unnecessary by formal politics make their appearance either in the form of religious fundamentalism or even worse communalism.

In summary, whereas secularism provides us with impoverished public sphere devoid of any substantive system of meaning, the entry of religious identities into politics impoverishes religion itself because now on religion becomes subordinated to political pursuits. Societies are consequently left with very few resources which can enrich individual or collective lives.

For overtime, whereas the ills of religion have found political expression, the strength of faith are not available for checking unethical public behaviour like corruption and violence.

TN Madan believes that the prevailing circumstances, (all states have a religion, but one (in Indian subcontinent) is left) secularism in South Asia is impossible and as a basis of state action impracticable. For the inhabitants of this region, religion as the doctrine is more important than any other social or cultural factor. It is both morally arrogant and political folly to impose any form of

Secularism as a society of believers. Nyaya on the contrary, he argues that these beliefs must be taken seriously and the religions should be given the same place in society as non-religions.

Both Nandy and Madan agree that if India's society is deeply religious. Then this poses a problem for secularism as a state project.

Therefore both the theorists/scholars sought the answer to communalism in the practices of civil society particularly that of Tolerance.

Madan suggests that state practises of secular - Can have to be based on the recognition of religions. This has to be supported by discovering and strengthening the internal resources of religious pluralism and tolerance as a state project.

Nehru's idea of Dharma & Panth Nirpekshta → Close to wall of S/P.

promote the values of religion → peace, plurality, tolerance etc.

Secularism and Equality Debate

- What does it means to treat religious groups equally?
- Does the states stay away from religious beliefs and practices equally or does it intervene in the internal affairs of religious groups equally.
- Does not the equal treatment reproduces the empirical fact that one of these religious group is numerically dominant and culturally hegemonic and the minority groups are at risk because they are vulnerable to assimilation on one hand and cultural domination of the majority on the other.
- And if some conception of group rights to protect minorities not violates the basic principles of Secularism (equality of all religions).

The right of minorities to their own culture and the right to run their own religious institutions was guaranteed in Art. 29 & 30.

The grant of minority rights was accompanied by special concession made to them in the form of guarantee that they could retain their own personal laws.

Although Art 44 stated that the govt. should enact UCC, it is only after 73 years, that there is some progress towards it. Non-interference in personal laws of minority religions reached its peak when Rajeev Gandhi govt brought an amendment to negate SC judgement under Shah Bano Case.

The questions on Indian secularism have been raised even before this by D.E. Smith who suggested that liberal democratic theory of secularism holds/carries 3 connotations:

i) Liberty and Fo Religion.
ii) Citizenship & non-discrimination.
iii) Separation of State and Religion.

Acc. to him, 3rd principle was missing as the right of state to intervene in Hindu Religion has deeply compromised India's Secular credentials.

Rajeev Bhargava coined contextual secularism to counter the charges levied by Arun Shourie and LK Advani who called const[nal] (S) as congress (S) or 'pseudo secularism' (based on minority appeasement). (S) = Secularism

Arun Shourie: In secularism, it is the individual and not the community as the basis of rights. Secular state should follow the principle of non-discrimination.

LK Advani: calls const[nal] secularism as Congress secularism or pseudo secularism (based on minority appeasement.

Acc. to Bhargava, in contrast to the absolutist separation b/w state and religion. He argues that the Indian Const.n calls upon the state to exclude religion for some purposes (for instance decision to exclude separate religious electorate) and to include this for others as for example in accepting personal laws.

Neera Chandhoke suggested that secularism can't be abstracted from the wider conceptual context of which it forms one part or rather a tool and thus wider conceptual values are equality & democracy. In this sense, equality of religions would mean preferential treatment of those groups & identities which are under constant threat of being subordinated to the majority.

Amartya Sen defends secularism as part of a more comprehensive idea that of India as an integrally plural country made up of diff religious beliefs, language groups, divergent social practices.

29/Nov/23 (#113)

Why DPSP?
Diff. b/w DPSP and Rights?
Relevance of DPSP?
Current relevance in Globalised World?
Why Part IV as DPSP?

Part III	Part IV (Goals)
-ve rights	+ve rights
constraints on state	directives to the state
do not alter the structure	Redistribution of resources → Differential

Eg: Movement (Govt. doesn't enable movement)

Part III + Something → Part IV

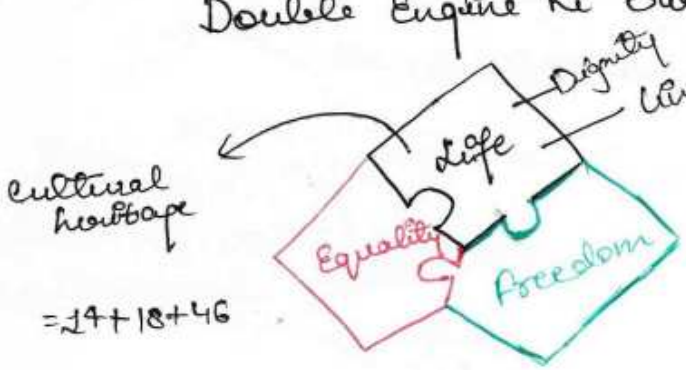
Only diff. is Part IV non enforceable

FR >> DPSP → till now!

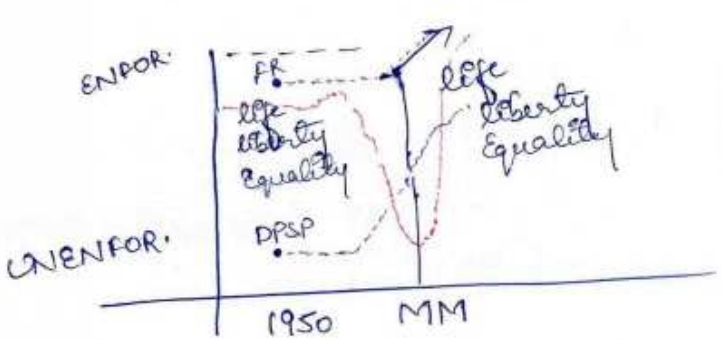
Now → not bound to DPSP

Bedrock of balance b/w FR & DPSP
→ Harmonious Construction

Articles like Bharat Tere Tukde honge! →
Double Engine Ki Sarkar



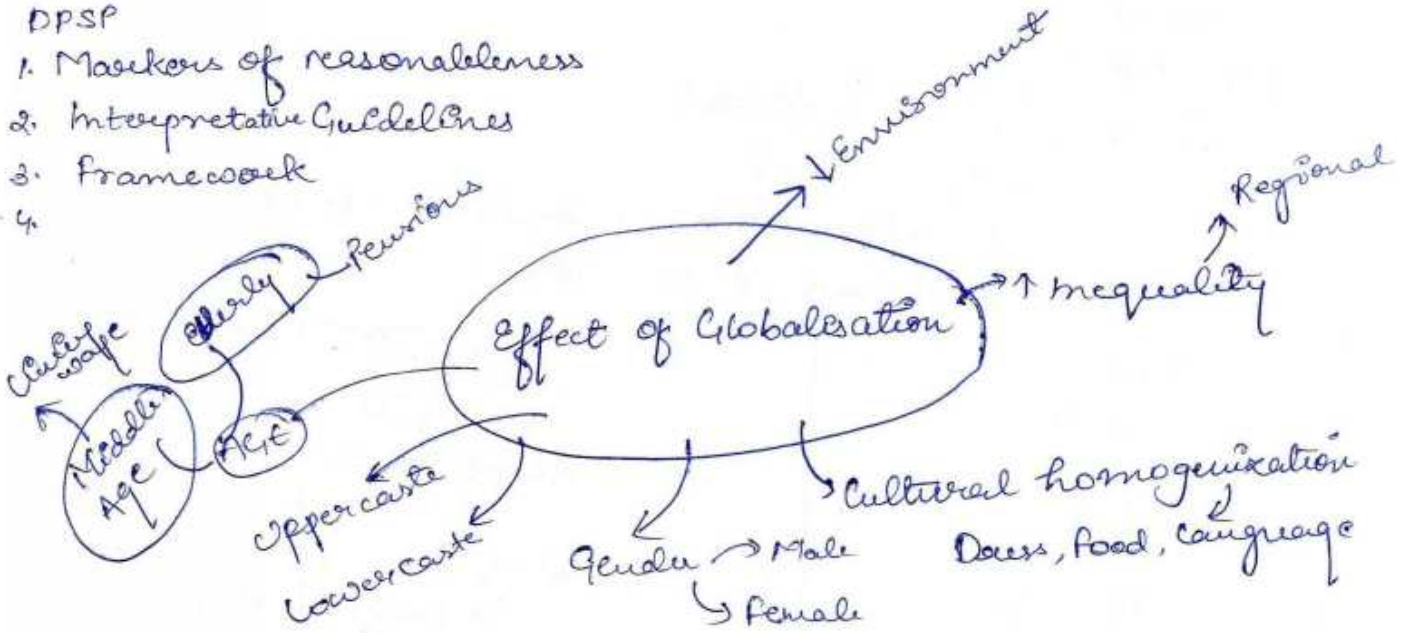
=14+18+46





DPSP

1. Markers of reasonableness
2. Interpretative Guidelines
3. Framework
4.



39 - Minimum
Land Reforms
Nationalisation
Progressive Taxation
CSR

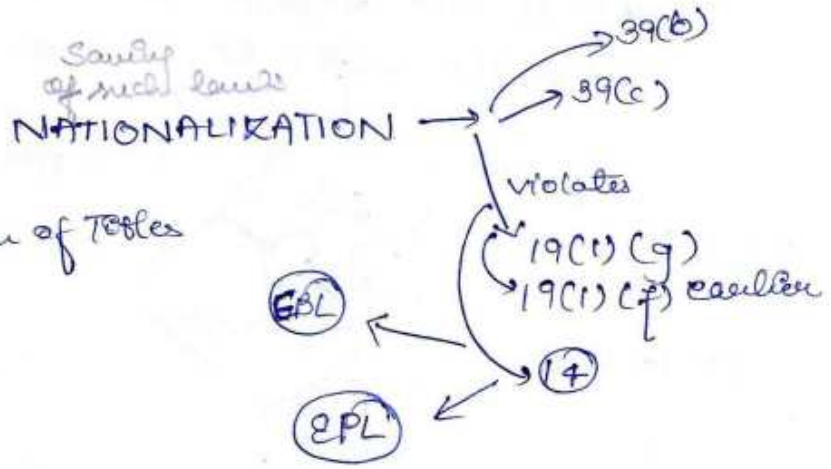
39A - NASA

42 → Labour codes

41 - MGNREGA
→ UNEMPLYOMENT
SICKNESS

45 → ICDS
46 → Reservation
47 → NFSA
National food Security Act
fortify

Minimum wage
Living wage



Land Reforms → Abolition of Tenures
→ Ceiling

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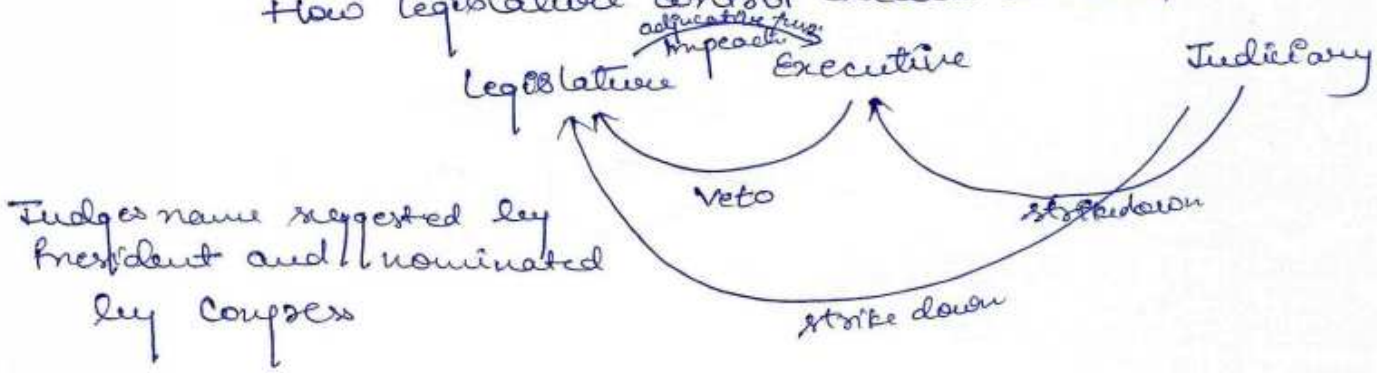
|30|Nov|23| (#229)

Separation of Power

Montesquieu's Idea

American SOP → Ideal SOP

How legislature control execute in USA



How you can control other body?

Congress Control Executive impeachment

" " Judiciary Changing the laws

No common membership b/w Congress & President Cabinet

↳ USA

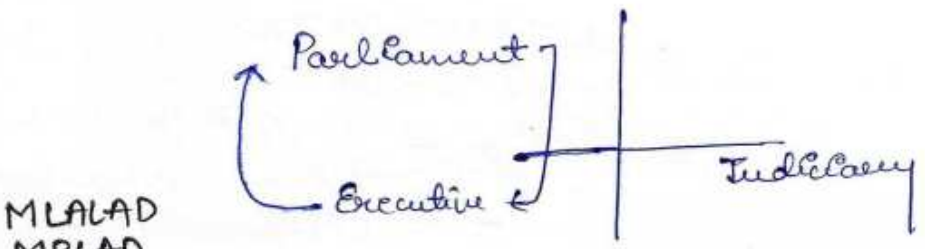
British

↓

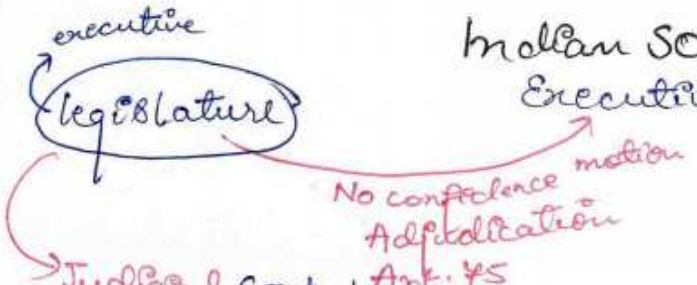
No Written Const.ⁿ

↓

PARL. ⟷ EXE | Judiciary



MLALAD
MPLAD



Indian SOP

Executive SC of India

Art. 75

Impeachment

IX schedule

Anti-defection Law / Money Bill

Executive controlling legislature

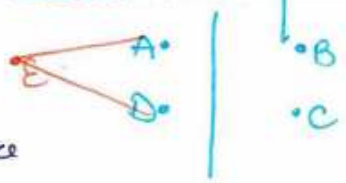
① Summon – Prorogation

② Law making Monopoly

③ Art. 73 & Art. 245
Parallel law

④ Delegated Legislation

Excessive Delegation



Art. 245
Art - 73 & 162

Executive notification without backing of law

⑤ Ordinance

CBI, no longer needed to go by laws.

Inter Executive Controlling State legislature

Intelligence Data

Executive → Judiciary

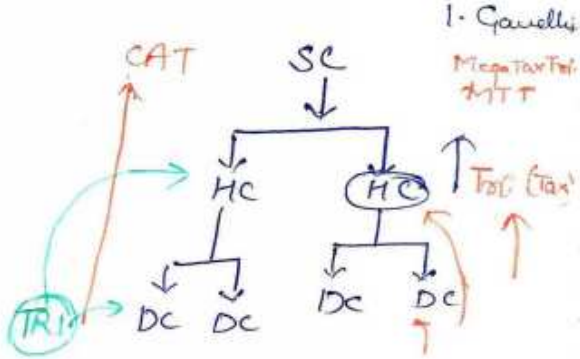
Collegium

Power to remove

Appointment process

Tribunals

Eg: 323 B



Parliament creates Tribunal

Disqualification of MPs, MLAs done by President

SC of India

Legislature Executive SCoI

Judicial Review
Basic Structure Doctrine
(limit on Parliament)

parliamentary activities

constituent activities

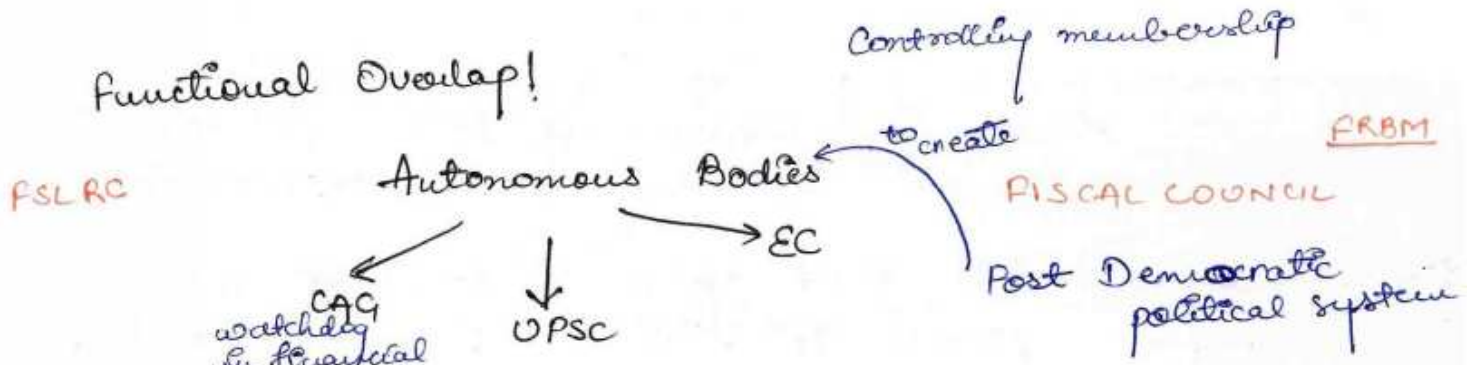
Eg: 2010, Privacy

(19) (21)

(14-9) → Legis.
→ Executive

Case

Functional Overlap!



Separation of Power

It denotes horizontal fragmentation of power originally proposed by Montesquie's Book Spirit of laws. He discovered that a despotic form of govt. develops when power is concentrated in the hands of small no. of people who carry out enactment, execution, and adjudication and so he recommended functional SOP where one type of function shall be performed by one organ exclusively.

USA SOP

Article I
Section 1 All legislative Powers herein granted shall be vested in a Congress of the US, which shall consist of a Senate and House of Representatives

Article II
Section 1 The executive Power shall be vested in a President of the USA

Article III
Section 1
The judicial Power of the US, shall be vested in one SC, and in such inferior Courts as the Congress may from time to time Ordain & establish

I model is American which follows strict SOP. This SOP ensures no common membership b/w the 3 organs and generally there is no functional overlap. However, there are checks & balances in this system also for eg: Executive (E) keeps check on legislature (L) in form of Veto power. (L) is a check on

from the other departments through ... to prescribe laws; finally Judiciary (J) is a check on the others by means of its authority to strike any action as null and void.

The second model is that of a Westminster which is a type of looser SoP. It is based on principle of supremacy of Parliament. Parliament can control both (E) and (J) by prescribing laws. (E) can never usurp law making from Parliament and (J) cannot exercise its review over laws made by the parliament.

Indian Model of SoP

The Col provides for III model of SoP in a sense that while there is a recognition of (L) (E) and (J) bodies. It does not expressly vest the diff kind of powers into diff organs of the State (except the (E) power in the President & the Governor).

Legislature

Judicial functions of legislature

(L) in India exercises Judicial power under Col through impeachment of judges, contempt of legislature proceedings and anti defection laws, designation of Money Bill.

(L) can also change the base on which a decision is given by a court (to the level of nullification of punishment in Civil matters.) ↳Eg: Vodafone case

To counter early successful legal challenges to land reforms and Arts (aff. act.), Parliament brought first constitutional Amendment to not only overturn available SC judgement but also by including

IX schedule, parliament curtailed Judicial scrutiny. Art. 368
(virtually govt power to state govt to amend the const^n)

Executive

Theoretically under strict SoP, the (E) should carry only administrative function (implementation of law and order) however the functional overlap prevailing under Col allows the (E) to perform both (legislative as well as judicial power).

Executive control on legislature:

In a parliamentary system, it's the (E) which practically controls the (L) rather than the other way. Apart from that summoning and prorogation of the session, tabling of draft bill, its complete law making process from initial, its notification in the Gazette of India.

Functional Overlap with legislature:

Co-extensive power of the executive to make laws, (Art. 73 & 245) Art. 245 doesnot provide or prohibit legislation by executive and Art. 73 clearly states that power of (E) is co-extensive with parliament on matters of list 1.

Delegated legislation

In almost all the legislation, Parliament delegates the power to frame rules to the (E). Eg: Matters like taxing Debt policy (max. part of duty)

Ordinance (Art. 123) → 213 also

The Const^n clearly recognises legislation power of executive which provides that ordinances may be promulgated and shall have same force and effect as an act of Parliament.

The most egregious form of legislative power granted to executive are those listed under Emergency provisions.

Reservation of state legislature bill (a legislative act) by the president for an indefinite time violates the fundamentals of SoP.

(Executives control over Judiciary)

(E) controls (J) through its power to approve the appointment of Judges to the Judiciary. Also in case of HCs, the strength of each court is determined by President.

Executive's Judicial functions

Pardoning power of President & Governor.
(E) controls the funding and staffing of Tribunals under Art. 323 B and they exercise functions parallel to HCs.

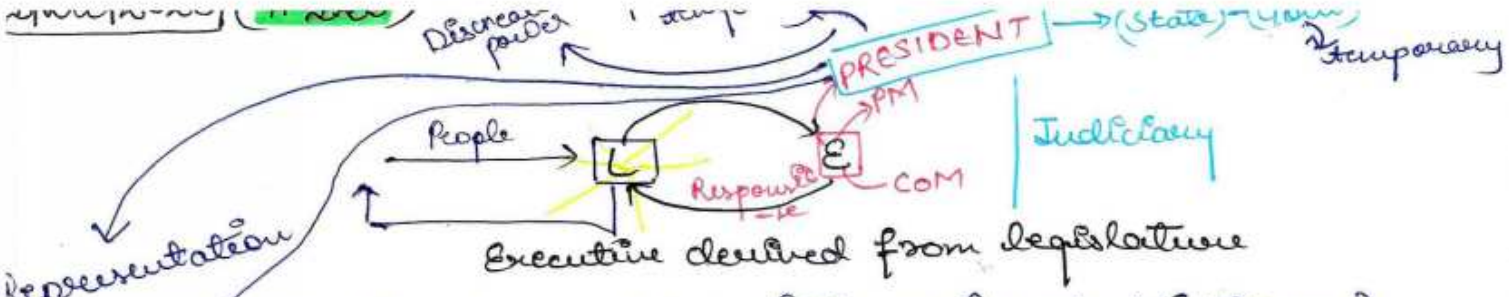
Legislative control of (J)/ (J)'s Legislative Control

Power of Judicial review, the higher judiciary exercises wide control over legislations by exercising their review powers to hold all the legislative initiatives null and void shall they happen to contravene the constitutional provisions.

Various SC judgements (LCly Thomas) have changed the parameters of becoming the members of assemblies. Judiciary exercises control over membership of assembly.

Basic structure Doctrine is a substantive, qualitative control over the constituent powers of the parliament.

Complete from pdf!



Merit

Major Policy Representation

Demerit

✗ SOP (no SOP) → Elected dictatorship

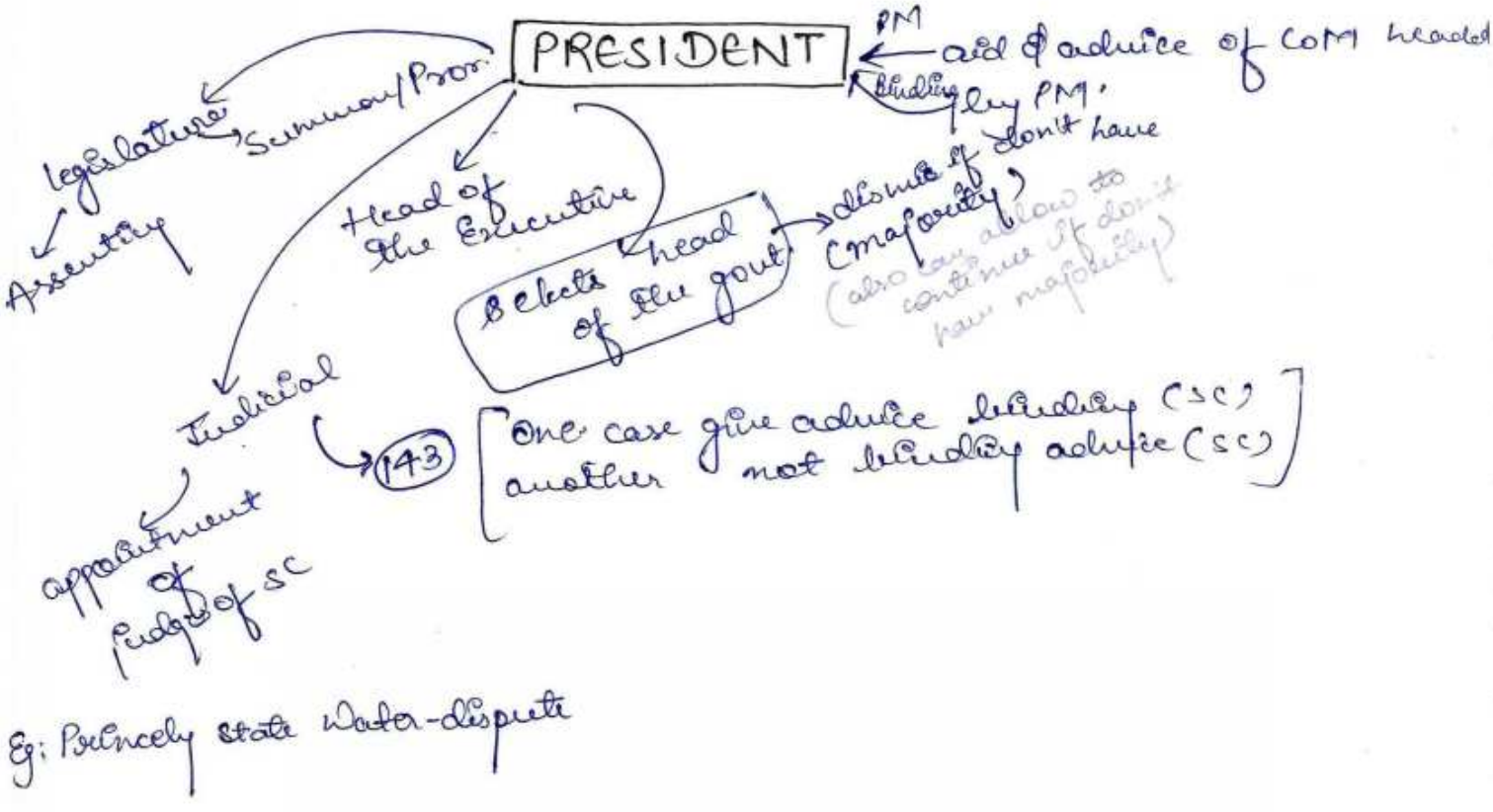
coalition → Policy paralyses

Parliamentary system → So as to remove deadlock

USA → Enforcement of laws president

Armed PM, all system revolves.

media → you get to legislate what you want to execute / enforce.



Eg; Recently state water-dispute

Original text Art 74. President. (till here only) (1)

24th CA.

[Rahul Gandhi – Pranabh Mukherjee]

Bill related act (108-120)

With-holding means no!
Neither assenting nor withdraw (Pocketing)

Atal Bihari lost majority ~~after lost majority!~~ before Kargil!

Constitutional Discretion power
Situational Discretionary power

Prime-Minister

Can advice anything

CoM → PM → President → Chairman

PM → International Summit

PM → Aid & Advice

PM → Patronage

Parliamentary body

outside

organised political party

Parliamentary body

outside

Parliamentary body

Parliamentary body

Parliamentary body

Executives

Parliamentary System

One of the key features of any political system is the r/s b/w the assembly and the govt. (legislature and executive authorities).

Most democracies have adopted some form of parliamentary govt & the central feature of this system is fusion of legislative and executive power. The govt. is parliamentary in that it is drawn from & accountable to assemblies.

Merits of Parli. system includes:

→ It generally delivers effective & responsible govt. Effective means the govt. rests on the confidence of the assembly and can in most cases ensure that its legislative programme is passed. In short Parliamentary executive gets things done.

It is responsible b/c the executive can govern only as long as it retains the confidence of the assembly.

→ Finally parliamentary system results in more diverse executive by ensuring that CoM comes from the assembly.

Demerits of Parli. System includes:

→ Unfortunately PS often fails to live up to the expectations b/c if the ruling parties command a majority then it often results in 'elected dictatorships'. Hence, the Parliament just becomes a talking shop. However, if the ruling party is weak or coalition is not cohesive, then it results in policy paralysis.

Reasons for adoption of PS in India:

→ We adopted PS as we were familiar with it at Provincial level. KM Munshi said in Constit Assembly debate that some form of responsibility has already been introduced in the governance of the country so we have the better understanding of conventions of system.

→ BR Amb. made the case on the basis of avoiding legislative and executive conflict and the need for executive to be responsible. He said a newly independent developing country must be able to deliver on its govt.'s agenda.

→ Also it was understood that in a diverse country like India, a parliamentary system can result in Executive that closely resembles the diversity.

President

Reasons for creation:

→ Post created for continuity during crisis period/ there must always be a govt.

→ Can Shield the sovereign state of India from the criticism that the real executives faces.

→ Ceremonial functions performance

→ It provides one more way to representation to the Indian diversity (Muslims, SC, ST have been presidents but not PM)

Formal powers rooted in Col

→ Art. 75 (1) Appointment of President.
(2) Pleasure of President.

Read full article.

→ Art. 73

→ Art. 111 (Assent to bills)

→ Art. 74 (Executive Powers)

→ Art. 85

informal powers not derived from it.

When the President receives advice from CoM with which they disagree, they may take no action and also not refer it back to the council since the reiteration could compel the assent.

In extreme cases, the President may refuse assent even after such reiteration; a drastic step not yet taken in India, which would trigger a constitutional crisis.

Also, there is wide room for manoeuvre b/c if the President disagrees with the advice, he can also refer the advice to SC for a legal opinion. (Constitutional provision for it exist in Art. 143) and can do it o/o advice too and then if SC says that the advice is illegal, the govt. may not pursue the matter as the SC would then strike it down after it goes through. The President in India is not entirely a puppet b/c of the very difficult impeachment process.

What this means that there are a lot of formal loopholes in the CoI. For eg:

- i) Selecting the PM in a hung assembly (Lok Sabha).
- ii) Dismissing CoM after loss of majority.
- iii) recommending dissolution of Lok Sabha.

Should formal rules and procedures be est. in these crucial matter?

Also, b/c alot depends on the dynamics that exist at any given moment. The coherence or fragility of diff multi-party coalitions, good or bad relations b/w large or small parties and many other factors. In such situations, a stable govt., (the main priority for President) may be formed by a particular coalition is emitted (may not be the largest)

Similarly, we can argue for both the removal of CM after loss of majority & dissolution of the lower house. Hence, a codification of procedures would reduce the President's scope for Manoeuvre and it could cause more problems than it solves.

5/Dec/2023 (#116)

In practicability PM became President.

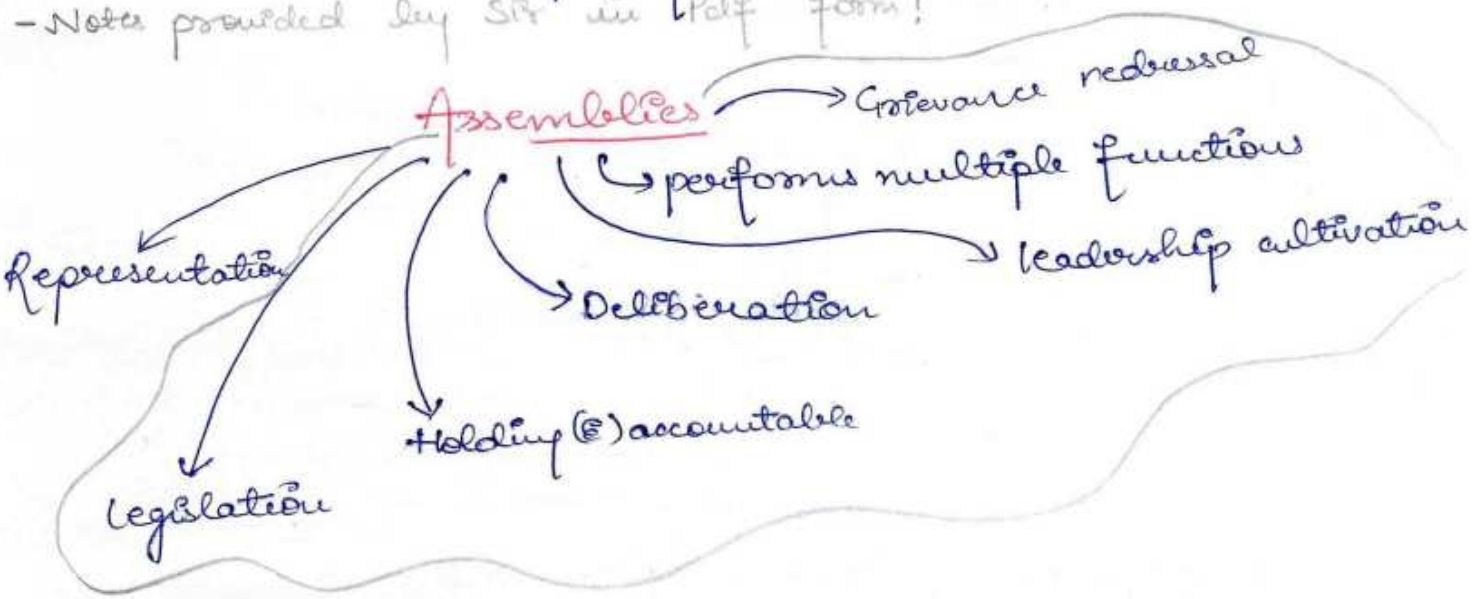
PM → Patronage
PM → Aid & Advice

Executive - Breeder
- Cable core

Global Phenomena → PM (Glorified)

Art. 111 - With-hold (Absolute Veto)
Postponing (Pocket Veto)

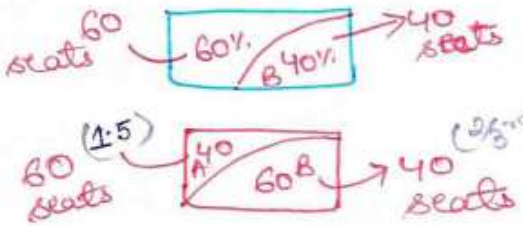
- Note provided by SR in Pdf form!



Just Representation
→ Territorial constituency (Geographical representation)
Societal Representation
Religion
Caste

India's Representation - Crisis of Representation

One Personal - One vote - One Value



One person, One Vote, One Value → Diluted because of this!

Delimitation South Indian >> North Indian
vote's value vote's value

No taxation without Representation

I General Election

One MP → 3.5 Lakh
" → 28 - 30 lakh

Internal re-organisation 2001



2nd level disenfranchis-ement of Urban centres.

Proportion of Rural Pop^{n}. ↓

MPs from Muslim comm ↓
People from Muslim comm contesting elections ↓

co-terminous →



No local level governance constituencies

Even Russia has Duma under Putin

Why heroes only in Executive, not in Parliament?

Globalisation
→ Policy making complex

Krishan Singh or MP

shallowness of assemblies

Reg Govt./Executives
Assemblies over weaknesses → lack of specialisation
↑ Interest Group
↑ Professional Parties → lack of

(MSP) → Min. Income to farmers
↳ Food Security

Parliament ↓
× Permanent Secretariat

↓

- Min of Agri.
- NSSO
- CSO

Anti-Defection Law! (↑ Org. Pol. Parties)
↳ It compels MPs to vote against their conscience.
Eg: Reshuffle → Chain of Connection (Lost Accountability)
→ Decision making shifted from assemblies to Party HQ.

In absence of Anti-Defection
No Confidence Motion! (accomodative)
Support of 5-7 peoples gives you majority

If No ADL → legislature controls (E).

Parli.y Commit.
↳ Just comment on draft

Real Power b/w (E) & (J)
→ Limit on Parliaments law making power
Written Const.n
Basic Structure
Judicial Review
Art. 73
Delegated legislation
Ordinance

Why MPs not PM in India?
CMs → PM?
(exceptions are there)

Assemblies

An assembly in its simplest sense is a collection or gathering of people but in political terms, it has come to be associated with representation, legislation, scrutiny and oversight of Executive, cultivation of next generation leadership and deriving legitimacy for the state.

Issues across the state plaguing assemblies:

Disciplined Political Parties: rather than assemblies becomes the principle agents of representation, Party loyalty also weakens assemblies in terms of their functions as debating chambers.

Big Governments:
The rise of big governments have "redistributed power" from assemblies:

→ it leads to an ↑ in size and status of bureaucracies.

RS (mood 6 years ago)
- All India Services
- State List subjects

LS (current mood)
↳ financial matters
Joint Sitting

• rough

→ It places greater emphasis on policy initiation and formulation.

Most assemblies therefore adjusted themselves to the loss of +ve legislative power.

- Big Govt has meant that the govt. policy is extremely complex and intricate.

Globalisation:
Globalisation has resulted in both causes and effects which are generally beyond the comprehension capabilities of 'generalist assembly members'.

~~Inter~~ Lack of leadership:

They usually comprise several hundred members who enjoy formal equality. This egalitarian character of assembly weakens their capacity to provide leadership and take concerted action. This problem has become more acute in an age in which public looks to govt. to solve social problems and deliver prosperity.

Interest Group and Media Power:

They have become alternative mechanisms of representation and in that capacity, they tend to be more effective than assemblies in taking up popular grievance & giving expressions to the concerns and aspiration of particular groups. While assemblies have largely been excluded from the process of policy formulation. Organised interest groups have become more prominent; both as representatives of affected groups and as sources of expert advice and information.

FUNCTIONS OF ASSEMBLIES:

Legislation: (legislative role of Parliament)

- It is the key function of assemblies in India.
- This has been done for 2 reasons:

I → Parliament is a forum in which proposed laws can openly be discussed & debated.

II → Parliament has been constituted to suggest that the people make laws themselves providing legitimacy to the laws.

However this idea is greatly diluted in case of Indian Parliament as it does not monopolizes legislative authority (Parallel power of (€) to make laws, delegated legislation, frequent resort to ordinance making by (€)).

More significantly in many parliamentary systems little true legislative power b/c legislative procedures or programmes emanate from executive wing which has the organizational coherence and data to make specialized draft Bills.

But then, Indian MPs have some residual capacity to initiate legislation in the form of private member bill.

However, these are debated only if they align with (C)'s agenda, otherwise they are not even (rarely) allowed to be tabled. → not given leave of house to table.

The -ve legislation power of parliament (to stall, reject or amend the Bill) is also limited.

In India, legislation is being passed through Parliament rather than by the Parliament.

Representation:

Parliament in India plays an imp. representative role in providing a link b/w the govt. and the people.

Representation is widened in case of Indian Parliament b/c the method of election to the Lok Sabha & Rajya Sabha are diff.

However the representative role of Indian Parliament has been diluted as a result of 84th Constitutional Amendment which ties the hand of delimitation Commn (freezing the no of seats to each state at the 1971 population level and allocation of seats within state at 2001 population levels).

This has allowed for:

→ overrepresentation of southern Indian state & under representation of north Indian states.

→ Under enfranchisement of Urban voters because of massive rural to urban migration (i.e. Dr..

urban electorate
→ Unconnected 3rd tier.
→ Non-alignment of MP & MLA constituency with those of local govt.' hinders meaningful democratic planning and decision making & knowledge transfer.
→ And finally, the dilution of Rajya Sabha as 'Council of States' by decoupling residency requirements.

Yogendra Yadav calls this Paradox of Representation while Milan Vaishnav calls this Crisis of Representation. Yogendra Yadav says that lack of delimitation is deliberate and it is an unspoken federal contract b/w North & South India. तुम हमें Seat दो, हम तुम्हें Revenue devolve type

Scrutiny & Oversight:

Along with legislative & representative role, assemblies have the function of scrutiny and oversight over (E). Although instruments like Question Hour, NCM (No-conf. Motion) Censure & Adjournment Motion, Committee system exists but b/c of anti-Defection Law and Globalisation, Big Govt. and Interest groups, these tools are largely ineffective

Anti-Defection Law:

ADL provides for disqualification of a legislator if he votes contrary to the party whip. As a result, the members are compelled to obey the party whip in order to avoid loosing their seat in the house. The law raises questions on the role of legislators in the following manner -

- It re-straints legislators from expressing their conscience in the house contrary to their party.
- It breaks the link of accountability b/w the voter and elected representative.
- [illegible]

by curbing the liberty of the members to the govt accountable.
It shifts the decision making from the assemblies to the party headquarters and finally only to a few political party leaders.
Hence effectively undermining the sovereignty of the assemblies.

Another issue that has arisen from the ADL is the role of the Speaker in deciding disqualification petitions.

6/Dec/2023 (#117)

It is problematic because there is a direct conflict of interest of the decision maker and a particular decision that can be taken. It is also a violation of SOPs as the speaker while deciding on disqualification petition acts as an adjudicatory body.

In KIHOTO HOLLOHAN Case, SC justified ADL by stating ~~with~~ "Political parties function on the strength of shared beliefs! Any freedom of its members to vote as they please independently of political parties declared policies will not only embarrass its public image but also undermine public confidence in it which is its source of sustenance and indeed its very survival.

We know have the benefit of hindsight to see how ADL has worked. Political parties issue whip on most issues and not just those that effect the stability of the govt.

Even on contentious political issues where there may be significant difference of opinion within political parties. MPs are often compelled to toe the line decided by the party leadership. This effectively converts each MP to a mere

no. that the party leaders can count on. While the constitutionality of ADL has been upheld, One can debate whether it has achieved the purpose of curtailing unprincipled defection.

Main reform suggested ~~by~~ for ADL include the following:

- Coverage:

Political Parties should limit the issuance of whips to instances only when the govt. is in danger. (2nd ARC)

- Defining Undefined terms:

ADL mentions, "Voluntarily giving up membership of a political party" w/o stating what it actually means and this term has been misused to disqualify the members who have exercised their ~~rose~~ free in any way that goes against the party ideology.

Another term that needs to be included within ADL is 'pre-poll electoral coalitions' within the definition of Political ~~Pol~~ Parties. (Ha Ju Abdul Hakim Committee)

Dinesh Goswami committee recommended transfer of Decision-making power from speaker to governor/president on the advice of EC (Election Comm.) ↳ legislative ↳ RS ↳ LS

- Implications of Defection:

NCRWC recommended extension of restrictions to include prohibition on joining any other political party or holding offices in the govt. for the remaining period of the assembly.

- Committee System:

The committee system is a distinctive feature of modern politics in developed countries they has emerged as 'power houses of assemblies' and the very hub of legislative process. It is often

said that where parliamentary chambers are always talking, the committees are always walking. Thus Woodrow Wilson made a famous remark that Congress in session is Congress on exhibition whereas Congress in Committees is Congress at Work.

The need for a committee system arises b/c the Parliament meets for a very limited period of time & it lacks specialisation and hence, it doesnot provide opportunities for fuller and deeper discussions. In a political atmosphere always under media scrutiny, cooperation on the floor of houses is impossible, because of this reasons Committee systems have become the centre peace of every assembly to the extent that weak committees make weak assemblies, strong committees make strong assemblies.

Pegion hole

Devesh Kapoor in book Public Institution in India has analysed India's Committee rigorously. He observes that Committee's in India work in a relatively effective manner b/c they are devoid of control of party whips. Most reports by Standing Committee's are drafted after consensus which makes decisions more legitimate. These committees actively engage with various stake holders both through written as well as oral testimony. Also, since the sitting of the committee's in India are not subject to any constitutional requirement. They have 'Calendar Independence'.

However, he has observed certain substantive issues as far as functioning of committee's are concerned. He says recommendations are not binding is not [illegible] fact that

no justification has to be given by either house on what actions were taken or not taken on such recommendations and so the reports at best act as a source of information for other MPs.

There is an acute shortage of expert staff specialising in the domain for which the committee has been formed as they come from generalist secretariat services. Since, the membership keeps changing from year-to-year. The MPs themselves do not get the time to build specialization since the staffing of committees is done by chairperson & secretary matters to committees is also a discretion of the chairperson, the partisan role played by the chairperson generally corrupts the process.

As a way to reform the committee system within India, we need to empower them with funds and specialised staff. Also there is a need to reform the committee system in a way that restores both +ve as well as -ve legislative (law making) powers within the assemblies in India that can be done by providing for change in rules of committees so that they get the power to initiate draft legislation suo-moto and also to veto a bill that has been sent for consideration

Role of the Speaker and Reforms

Securing the neutrality of the speaker is a question that experts in India have been grappling (dealing) for 60+ years. A watchful parliament forms the foundation of a well functioning democracy & hence, the presiding

officers who are not [illegible] of [illegible] of this institution.

Role of speaker in India.

In India, speaker (especially of Lok Sabha) holds several powers & play a key role in maintainence of order (suspend and expel members) disqualification of members (ADL), Committee formation (appointment of members and chairman), Imp. decision making like on matters of admissibility of questions, notions and resolutions.

The mechanisms to ensure the neutrality of the speaker in India include the following:

i) Salaries & allowances are fixed by parliament and charged on CFI.

ii) His work and conduct can not be discussed in Lok Sabha except on a substantive motion. The fact that they can exercise only a casting vote in case of a tie is expected to make the position impartial. He is placed at the rank along with the Chief Justice of India in order of precedence.

Issues associated with the Speaker's functioning:

With no security in the continuity of office, the Speaker is dependent on their political party for re-election.

There is no convention in India which mandates Speaker to resign from their party membership. Also there is no bar on post-retirement appointment of the presiding officer / speaker and so the Speakers across the country have occupied ministerial role shortly before or

after this term.
B/c as an arbitrator in ASL and determination of Money Bill (specially House of the People) the speaker's discretionary power and largely unchecked.

Position of Speaker in UK:
In Britain, they have 'once a speaker always a speaker' by convention, no political party fields a candidate against the speaker at the time of general election. The speaker can continue in office as long as they desire. Also by convention, they give up their party membership and do not take post-retirement appointments.

Observation made by Bd Sankar and Valerian Rodrigues: Book - The Indian Parliament; a demo-cracy at work.

Changing social composition of Lok Sabha:
The Congress party followed the policy of inclusion of diverse groups and communities while selecting representatives to parliament in 50s and 60s. By the second half of the 1960s, significant groups started disengaging themselves from congress. Landlords, businessmen and Conservatives came together in Bharatiya Jan Sangh and the middle peasantry & middle castes separated themselves from Congress to form numerous socialist political parties. In this process, there was a greater debolution of power to the countryside.

Note:
Yogendra Yadav has called this process as "a democratic upsurge and the deepening of democracy".

Changing modes of discourse:

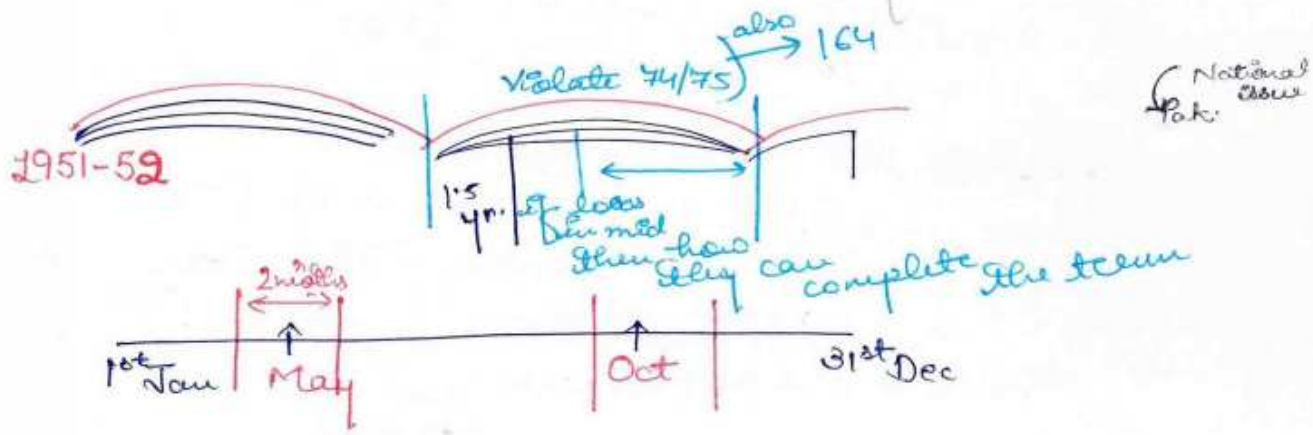
The overwhelming mode of communication in CA and in early years of parliament was in English. Over the years, the changing social composition of the parliaments, many parliamentarians resorted to regional languages.

From national Identity to Plural Identities:

In the 1990s and 90s, many members of the parliament ~~by~~ ascribed to themselves religious, ethnic, cultural identities as their primary public concerns. In contrast, in the first two parliaments most of the parliament -arians asserted national identity.

Draw diagrams:
Parliament pdf. ✓

One Nation, One Election (staggering of elections)



→ 2.5 years period division
→ Only NCM if you are viable one

7/Dec/2023 (#118)

HC Pension → CFI
HC Salary → States funds
SC Salary → CFI

Judiciary-

Art. 13 limits both (E) and (Parliament/legislature)

137
32
136
131
245-252... (Writs Review powers)

At least 80 articles provide for Judicial Review

Inter-State dispute - SC

Art. 13 and 368
Conflict b/w (J) & (E) (Parliament)
controls

Special majority
½ → 2/3
Art. 55 (exception)
54
↳ President

Initially:
Procedure to amend the Const.n
Art. 73 → Executive power of President
Art 368(b) Chapter IV of Part V, Chapter V of Part VI
→ (SC/HC)

Problems after Const.n Creating
19(1)(f) – RTP
14/15 – Reservation
19(1)(a) – FoSE
→ 1st CAA
subsumed 31A/31B
↳ if compensation
31B → within IX schedule

15(4)
Reasonable restrictions
19(2)

challenged in Shankari Prasad

Relation b/w 13 and 368
- if 368 over-rides 13 (Take away FRs
- if 13 over-rides 368 (even CA can't take away FRs)

Parliament → 368 → Not law making process
Draft Amendment Bill subjected to Art. 13

Deliberate omission → CAA under Art. 13(3)(a)
13 → Const. Amendment

Right now
Art 368 overpowers Art. 13
↳ Notwithstanding

Parliament's const.al power become unlimited.
Parliament's law making and constituent ~~for~~ assembly separated

2/3/4/5/6/(7)/8..../(27) CA (Constitutional Amend.)
↳ Unique → immune from judicial review
widened IX^th schedule

Eg: law → Debar (HC) from exercising their power under Art. 226
Tamil Nadu

RC Cooper
Sajjan Singh
Justice MADHOLKAR 12 13 | | 32
HIDAYATULLAH

Art. 368 → 1/2
↳ 2/3
↳ 350/450

Basic Structure Doctrine

After coming into force of Const^{n} of India, the problem of the validity of Const.^{nal} Amendment arose easily and specially on the issue of Right to Property (RTP)

The originally enacted const.^{n} included such provisions relating to property under 19(1)(f).

The Bihar land reform Act, 1950 was declared unconstitutional by Patna HC and other similar legislative and executive actions dealing with land Reforms, AAs, and restriction on FoS were struck down by HC and SC. Such conflicting views of the courts led the Parliament to bring I CAA, 1951 which was immediately challenged in SC.

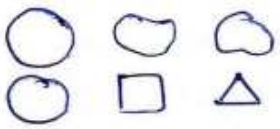
Shankari Prasad

The I CAA was challenged on the ground that the word 'law' under Art. 13 also include CAAs. Hence Art. 31(A) and 31(B) specifically and 15(4) and words added in 19(2) generally are Uncons.^{nal} because they abridge FRs.

The court held that Amendment is superior to ordinary legislation. Hence, it would not be hit by 13(2). Court ruled that in context of Art 13, law must be taken to mean rules and legislations made in exercise of ordinary legislative power & not amendments to the Col, made in exercise of Constituen -t powers.

After this case, the Col was significantly amended through various CAA and specifically the 17th CAA which introduced multiple laws under IX schedule so as to keep them away from Judicial Review.

Not amendment, it's rewriting

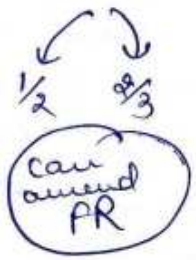


Golaknath

(13) Law → 368 Bill → Procedure → Power - 248

Proviso requires higher majority

Now 368 dominated by 13



Proviso require even higher majority

Indira Gandhi:
Art. 13(4)
Art. 368

Golaknath Case (11 Judge Bench)

The genesis of Basic Structure in Sajjan Singh
The majority judgement upheld Shankari Prasad view and hence retained unchecked power of the Parliament to amend the Const.n However the minority judgements given by Justice Madholkar and Justice Hidayatullah laid the foundation for BSD

Their I observation was:

- The Col gives so many assurances that it would be difficult to imagine that FRs would be a play things of special majority.

To hold this, would mean that the most Solemn part of our Const.n stands on same footing as any other part and even on a less formal ground than the one on which the Articles mentioned in the proviso stand.

Finally they observed whether making the change in such a basic feature of Const.n can be regarded as amendment when infact it should be designated as rewriting of the Const.n.

Golaknath case:

The strong reservations expressed by minority in Sajjan Singh prompted the CJI Subba Rao to constitute a larger bench to reconsider the opinion on the a/s 6/0 13 and 368. The court with a majority ruled that substantive power to amend Part III is not to be found in 368 as it contains the procedure only to amend the Col. The power is located in Art. 248 and last entry of List one (any of the matter no written herein). Hence it is purely legislative exercise & law made under Art. 368 becomes subject to Art. 13

To nullify Golaknath Judgement, the 24th CA was brought which made changes in Art. 13 and 368 to make it clear that CAAs will not be under Judicial Review provision of Art. 13. Art. 368 was also amended to specify that it grants the power to amend the Col and lastly it also mentions that "president shall grant the assent to CAAs."

Evolution not possible under it

24th CAA → law does not include CAA

368 → power to amend const.n and not procedure.

Keshavanand → ① Limit → Power

② Const.n → Judiciary

Parliament

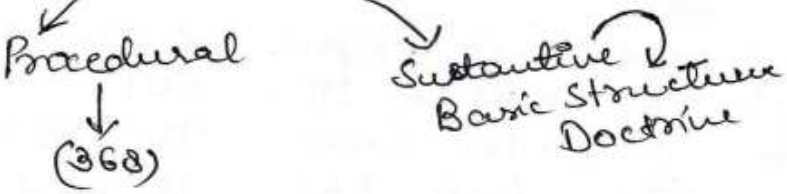
Exc.

provide same wide power.

③ Basic Structure - Vague

Foundations are undefined, they are evolving

& Check



124
124 (A)

BSD prevents Parliament from becoming CA

Keshavanand Bharti (13 Judge Bench)

The first question that was answered was that 'what is meant by the word amend'.

The court held that amendment to the Col has to be within the limit of essence of Col as the Indian Const.n is I and foremost a social document & is based on the socio-economic ideals of the freedom struggle. It is these principles and values that provide the organic entity & vitality to the Const.n. The parliament which is creation of Col cannot rob the Col of its own vitality and identity. The identity relates to the essential principles on which we can identify the Indian Const.n and the Const.n itself does not provide any mechanism by which this very identity can be taken away. The court observed that as far as source of amending power is concerned, Art. 368 is the only source.

SC observed that constituent power of Parliament can't be equated with constituent power of CA which has original constituent powers and it was not limited by any pre-existing

checks and balances. On the other hand, parliament's Constituent power is a derivative power. Hence, the Parliament can't rise above the Co! to acquire those powers for itself.

With respect to the relationship b/w Art. 13 & 368; the judgement held that Art. 13(2) refers to ordinary legislative power and Art. 368 refers to the constituent powers of the Parliament.

Hence there is no conflict b/w the two as their field of application are distinct and they don't control each other.

The court also held that it can interfere in any amendment procss from the perspective of procedural limitations (Art. 368) and substantive limitations (BSD).

On the contention that BSD was very vague, the court said that the doctrine can't be said to be vague only because it cannot be clearly defined at this point of time. In fact, SC held that most of the value and terms in the const.n like equality, Justice have been defined.

8/Dec/2023 (#119)

Minority judgement → Begins literal to liberal

SCo! (Art. 124) → SC for millions

- Political
- Social
- Economical

Justice Delivery

widening of rights

widening of Remedies

1950 → humble Apolitical

Apolitical Beginnings Power and Promise (1950-1966)

1st CA — nothing left to influence other texts

AK GOPALAN: X (Denied) Procedural fairness (favour of govt.)

C. DORAIRAJAN: 14 → EBL, → EPL → Reservation X (not in favour of govt.)

15 → Religion, → Race, → Caste

FoSE →

(SC) ① Literal interpretation of Constitutional text

② Apolitical — Pro govt. / Anti govt.

No references to political ideology only legality

③ CA → New members of Parliament

Apolitical, rule bound, text bound — SC

Increasing Politicization Reach

GOLAKNATH: FR (legislation not to be enforced in area)

Subba Rao (Election President) ↓ next day resign

SAJJAN SINGH: (Minority Judgement)

R.C. Cooper → [Preventive Det. (22/21): Eg]

14, 19, 20 → Impacts

22 → AN Ray, Keshav.

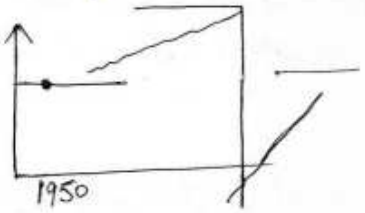
Madhav Rao → Privy Purse

Allah. HC → Rajnarayan VS Indira Gandhi → free & fair elections

Emergency → Already Amendment in b/w → SC

Art. 226

ADM Jabalpur





This is what enabling SC to widen Art. 21) grievance

Eg; Slums (Widened Art. 21)

Shelter → Dignity → Life

What SC can now do?

SC → 141 → Law declared by SC is binding to all people not only citizens

SC → 142 → to do complete justice

→ SC exercising legislative Power

Eg; Retired IPS officer

→ Vineet Narayan

→ not DGP since four years

UP → DGP change

Mandamus → Continuous Mandamus

Ganga Cleaning

→ Constitutional Amendment

BSD → Amendment → without following Procedure

42nd Ondone day 44th CAA

Raju Ramachandran in Supreme Court not unfavourable observed that the BSD has meant, unelected judges have assumed wide or vast political power not given to them by the Col.

Zia Mody in her 20 Judgements that changed India has accepted that from academic and legal point of view judiciary wasn't correct but creation of such a doctrine was need of the hour and it has proven to be blessing in disguise. This elevated judiciary that prevented India from going into authoritarianism as is the case with other 3rd World Countries.

→ prevent tyranny of executive
Bill of Rights
Federalism
FRs

Evolution of Indian Judiciary

I Phase: Apolitical beginnings:

The decision of SC during this phase (AK Gopalan, C Damanyan, Shankari Prasad & Sajjan Singh) were marked by underlined adherence to the letter of the Const.n. Hence, when the Const.n itself was amended, the power of the court was accordingly cut down. The decisions were neither pro nor anti govt.

Three key aspects stand out in the early years of SC functioning.

i) It's strict adherence to the letter.
ii) refusing to be influenced by the govt. ideology.
iii) Unequivocal concession of the power of the parliament to amend the Const.n.

In summary, until now the legitimacy of SC was

not based on popular support but was based on consti-

II Phase: Politicization of Judiciary

This era was marked by Judgements like Golaknath, RC Cooper, Keshavanand Bharati Case. This era replaced popular Sovereignty with constitutional Sover.[y] and SC acquired the power for itself to decide on the validity of the Constitutional Amendment. So it was clear that henceforth, it would be the prerogative of the court to decide constitutionality of Amendments, legislative & executive actions.

-And hence, the SC struck down all major govt. initiati-ves.

Though in the I Phase also, SC struck down major govt. reform measures. There were two crucial differences this time.

- Coming as it did after Golaknath, the govt. was wary of the court and its tendency to use its Const[nal] power to strike down popular reforms.
- The govt. was no longer under the secure leadership of India's freedom struggle for independence but was under the leadership of populist and openly fresh into Power Indira Gandhi who was overtly on the mission to create 'A committed Judiciary'. As a result, (a) disregards the convention of Seniority to appoint 'Loyal' judges to higher Judiciary (SC). Towards the end of this era (b) exhibited extremely loyalist characteristic as reflected in ADM Jabalpur case.

The sense of betrayal felt by public at large was so grave that it activated the repentance mode of Judiciary as it was facing the crisis of legitimacy like never before.

Creation of World's most powerful Judiciary: Phase II

In Indira Gandhi's defeat coupled with 44th CA gave a new lease of life to the SC as the collective repentance over the judicial surrender required atonement. This came in the form of 2 landmark judgements:

i) Maneka Gandhi
ii) Minerva Mills

But so deep was the sense of betrayal the court felt constitutional correction itself was insufficient to regain the trust of the masses and hence judiciary started seeking popular legitimacy over Constitutional legitimacy. This was done in the following way:

Growth of PIL

12/Dec/2023 (#120) proceedings

Art. 32 → Appro. in ordinary courts

Constitution itself creates activated judiciary

Judicial

HC/SC ← Activism → B.L. Wadehra PIL Handbook

↓ Cognizance

→ 13/32/245/246

Emergency → 356

→ Recodification of power

→ Highest Appellate Authority (SC)

Routinely modified

District Court → 302

↓ 20 Judgement

Tell if there is one, do not if there is none

ANOOP BARNWAL Judgement

Executive → CEC

(President)

(CJI)

Art 324 → President should appoint CEC
Clear drawn → (L), (E) power undermined
Const^n is what the judges say

Judicial Sovereignty
1. Const^n → Judicial Review
2. Enhanced
'BSD' — inventing
3. Widening of FR (21/19)

Procedural Due Process → Substantive due process → Due Process of Law

Liberalizing 32

Modi appoints next PM (What if)
Top 5 judges decides itself
• Appointment

Judicial Restraint

Globalisation
↓ outcome of
Judicial Activism
↑ Activators of Judiciary

↓ Legislative
↓ Executive

Liberal
↑ ↑

ADR
PUCL
Activators of Judiciary

ACTIVISM

Access to reach to SC
dents the actual functioning!
Federal court

Core competence << (distributed by) non core competence
hearing by 1 Judge in India (nowhere in World)
TMK judgement given by 5 Judge bench.
Dilutes the benches

Jurisprudence of

'Some Bost'

→ Exasperation

→ Oral observation

× Doctrine/ Principles of Law

No law governs the judgement

Ban on Plastic

Predilection over principle

✓ Right to clean environment

Livelihood (1st addendum of 21)

Bandhua Mukti morcha case

Techno >> Social

quantifiable → not quantifiable

0% discharge condition?

20 cases of PIL → Why are they less important?

Information Access

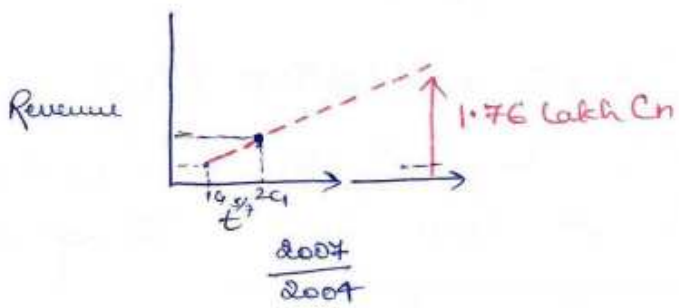
Committee Terms of References

Polycentric

SC not designed to absorb the shock

2013 Judgement

CAG



Growth of PIL :

The PIL broadly refers to institutional changes engineered by SC to facilitate access to the court. In the aftermath of emergency, the ground work for the PIL was laid down in a series of cases marked by procedural innovation and doctrinal creativity.

→ In SP Gupta vs President of India, it relaxed the rule of locus standi and opened up the door of judiciary to public spirited citizens.

→ In Sunil Bhatra vs Delhi Administration, SC invented epistolary jurisdiction (through letters)

→ In Bandhua Mukti Morcha case, the court heard NGOs on behalf of absent bonded labours and also provided relief.

All these judgements have resulted in SC acting both in legislative and executive functions.

→ not to be written in Exams

Once an issue catches ~~an~~ the attention of the court, the judicial machinary kicks into play. Given the inherent powers of SC combined with procedural innovations that the court has in its arsenal, it will take immediate steps to simultaneously widen Art. 21 (Justifying action) setting in Policy Evaluation (legislative action) and making the (E) accountable for the new law.

The expansion of protected Rights:

For a PIL to be timely effective, the length and breadth of substantive rights protected under Const.n would also need to be comprehensive.

Hence, the activist ~~court~~ court proceeded to expand the rights available under Indian const.n. The chosen vehicle was Art. 21. The FR to life and liberty was gradually expanded to cover unarticulated rights such as Right to Human dignity, privacy, livelihood, right to enjoyment of a clean environment, right to education.

This has enabled a smooth transition of (E) and (E) as follows:

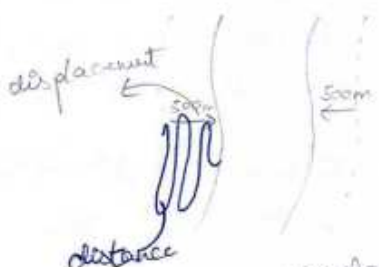
32 ✓ 3774 Pahuche
21 ✓ Door Opened
Relief → 141, 142

i) The court acting as a legislature

Since the SC widened the scope of its jurisdiction and the breadth of its substantive rights. The court had to proportionately widen the nature and the extent of remedies that it could provide for such violations.

In Laxmikant Case, the court laid down a series of guidelines in the best interests of child for regulating hitherto unregulatory area (inter-country adoptions).

In Vishaka vs State of Rajasthan (in the absence of an enacted law) the court laid guidelines defining what sexual harassment at workplace is, and once the crime is defined providing procedures and machinery for investigation and grievance redressal.



we don't have state highway

ii) The court acting as an executive

The court in an (E) avatar has used the device of continuing Mandamus to perform its executive roles.

For eg: In Vineet Narain vs Union of India, it undertook a writ petition which alleged that terrorist-politician nexus was making impartial investigation impossible and sought the court's intervention to make CBI more independent. The SC gave series of directions to the govt. like the manner of selection, transfer and procedure of appointment of officers in CBI.

The court has also used;

'Continuing Mandamus' for environmentalism.

In MC Mehta Vs Union of India (Taj Trapezium Case), the court in a series of directives (spanning over 2 decades) responded by banning coal based industries in Taj's immediate vicinity, and close down 250 factories & the creation of traffic bypass (Agra Express way) and also a green zone (no construction activity) to insulate Taj Mahal.

In MC vs Union of India (Ganga Pollution Case), multiple writs of mandamus were issued to impose sewage discharge in cities, the installation of waste treatment in every cities, getting rid of polluting factories in upstream Ganga rivers.

MC vs Union of India (Delhi Pollution Case), the order mandated conversion of Delhi's public transport system from Convention fuel to CNGs.

In MC vs Union of India (Delhi Industrial relocation case) it ordered the closure of polluting an hazardous industries operating within Delhi.

The phenomena of potentially endless judicial oversight have led to the conclusion that (J) is merely substituting Judicial Governance for (E) Governance, a phenomena that some scholars would contend as Judicial activism while others would call it Judicial overreach, Judicial activism in some cases or Judicial excessivism.

Judicial Activism

It implies a high energy state that is institutions go beyond their constitutionally defined orbits into the domains of other institutions and

into the domain of (c) and (e). [illegible]
There is an agreement that when Judicial Review is not limited to checking the constitutionality of the acts of legislature and (E) and it takes the functions in hand, it is designated as an activism.

The written nature of Indian constitution gives power to judiciary its review (c) and (e) functions.
Acc. B.L. Wadhera, in his book PIL - A handbook, the near collapse of responsible govt. has resulted in grave legislative and Executive failure b/c of which citizenry started looking up to the higher Judiciary which was reciprocated by the latter through 'Judicial Enthusiasm'.

Upendra Baxi in the Avatars of Indian Judicial activism defines activator of Judicial Activism in India. Eg: Civil Rights activist, Women right group, bar association based group, poverty rights groups, environmental group.

Rise of Civil Society Organisations and movements have resulted in multiple PILs being filed by these well funded, organised and technically sound NGOs.

Judicial globalisation has resulted in the inflow of Jurisprudence from various SCs around the world to find their way into Indian Judgements as well.

This was combined with the adoption of vaguely understood Ideas of HRs and Environmentalism.

Acc. to Upendra Baxi, activism is that way of exercising judicial power which seeks to fundamentally recodify power relations among

the dominant institutions of the world. Acc. to him, the debate ~~abo~~ around JA is misplaced b/c generally people question whether judges do or don't make laws or ought not to make laws.

However, he dismisses this question suggesting that 'Appellate Judges do make laws and not merely interpret it' Infact these labels for judgements are an evaluation by various social groups in terms of how their own interest, ideologies and values were impacted by these judgements.

Acc. to Justice Katju, anything that goes beyond 'Tell if there is one, don't make if there is none' is an overreach

Consequences of Judicial Overreach, Activism, etc.

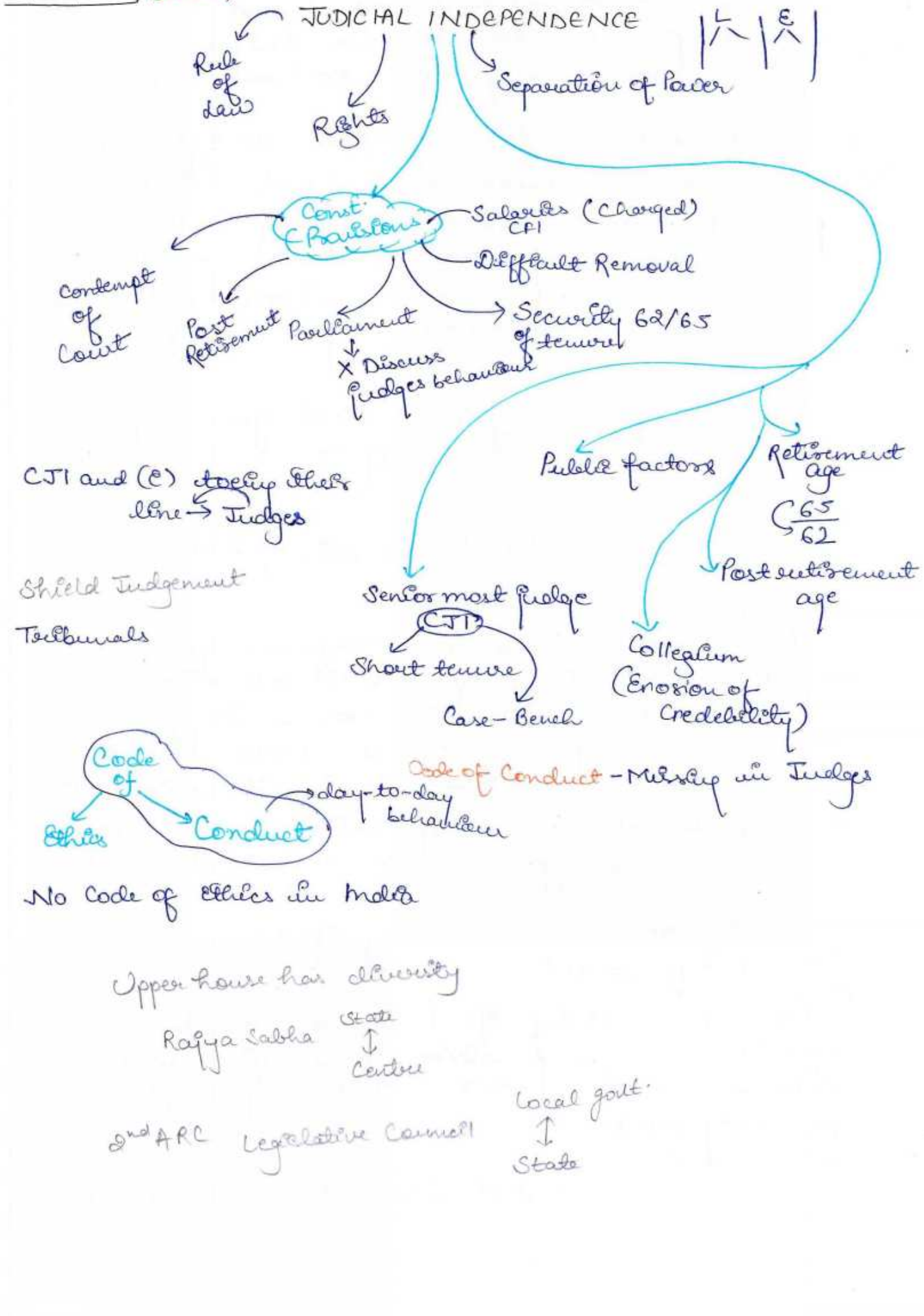
(Pratap Bhanu)
Acc. to PBM, Political, Social and Economic questions not usually presented to judges in other countries are decided as a matter of course by the Indian SC. It has developed into a forum for policy evaluation (the role that SC is ill equipped to play. In seeking to do it compromises on the role that it is equipped and required to play.

This not only reflects in backlog of cases but has 3 specific consequences:

i) Creation of a body of Case law marked with rhetoric, imprecision and intellectual fuzziness and hence creating 'jurisprudence of exasperation'.
-pdf.

JA can be a medicine but not a daily bread.

13/Dec/2023 (#121)



FEDERALISM → Decentralisation of Power

Self Rule

Shared rule

written Const' → two levels ← creates / protects

Independent arbiter

Banking Institutions

Rajya Sabha

Delineated tax bases → Niti Aayog

Inter State Council

What can be shared and what can't?

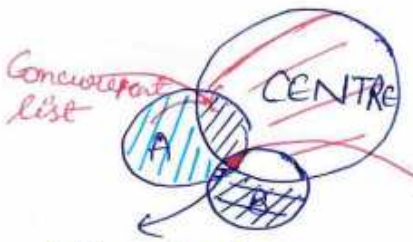
Coming together → Element of sharing very low

Reason for federal – ?

Federalism x connected with Democracy

It can fragment the idea of nation itself.

Diversity
Regional
Geography
Centralised



Inter-State water dispute
Rajya Sabha

GST
NITI Aayog
Inter State Council

FEDERALISM → Legislature

Lists (I, II, III) I >>>> II III

97 → 56

In India, Centre's self Circle is very wide.

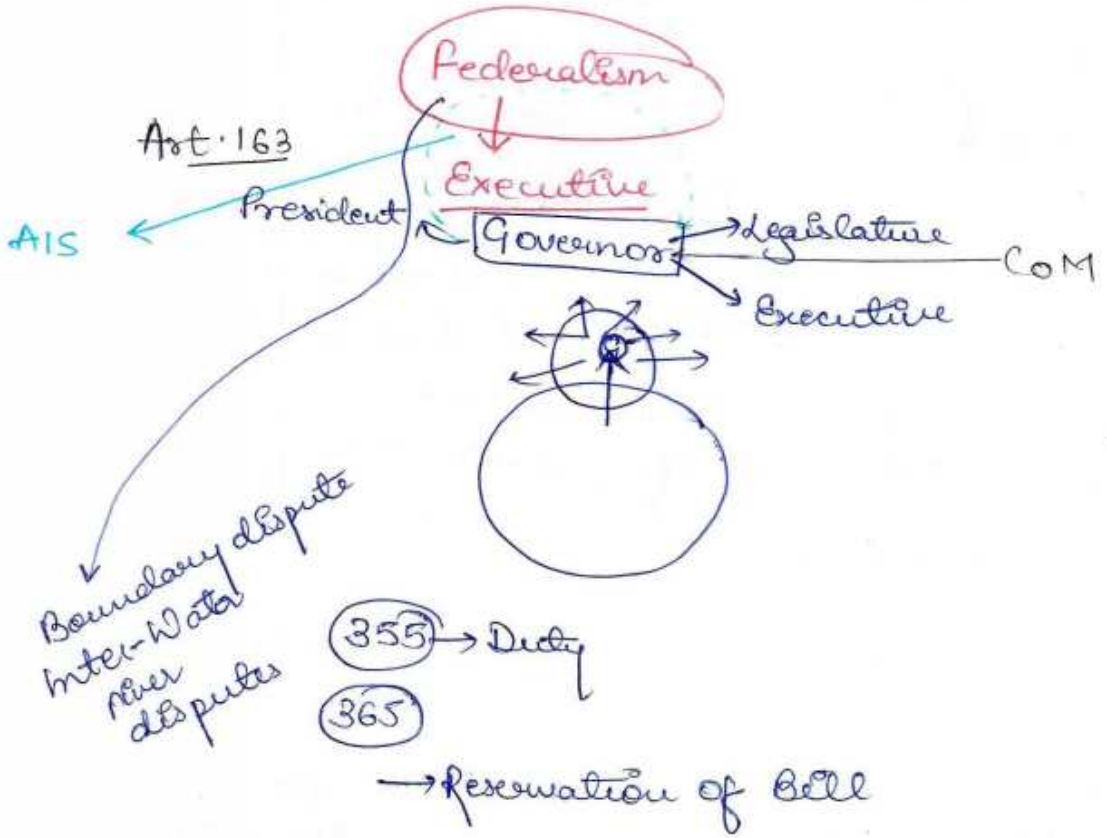
Residuary (Radius not defined)

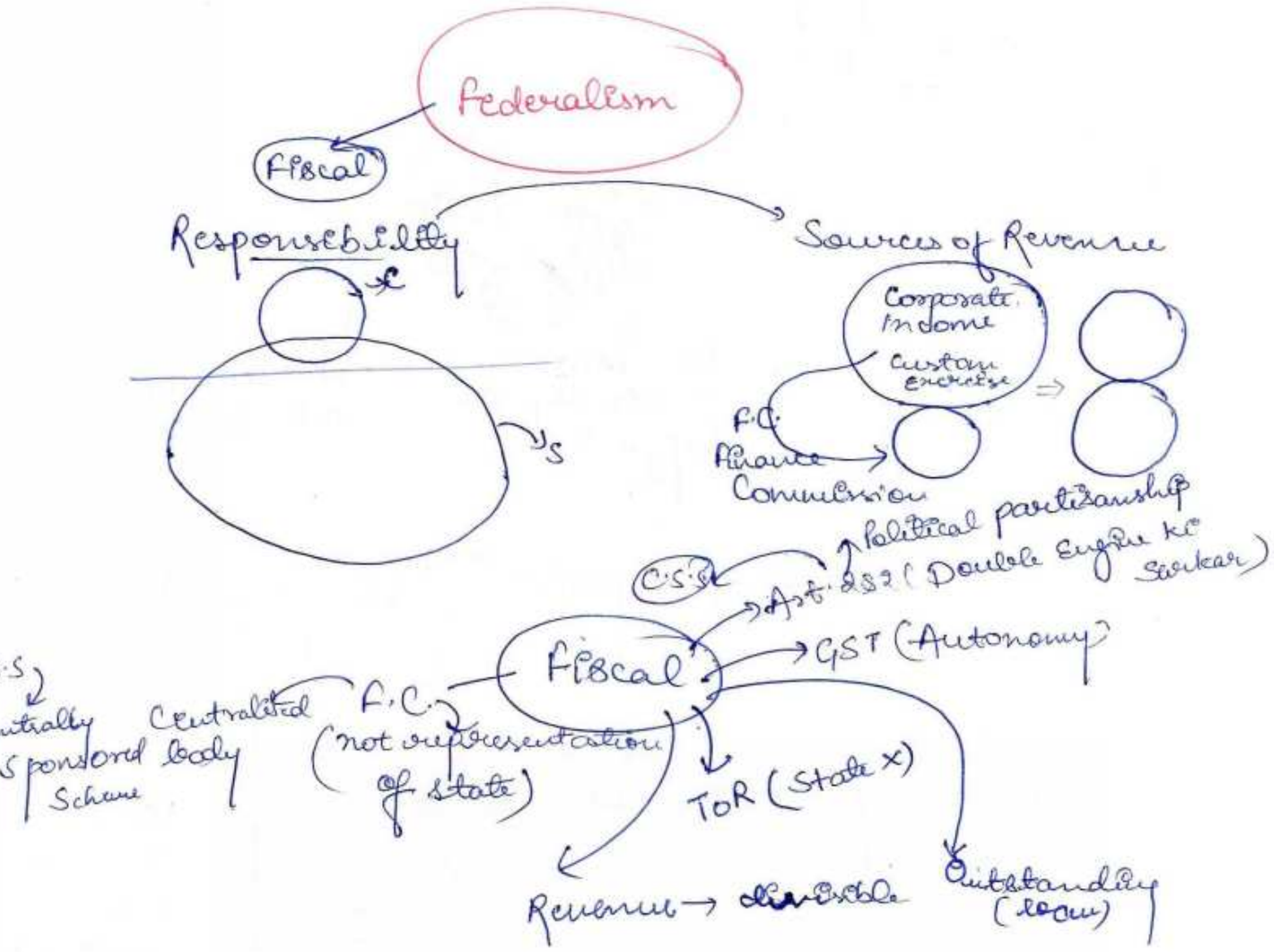
Governor's reservations

247–250

4/5 → Parliament → State legislations

Lok Sabha > Rajya Sabha
→ Diluted





14/Dec/2023 (#122)

Federalism ← Pluralism, fragmentation

Eg: 2
Bangladesh
Sri Lanka
Nepal

Federalism → conflict, GST stuck

Bold → Radical

Codified const.ⁿ itself favour one idea of values

Sharing / Self

Delicate balance

Indian Federalism came to existence → 1950

Quasi Federal structure

Article 1 → Union of States

Article 3 → Unilateral political reorganisation of country

Procedure → Ordinary law

A.I.S. → Selected & Controlled by Union

Executive federalism ← Indian Federalism

Parliament ← legislative dominance

State ← executive dominance

Officers → Controlled by Centre

Planning Comm. → Output of Tyre production

Outsourcing is specific.

Taxation tilted towards Centre

Welfare state → tilt towards Centre

AMERICAN FEDERATION

Alfred Stepan → Art. 3 'Demos enabling'

→ Enable people or majority

'Demos Constraining'

Andhra Pradesh
Tamil Nadu (minority within A.P.)

→ Always utilized to empower minority.

pre-existing → constitution (Demos Constraining)

Union I → constitution (Demos Enabling)

India to Survive → Federalism & Secularism

North East → Overwhelming concern of Internal Security

MP Singh — American → 1930-70s, 80s

USA → Great Depression

- create a 'new federalism'
- restore federalism
- re-establish state autonomy.

Federalism → dynamic in implementation

AMERICAN

FEDERAL ⟷ UNITARY

Indian keep fluctuating mostly towards actual federalism

Competition b/w

Parliamentary axis (L·S & Central govt.)

Federal axis (States)

10 years ago, Centre OPA ← In such federations

Art. 263, 201 remains the same

Confederal → Vetoed by Single State

Policy towards Sri Lanka guided by Tamil Nadu

PARLIAMENTARY FORM (Coherent) → Incoherent with Federalism (Presidential form of govt.)

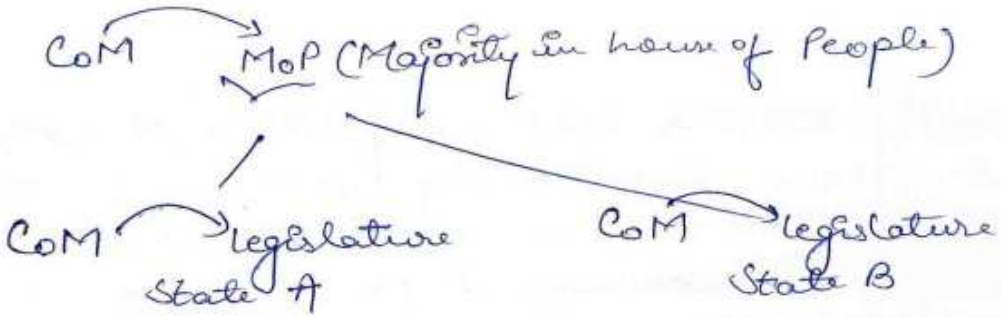
CENTRAL (4 years)

President completely disconnected from Congress

STATE level

President / Legislature

P/Legislature



Connection of legislature with MoP

No federalism in India instead of Const.ⁿ

There is no federalism, there is only party system.

India

1950 → Nehru

All matter resolved within the party.

Dispute → only during transition of party system.

FEDERALISM

↑ Welfare

LPG (Revenues determined by market structure)

Pradhanmatri Yojna → 40% contribution from states.

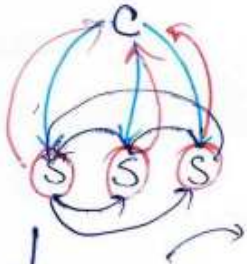
Co-operative Federalism → Interdependence → legislative dominance but dependent on state for (₹)ⁿ.

TEAM INDIA

Competition + Cooperation

Sachin T. Rahul Dravid

Some people



→ One Nation, One Election

TEAM INDIA

Cooperation → GST, NITI Aayog, Zonal Council

Competitive → Money utilization index

Federalism

F. usually refers to legal and political structures that distribute power territorially within a state. It is also considered to be a part of broader ideology of pluralism. ~~It accordance~~ It is also a method of promoting self rule and shared rule and balancing the interest of its nation within its ~~nati~~ regions.

Federal systems are based on compromise b/w unity & regional diversity and b/w the need for an effective central power & the need for checks on that power.

This balance b/w centralization & de-centralization is shaped by wide range of historical, cultural, geographical, economical and political factors.

Why do we need federalism?

- Coming together of several established political communities. Eg: USA
- Existence of an external threat. Eg: EU
- Vast geographical state. Eg: Canada
- To accomodate cultural and Ethnic heterogenity.

Advantages of f. include following:
They give local & region interest a constitutionally guaranteed political voice.
It creates a network of checks and balances by fragmenting the power.
It is a mechanism through which fractured societies maintain unity.

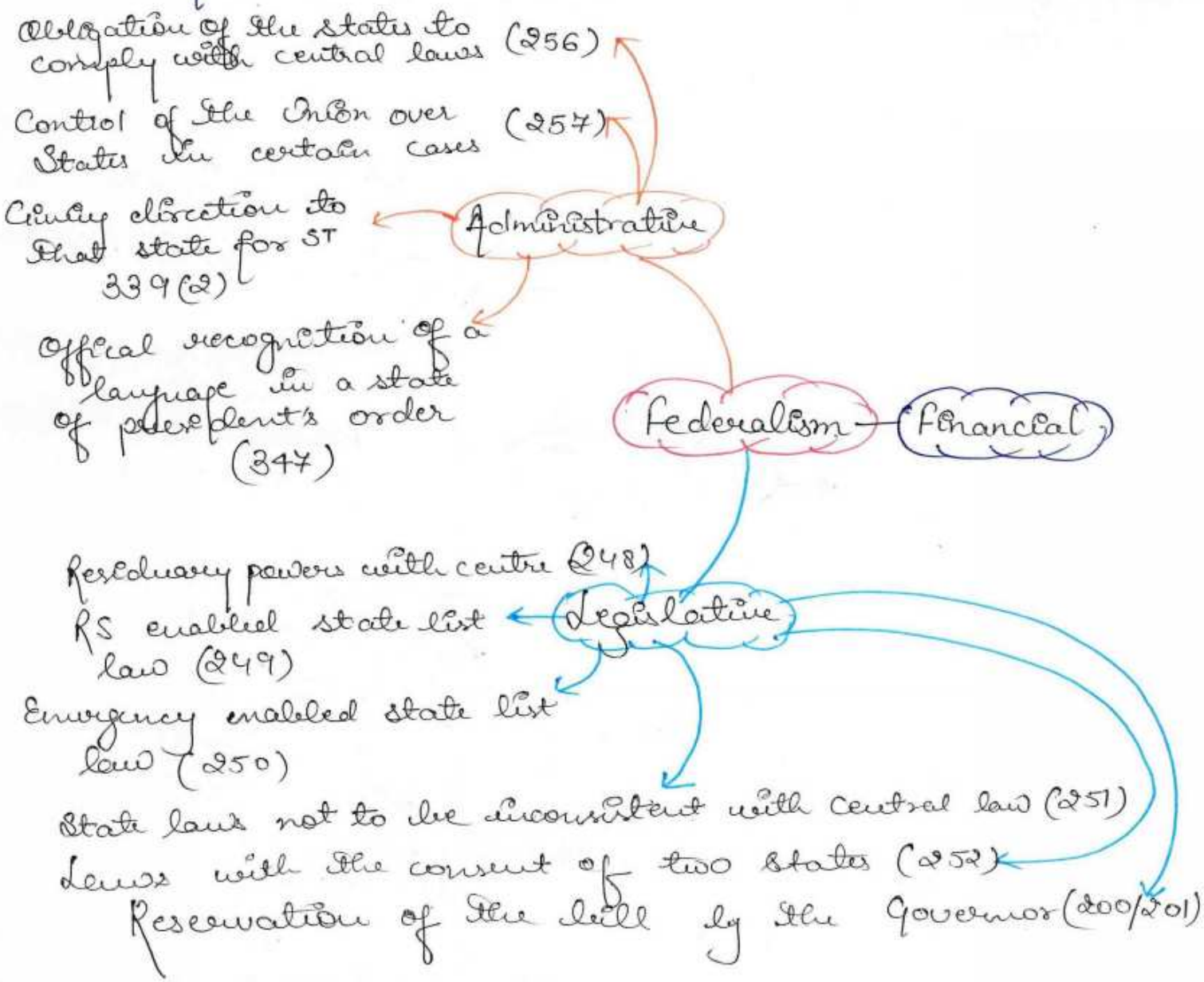
Disadvantages of f. include following:
Structures intended to create healthy tensions within a system may also generate frustration & even

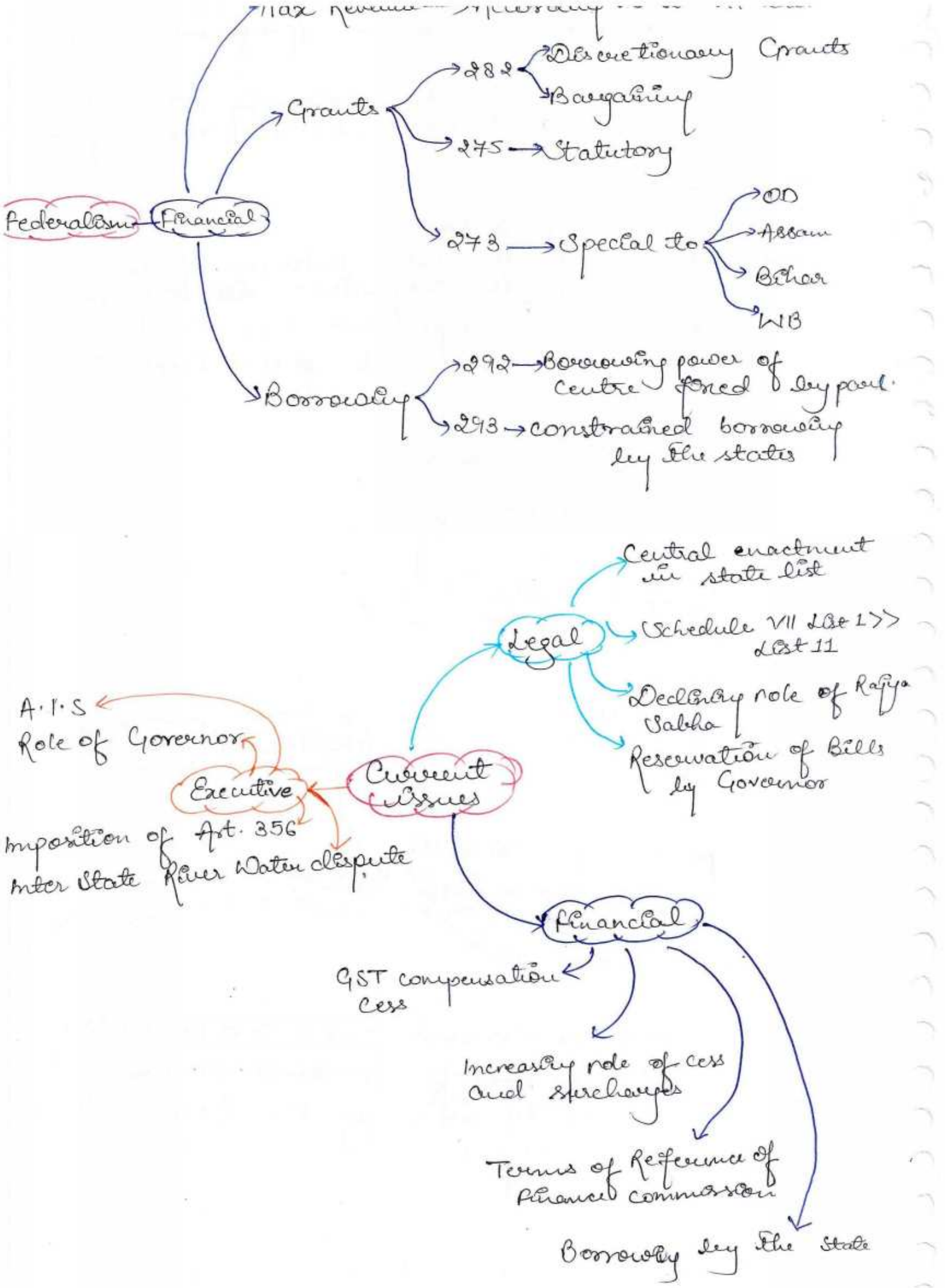
by centralising the central authority, it makes implementation of economic or social programmes more difficult.

- At various stances, it has actually strengthened centrifugal forces and has caused disintegration.

Features of F.

1. Two autonomous levels of govt.
2. A written constⁿ which guarantees autonomy of each level
3. A constⁿal arbiter which adjudicates disputes b/w various stake holders; Independent tax basis.
5. Linking institutions in order to foster cooperation among various levels.




Tax
Discretionary Grants
282
Bargaining
Grants
275 → Statutory
Federalism
Financial
273 → Special to
OD
Assam
Bihar
WB
Borrowing
292 → Borrowing power of Centre fixed by parl.
293 → constrained borrowing by the states
Central enactment in state list
Legal
Schedule VII List 1 >> List 11
Declaring role of Rajya Sabha
Reservation of Bills by Governor
A.I.S
Role of Governor
Executive
Current issues
Imposition of Art. 356
Inter State River Water dispute
Financial
GST compensation Cess
Increasing role of cess and surcharges
Terms of Reference of Finance commission
Borrowing by the State

India as a Quasi-Federal State

– Kenneth Clinton Wheare

Professor K C Wheare compared US model with Indian model and declared India to be a Quasi-Federal State. Acc. to him, India is federal in form but Unitary in spirit b/c (no dual citizenship, lack of guarantee of territorial integrity, A.I.S, Emergency provisions

He noted that the fact that constituent units within India did not enjoy a guarantee of territorial integrity was the main reason behind his labelling India as a quasi-federation. This criticism limited & centring on mechanism of Part 1 of our Const.n as Art. 3 gives parliament the power to form/alter/dissolve the units, the states indirect role in this process which is confined to the vote in Rajya Sabha and to the expression of non-binding opinion on the issue.

Alfred Stepan has distinguished b/w holding together & coming together federation. He argues that US's & styled Demos Constraining federalism is unsuitable for 'robustly politically multinational country like India.'

Infact, he showers praises on Art. 3 of Indian Const.n which allows parliament to create new states and redraw state boundaries with simple majority barely consulting the relevant states. This is unthinkable in a coming together federation which must be demos constrain -ing in order to protect state rights. This is why Stepan has a highly positive assessment of the way, India's political classes have used the Const.n's Demos enabling features as he wonders at the 'relative consensual manner' in which most of the boundaries of the States in India were redrawn b/w 1956 & 1966.

largest multicultural and multinational democracy. This feature has allowed the majority at the centre to respond to minority demands from states for greater autonomy.

Commentary by M.P. Singh :

This approach by KC Wheare is legal constitutional as it focuses only on the text of the Const^n and hence it is very static approach. And so, he (K.C. Wh) has clearly ignored the dynamism of federalism as it needs to be understood by its functioning in a particular socio-cultural context. Indian federalism as well as US federalism have been dynamic. Roosevelt, who introduced welfare state in US (new deal) started the era of centralisation which gave rise to very powerful federal govt. even in American set up.

Acc. to professor MP Singh, there are two axes of Indian Political System:

- ↳ Parliamentary axis
- ↳ Federal axis

Parl. Y axis denotes strong centre, federal axis denotes strong state.

When single party has absolute majority at the centre, Par. Y axis becomes prominent (Under Nehru, Indira Gandhi and currently Modi) on the other hand, when there is a coalition politics, which represents regionalisation, federal axis becomes dominant. Thus, the nature of federalism has been evolving with the changing nature of Party system within India.

It doesn't operates in vacuum and it is influenced by other multiple factors like economic policy or political economy of the state, the position of the states will be stronger

of the developmental model is neo-liberal and that of centre will be stronger if developmental model is based on planned economy.

15/Dec/2023 (#123)

Federalism

'Quasi'

Christophe Jaffrelot

1950 – 1966
Consensus Building

Gandhi → Congress Committee's
↳ (Language)

Nehru – letters to CMs

Reorganization (Equal basis)

Consensus Building
↓
1956 Major Political reorganisation
Govt → resolve conflict at party's platform

16 → 20 times Art. 352 used
yrs.

1st Constitutional Amendment → way to enhance federalism
Diluted FRs to provide federalism

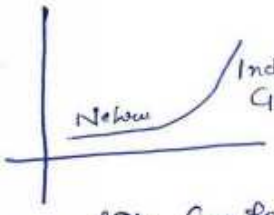
1967
↳ Populist trend
↳ Slogans started with Indira Gandhi
↳ Privy Purse; (J) struck it
∴ Judiciary – Anti-Poor (they said)
↳ Nationalisation of Banks (SBI)
Regional Congress leaders (Popular)
Not going to support you immediately
Problem in the internal structure of the Congress
↳ Started removing those people from Cabinet

Mauryan and Mughal Empire

Religion is also a political ideology

Akbar's rule
↳ Secularism
Federalism

Aurangzeb – Indira Gandhi



↳ more like Confederal state

Indira Gandhi minister
↳ Cabinet of Shastri

development of [illegible]

People elect a new legislative assembly and no one knows who will be CM. (Chat)

Political part → internal — Refederalisation

Real issues of people not addressed

1980-84 →

1990 → Refederalisation — 2014

Party → Emergence of BJP – Takes away upper class

Regional Parties – lower castes

(Region along with Caste)

Regionalisation happened very early in South.

Congress vote ↓ substantially

↓ Majority

↓ CM

Reluctant to use any Const.nal provisions

LPG → SEZs → ↑ exports

↓

Centre goes away

SR Bommai Case

Lalu Yadav not removed

CoM reflects diversity of India

↳ proportional to States contribution

A.I.S → agents of centre earlier → eyes of the states

Policy of Paralysis

Only person whose bills are constantly reserved – CM of Gujarat

↑ Centralized – WRATH of St.

(CModi for)

2014-2024 → Recentralization

BJP → Centre
→ prominent state
↙ not only in states but more seats in R.S.

Road to Delhi goes from UP and Bihar

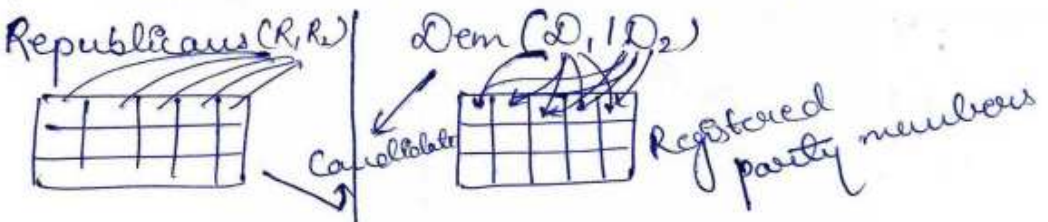
2017/2018 → Complete majority
↳ GST
↳ Banning of Notes (Demonetization)

Covid → No consensus over lockdown
Socio-economic decision of highest level

One Nation, One _____

Politically
Modi – Star Campaigner
MPs no importance, other than electing Modi
Presidential form of electoral
Every election as a mandate of your govt.

Centralization not just in party system, but within BJP also.



Swing states (R, D)

Their purpose was just to convey the mandate of the people.

Indian federalism has undergone through profound process of informalisation due to fragmentation of India's party system and consolidation of broad based coalition govt at the centre (1990s - 2013) and transformation of Indian economy from a command to more liberalised system.

Acc. to professor MP Singh, the concept of Cooperative F. entered into the lexicon of the theory of federation from 1930s when USA introduced welfare state; the time at which Indian Const.n was framed (being written) 'cooperative federalism was already a well established concept.

Unlike US Const.n which is an example of dual federation, India is an example of cooperative federation. In Dual f., the 2 govts are completely independent and work in water tight compartments whereas in cooperative federalism, interdepence is permitted for b/w the two levels of the govts. Rather than working in water tight compartments there is interlacing. so of ... dependent on Union for finances,

union is dependent on states for implementation.

Acc. to professor MP Singh, in most scenarios, cooperative f. remains an idea alive in practice, it becom bargaining f. which represents a situation where centre acts as a big bullying brother or a patriarch since bargaining power of centre is more (Governor, CSS(288, 293) bargaining f. shows the disadvantage ↳ Centrally sponsored scheme position of the state.

PM Modi in his own words, 'We want to create TEAM INDIA has defined cooperative f. as marked by consultati -on, cooperation and mutual trust & respect b/w centre state and centre. And so in this capacity becomes friend, philosopher and guide.

Centre has taken a lot of initiative in this directio -n like creating of GST council, NITI Aayog; Sub groups of CMs, various taskforces constituted under the leadership of CMs.

There is also an element of competition in this coop -eration which is clearly visible in the efforts of NITI Aayog to focus on indices like water manage -ment, SDG India index, special district programme etc.

The first decision taken by PM Modi after becoming PM was to remove any kind of element of centralised policy making by scrapping Planning Comm

His another famous slogan Minimal govt. max governan -ce indicate neo liberal principles and making back of the states. This will further the competition among the state.

However professor Balveer Arora claims that due the differences in circumstance of many states competitive element of f. may not be appropriate

Critique by Christophe Jaffrelot analysed in Phases part.

The Phases of Indian P.

Phase I : Nehruvian Era → Tagline

Act of diffusing tensions

In 1947, the provinces inherited from colonialism were problematic because they did not align with linguistic groups. After 1950, the contradiction b/w linguist map & political map was especially unsustainable since India had officially recognised regional languages in the Const^{n} and the dominant party which was completely lingually organised. The leaders of regional branches of Congress party demanded that Nehru make borders of their states respecting the linguistic boundaries and hence in 1956, the states in India were reorganised on the basis of language making culture and politics coherent. Not only provinces developed strong identities, but they were headed by regional bosses who were well entrenched politically. This increased the popularity of congress in general and Nehru in particular.

The spirit of accomadation was reflected in various other ways. For eg: Regular consultation with CMs through letters, informing them about govt decisions and global developments. It also got reflected in the way, the constitutional amendments were made to protect state initiative (Land Reforms, Reservation)

Phase II : Indira Gandhi Phase

Victim of IG's populism → Tagline

cases term - arguments [illegible]
Bihar reservation

Constitution

→ one of the parameter to gain sovereignty is to have a constitution

Eg:
→ Bill on Digital India Act
→ IPC
→ Constitution

① Supreme law of the land
↳ Creates institution

Define duties, functions and gives powers

Most difficult to amend

↓

Amendment (Eg: Art. 368 and Art. 3)

↳ Simple majority (equal footing as ordinary law)

→ 2/3rd + 1/2

→ 2/3rd + 1/2 + (>1/2) → of all the states
↳ of both houses

Indian constitution is a liberal con^x with socialist objecti -ves.

Modern constitution

② Relation b/w State & individual

Modern State → Power to use force
can empower also to someone
↳ AFSPA

Idea to create limited govt. is called constitutionalism
↳ Bill of rights
↳ Separation of Power

Separation of Power

It is you fragment horizontally the power in such a way that no same set of people are responsible for the three sovereign functions of the state

- ↳ making laws
- ↳ enacting / enforcing laws
- ↳ adjudicating laws

India → Same group of people responsible for enactment are also responsible for enforcement of laws.

Parliamentary system → No SOP when it comes to legislature and executive

legislative & executive | Judiciary

Wall of Separation

SoP in India

In US

↓

no common membership

SOP → Sovereign

↳ ooo

↳ Federalism ↳ :::

Decentralization of Power

↳ Independent Judiciary

↳ Rule of law

↳ Secularism (restricting State in religion)

Any relation b/w UCC and Sovereignty - ?

→ It will end the confusion of 2 swords

→ State is internally supreme everywhere except personal laws.

Gandhi

Eg: Afgh., Pak., Bangl., Myanmar, Sri Lanka

In the ocean of chaos, we are island of peace and stability. - Why ?

Tell → 1975 Pak. (Asian Tiger)

Constitutional Morality

① Obedience to the form of constitution.

Gandhi → Culture of Non-violence

→ Freedom of speech against the govt.

→ Singularly claims to represent the people will

Cons.on → can resolve all sorts of disputes

Cons.onal Morality ←→ Social Morality

Constitution
↳ ltd. govt.

+ve
① Preserving the individual
② Elevated 'core' → TRANSIENT
③ I exercise of self-determination
④ Independent judges

-ve
① Slow to response
eg: GST
Thought 2000 → into existence 2016-17

② Values flawed - conflict
Core values → Problem
↳ Law is what the judges say!

⑧ Independent judges → Power
↓
A vs B
not Polycentric

Judicial activism
Overreach

eg: review meetings
↳ GANGA
cannot be accepted as SC ↑ → failed cons. ons.
Art. 132

④ Social Values > Constitution

Nehru's daughter IG, gradually broke with her father's practices starting 1970s, she centralized the political decision making process in a system that was perfectly parallel to her populist style through which she attempted to connect directly with Indian citizens in order to short-circuit national and regional leaders. With the creation of slogans like Garibi Hatao and initiatives like Cancellation of Privy purse and nationalisation of Indian Economy Centralisation its peak during her time. She avoided allowing regional leaders with a strong base to establish their authority within the congress party. So instead of people leaders chosen by the people, people chosen by her became leaders, whereas in the states governed by opposition parties, she attempted to undermine the CMs by frequently using president's rule (ten times during 16 years Nehru (earlier), 40 times in 12 years this era)

Phase III: 1990-2014

The assertion of Indian P. (Refederalisation)

The 1990s marked the beginning of refederalisation of country for 3 reasons:

→ Electoral decline of Congress Party which lost and never regained its majority in Parliament again.

Ceding Power to the Hindu nationalist BJP and 'Secular' regional parties. These parties which usually exist in only one state ended up commanding not just the state legislatures but also dominated in elections to Lok Sabha. Their majorities legislative assembly got reflected in Rajya Sabha and so as no single national party could govern India alone, the country entered into the era of coalition

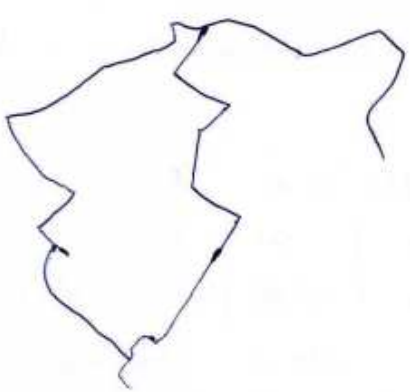
govt's. This era was necessary [illegible] to accommodate as to obtain support of regional parties, both BJP and Congress had to offer important ministerial portfolios to their leaders remain attentive to the specific regional demand (industry, infra, education and health). Also it got reflected in India's foreign policy decisions as well (Tamil Nadu Sri Lanka). This was also the time when the use of Art. 356 was at minimum.

→ Second reason, which helped Indian state become more autonomous due to the decisions of SC which on various occassions intervened and declared that F. was a part of BSD & it (SC) also laid down rules in various cases for the Exercise of various powers by the Centre.

→ Indian states also benefitted from weakening of federal govt. on one hand, due to economic crises, the federal govt. cut social aid on the other hand, LPG reforms liberated the states from overright of New Delhi.

17/Dec/2023 (#124)

Regionalism → Mental Construct ← Nationalism



Societal Parameter
Political Projects (Mediated by leaders)
Territorialization of political life (in mind)

Likely possible they might operate conflictual with each other (regionalism or nationalism)

brotherhood-regionalism (one region they belong to)

India ~~gotten~~ the statehood first that's why any demand constitutionality it is regionalism.

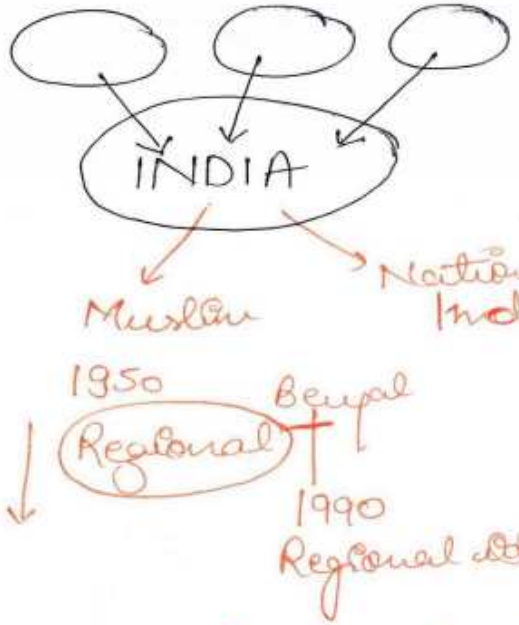
Regional Identity since Medieval and Ancient times.

→ 19th Century

subsuming all within itself, the identity of being us.

Preexisting identities subsumed into India.

Competing regional identities.



Reverse is also possible.

Regionalism and Nationalism also cooperate

They have a hierarchy within themselves

Rabindranath Tagore – (1911) India's National Anthem

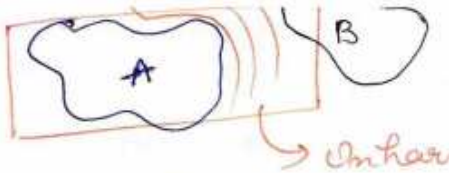
Bharat Bhagya Vidhata → I

later – Regions mentioned

↓

1905 → Amar Sonar Banga

O Ma, Amar...



→ Inharmonious

Any project to be successful should resonate to the people.

Territorialization of political life → dynamic process



→ Publishing map

→ Local dissemination ↔ Parliament / Private

→ More autonomy → 371

West Bengal - Gorkha land

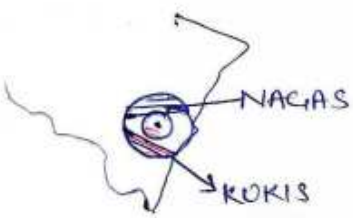
Art. 16

→ Autonomous District Council

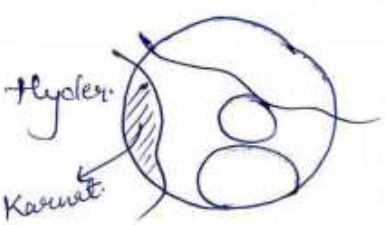
- legislate
- Execute
- Adjudi-cate

6th & 8th

India
↓
North east
↓
States
↓
G/K/J



Article (3)
I wave → stabilizing (existing) political identities



Political mediation may come from armed groups and NSAs.

No distinction b/o Punjab and Pak.

→ Nagaland



① It should not be violent

② → Parameters ⇐ Ethnicity / language

→ Religion (X)

Regional disparity → Telangana, Jharkhand, Chhattisgarh

Sustainability of Dev. / Environment.

↓

Uttarakhand

Causes of Regional demand

→ Regional disparity (Jharkhand - Bihar)

→ Cultural Imposition WB – Kalimpong and Darjeeling.

→ Son of Soil

→ Modernization of Political life

Traditionalisation of modernity

Bengal, Bihar, UP → Punjab (Kharif season)

Caste, Religion, Region → Power → Vote

Periphery → Bangladesh Eg:

Art. 3 Power to empower

Phase IV: Asserting Power – The concentrated way
Christophe Jaffrelot

The decentralisation of power that Modi administration has sought during the last 5 years partly explains why India is now considered to be case of centralised federalism like Australia.

In contrast to initial discourse of PM Modi vis-a-vis the centrally sponsored scheme, role of governor and action of central agencies, nothing has changed in 10 years.

The slogan of TEAM INDIA [illegible] shows contrast to

the lack of consensus with states on such imp. matters like demonetization, Covid response, politicization of position of governor (appointing even retired CMs as Governor).

Also the fact that Modi is at the forefront during regional elections in states puts particular stress at India's federal structure. Now the BJP no longer runs in general elections behind a regional leader who is projected as the next CM but behind the PM who then 'designates the CM after victory'.

↳ hero worship
↳ violation of Parli. form of govt.
↳ federalism

Not by 'CJ'

Note:

The efforts by the Central govt. to come up with slogans, 'One Nation, One Elections'

Tax (Indirect)
Language (Promotion of Hindi language)
Adhaar Card (ID)
Agriculture Market

Invokes reactionary response from the states as it threatens their autonomy.

Regionalism

What is region?
Both regions and nations are not self-evident realities on Ground.
Regionalism and nationalism (Independent statehood) can be located in the process that some geographers & Political Scientists describe as territorialization of Political life. Pak. ← → Andhra Eg:
It never become "fully accomplished once and for all"; but remains subject to states and non state projects.

Regions are socially constructed, politically mediated and actively performed accomplishments, defined in this manner, one could hardly accept a sharp dividing line b/w region and a nation.
Their interaction among each other might result in 'tension' or might also 'synergize' them.

Ayesha Jalal writes the retrospectively constructed official nationalism of India and Pakistan have sort of ~~obscure the fact~~ to ignore the multiple alternatives of popular nationalism that lost out in the final battle of state power.

In India, there has been diff movements at diff. times

- Secessionist Movt's; which aimed at separation. Eg: Kashmir Khalistan, ULFA (ULFA), Naga.
- Movt's for creation of separate states within the framework of Indian Const.n (Bodo land and Gorkha land)
- Movt's for greater regional autonomy
- Son of the Soils movements.
- Mild form of regionalism, (like local reservation and

explanation for emergence of regional movements:

→ Impact of modernization
When democracy is introduced in traditional society, people go for identity based mobilization.
Region being one of the most important ascriptive identity.

→ Regional disparities or uneven development leads to creation of identity which is often not connected with traditional ideas of regionalisation → Eg: Telangana, Jharkhand

→ Sons of the soil which is a concept that talk about the rights of the local people over land, culture and resources

→ Politics of opposition at some places regional identity is constructed in opposition to something. Eg: Tamil identity (anti-brahminical, anti-Hindi)

Acc. to Paul Brass, nationalism is a very short term trend, regionalism is a permanent feature. He is supported by Sanjib Baruah as the observed 'our identity as a Bengali, Punjabi is centuries old whereas our identity as Indian is just 70 years old.

Response to the Regionalist demand (Integration)

Constitutional Provision

- Federalism
If Secularism is a response to counter communalism, F. is a response to accomodate regional aspirations.

English as a link language

- Provisions of 8th Schedule providing constitutional recognition to national languages (22).

All India Service.

Provisions related to asymmetric form of F. to provide variable power sharing mechanism on a case to. (Art. 371)

- Alliance with regional parties now at local and national level has provided a sense of confidence to various regions. (out of Const.nal Provisions)
- Stabilizing regions as a state project (Art. 3)

The Demos enabling feature of Indian explains the survival of India as the world's largest multicult -ural and multinational democracy.

This feature has allowed majority at the centre to respond to minority demands from states for greater autonomy.

Paul Brass has observed emergence of few rule (not formly articulated) behind central govt.'s approach to regional demands.

→ Such demands should not be violent, and it should also sort of secession.
→ Groups making such demands can adopt any parameter cultural and non cultural basis but cannot be underlined by religion.
→ It should be backed by popular support.

This is reflected in the way India has been re-organ nised thrice in three waves whereas the I and III wave has been completely peaceful it is the II wave (reorganisation of North East) which have not been fruitful.

This can be explained by the fact that state stabilization projects for regions should stick with the people for the state is not the only actor in territorialization of political life. In cases where the territories do not stick an entity can be provided to both States & NSAs to provide leadership to the unaccomplished task.

G unhayal Singh explains this via a core periphery

model. Regional aspirations emerging from the regions are always stabilized and not a cause for concern but such mvmt in periphery always remain a concern, because in border areas both states as well as NSAs have an advantage of operating with a large freedom.

So by F. as a political principle understood as an aggregate of politically organised territories, Baruah argues that federation building and not nation building is the appropriate project for India.

Inst. → Pak, US, Yugoslavia

Response of India State to Secessionist activities.

Atul Kohli explains that India has been relatively successful in taming separatist aspirations. He further explains that such mvmt follow an inverse U curve, which follows a pattern in which first, there is a heightened mobilization of group identities (violent response against violent groups) followed by negotiation and eventually such mvmts declines as exhaustion sets in, some leaders are repressed while others are co-opted by some genuine power sharing mechanism.

So we can see that regionalism itself is not a threat, it's our management of regionalism that becomes a threat.

Girod K. Jha feels that subnationalism in Indian Politics has generally been regarded as something that is anti-system and an anathema to nationalism. But the functioning of Indian State for X no. of years has shown us that regional demand legitimized at right time strengthens the nation itself.

Reena Singh in her book How Solidarity works for welfare' gives an entirely fresh perspective connecting regional aspirations with the regional development. She feels that when solidarity within the sub-national political community is strong (Kerala, Tamil Nadu) citizens put collective good over individual welfare and support progressive social policies that results in drastic human developments but where such solidarity is weak, as in case of UP, Rajasthan and Bihar. such common purpose is absent and public policies are significantly less developed.

What should be the approach to deal with future regional mant.

Acc. to Atul Kohli, democracy is one factor that enables aspirations but it can be countered by more democracy.
Regional mant's reflect aspiration of people for sharing power, hence by devolving substantial powers, creating institutions where people can be coopted in the decision making is the only way forward.

Acc to professor MP Singh, there is a need to strengthen Panchayati Raj institutions and democratic decentralisation is the key to handle India's diversity.

Hence, any demand for regional identity should not be seen as crisis of nation building but rather should be seen as crisis of development and hence balanced regional development, inclusive growth & co-operative F. are the only options available on the table.

Do we have more states?

Appointed by Central executive → Governor ← Emperor the Panchayats and Municipalities.

Governor → 163 (1)

Governor → Removal on the wishes of President

Governor → SUMMON/PROROGE / DISSOLVE → ends the mandate of people

Governor ↔ 356 → 365, 255 → Situation 'Const' mandated'

overtly political

Reservation of Bill → Reduces the power of HC

Bill → inter State Trade

Govt. Change → Replacements

Politicization – Lok Sabha, Electoral form

Governor competing with the current CM.

Editing the speech

CM → Single largest party

CM → Alliance

Other Single largest party not aligned.

I Preference Pre Poll alliances

(PM + ≤CM) → finalize list of 100 people

appoint anyone, anywhere

→ consultation with CM.

Request Report → 'Speaking document'

↓

President approved (not only the fact)

Inter State River Water dispute

↓

Conflictual

↓

Whiskey is to drink., water is to fight

Water → politicization → emotive issue

Water → inter state River (Centre)

Entry no. 56 of List 1

States (27) (not included in 56)

Art. 262 → Parliament to make law — ISRWD Act / Basins Act.

→ Disbands SC → (One thing 131)

It become technical rather than a ~~political~~ legal issue

→ Rivers themselves change path
→ Glacier + Rainfall + Ground water
} climate change

→ Use + Distribution → Urban agglomeration
→ Homes
Agriculture
Industry

SC entry into ~~distribution~~ regularization of water

ISRWD Act

↳ what is a inter water dispute → control
↙ use ↓ distribution

Parliament can

section 3 → On receipt of request — not defined

→ Tribunals submit the Award, it has to be notified (no time limit)

Creamy layer of delay by SC

Set up the tribunal (no time limit)

We may go under correction.

Art 21
32↓

River Kaveri



→ Right to life (water)

Minimum supply should be ensured

To have no award → Central govt.
↓
not good for party having national aspiration.

No new tribunal every time dispute emerges.
One permanent tribunal.

Adjudicate
Mandate → Consensus
↓
Not create a position of A Vs B.

(If it fails)

↓

Central (data collection) ← Tribunal

Intervention can be denied even then by SC.

Small vs large States
Small states are supported by Rajni Kothari and MN Srinivas.

Arguments for

- Fulfils political aspirations
- Administrative efficiency
  Resolution of identity crisis
- Resolution of internal colonisation

- Security threats can be resolved.

Bibek debroy - 50 states

Arguments Against

- Statehood can't guarantee development.
- Results in aggressive nationalism - sons of the soil
- ↑ in ISD - creation of new disputes like Hyderabad and Chandigarh Bhakry.
- Threat of Balkanisation.
- Strengthening of regional parties.

Rather than more states, we should go for strengthening decentralisation - strengthen PRIs etc.

Centre State Relations

Governor → Partition & secessionist movts created need to keep watch at local events.

- Indian Const.^{n} formed not in atmosphere of optimism, but that of fear, trepidation.
- Gov. is like long arm of union with iron fist & velvet gloves.
- Sole Paradox: The Gov. Sage or Saboteur

Const.^{nal} provision →

Art. 153, 154 → The (E) function of state be vested in Gov. & shall be exercised by him either directly or indirectly.

↓

There shall be a governor of a state.

Causes of Gov. - State frictions fraction

Lacunae in appointment/removal process

Gov. have become political appointees and there is no provision for impeaching the Gov., who is appointed by President on Centre's advice.

No Security of tenure

Gov. has a 5-year tenure, though he can be removed by the President at any time.

No time limit for granting assent to a state bill
It has been held in Purshothaman V. State of Kerala case (1962), under Art. 200, there is no time limit for granting the assent and lack of guidance regarding matters he should accord or withhold assent.

Legitimacy
Since Gov. is not elected, his power to undo the will of the legislature by just declaring that he is withholding his assent, raises concerns of legitimacy. Additionally, no court is entitled to go into the justification of such withholding.

Lack of guidelines to exercise powers
In Const.n, there are no guidelines for exercise of Gov.'s powers, including for appointing CM or dissolving Assembly and thus Gov. have been accused of acting on behest partisan politics.

Lack of mechanisms to resolve differences
There are no provisions laid down regarding how the Gov. and the state must engage publicly when there is a difference of opinion. The management of differences has traditionally been guided by respect for each others boundaries.

Sarkaria Commission
- The procedure of consulting the chief minister in appointment of state governor should be prescribed in Const.n itself.
- The governor's term of five years in a state should not be disturbed except for some extremely compelling reasons.

The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly.
Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.

Punchhi Commission
Governors should be given a fixed tenure of five years & their removal should not be at the will

of the Govt. at the Centre.

- The procedure laid down for Impeachment of President, mutatis mutandis can be made applicable for Impeachment of Governors as well.
- Exercise of discretionary power must be dictated by reason, activated by good faith and tempered by caution.
- In respect of bills passed by the state legislature, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.

National Commission to Review the Working of the Const.n (NCRWC)

The president should appoint the governor of a state only after consultation with the chief minister of that state. The question whether the ministry in a state has lost the confidence of the assembly or not should be tested only on the floor of the house

Bommai case (1994)

The question of state govt. losing the confidence of legislative assembly should be decided on the floor of the house. The power under Art. 356 is an exceptional power & should be used only occasionally to meet the requirements of special situations.

Rameshwar Prasad case (2006)

A Governor cannot shut out post-poll alliances altogether as one of the ways in which a popular govt. may be formed. Unsubstantiated claims of horse-trading or corruption in efforts at govt. formation cannot be cited as reasons to dissolve the Assembly.

Nabam Rabia case (2016)

SC held that Governor has no discretion in matter of summoning the house if the CM enjoys majority in the house and, therefore, is bound to act on the advice of the cabinet. Also, in case the Governor has reason to believe that the CM has lost his majority, a floor test could be ordered.

Reforms diagram

Whisky is drunk, water is to argue.

India has 25 major river basins running through the nation, with as many as 103 sub-basins. Many of these rivers traverse more than one state, leading to conflict between the states regarding the use and dist.n of water, for industrial & agrarian uses & for consumption. The resolution of ISRWD, consequently, is vital to the functioning of India as a federal state.

For the same reason, ISRWD's resolution and the processes and inst. that guide such resolutions, are the site of continued & intense conflict & contestation.

Water dispute & Constitutional framework

Art. 262 and the vesting of power in parliament :-

a) The resolution of federal disputes - i.e. dispute b/w states, or b/w states and the Union - is constitutionally contested through judiciary.

b) Art. 131 → Original jurisdiction of the SC
An exclusion, however, was carved out for ISRWD, under Art. 262 allowing parliament to decide the forum & manner of resolution.

ii) Inter-state river in federal nation :
a) Schedule VII of Col differentiates b/w regulations of inter-state rivers (List I, entry no. 56) and use of water irrigation and canal, generally (vested in List II, entry no. 17).

Traditionally justification for vesting the control of inter-state river in Union have revolved around the claim that parliament controls matters of national interest, while states control matters of local interest.

The consumptive use of river water, on the one hand, as Homdasji Manekji Seervai has noted is fundamentally local in nature. At the same time, in current times where the use of water is in multiple forms and with the ↑ing emphasis on delocalisation of agriculture practices, the national significance of the use of water can't be minimised.

Parliament's role → ISRWDA

a) The River Boards Act was enacted with the declaration that the Union govt. should take under its control

river and [illegible] in public interest.

i) ISRWDA → Was an act to provide for the adjudication of disputes relating to waters of interstate rivers and river valleys.

* Significant features of ISRWDA are :-

i) Defines "Water Dispute"

ii) excludes such disputes from the jurisdiction of the SC.

iii) It confers a power upon the Union govt. to constitute tribunals to resolve such disputes.

When a dispute has occurred or in the opinions of a state govt. is likely to occur, the states makes a request to the Union govt. to refer the dispute to tribunal. It is only when the Union govt. is of the opinion that water dispute can't be settled by negotiations, that it shall within one year from the receipt of such request constitute a water dispute tribunal.

Upon the const^{n} of a tribunal, the water dispute, is referred to it for adjudication. The tribunal submits its report to the Union govt. setting out the facts as found by it & more significantly," giving its decision on the matters referred to it". Sec 6 of the act mandates that the Union govt. shall publish the decision of the tribunal in the official gazette and the decision shall be final & binding on the parties to the disputes.

* Inter-state River water dispute resolution : Concern of Diffc^{ies}

The principles of inter-state river water dispute resolution → Act gives no indication of the principles that have to be applied by the tribunal in deciding the disputes.

Bar against the SC's jurisdiction :-

i) On the one hand, the court has rightly held that only states may raise 'water disputes' but in doing so it has had to reconcile this with the issue of enforcem -nt of the fundamental right to water. Despite this, in certain specific circumstance, the court would have the jurisdiction to intervene.

→ Disputes that were not related to the use, distribution control of water.

→ Locus standi of ward disputes instances of [illegible] filing petitions.
→ Tribunal have not proved to be the most efficacious forums for dispute resolution.
This machinery has fail to command the respect it deserve as a constitutional forum. The SC, armed with the power to punish for contempt is able to deal with states in a manner far more effective than tribunal especially in respect of matters that have pol. overtones.

(ii) Post award litigation:
Appeal against awards → Art. 136 grants the SC the power to hear appeals by special leave from any order, judgement, decree, determination or sentence in any cause or matter passed or made by any court or tribunal in the territory of India. The observations of the SC in State of TN v/s State of Karnataka would suggest that the SC could examine constitutional or legal issues that may arise out of an award under Art. 136.

Enforcement & implementation → The SC, in reconciling Art. 131 with A-262, held that the enforcement of award of a tribunal in relation to 'adjudicated disputes' doesn't raise a water dispute and a suit for that purpose would be maintainable.

• Delays in Resolving disputes :- (A matter of grave concern)
§ Much of the delay arises at the stage of constitution of a tribunal. The union govt. is of opinion that the water dispute cannot be settled by negotiation.
The 2002 Amendment provided that the union govt. shall within a period not exceeding one year from the date of receipt of the request, constitute a tribunal.

(ii) Publication of Awards :- Sec. 6 of the Act requires the union govt. to publish the decision of tribunal in the official Gazette. It is only upon publication that award becomes final and binding.

Inter-state council :- Article 263 → PM is chairman of Council
→ CMs of all states & UT with LAs & administration of

Assigned with duties of investigation & discussion such subject in which some or all the states or union terr. and one or more of the states have common interest; make recommendation for better co-ordination of policy & action w.r.t. these subjects & deliberate upon such other matters of general interest of to the state.

- Non-permanent constitutional body, set up presidential order in 1990
- Strong mech. for cooperative centre-state relation.

5 Zonal councils created under provisions of state reorganisation Act, 1956 also provide a meeting ground to state & UTs

Challenges:

i) The council hasn't been assigned the function envisaged in clause (a) of Art. 263 of the Col namely, "inquiring into & advising upon disputes, which may have arisen b/w states", as recommended by the Sarkaria Commission

ii) Lack of regular meeting. since constitution of ISC, the body has only meet 12 times, although its procedure says that it should meet at least 3 times every year.

ISC should act as a tool for cooperation, coordination & evolution of public policy.

Interstate disputes

The successful functioning of Indian Federal system not only depends upon centre-State, but inter-state relations too

- Constitutional provisions
  - ① Adjudication of inter state disputes (262)
  - ② Co-ordination through ISC (263)
  - ③ Mutual recognition of public act, records
  - ④ Freedom of interstate trade, commerce & intercourse (301-307)

Dispute
- Border
- Water
- Minority

- Extra constitutional - Zonal councils

Interstate water dispute

for adjudication of

any dispute with respect to use, distribution and control of waters of any interstate river & river valley.

② Parliament may also provide that neither SC nor any other court to exercise jurisdiction in such dispute

1956 → ① Interstate water dispute act for establishment of tribunal.

② River boards act for reg^{n} & dvpt of interstate river & river valley.

Water: State Subject (Entry 17)

to interstate river & river valley reg & dvpt: Union list (56)

Resolution - Art. 131, 262, 263, 136

ISWD issue

i) Const^{n} of tribunal
ii) Delay in proceeding
iii) Legitimacy
iv) Implementation
v) Jurisdiction
vi) Environmental
vii) Reorganization of States
viii) Regionalization
ix) Geographic

Question: Weakness of I-S river water dispute redressal mechanism? Give suggestion.

Ans. Art. 262 bars jurisdiction of SC/any court over/ SW dispute ISWD Act, 1956 provides ad-hoc, tempo-rary, exclusive tribunals. The award by tribu-nals carry force of SC's award and binding on disputing states. As seen during Cauvery dispute, this arrangement has not been effective & suffered from several governance & institutional challenges.

Weakness

Despite SC order, Karnataka refused to release water for TN. There is institutional vacuum for implementing tribunal awards. The responsibility of Central govt. Set up Instit^{n}. hasn't been fulfilled.

During distress time, the dispute become the matter of

[illegible] to animate & escalate disputes. ∴ opportunity for vote bank politics.

Adjudication by tribunals involves lay-down politics adversarial litigations causing chronic delays. The arrangement deprives the state of an avenue to redress their grievances, after tribunals are dissolved.

Suggestions

2nd ARC – i) Central govt. to become party in dispute
ii) SC to take note Art 262 should avoid entertaining SLPs.
iii) Need of creation of permanent water tribunal & national water law for use, conservation & management of water.
iv) River basin organisation – Centre, state & local govts.

Fali Nariman – Criticizes the functioning of tribunal.
Punchhi Comm.n – Recommended multi-disciplinary composition of tribunal as per global trend.

Conclusion:

- Union govt. has recommended amendments in ISWD Act and proposed an agency to collect data including rainfall, irrigation & inter-basin flows.
- Cabinet also decided to constitute a permanent tribunal to resolve disputes over river water.

18/Dec/2023 (#125)

Political Economy -

Demonitization - Economic policy
↳ Political Consideration

Farmers Bill -

People who control APMCs were regional parties

India - low level of inflation → direct impact on people.
↳ CPI 2 ← 4 → 6
↓
Electoral politics

SOFT STATE → highest amount of fiscal deficit
→ BoP issues

(1950) → 1984 : Rural privileges (Vote bank)
No reform for PSUs until 1990

Regional parties became prominent

Red Tapism in the hands of Central govt.

We chose to reform (Relation - Political)
↳ Pak. (Relate)

Gandhi

(self-sufficiency
Village level
(Agriculture)
↓
no surplus, nothing to be monetised
↓
Agri credits

Surplus
Cottage industries
(Khadi)
requires manual labour

Gandhi didn't support mechanization
(only for few)
↓ ↓
Defence Energy

For Self addition :

(Nothing left)

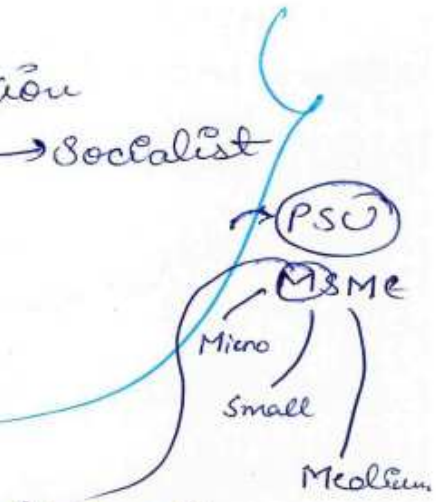
Nehru

USSR Model

1. Planning – Resource allocation → Socialist

1955 : Avadi Session
State shall be at the commanding height of economy

Bread manufacturing earlier – PSU



State not look over these

→ ∝ Invest

- CAPITAL GOODS → INDIGO
- Consumer Goods } State production } → Import substitution
  → To check inflow
- Regional disparities.
- Unemployment
  no requirement for skill and creativity

India better performer as compared to other 3rd World countries.

MACRO ECONOMY

Employment

GDP

Inflation

Demand for diesel and Crude oil

We were are to substitute import and became self-sufficient to some extent.

Problem with State control

Monopoly → inefficient → losses

PSU running at ↑ Losses → Tax

Products → Capital goods

Consumer goods (Inferior qual

Tariff
Non-Tariff

↳ highly skilled professionals ← IITs, NITs, IIM

PSUs become reason for Brain Drain

↙

Creativity not allowed

↳ corruption; Red Tapism

Commanding heights → PSUs

→ Regulate

Land, Capital, Labour } guiding by laws

Private production

Ideas } govt. controlled

You leave out TATA, BIRLAs (by utilizing exceptional cases)

Petroleum refinery

Everywhere scope of corruption

Max amount of Black Money

Political Economy

Almost all the economic decisions that are taken, there is a politics behind, almost all the economic challenges faced by developing and poor yet growing economy bring political and economic questions to the fore.

Political economy refers to the distribution of political and economic power in a given society and how they influence direction of development and policies.

Gandhian Perspective

Gandhi wasn't an economist and didnot give any specific model of economy, it was S N Agarwal.

S N Agarwal presented Gandhian model of growth in the following way:

- Rural economy focused around self sufficiency, abolition of money lender, cooperates, rural credit, dairy farming.
- Village industries to be centered around Khadi & cottage industries.
- Large industries limited to defence, chemical, steel and mining.

He wasn't against large industries and so he was against mechanisation resulting in concentration of wealth.

Gandhi's focus on minimization of wants, production by masses not mass production aimed at inclusive development for attainment of Economic Swaraj.

Nehruvian Perspective

- Influced by Lenin and Stalin, state led economy.
- Investment in heavy industries which would provide basic platform for industrial development, import substitution.
- Economic planning through 5 year Plans.
- Rapid industrialization to reduce dependence of agri. employment generation, creation of capital & consumer goods.
- Small scale industries for private player and not a priority for state.
- Science and technology promotion to create 'enablers of growth'.

Advantages of Economic Policies
Strong base for Industrial production.
Self reliant economy.
India became one of the advanced country in the 3rd World.

Drawbacks
License Permit Kota Raj
Stagnation in agriculture
Imbalanced regional development
Uncompetitive capital and Consumer goods production

PSUs

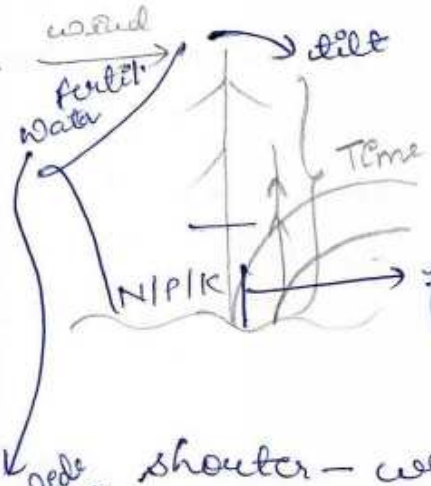
Role of PSUs

To provide robust base for future development of economy
They were seen as a mechanism to implement the planning on ground.
They were guided by Top down approach, and their agendas and policies were set through 5 years Plan.
Their achievements include ↑ in Industrial prod.n, enabling Green revolution, infrastructure development, creation of small urban centres throughout the country.
Except for very few PSUs, most of them started showing the weakness of the model and developed structural problems.
Arvind Talati has said that PSUs are like old family silver where family had to spend more to keep the silver shiny.

By the end of 1980s, PSUs were overmanned, marked by low work ethics, low capacity utilization, excessive expenditure and absence of rational pricing policy.
Most of the PSUs were running very high deficits

and income cheap contributes to very high fiscal deficit during 90s.

Green Revolution



We flood rice production because of weeds

Wheat

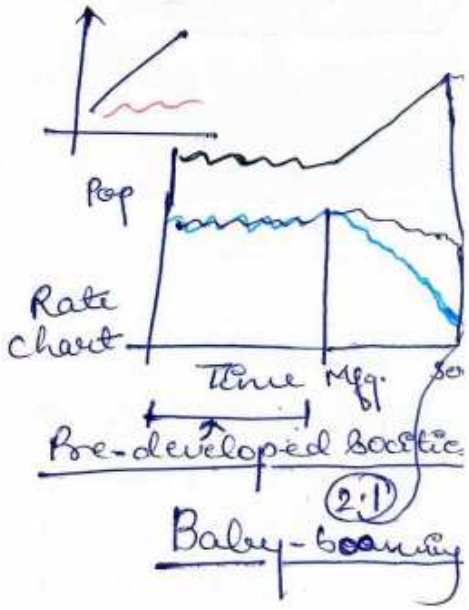
nutrient grows in the stem

shorter – weeds

– get more nutrients

HYV seeds → Every season → new seeds

Purchase → Fertilizer
→ Seeds



MSP → Income viability
↳ Ensuring ↑ing food production

Political (Regional disparity)

(-ve)

Regional disparity
Inter personal disparity

Land owning communities

Land outsource to Rich
↓
Punjab, Haryana

Land outsource to Poor
↓
UP, Bihar

Ecological aspects
↳ Depletion of Groundwater
↳ Reduction in fertility
↳ Monocropping
Unsustainable form of agriculture.

Green Revolution

Introduction of high yielding variety (HYV) seeds of wheat and rice along with credit facility and price incentives (MSP), PSOs took care of fertilizers and Pesticides.

The main purpose behind introducing GR was creating Self sufficient India as far as food prod.n is concerned. In this sense, it was expected to be a ~~skill~~ scale neutral strategy (same to big and small farmers).

VKRV Rao, GR ↑ed gap b/w rich & poor. There is an ↑ in indebtness in ~~India~~ villages in India.

Rudolf and Rudolf attribute emergence of Bullock capitalists to the GR.

19/Dec/2023 (#126)

Aseema Sinha As a result of GR, many Indian companies developed that revolved around providing agricultural goods and services. For eg: companies specialising in mechanisation of farm tools, companies providing novel seeds, and agricultural credit companies.

Dhanagare attributes rise of new farmers movement for Price subsidies as a result of Green Revolution.

Vandana Shiva in her book 'Violence of GR', critics the impact of GR

- Ecological consequences
  Shiva argues that GR which aims to ↑ productivity has led to severe ecological consequence, extensive use of chemicals has harmed Soil fertility, water resources and biodiversity.
- Social inequities
  Corporations and wealthy farmers have benefitted most from GR leaving small and marginalised at disadvantage.

- Seed patents and genetic engineering
She criticise the corporate control of seeds through patent and she feathers the point by stating that this control over seed deprived farmers of their traditional rights to save and exchange seeds.
- Loss of agriculture diversity
Acc. to her, GR has promoted monoculture and emphasized on importance of preserving tradition -ally, locally preserved crops varieties.

Realizing the impacts of green revolution, the govt. itself has adopted new agricultural policies to respond to these challenges. Now that we have achieved food self-sufficiency, the focus is now on sustainability and increasing the nutritional values of the farm produce.

(151)

Industrial Licensing
- Areas
- Sector
- Production
- Labour relations

Urbanization Modern
- Interaction beyond traditional identities
- Politicization around class
- Communal forces
- Students politics

Politicization around non-traditional identities.

Once you give someone rights, it's a stronger politicization

Problem in budget making
- ↑ agri (inefficient) policies
- Electricity (free)
- Fertilizer (free)

Core Vote Bank

Industrial reform → PSUs
- efficiency
  - labour reforms
- Private
- left tilt will go away

Class which commanded power lose interest in the state
↳ facilitated rolling back of state

1991

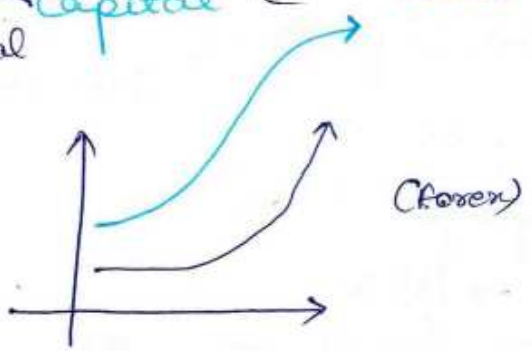
widest in terms of actions → LPG → in terms of impact ← widest

to facilate

① Industrial de-licensing
- List → State
28-29 → 3
Nuclear (Atomic Energies)
Defence
Railways
- Decoupled → Regions

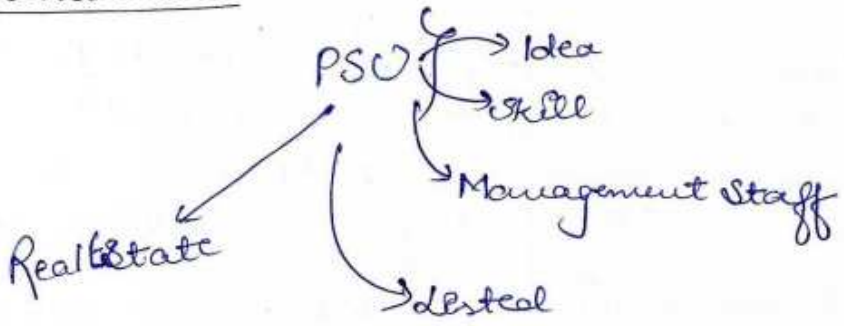
② Import restrictions went away
→ Quota go away.
→ Custom duty drastically come down
GATT → WTO

③ Forex
100R → $?
Demanded → $
Illegal trade where $ ↑
float
Modified → managed floating
RBI → Market player itself (now)
Current (earlier control both now, let go current)
cap on Capital
Capital



RBI (regulator - facilitator)

Privatisation



DIPAM

Govt. slowly and gradually coming out of that PSU (not performing well)

Globalisation

X CAP → % Share holding
→ Quantity

GDPs fed

Lack of development politics

India's politics → dominance of free bie

Free bie vs Public good (Laptop distribution)
→ result

Decoupling ?

Not relying - Very powerful

Impact of Import Substituting Industrialization on India

Devesh Kapoor has summarized India's policies which lasted for over 4 decades since 1950s. It was marked by High Tariffs and over valued exchange rate, Import control and Industrial Licensing policy.

ISI is a modernization strategy which results in rapid urbanisation. It is a breeding ground for literacy and mass communication which are basic requirements for modern politicization.

expands political consciousness of participation. Urb.n leads to erosion of traditional loyalty to the joint family & village breaking old commitments, and greater respect for individualism and so patron client relation in village is ↑ly replaced either by class or sector based or communal group demands. This is also reflected in India's experiments with ISI. The literacy rate more than doubled from 28% in 1960s to 52.2% in 1990s (Gol)

Democratic politics in India became ↑ly competitive as a result of social mobilization. A variety of contests such Congress Vs left, Congress Vs Students Union, Congress Vs Jan Sangh, Congress Vs right wing, Congress Vs regional Parties began to surface.

The congress party under Indira Gandhi was unable to either accomodate or even response to an ↑ly mobilised opposition invoked National Emergency b/w 1975 and 1977.

In sum India's modernization promoted literacy, mass communication, Urb.n in the context of political democracy. This mobilised the people to participate in political protest and voting.

ISI and low productivity

— Krueger

Acc. to Krueger, ISI generated classic conditions of low productivity in India marked by extremely low efficiency, with very few clear guidelines, it generated rent-seeking behaviour.

Isher Ahluwalia, study on productivity of Indian

manufacturing industry have the dismal performance in total factor productivity growth in 1970s.

Tyagi and Sivamai had noted that while Taiwan and South Korea were catching with US level of prod.ty, India did not catch up at all and hence India's international competitiveness declined (India's share in manufacturing exports of all developing countries came down from 2.1% in 1962 to 0.4% in 1990).

Two things could happen under these circumstances, the govt. could subsidize various sectors by providing seeds, fertilizers, irrigation and concessional finance to retain substantial farmer vote bank and govt. could continue providing protection to organize labour and industry both, and so in this way, the govt. lost the room to maneuver when it came to formation of budgets year-on-year.

Reforms of Year 1991

The Indian Economy's 1991 crisis was not a sudden blip rather it was a result of variety of causes which were in development for 40 years.

The manifestation of the economic control manifested in following ways -

i) License Raj and Permit Raj:

Elaborate system of licenses, regulations and red tapism that was required to set up run and even close the business.

It was executed through monopolistic and restrictive trade practices Act, 1969 which controlled the quantitative as well as qualitative aspect of licensing.

ii) Import Substitution:

Replacing imports with domestic prod.n as an attempt to reduce dependency on foreign countries but this led to monopoly of Indian industries and took

away any incentive for them to improve the quality and efficiency.

A Closed Economy:
By making Rupee inconvertible, charging high Tariffs, Import licensing.

The long term repercussions of these policies were combined with immediate factors like compliance caused by Bombay High ~~Reserves~~ Oil discovery, Collapse of Rupee-Rouble trade, USSR disintegration and crude oil price hike due to Gulf War resulted in BoP crisis.

India's Response

Liberalisation

Deregulation of Industrial Sectors:

Industrial licensing was abolished for all but very few Sectors. Many industries, which were reserved for Public Sector in 1991 have also been de-reserved and market has been allowed to determine prices.

Financial Sector Reforms:

Change in the role of RBI from regulator to facilitator of financial Sector
Ending the monopoly of nationalised banks and allowing the entry of private banks. Foreign investment in banking has also been allowed.

Taxation Reforms:

Gradual reduction in corporate tax and simplification of procedures.

Foreign Exchange Reforms:

Market was allowed to determine foreign exchange

rate.

Trade and investment policy reforms:
Dismantling of quantitative restrictions on imports, reduction of tariff barrier, removal of licensing provision for imports (except hazardous and environmentally sensitive products).

Privatization

Privatization means transfer of assets from Public Sector to private sector which has an impact of improving financial discipline, facilitates modernization, ↑es the investor confidence and does not allow loss making firms to continue.

Globalization

Process of international integration arising from interchange of world wide products, information and communication technology. India allowed Globalization by opening up its borders to goods, services as well as capital.

The Impacts Of LPG

- Size of economy ↑ed from 6 lakh crore to 240 lakh crore
- Increase in foreign investment both in FDI and FII
- Significant growth in foreign Exchange Reserve
- Growth in service exports
- India has been able to develop vibrant capital and financial market, ↑ly consumption expenditure.

Chinks in the Armour:
- Limited inclusivity and jobless growth.
- Complicated taxation frameworks.
- Reforms did not touch upon agriculture, informal sector.
- Lack of emphasis on Human Resource Development

elite', LPG era has [illegible]

Clientalism:
Appeal of vote on the basis of freebies.
Electoral competition poorly revolves around Public Good.

Demand side puzzle:
Weakness in demand of public goods due to identity politics and ↑ly declining of middle class from public goods.

Organisational Capacity:
Administrative capacity of Indian State beyond maintaining law & order is fairly inadequate.

Lack of Decentralization:
PRIs created almost at same time as LPG are still dysfunctional because of lack of 3Fs; Funds, Functions and Functionaries.

Montek Singh Ahluwalia in his article 'Economic Reform -a retrospective view' said LPG has done well in some areas and has neglected in some areas. Ac. to him, poverty has been considerably reduced as a result of LPG. Although situation of people just above poverty line is not very good. There is still no good system for delivering basic services like health and education.

LPG has not resulted into growth of employment opportunities but has enabled India "middle income status" and so India is bound to face challenges if not reformed and can likely get trapped in middle income trap.

Bimal Jalan in his book "Emerging India - Economics, politics and Reforms", has written that reforms has released creative energy and productivity but at the same time performance poorly in social indicators

It will be grave mistake if we don't go for critical reforms.

Amartya Sen — Uncaging of Tiger has not resulted into tiger like spirits. The spirit has been compromised because of lack of ~~progress~~ social reforms, stagnation in agriculture, skill deficit, problems of Bimaru states.

China is an interesting case study because while riding on globalization, it simultaneously invested in human capabilities.

20/Dec/2023 (#127)

IDENTITY

Castes

Caste:

Social Institution

Creates a hierarchy of purity and pollution which is based on the accident of birth.

BIRTH
PURE Social intercourse
→ Feeding
↳ with whom
→ occupation
→ rules of marriage
POLLUTION

India's Jati's System is very different from Caste System.

→ Religious Institution as well

→ Ideology
↳ to reinforce upper caste → dominance.
95% are dominated without using any force.
Willing subordination

Britishers → India revolves around 3 centre
Villages
Religion
Caste System (specifically for Hindu Society)

Caste is vertical interdependence and obedience.

No interaction among Region A and Region B

Region A ⊣⊢ Region B

organisation ... aggregation

With categorisation, → with mobilisation

CASTEIZATION OF JATIS

Nehru – No sympathy for caste

Col reflects those ideas.

Caste Agnostic → Const^{n} Art. 38

1950 → Liberty
→ Justice
↓
Equality

Caste System take away FOSE

Const.^{nal} values in conflict with social reality.

Injustice comes from social stratification.

Louis D.

Class → open → Merit Status Worth

Caste → closed → Birth → occupation → position in the hierarchy

Eg. Foreigner → It doesnot allow horizontal mobilization also

No consonance b/o merit & status

Status >>>> Fiscal Welbeing

Why would you invest?

Caste : Scope of Horizontal association

Press → Access to Global literature
→ Material
→ Journals

Modern Transport

Indian Post → letters, Post Card

What it would be to I read about equality

TRADITION
Caste

MODERNITY
democracy

Modernity is getting traditionalised.

Caste Based Political Parties
Distr.n of Tickets
Political Alliances → M-Y
→ AJGAR

Pressure Groups on the basis of Caste
↳ Marwadi Seva Sangh
↳ Karni Sena
Dharmashala

How tradition get modernised?

Societal → Religion

↳ It is Secularised.
↳ Caste lost its religious role.
Secularization → declining religious role
↳ Political platform
Caste has also become a political idea
Ideology for lower caste to gain power.

REPRESENTATION
RESPONSIBILITY

Social JUSTICE

Earlier
Divisive force

Vertical Interdependence gone away
Unifying turned out. after

Divisive force → Unifying

Aspire for something (Delhi) → United (You will be under Delhi)

Caste look for Partners (Mayavati supported by Brahmans)
Caste is providing you an identity.

Way out of Caste system - SC, there is no need to discuss it. (It's not an overwhelming concern)

→ Deepen the Democracy in our country [illegible]
Awareness politicisation of Caste has done.

CASTE → Communalisation
↑ Cry violence as result of Caste

PM
JFK
ΣCM
Kanyakumari

Race to Bottom
→ ↑ Reservation → Dominion status

Ignorance of development
Caste Patriotism

Caste, Ethnicity & Religion in Politics

What is Caste?

Acc to GS Ghurye, caste is a social institution which creates segmented division of society, gives rise to hierarchy of groups with restrictions on feeding and social intercourse, civil and religious disabilities, choice of occupation. The term caste comes from Portuguese word Castus which means pure blood and hence western interpretation of Jati System comes very close to the racial understanding. Caste is both an institution as well as an ideology.

As an institution, it has social and religious significance (social stratification on the basis of purity and pollution) but caste as an ideology creates a system of values and ideas that has legitimised the privileges of upper caste and willful subordination of lower caste.

It is ideology in another view is that it provides a world view around which a traditional Hindu will organise his or her life.
↳ total Hindu ideology.

Louis Dumont has described caste system as normative model of social stratification which is opposite to the western model of stratification based on class because acc. to him in class, status is determined by merit whereas in caste, it is determined by birth. In class, power and status both come from economic welbeing whereas in caste it comes from purity & pollution vertical axis.

Also, by prioritising status over merit, it kills the latter.

And so these kinds of views convinced even Indian Nation -alist that the caste will not be able to withst -and modernity, Industrialisation, Urbanisation. That's why reflecting the same ideas, the Col didn't mentioned any kind of discrimination on the basis of caste.

Nehru went on to say that caste is a threat to national identity and has no role in modernisati -on project of India. Even while fully realising the incongruence of caste system with framework values of our constitution (Liberty, Justice and Equality). It was expected that tradition will dissolve with modernity and caste will become invisible.

But as Rudolf and Rudolf have famously remarked that in India, we see a curious case of modernisation of tradition and traditionalization of modernity.

Traditionalization of modernity has been explained by D. N. Sth, he emphasises the impact of caste in following manner

- → Caste based pressure groups and political parties.
- → Parties choose candidate acc. to caste combinations.
- → Caste based alliances
- → Caste based political polarisation (Brahmin vs Non-Brahmin in Tamil Nadu)

But while interacting with modernity, tradition

itself has been measured.

↳ Secularisation

Earlier caste was emp mainly for ritualistic and religious purposes, now caste is being used for secular purposes (employment, education and health), caste as an integrative force. Caste has been traditionally thought of as a divisive force but electoral democracy has transformed caste into integrative force (alliance formation and integration of similarly situated Jatis across the country)

↳ Caste as New Ideology for subjugated Caste

Caste has transformed from serving the interest of upper caste to now mainly becoming an empowering tool and providing grounds for social justice

IMPACT OF Caste In INDIAN POLITICS

Christophe Jaffrelot characterises caste mobilisation as silent revolution.

Rajni Kothari, articulates 'Democratisation of society' to caste and politics. He went to the extent of commenting that democracy in other 3rd World countries collapsed because of "absence of caste."

Acc. to Yogendra Yadav, interaction b/w caste & politics has led to democratic upsurge and deepening of democracy. He talks about two phases of upsurge.

- In 1960s when OBCs came out of congress
- In 1990s when Dalit left Congress and form their own political parties.

This shows that caste base mobilization has ensured that democracy in India does not remain

a top soil.

Acc. to Sudipta Kaviraj, the new class of political entrepreneurs have successfully utilised and harnessed 'caste as an identity in politics".

Caste groups instead of collapsing with historical embarrassment have adopted themselves surprisingly well to the demand of parliamentary politics. Hence, creating democracy of caste instead literacy of caste.

However, people like MN Srinivas, CP Bhambre and Ashutosh Vaishney do not agree with the above scholars.

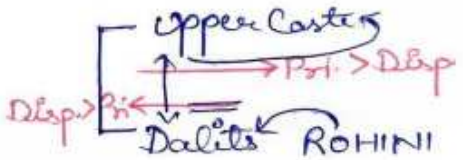
MN Srinivas has observed increasing role of caste in politics has led to ↑ in violence in India.

Acc. to CP Bhambre, caste politics is not good in the long run as he believes that caste politics led to communalisation of Indian politics. (When one side use caste, other side tries to put religion). Hence caste is neither good for national unity nor for democracy.

Ashutosh Varshney in his book 'Battles half Won- India's improbable democracy', argues that caste based mobilisation hasn't resulted into any concrete transformation in the distribution of power in society.

(Ash Vars)
Indian democracy although is a great success, it failed to do good in 4/5 the elections.

21/Dec/2023 (#128)



OBC ↔ SEBC

CASTE SYSTEM

North India ←
Brahmins + Rajputs + Other Upper Castes + Bhumihar Tyagis

South India →
Brahmin

North India ←

North-West:
Hindu Revivalist movt
Arya Samaj → Sudhi Movt
Brahmo
Vivekanand

Wider Social coalition + Movt's to maintain Caste System

South

Periyar – anti-brahmans
Jyoti Bha Phule – anti-brahman (anti-caste)
Tamil
Marathi
Narayan Guru

Clear cut disconnect from Congress

Federal structure
official language → English
→ Hindi

India – Abroad (South Indian) (Prominent Brahmins)

If Brahmins left, space provided to OBCs

Land reforms →
Local elections →
OBC
Local govt.
Tillers

All this propels OBCs in the politics fast
North India took >20 years for such reforms.

1970
Congress
→ OBC's
→ Richest (Rural)

Chaudhary Charan Singh
→ OBC party

Current Indian Politics is OBC Politics.

Politicisation of OBC
Modi as OBC

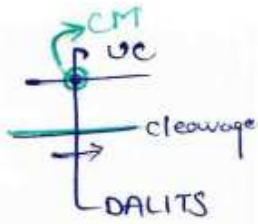
→ Caste calculation
caste equation

TICKET

Party → Developmental

Creating factures within OBC

Dalits have been deprived of any capital.



consolidation of all non dominant OBCs.

DALITS

- Co-option
- Co-operating with
- Co-existing

Symbolic in nature

↳ managerial approach

Autonomous

↓

Kashiram



Bahujan → SC+OBC

OBCs went away left → (SC)

Dominant Dalit BJP leader (Co-option)

Kashiram
North India → Dalit mobilization
Mayawati

Autonomous → It does not enables you power but when allows you power, you get absolute power.

Elephants Monument → Identity assertion.

→ Radical rejects both autonomy and cooption

↓

Main stream

People shift from Radical to Aut. or Coop.

Politicization

Dalit Identity → change in Nomenclature

→ Social Media

Globalisation

'Dalit life matter'

Athawale Ramdas Bandu

Religion

Sikhism → Counter to fight against Muslims.
Resistance becomes fierce when it comes along with religion.

Modern History

1857 → Blamed muslims for revolt.
1870 → AMU
1880 → Congress
↑ National
1905 → Bengal Partition
1909 → Separate Electorate
1920 → Sarvakar → Hindutava
NCM ← Islam

Means
→ Gandhi
→ Means, End
Khilafat
→ Religion in Politics

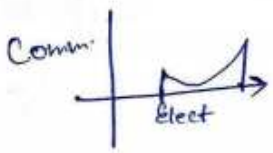
Ummah → Borderless territory of Muslims

IQBAL

1947 → Violence
↓
Politics
↓
Religion
Candidates
Ministers

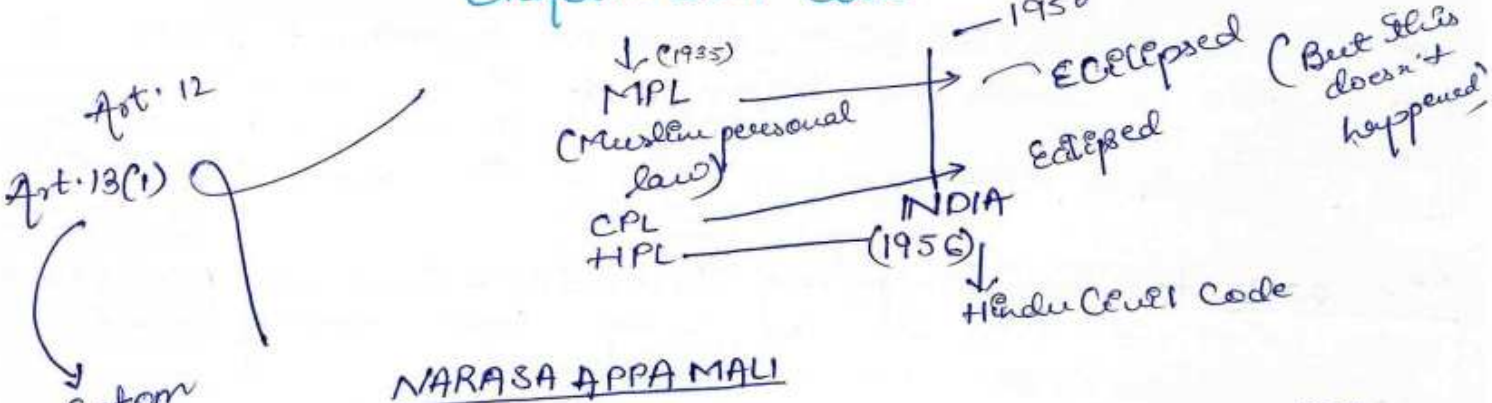
Association with religion diff. from communalism

Essentialist
Institutions
Instruments



UCC ← Secular

Uniform Civil Code



NARASA APPA MALI

↓

Personal law is not a matter of judiciary. It's a matter of Parliament.

You are going to take discriminatory laws.

Shah Bano → Muslim personal law

CrPc 125

Personal

↑

13(1) Conflict Part(III)

↳ 372

VII

Personal laws } Concurrent

Art. 29/30

Art. 25

① Discriminationary → Gender Justice

② Sovereignty

Hindu Civil Code → Parliament → women (< 14%)

↓ Minority

UCC → Hindu Civil Code + Criminal affairs

Autonomy → 6th

↳ 371

PRATAP BHANU MEHTA

DOMESTIC VIOLENCE ACT

DOWRY

Age is Primary Consent is Second ← POCSO

Marriage Age → 18, 21 (21, 21) (now) Child Marriage Act

OBCs in Politics

OBCs are intermediate caste, the most important factor in Indian politics currently because of their numerical strength. In the Col, they are described as SEBCs and they are distinguished from SCs and STs both.

Marc Galanter in 'Competing Equalities – Law and Backward Classes in India' suggests that OBC is a very loose conception.

OBCs represent large no. of intermediate castes primarily peasants, farmers & artisans. They are internally differentiated where the status of some aligns more with SC whereas in other cases some OBCs groups have status equivalent to upper caste.

One of the most imp. developmental initiative taken by Indian state soon after Independence was the introduction of land reform legislations. These legislations were defined to break the hold of non-cultivating intermediaries by transferring ownership rights to the tillers of the land. Even though land reform initiatives were invariably subverted by locally dominant interest, they ended up weakening the hold of traditionally powerful but numerically small groups of Upper Caste.

Similar initiatives of the Indian State aimed at Social Change such as community development programmes Panchayati Raj, Green Revolution, directly helped the OBC community to enable them hold over local and regional politics.

History of OBC politics in India

Christophe Jaffrelot in his book 'The silent revolution' has explained the rise of OBC politics in north & ... India

Situation in S. India

OBCs are more dominant and OBC politics is older and mature and there are 3 reasons for this:

→ The composition of the society in south is diff. from North. In south, the only UC has been Brahman and rest majority pop.ⁿ is OBC.

→ The social reform movt.s in S. India like Jyoti Bha Phule (Satya Shodhak Samaj) & Periyar (Self Respect Movt.) Shri Narayan Guru (SNDP Shri Narayan Dharma Paripalana). Social reform movt.s were mainly focused on caste & caste based injustice and hence they were successful in strengthening the consciousness among OBCs. Brahmins were not able to counter this challenge.

→ Efforts from the centre to impose Hindi language ~~abused~~ the S. India and led to the assertion of Dravidian identity against centre.

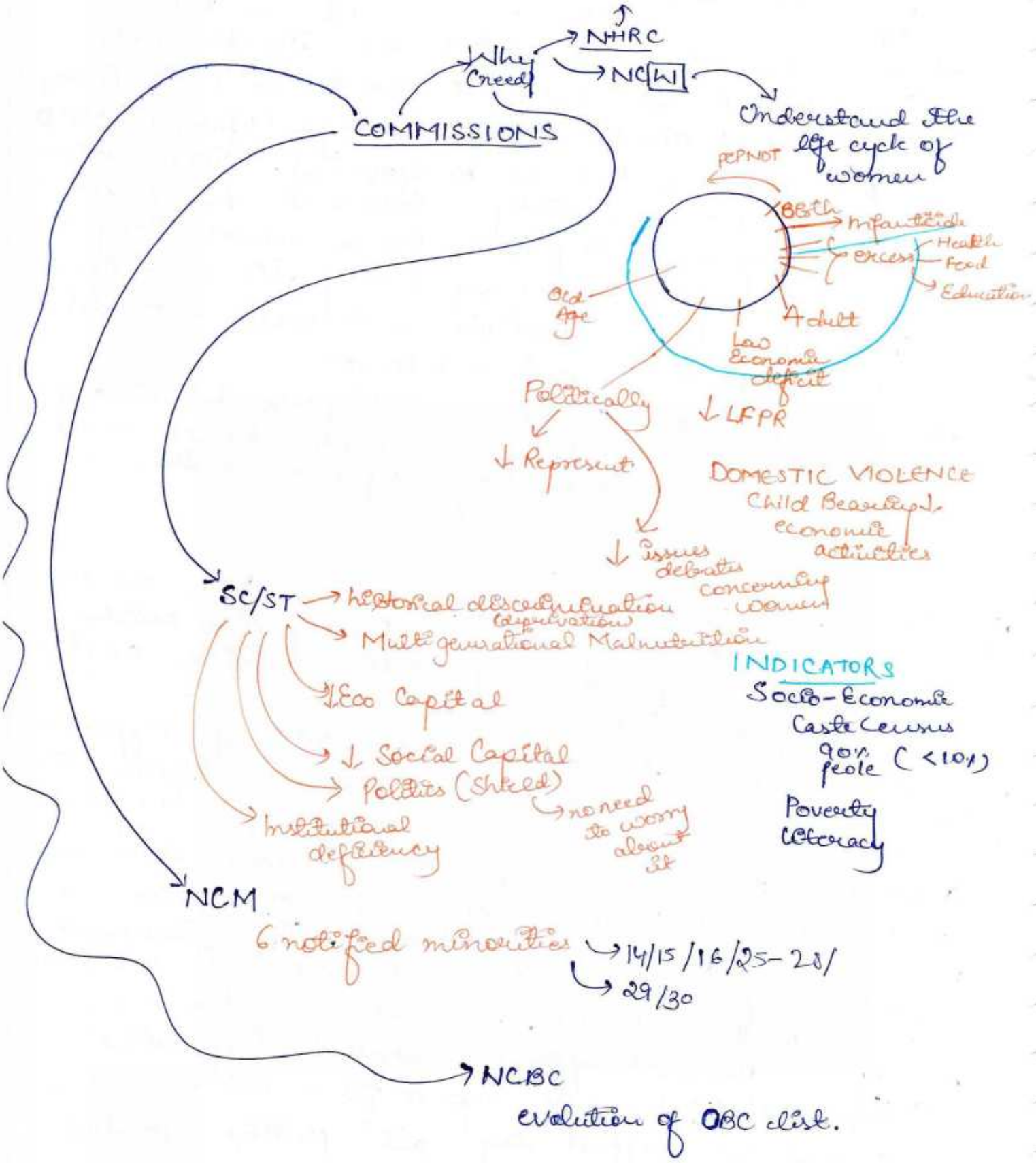
Situation in N. India

- In N. India, b/c of social reform movt.s focus on reviving hinduism (Arya samaj, Brahma Samaj, Ramkrishna Mission) the influence of Vedic religion continued for a very long time.
- In North, every region has coalition of Upper caste (UC) and ~~not~~ just Brahmins and hence OBCs in North remained the part of Congress ~~and have~~ for very long time. Hence the arrival of OBCs in N. Indian political scene as an autonomous force was delayed. The increasing influence of OBCs has resulted in mandalization of Indian politics, and it can be seen in multiple political offices, controlled by OBCs (CM and PM), but apart from this, there is a conscious effort by all political parties to new strategy around OBCs. BJP unable to counter Mandal forces with Kamandal ~~ke~~ ~~sacrificed~~

to non-[illegible]
note share ~~from~~ to 40-42 %

22/Dec/2023 (#129)

STATUTORY INSTITUTIONS/COMMISSIONS



Provisions in Constitution

Women - 14/15(3)/16 → DPSP

SC/ST → 14/15/16/17 / DPSP 332-340

Need Provisions in Const
How composition
Issues
Scholars

composition

NCSC/ST → Const^{n}
NHRC/NCM
NCW
statutory

Appointment
Removal
Term
Independence
HR
Power to enforce
hearing attendance

Issues

Insufficient fund
Member → X field
Human Resource

Election ~~Etc~~ Commission

→ Autonomous

Free & Fair Election

→ Peaceful ToP → No Questions

India & Pak: Democracy not evolved, Imposed

324

legal provisions

RPA ← Pre-electoral votes, 1950
RPA → 1951

Issues

→ Appointment (President has to appoint CEC) → not easy to remove
Other 2 members can be kicked out on the recommendation of CEC

→ RPA (1951)

→ Funding

Launder

Black → White
- Source is legal but disclosure is partial
- Source is illegal

Black → Power

Foreign

Electoral Bond

A (anonimity)

EB can not be purchased ~~not~~ through Cash.

Amends Companies Act → 3 years

~~7.5~~ → 100 to Pol. Party

FCRA

↳ Foreign Funding

State funding

→ Against new and emerging party

Obviates / ensure that private funding will go away

Conservative bias

Conflict

Transparent

Intra party democracy / RTI

Substantial funding done by state

↳ Media

→ Loud

→ Airtime

not feasible neither desirable

FUNCTIONING OF Pol Parties → CoM → President

↳ Centralisation of Politics

↳ Intra Party Democracy → Reforms will not be fruitful w/o In P. Dem

↳ Lack of inclusivity and nepotism

RPA Sect. 29

Define → Structure

↳ Process

↳ Amended

Strengthening Model Code of Conduct

Applicate of MCC is biased

Paied News
Fake News

Exit polls
Opinion polls
↳ Prove it to be credible

Parliament

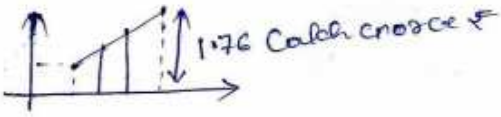


↳ Financial accountability
↳ 148/149/150/151
Duties and Responsibility of CAG Act.

ISSUES → Precedent
→ CAG (BIAS)
→ CoI
→ IAAS Indian Audit Account Service
→ POST MORTEM → REPORT → Public Account Committee
no time for tabling
→ Audit
What it actually means
→ Executive Action Taken Report



Money → 1000 Cr → Performance of the Scheme
↙ Financial Auditing
Compliance Auditing



CAG MGNREGA

Economy
Efficient
Effectively

(Toll) Eg

Capabilities ← PPP (Public Private Partnership)

UPSC → to uphold the merit
→ transparency

311

Lateral Entry → DYNAMISM → Globalisation → NGO → EM
→ Specialisation

Career → TIM

Prominent / Compulsions

Finance Commission

→ 280

→ Vertical + horizontal

C vs ES

Lack of representation

Qualifications

FC is one problem in fiscal federalism

Do the remaining work yourself!

10/Jan/24 (#146)

SOCIAL MOVEMENT

2. Membership
   ↳ share common social concern
3. leadership
   ↳ Officer holder
   } Organisation starts with
4. Sustained collective Action
   } documentation

Social cause

Sustained collective feature

People's Union for Civil liberty
↓
PIL

AMNESTY International
↳ Reports

The action can be manifested in
↳ Litigation
↳ Protests
↳ Media

If Objective achieved, then what? → Objective keeps evolving!

Development process → dynamic

Growth
↓
Economic
↓
Socio Econo.
↓
Human Devel.
↓
Sustain. Develop

All the people who treats Development-al process as an industry, become industrialist

SM overwhelmingly focussed on Class ← Marxist

Centrality

Old Social Movt
↳ Overwhelming reliance on Political Party

RACIAL
Gender
Environment
Tribal
Anti War
Demilitarisation/Nuclear Proliferation

New Social Movement not marked by their reliance of political parties. Infact, they are so powerful (Pressure Gro. → they compete with state also)

New form of cleavages/alienation — Eg: Student (JNU)

Globalisation
↳ dislocation of industry

Environ.

NSM → beyond the obsession of Power (State)
↳ Universal
Funds / Highly Wealthy
DIP - Developmental Industrial Player

5 Star Movt.

(IIM) Eg
People hired
Now → lost motivation

Lobbying: → FICCI
Association where all the Industrialist are members and whenever they want to get a desired policy ~~tooth~~ which can be good for overall industrial setup

PUCL
ADR
} Social movt.

They will together call on PM and make the ministries aware about what the problem they are facing.

Metoo movt. is not a social movt.
not a social movt.

Social movt. (LGBT)

Social Movements
Civil Liberties and HRs, Women Movts and Environmentalist Movts

Social Movt.

Social Movt. (SM) is defined as sustained collective action over time and must be marked by some degree of organisation to include a leadership and a structure that defines how members relate to each other, make decisions and implement them. Those participating in a social movt. have shared objectives and ideologies.
Spontaneous and disorganized and short lived actions

are not categorized as social movements.

- The debate on class and collective action has a long lineage within Marxist scholarship. The long standing Marxist assertion that organised mov.ts of workers and peasants to shoulder the historic burden of bringing about radical, social transformation.
- However events around the world shook the Marxist views and sparked off a new wave of social movements which has continued since then. For example:
  i) Mov.t for civil rights, for African American and its militant sibling, Black Panther
  ii) The student's movement against restrictions on freedom of Speech and Expression. → Indian sibling (Maoist - Naxalism)
  iii) Peace movements (Nuclear disarmament, demilitarisation)
  iv) Environmental mov.t.
  v) Women's mov.t.
- All these movements sharply challenged the notion that the class conflict was the central social contradiction around which the social action would be organised and hence a new definition of social movement emerged in the form of New Social Movement (NSM) which demonstrated that class had become redundant as an organizing form of identity.
- NSM were the product of post industrial social formation where the welfare state had made classic forms of exploitation obsolete but where modern society created new forms of "alienation" and these movements reflected and responded to this very discontent. They were all very 'over-class' in that their politics exceeded a particular ideology (Marxist) and (nationhood). → Nationalism
- This is reflected in India also where since the 1990s many social mov.ts have become embedded in Global networks and alliances. For example the link forged by the Dalit groups with mov.ts against racism around the globe, the participation of environmental mov.ts in the transnational opposition to [illegible]

WTO and the ties b/w movement for the adivasi rights with an international campaign on indigenous people are some of the instances of the growing trend.

Adivasi Jan Sati

- Another key feature of social mvmt. in this era is "institutionalisation of campaigns" and the growing presence of NGOs who work as agents of mvmt. Such NGOs provide support in various forms (funding, networking, advocacy, documentation and publicity). → PETA
- In this process they are supported by other players like donor agencies, charities, pressure groups and in some cases by the state also.

If the hallmark of the previous generation of social Movement activists was the grass root political experience from which they derived their credibility, new social mvmt. activists tend to draw their strength from formal academic qualifications, professional employment and network of other social actors.

State highly relying on the social auditing done by the NGOs
If deficit – NGO will come

NGO

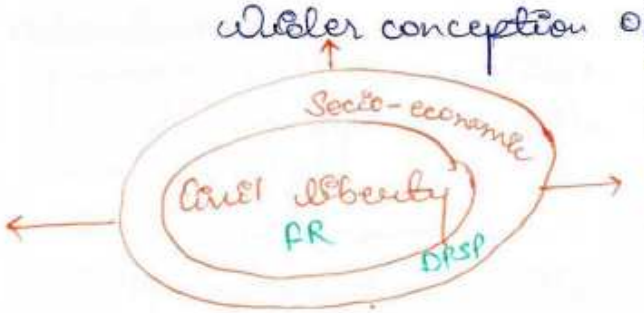
Pressure Group

only those people who are impacted by the common cause only they form the membership of Pr. Gr.

Jean Dreze
Aruna Roy
Medha Patkar

CIVIL/HUMAN Rights

Wider conception of HRs → Civil liberties are just the subset of HRs.



Dalit Movt. → HRs Movt.
Kabir → Dignity

HRs started earlier (before British)

Congress (Earlier) → x social Concern

Only Concerned with Political motivation (objective)

1940 → FoSE → Ilbert Bill → Equality

Rowlatt Act → liberty

→ for 20 years, no Social and Liberty movt.

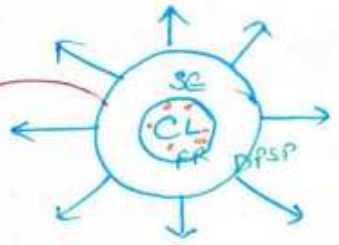
1st → Reasonable Restrictions Art. 19(2)

In other -
Revolution → Const.

In India (social)
Const. → Revolution

Art. 14, 15, 16, 19, 20, 21, 22

J. L. Nehru → Indira



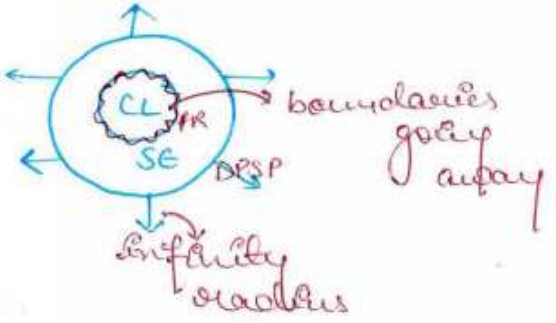
JP → Total revolution
Committed (J)

Minerva Mills

Judiciary

UCI (1st)

Through indirect means, golden Judicial rights



Civic Liberties and HRs Movt.

In India, the last quarter of the 20th C witnessed growth recognition of HRs due to a combination of factors.

It is obvious that this interest in HRs are rooted in denial of life and liberty that was (1975-77). The

mass arrests of the leaders of opposition and misuse of politicians by central agencies especially those who could present a challenge to centralisation of power are some of the dominant images that have survived.

Rights which are considered necessary for civilized existence are known as Civil Rights. For example Right to life, liberty, equality, property, etc. These rights are based on the philosophy of liberalism and the purpose is to check the arbitrary exercise of power by the executive.

In this context India's struggle for independence can be seen largely as a civil and human rights movt. mobbed into political movt.

Early nationalist demands for basic rights like freedom of press, greater representation in assemblies, agitation against Rowlatt Act and Ilbert Bill were instances of the Civil Rights Movement.

Nehru was one of the prominent civil rights activists and his insistence led to the establishment of the Indian Civil Liberties Union (ICLU) 1936.

The conversations around human rights were also not missing in INM, discourses on dignity (lower caste and tribes), protection of minorities and regional disparity found its place in the mainstream political discussions.

All of this was reflected into India's const^{n} which became a document to give rise to a social revolution. It is perhaps the first Const.^{n} which incorporates the spirit of HRs in India (a very poor country) Other the FRs are also available to non citizens. Indian const.^{n} also has the second level rights in the form of socio economic rights.

However this is just the courtesy of rights. The issues have emerged with respect to Civil and Human Rights just after the promulgation of the Constitution.

22/Jan/24 (#147)

AFSPA
UAPA

Preventive Detention laws
Extra Judicial Killing

↳ National Human Rights Comm.
↳ Some matter go beyond law/state.

Women Movt (WM)

Women Movt. in Brahmin Vs Dalit
Urban Vs Rural
Muslim vs Hindu

Raja Ram → Sati
I.C.V → Child Marriage Widow Remarriage
P.R → Caste
(Ishwar Chandra)

→ Gandhi (Non-violence) → Non-violence (Moderates)
↓
Satyagraha

Participation ↑ ⇒ x say ~~no~~ ↑ in National Issues (actual)

↳ 'Domestic'

Differential treatment of state (Women)

Towards Equality → Mainly Women (Sex Ratio)

align with already existing Social Movement

Congress WM
RSS WM

↓
Collaboration

→ autonomous
↳ (association means become secondary)
Dowry deaths
Rape, Domestic violence

not able to form universal identity
(Differentiated Universalization)

Split on the basis of identity especially caste and religion.

National Commission ~~for~~ of Women (Weakest mst.n)

the movt.

Electoral politics perpetuate identity.

Indian Constitutional provisions like Art. 22, 19(2) demonstrated that there will be restrictions on civic liberties in free and independent India.

The 1st CAA limited the scope of FOSE and dilluted Right to property which further eroded civic liberties in the country. Since then trend has been to misuse various preventive detention laws to curb dissent.

Even Sedition law has been only recently modified to suit and align with the const.n.

Emergency and Aftermath

There was a ~~growth~~ of gradual decline in the rule of law and the rise of police state in India in late 1960s. There was also the growth of executive high headedness, corruption and towards the beginning of 1970s very high inflation. That's when we see the beginning of new phase of civil rights activism in the country. By this time nostalgia of freedm movt. was over and and failure of the govt. obvious. JP who led the students movt. across the country called for 'Total revolution'. He even called on Armed forces not to obey the order of govt. In this context govt. called for the creation of committed bureaucracy and judiciary. As soon as the election of PM Indira Gandhi was cancelled National Emergency was evoked resulting in darkest hour for India's democracy and civic liberties. It was a trial period for India's democratic framework and fortunately it survived. There was a proliferation of civil rights org. like People's Union for Civic liberties (PUCL), citizens of democracy. In the same phase judiciary had also become active in India's civil rights movt.

From 1980s there has been a growth in the consciousness related to HRs across the globe which is also

association arm ✓ led to the dynamism of new phase of HR activism. Judges like PN Bhagwati Institutionalized PIL which proved to be a revolutionary step in providing access to justice.

SC which had been reluctant w.r.t. DPSPs became the champion of socio & economic rights by widening the length and breadth of rights available. Under Part III higher (J) not only legitimised the social mvmts but also paved the way for multiple future social mvmts.

A recent trend in HR and CL mvmts has been felt as a result of globalisation where the impact of International NGOs like Amnesty International, Reporters w/o borders, HRs watch have opened their offices in India and are ↑ly driving the agenda.

GoI has also established institutions like NHRC, NCSC, NCST, Right to information to protect Civil liberties & HR but their effectiveness is debatable.

→ any mechanism that enables transparency & information will become essential part of Civil life. currently

India faces prominent HRs concern like -

(i) HR violation by members of Armed forces in insurgency affected areas (AFSPA)
(ii) Large no. of preventive detention laws (UAPA, PMLA)
(iii) Large no. of undertrials.
(iv) Caste & Religion based violence

This shows that HR activism in India has not resulted into any qualitative improvement and India's commitment towards protection of HR is more of a rhetoric than reality.

Ac. to Upendra Bakshi, there is no HR mvmt. in India rather we have HRs industry in India - Advocacy groups, employ management graduates rather than social activists. Their organisations act with "corporate approach" rather than "social service approach". They also lack legitimacy because they are biased in their functioning. They actively raise HR violations by armed forces but hardly talk about such violations of militants

has to work within limits. Indian state does not tolerate any activism going beyond limits of national discourse. Whenever govt. adopts zero tolerance towards terrorists it ends up towards zero tolerance towards human rights mvmt.

It is to be noted that so long India will continue to suffer threats to territorial integrity and security there will always be a justification with the govt. for laws which compromise HRs. However Indian govt. should seriously think about bringing reforms in the following way:

(i) Reforms in NHRC by giving it greater powers
(ii) Ensuring discipline among enforcement agencies
(iii) Carrying out police reforms.
(iv) Judicial reforms.

Women Movements

The WM in India is made up of strands that defer on the relatively primacy of the issues, strategies of mobilisation, sense of identities, forms of collective action.

Origin of the women mvmt. in India is more often than not traced to 19th C struggles of social reforms. The nature and content of such struggles were determined largely by colonial conditions especially at a time when colonial govt. faced with struggles for National self determination, was experiencing growing crisis of legitimacy through

The foundations of these reforms were laid down to edu^n. and removal of pratices like child marriage, Sati, Pardah, resistance to widow remarriage. These reforms although did not give rise to social mvmts. b/c they worked within the limits of patriarchy where women were seen as passive recipients of efforts of a compassionate male reformer.

The period of social reforms was followed by the Nationalist period which is generally seen as one in which the activist women made her appearance in various forms after Gandhi rose to prominence. The visibility of women in public sphere during this period was however surrounded by discourses like "motherhood", "women's proper place", "valorisation of sacrificing ability

The nationalist mvmt. & the prominent women simultaneously edged out issues of women emancipation from the national political sphere. A careful distancing from the adoption of a critical stance towards "their men" while appealing to the colonisers was a constant characteristic of women campaigns.

Hence the nationalist mvmt. widened women participation but maintained public silence on women issues.

The report of CSWI (Comm. on status of Women in India) in the form of "Towards Equality" drew attention to the unequal status of women after 2 decades of planned development. ('71)

"Towards Equality" report drew on massive data to reveal the substantive erosion of women's social, eco., political status after Independence and in particular the steep marginalisation of rural & poor women. The report was perhaps the first to identify the trend towards declining child Sex ratio and "missing women".

Women activism in 1970s-80s was among the Several democratic struggle in period all of which stressed the need to redefine development.

The adivasi women traditionally less restricted than caste Hindu & Muslim women initiated strong struggles particularly in form of protection of environment & against alcoholism combined with domestic violence.

In Maharashtra an anti-price rise mvmt. was organised by a temporary coalition of women belonging to CPI(M). Middle class women in urban Bihar & Guj. participated in large scale mvmt. against political corruption & rising prices of food & fuel.

By this time two deferent and opposing perspectives on women struggle has developed. One which show women issues as one within the democratic struggles & proposed that women struggle should be waged alongwith already existing class actions like trade unions, revolutionary org.s and pol parties. And another one which preferred "autonomous approach" where these groups preferred not to associate with the existing mvmts.

Significantly the drive towards autonomy became a central motive of women's mvmt. in 1970s-80s giving it the lable of "autonomous women mvmts". These autonomous mvmts. raised concerns around Solely women interest Sexuality, rape, domestic violence, all of which were critical of Institutionalised Patriarchy.

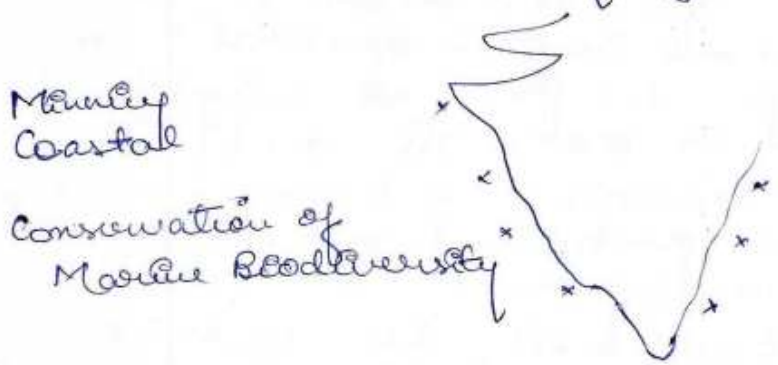
Environment Movt.

Decoupling Environment with other issues

Chippko Andolan → Deforestation → Women property → livelihood (mass)

In India; Tribals and Peasants Movt. (Envir. Movt.)
↳ led by Upper Middle Classes (Urban educated elites)

Appiko → Social Justice (community rights over forest areas)



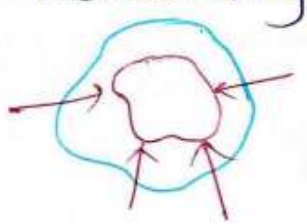
1927 → Indian Forest Act

State → Possession of all the forest areas.

Produce → INM

After Independence (Legacy) forest belong to you

Biodiversity (Animal Rights / Biodiversity above Human Right)



1972: Wildlife Protection Act
→ large scale displacement

Co-living 2006 (Forest Rights Act) ST and other Traditional dwellers Rights Act. (Non Trad. but belong to tribal comm.)

Namdhari → Lions protected in GIR area

Bishnoi community

Urban Envt. Mgmt

Overpopul.n
Unplanned Urbanization
↓ soil fertility
Settlement facing flood (Not planning)
↓ Ground water
Lack of Public Trasport → ↑ Air Pollution
→ Noise Pollution

Air Protection Act
Water Cons.n and Prot.n Act
Air and Water Cess Act
1986 → Envt. Protection Act

Environmentalization in India.

4 pages for Women Mgmt. (pdf)

Environmental & Ecological Movements in India

EEM

EEM are among the imp. examples of collective action of several social groups, protection and recognition of Constitutional and democratic rights which are not defined by law but form an imp. part of the day to day life of subaltern masses like the control over their resources, the right of Indigenous people to preserve their culture, protection of environment and biodiversity.

These mov't's also reflected and enlarged vision of economics & politics. Economic Justice sought by these mov't's doesnot mean mere distr.n of resources but encompass a larger vision like enhancement in quality of life. Right to live with dignity and they are elevated to the demands of participation in decision making.

While agrarian or worker class mov't's have had a long historical trajectory. Environmental mov't gained world wide attention only in the 2nd half of 20th C.

It may be mentioned here that scholars have tried to understand and analyze these mov't's in diverse ways. In genral, these mov't's are grouped under tribal and peasant mov't's and under a large umbrella of NSM. This is so b/c ecological aspects are generally associated with peasants and tribals whose survival and livelihood depends upon the state of natural resources like forest & water whereas some other scholars categorise them as elite mov't's as problems & concerns of the local communities are generally articulated by urban middle class elites. In fact there has been no single unified and homogeneous environmental discourse in India. There has been what Ramchandra Guha calls "varieties of environment -alism."

Env^nt M. in India – Issues and Concerns

The Env^nt Mout. is broad and generic term which is generally used to describe diff. types of local struggles & conflicts concerned with livelihood issues and ecological security within the larger context of dev^t debate. These struggles have critiqued question -ed the notion of dev^t and conservation strategy pursued by Indian State. The Indian Env^l Mout. are critical of colonial model of dev^t pursued by post colonial state. The post Indep^ce states failed to build up development agenda based on needs of people and continued to advocate modern capitalist agenda which led to the destruction of environment, poverty and marginali- zation of rural communities, formation of national parks, sanctuaries, protected areas...

... represent conventional Env^sm which the Indian state advocated with the aim of preserving wildlife and bio diversity by pushing people out of these areas. In response to this conventional Env^sm which -ch considered the state to be the custodi -an of natural resources, the Env^M in India advocated the Ecology of "Env^sm of the poor". It not only criticized modern dev^t but also strongly advocated the revival of 'self sufficient village economy' as demonstrat -ed by successful examples in Gr, Maldhari and Bishnoi community in Rajasthan & multiple other comm^es in country. It brought communities to the centre stage of Indian Env^al discourse. These mov^ts stated that local communities are best suited to conserve natural resources as their survival depend -ed on the sustainable use of such resources. They further argued that in order to make the sustainable use of

be given back to the people in a nutshell, the Envl movt. in India concentrates on the issue of equity in relation to access and use of natural resources.

Unlike in the west, a significant characteristic of IEM (Indian Envt. Movt) is that the latter mainly involve the poor, the disadvantaged and the women.

Examples:

- Forest and Land based
  Issues:
  Right to access to forest resources, non-commercial use of N.R. Res., prevention of land degradation, Social justice, HRs.
  Examples: Chipko, Appiko, Tribal Movt. in Bastar belt. ~~dev.~~ ~~project~~
- Developmental projects
  → Dam & Irrigation projects
  Issues: Protn. of forest, rehabilitation & resettlement, Social Justice.
  Examples: Tehri Bandh virodhi Sangharsh, Silent Valley Movt., Narmada.
  → Mining
  Issues: Depletion of NRs, participation in decision making, direct democracy.
  Examples: Anti-Bauxite Mine movt. in Odisha.
- Industrial Pollution
  Issues: Stricter pollution Control Measures, just compensation
  Examples - Zahira Gas Morcha in Bhopal, Gaya Mukti Andolan in Bihar, Movt. against release of chemical effluents in major rivers across the country.
- Tourism
  Issues: displacement, Ecological damage, loss of

mineral economy.

Ex: Uttarakhal Bachao Andolan, Badlancho Saad Goa

- Organic Farming

Issues: Sustainable Develop.t, Eco - Sustainable agriculture, Transparency, democracy.

Ex: Ralegan - Siddi, Laurie Bakers Housing Experiments

Urban Based En.l Movts

In recent past, en.l pollution caused due to Urbani.n and Industrialization has become the focus of collective action by Civic Society Organisation. NGOs, concerned citizenary especially lawyers, Scientist, and environmental activist. They have sort the intervention of judiciary and drawn the attention of the state for showing concern to the pollution caused by process of modernisation.

All the major cities of India are facing acute air & water and other kinds of En.al pollution continuous immigration of people from rural areas into the cities, their habitat in the congested areas which exist along with pollution, ↑by no of vehicles and unplanned expansion of cities have created levels of environmental hazard.

Hazard → Vulnerability → Unsound infra., poor health infra., settling near flood prone area.

Early Warning syst. Disaster Response ← Preparedness ← $\frac{H \times V}{P} = D$ → Disaster

The protection of envt. did not form significant part of the policies of the Central Indian state. The Nehruvian model gave more emphasis to the Industrialization & showing much concern to the pollution it is going to create.

However things started to change slowly after 1972 Conference which provided a decisive direction to global En.l mvt. In 1976, a Cons.al Amendment called upon the state to protect and improve the Envt.

& to safeguard ... of the country & made Duty (Fundamental) of every citizen "to protect & improve" the natural envt. In the following decades, the state passed legislation to prevent Envt. pollution. air, water and finally ~~a~~ Envt. Protection Act (EPA 1986).

The (J) played a key role by recently the widen of ppl's right which included R2 Clean Envt. as inferred from various MC Mehta Cases.

In the phase of indifference of (E) and (H) about ppl's problem, the PIL became an effective weapon through which most Env. environmental mont. have been led. The intervention of (J) forced the State to introduce some measures for prevention of Env al ~~prevention~~ pollution.

Namami Gange (Executive measure)
Ganga Action Plan - Judicial Measure

Justice Krishna Ayyer, Justice Kuldeep Singh and Advocate MC Mehta have made remarkable contribution in protection of the environment.

~~Contribution~~

To sum up, env. al and Eco. l mont. became prominent in India since 1970s (like other such mont.s). The concerns of these mont.s are not confined to any particular group.

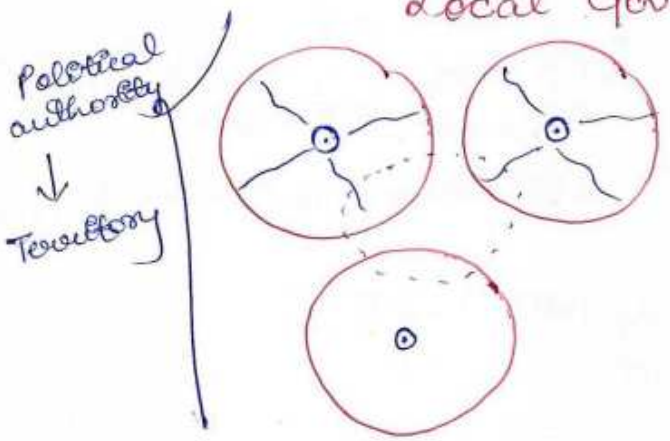
They are all encompassing, the entire village and Urban communities, women, tribal and peasants. Even the issues raised by them concern all Section of Society in varying degrees. These issues have been protection of peoples right to access natural resources, prevention of land degradation, promotion of commercialization of natural resources, maintenance of ecological balance, rehabilitation of displaced people. These issues are also related to people's dignity, env. al rights and their decision making rights on the issues concerning them.

The state disturb the ecological balance following independence which adversely affected the

people. The Kothi launched EEM with their leadership, NGOs and other Civic Society organisations. These movements have raised the levels of people's consciousness and have achieved success, they form a significant aspect of democracy in India.

18/Jan/2024 (#152)

Local Govt.



History - State centric which has commanded all the power

Across the Globe -

Globalisation, Climate Change, Civic Society → Enable decentralisation
↳ emergence

Local govt. → Small no. of people, small territory

Central capital kept on ↑ing the power? Why?
Idea of Nationhood became vigorous
∴ strong central govt., no sharing of power.

Powerful → Survival of fittest
Stickiness of map - Remember (Regionalism)

Social → West
↓ Global Financial Crisis
Planning

⇓
↑ CENTRAL

(Earlier) Capital A interacting with Capital B only
Global Governance Organisation

Separatist tendencies (Quebec; Canada) (Basque; Spain)
Multi-Level Governance
Above (Governance)
↑
Nation

↳ MGNREGA

Authority devolved through law

Eg: federalism

write down in Const.n so that it can't be (amended) altered unilaterally

↳ The (E) part is outsourced legal authority is retained



UNITARY

↙ ↘ REGIONAL Govt.

PROVINCES

FEDERAL

→ Decentralisation

→ Respecting autonomy of state

How is it related to Civil Society Org.?

Power shifting away from state.

AMNESTY INTERNATIONAL

↳ State Centralisation of power.

Want to split in multilevel governance.

Binding thread -- Village, National territory

India → National Govt.
State Govt.
(Dist.)
Rural level (3 level)

If Multilevel governance

Conflict on overlapping identities.

There will be multiple identities.



regional
state
National

Natural → Creation of Nation & Nationalism

Peaceful area → easy to local create

Local Govt.

Helpful

Literacy Rate

Security

Demo → Free & Fair elections

→ Indep.t aut. us Institutions

Stable Pol. System

Essential

Adequate → Funds

→ Functions

→ Functionary

not either or situation

all three are necessary

India - Gandhi

Why → In non-enforceable?

It is an emerging trend

→ creation of multilevel govt.

Nehru → against Panchayati Raj

→ b/c Planning

Father of Nation → Local governance

Patel → Territorial Integrity and Sovereignty of India (unity)

Ambedkar → Criticised the idea of social discrimination

When National Govt. functions under National Scrutiny it response under National Votebank.

National Govt. can't be too radical in a democratic setup.

Scrutiny of National as well as Global Media

Multilevel Governance ← Away from Media

Minor deviation will bring them to limelight.

Local ~~Govt~~ Govt. → Powerful (Left) → ☺ → Counter Congress hegemony → local leaders

West Bengal, Kerala

→ opposed to democracy and creating certainly anti Raj in

Decentralization of corruption rather than power.

Rajiv Gandhi → speaches about LG: coined by Narasimha Rao

LG (Local Governance) → Defined

→ power devolved not decentralization

If it has no stake in the central supremacy. → It has it means federalism not local gov.

Global experiments

Benefits

Response → Quantity ↑ → no: of decisions per year

→ Time ↓ → effective Eg: Sewage Management

→ Quality improved (Justice)

Getting relief that you are seeking

→ inclusivity and better representation

Accountability

→ Transparency

free flow of information in two ways.

(people participants to decision making)

Gram Sabha: You are Part of Process

RTI → One way

Grievance redressal → effective relief measures

State to people

people to state (Grievance Redressal)

Pol. Participation

↑ Voter turnout

→ Pol. Education (Awareness)

→ Accomodation

How local govt. enhances Pol. Education or Politicisation

→ (Politically Vocal)

→ Addiction

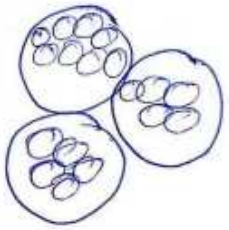
→ Deepening of democracy

Governance Integration

Vertical

Horizontal (When ministry interacts with other ministry)

At local level, vertical difference go away b/c you are sitting on a problem.



Mutual learning

Border areas — Centre govt

INDIA

3 Tier → District, Block, Village

11th Schedule

243G → May

Which one performed by whom not mentioned.

Subsidiarity

Activity mapping

Eg: Village

Primary School

Sec. School → Block

College → District

Octroi GST

Funds

SFC

State Finance Commission

State may devolve

Tabling delayed

Implement

Mayor elected person not functionary

Bureaucrats functionary

Functionaries

X Mechanism

Elections

State Election Comm.

MCC (Mode Code of Conduct)

Media scrutiny

Dissolution

State Leg. A.

Inclusion of MPs/MLAs

Provisions/conditions mentioned.

Modi rally in UP elections.
× sewage, × street dog
✓ Pak.

Ref. D

3F's resulted in fourth F i.e failure or lack of functionality

Central Govt.

may → shall
Do you think it's possible?
It can't be done. all power Shifting away from state.

Const^n Amend. ×

Allocation of fund to local bodies (Central finance comm.)

Independent Election Comm.
(SEC → Impartial)

Legislative Council → Mandate

No. of stakeholders reduces corruption

Const^n doesnot provide for Social audit

Const. Am. → Mandate social audit by

b/c it becomes public

Linking institution is missing
Change membership to provide for rural and urban representatives

parallel reform we don't carrying out.

Planning is diff.

NITI Aayog | MP/MLA

District Planning Committee

Get away of them or to make them accountable.

Jan 24 (#153)

Party System → How many? How they existed in past? How now?
→ Arrangement of parties in Electoral System
→ reflect diversity of the country

Role of pol. parties
→ voice to the people

Pol. Parties → interest in state → participate in decision making directly.
→ Organisation
→ Party Headq.
→ office holder
→ Cadre
→ leaderships

① Representation
② act as an agent of Goal formation ← ambitions
Eg: Ram Mandir

person of prominence
Mass Based

Cadre Based (BJP)
→ Internal mobilization & density
Political education
Disciplined
Presence of office bearer across the country

not every party have same level of cadre

Cadre - Prachaarak

Politics is always about the other

RSS
Communist party
→ ② Interest articulation → association with the state

Communist Parties - I flag bearer of goal formation

③ Political Education → Rights, Justice

⑤ leaderships creation : Modi, PV Narasimha Rao

legislative Part vs Organisational Part

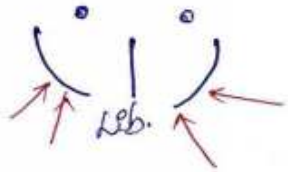
India's Party System

1885

I st : ← 1952

congress as coalition

Congress / communist parties / Hindu Mahasabha / Muslim league



Organisation

Cadres and mobilisation did not happen only on the basis of ~~territorial~~ constituencies carved within the state

1952 – 67

Congress Party

Social Mart.

SELECTION

→ organisation structure carried forward

+ legacy

Legislative Party

Organisational Party

Congress system

Multiple parties existed

Lost very ↓ % of votes

+ ↓ seats

... 67 →

Congress

Indira Gandhi

→ expelled those people

Decoupling

→ Cadre → Mass based parties

Personality

→ Populism

→ Centralisation

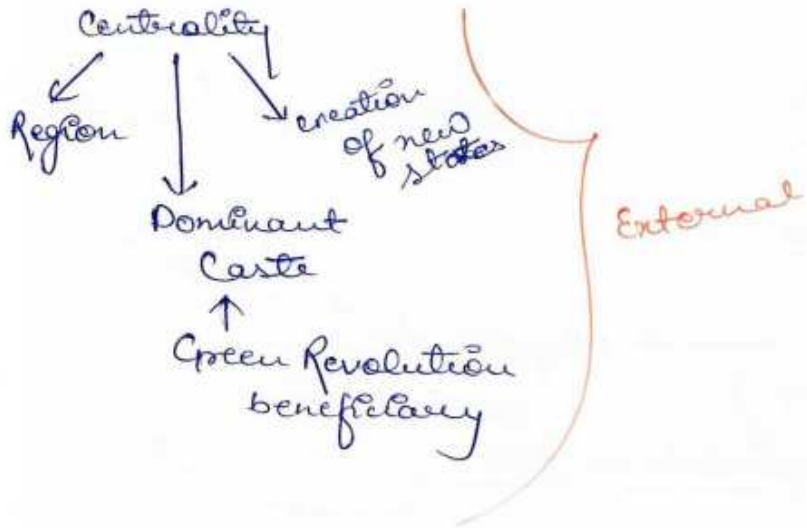
Internal



Mass based party

Professional politicians

Ideological base party requires Cadre.



1989 - 2014

Regionalisation of politics
Congress declining

BJP not wised to match Identity politics

Ideological diversity

Party A → Decouple India from Globalisation
Reverse Reservation

Urban middle class supports Ram Mandir I (mor)

Rethink Reservation ☺!

Ideological left/ drift gone away! Why?

We are worrying about Ideologies because of answer writing ☹!

BJP → flexible

Pragmatism

Radical transformation

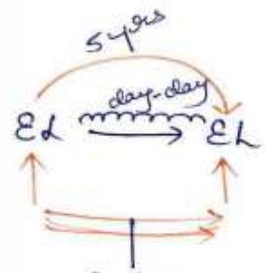
LPG
Globalisation
↓
X

(Urbanization)
Creation of Middle Class

Killer of diversity

Social Cleavages

dumping
counter Vailing duties.



Cadre goes away → Nepotism (don't have choice)

↓ Parliament

Criminalisation of ~~politics~~

Decline in Intra-party democracy

National Party

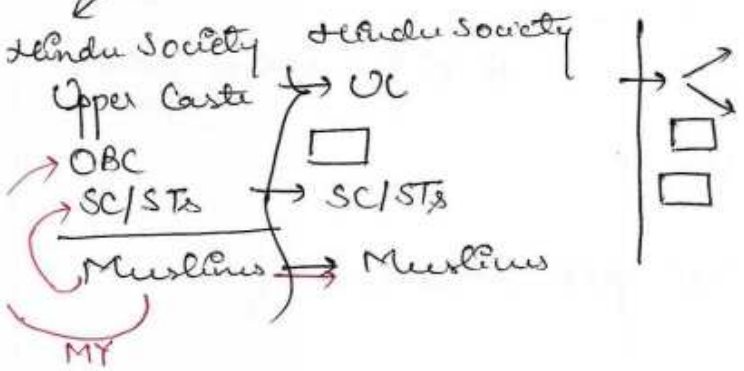
CONGRESS

Ideological → Secularism → Nehruvian idea → Minority appeasement

→ Centrist

Stated as equal left & equal right
now no left & no right

Sociology



Pratap Bhanu Mehta → Reignite Social Movt. character
→ Start reconnecting with masses
→ Family को हटाओ

BJP

Ideological → Hindutava
→ Ethnic Nationalism
→ Western Secularism

Social base

Urban Upper Class → UC + Non dominant OBC → Poor politics

Upper Caste

Removed Caste barrier from every caste, the poorest caste is with BJP

↓

Women

RSS

↓

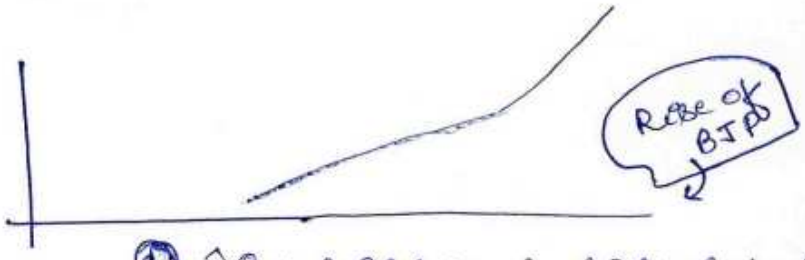
Ideology

↓

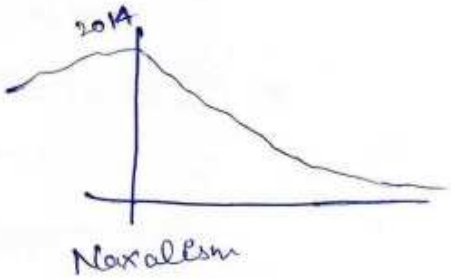
Cadre

→ Penetration } SM
→ Agenda }

→ role as opposition (effective)



① ↑ by regularised shift globally
② ↓ of Congress
③ RSS has now ↑ by its reach
④ Flexible
→ Regional adaptation
⑤ Globally → ↑ Islamic fundamentalism
⑥ → J and K problem and internal Security issues.
→ Terror
→ Naxalism
→ North-East (Extremism) insurgency.
⑦ Law & Order (centre-state issue)



Communist Party of India (M)

Ideology → Left → Population → Industrial Workers, Peasantry → Alienation

→ Regional → fluctuating stances

① Congress

British

INM

Why Anti-National?

→ Opium of masses in sum of religion

Ills of Global Capital

-ve coalition → to prevent particular formulation

↳ power sharing agreement

It's not easy to defeat BJP socially.
You can defeat BJP electorally

R1/Jan/24 (#154)

WTO

Protectionism
- Inefficiency → Decline (lack of competition)
- ↑ Global
- Monopolies → Prices

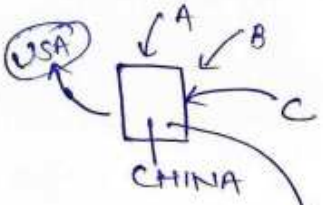
Close your border (Eg: N. Korea)

Tariff Notification

Import
- Income tax
- Custom duty
- National Income

Non Tariff
- Quota barriers → Quantity
- Min Import Price
- X Trade facilitation
- Min local Mfg. → Eg. Defence
- Subsidies → China
- Rules of origin
- Standards (Env. Concerns, TBTs)

Eg:
Drought in Sub-Saharan Countries:
- Min Export Price (Inflation in (Eg suppose) India)
- CAATSA
- Commodities Min export Price
- Destination countries



1 Lakh Origin

Iphone → 1 lakh
Max profit goes to US

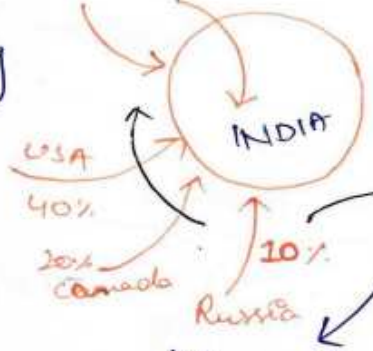
Domestic and imported commodity

WWII helped most → USA

Non discrimination Clause

Rules Regulations → GATT

→ Devaluing currency



FTA's are in violation of WTO

Min will become for all MFN

Most favoured Nation
- Min tariff

National Treatment

free riders

Dispute Resolution

Complete Transparency of Trade Policy

Safety Clauses
National Security
Animal Health, Human Health, Environment
↳ Biodiversity

BINDING or Non-BINDING - ?

What is Trade & Commerce ?
↳ exchange of goods and services
facilitates the trade

↳ Tariff
↳ Non Tariff
India → IPR
Copyright
Patent
ID (Industrial Design)
TRADE

PSU

↳ Services

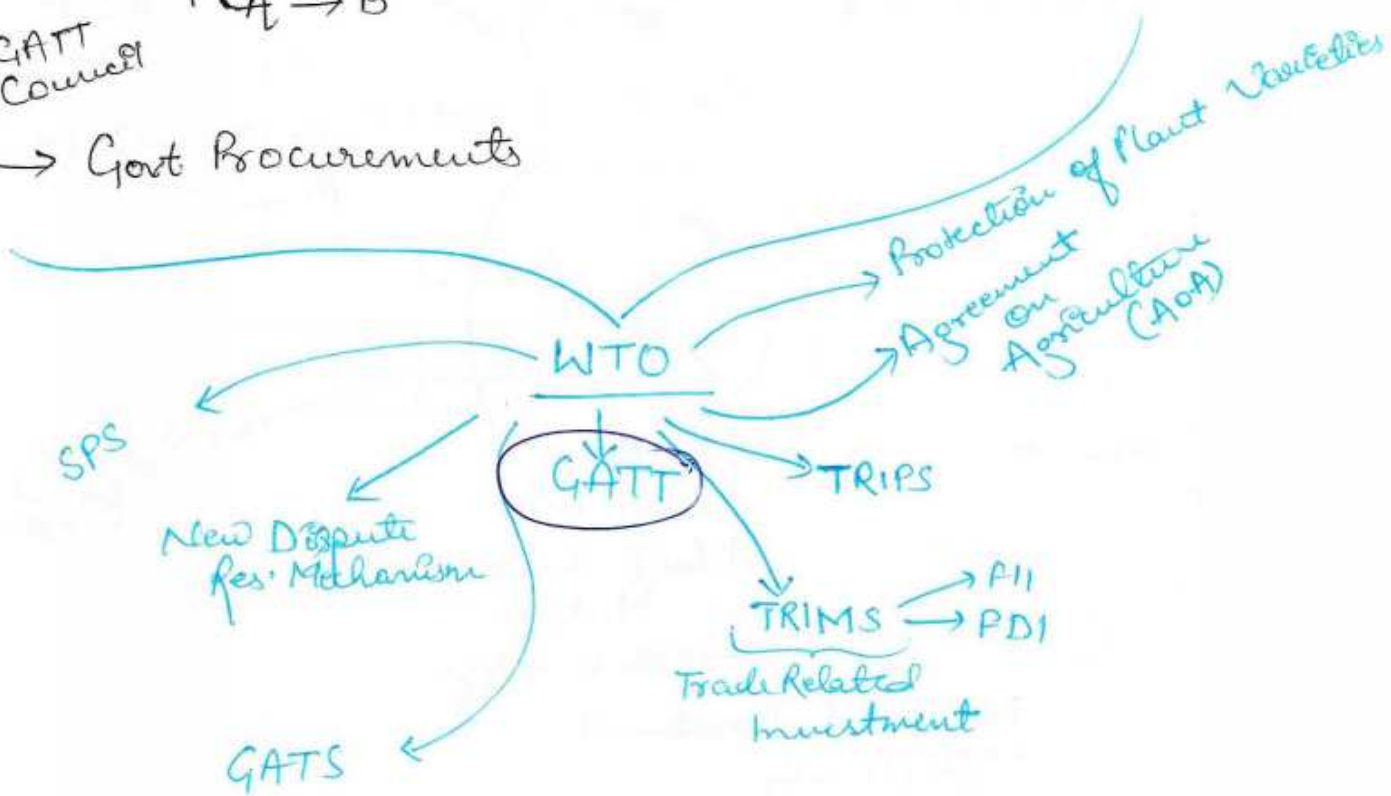
E-Commerce

↳ Agricultural

↳ Dispute resolution — dysfunctional
A → B

GATT Council

↳ Govt Procurements



AoA

Subsidies

Capital Exp' on Infra. → Free of cost → Wheat, Rice → Assured Acq, MSP

Godown

Agri. Extention

PM KISAN

Credit

Seeds, Fertilizers, Pesticides

→ Net Sown Area (NSA)

→ 10% Σ Agri. → Bali

Blue Box → Farm Cap

Amber Box

Water Export

Peace Clause

GATS

Education

Mode 1 → Teleeducation

Mode 2

Mode 3 → A A A A

Mode 4 → Servers

Qualification Technical

Non discrimination

MFN → National Treatment

Reciprocity

Indian CA topper

H1B

Doctor

TRIPS

→ Modify National laws to meet certain min. requirements.

→ Create law to protect → Copyrights → 50

→ patent → 20 → process, product

→ Industrial Design

→ GI tag

→ Plant Variety (Protection)

→ compulsory licensing → NATCO PHARMA

Process Patent

Product Patent

2000

x + y + z → A

A → withdraw → 2020, 2019 → 0

(x + z) + y → A

→ Product happy or arrangement of patent

Bottleneck

Artificial capacity } Mineral

↓ R&D

Basel-Hitler.

TRIMS → FDI

Capital

$ ⇄ $ (CAC) Current → Goods, Services

$ → Factory → $ (EA) CAC

Patent Waiver

BIT → Bilateral investment treaty

Multilateralism → 3/4

MR/FTA
↳ Multilateral
regional

Exception – Defence, Space, Nuclear (earlier)
Nuclear (now)

Arbitration mechanism
Eg: Vodafone
India – UK

DRM

USA → TRUMP → Economy legally compatible

2018 → 7 people (9) (5) (3)

90 days
Judgements
→ Mandate
Commentaries

301 USTR Report

Part. Quorum

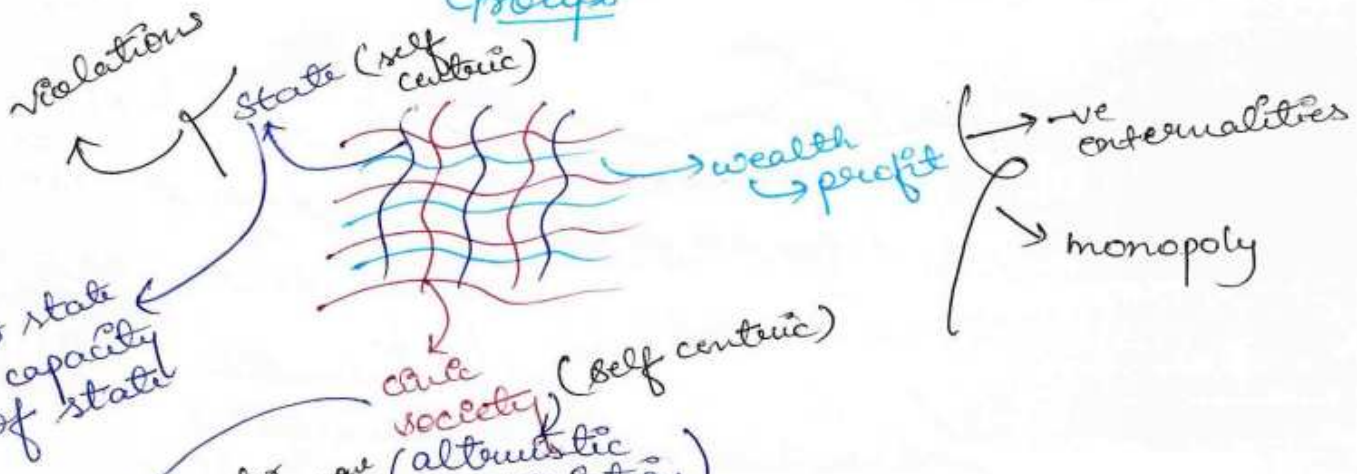
WTO → rising CHINA

- Differential Treatment
- Consensus based
- Simple
- × non adherence
- × National treatment / Non Market Eco.

GSP
India ← US
China
Self-declaration!

25/Jan/24 (#258...)

Pressure Groups



civil society (self centric)
(altruistic association)
for everyone

(ADR) → Report - informational Role
PuCL → Adjudication → Legal reforms
Litigation

Akshay Patra → facilitating something (govt.'s objective)

Protest against state { CAA / NRC

FARMER → AGITATOR

→ exposes the link b/w the business and the state.

→ can extend as helping hand to govt.

Wealthy People → Donate to causes of poor people

DONOR AGENCY → BILL & MELINDA GATES foundation
→ Azim Premji foundation
→ TATA foundation
→ RELIANCE foundation

Getting yourself indo from injustice.

Eg: Group of women pool in some money to create fund → SHG (another kind of civil society)

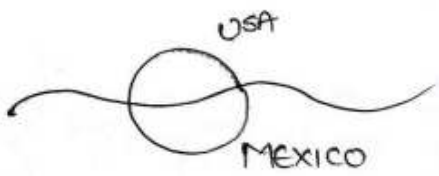
SELF HELP GROUP

Art. 19(1)(a) → base
→ 19(1)(b)
→ 19(1)(c)

Women's story : of children Rights enforced?

State → passive

Civic Right Movement



Extremely diff. HD indicators (human devel.)

Police station → FIR → Ghevaad

1. Constitutional rights → Contempt of Court

Civic society activates Sleeping state.

→ Defamation

→ Sovereignty/ Integrity / FRs

2. Non Profit → ↑ but wealth can't be distributed

Funds dependent (you need someones help)

Eg: Hindu Temple funding from Pak.

SOURCE

→ Reporting

3. SOCIAL BEHAVIOURS → AWARENESS LITERACY

eg: Bullying of civil Rights activist person especially male.

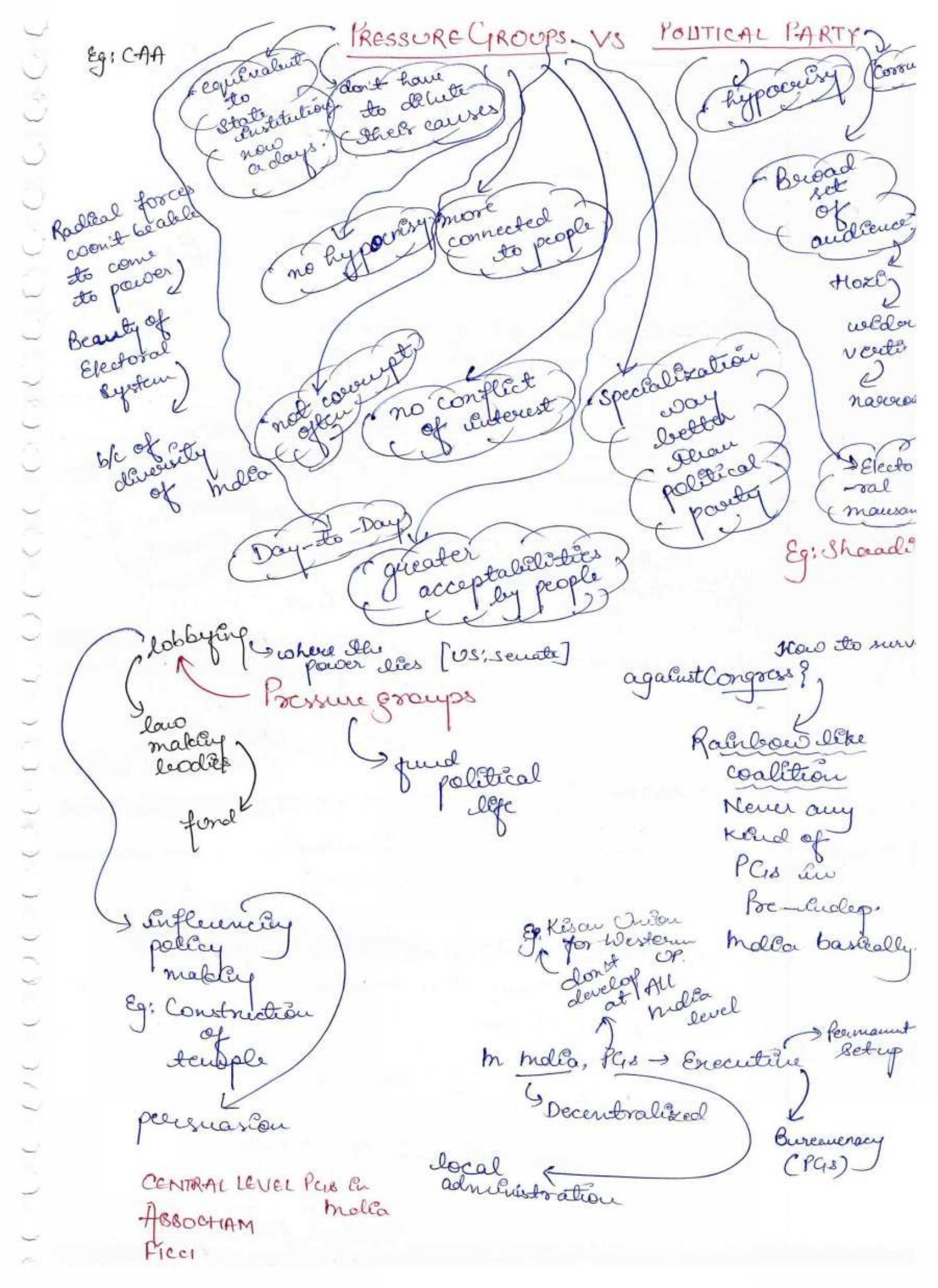
Pressure Group? → Pressurizing (consensus making) either | business or govt. | or policy making.

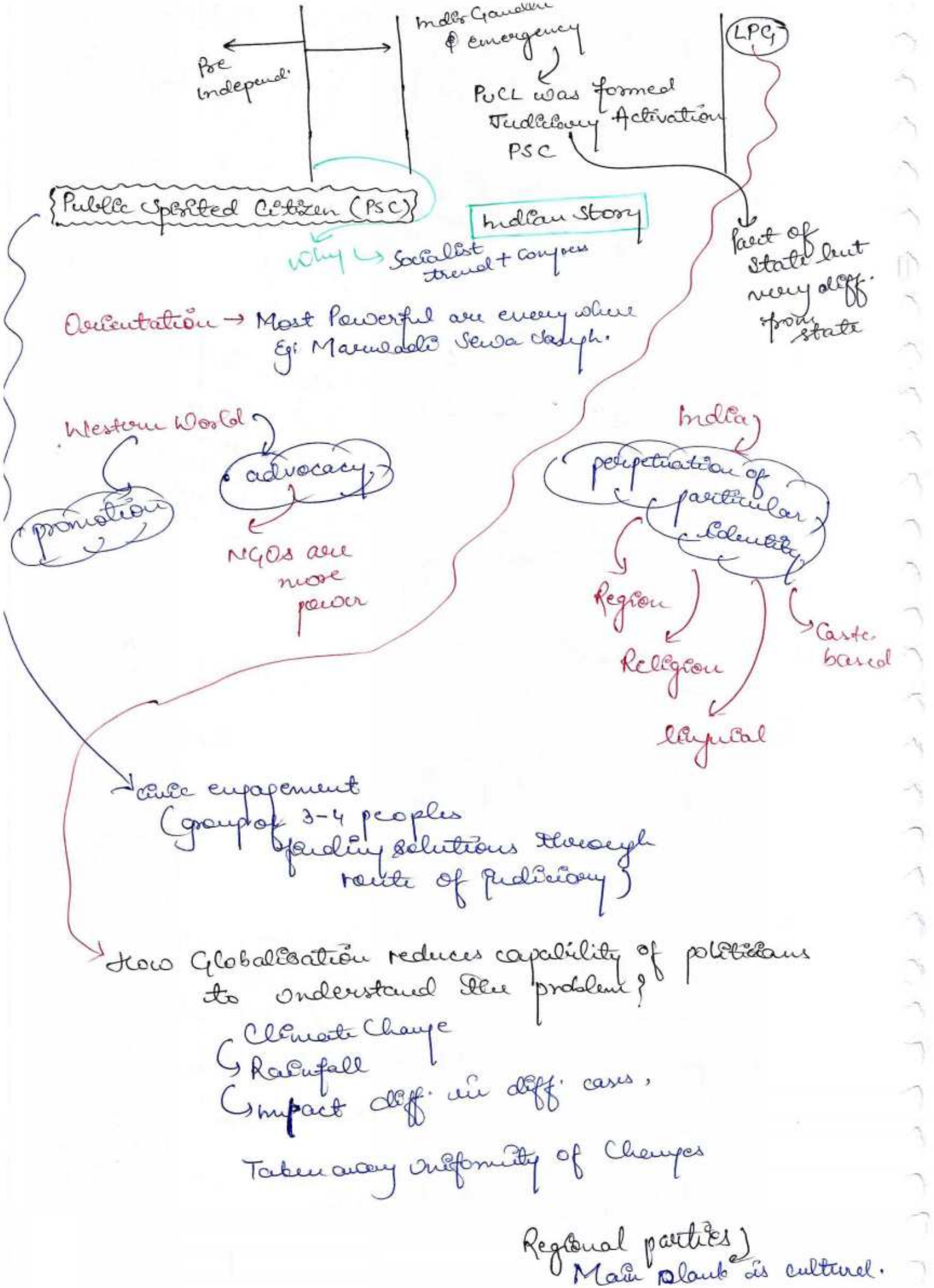
SHG?

Interest Group?

NGOs ?

Donor Groups?


PRESSURE GROUPS VS POLITICAL PARTY
Eg: CAA
equivalent to state institution now a days
don't have to dilute their causes
hypocrisy
Broad set of audience
no hypocrisy
more connected to people
Radical forces can't be able to come to power
Beauty of Electoral system
b/c of diversity of India
not corrupt often
no conflict of interest
Specialization way better than political party
Day-to-Day
greater acceptabilities by people
Eg: Shaadi
lobbying
where the power lies [US: senate]
Pressure groups
law making leaders
fund
fund political life
How to surv
against Congress?
Rainbow like coalition
Never any kind of PGs in Pre-indep. India basically
influencing policy making
Eg: Construction of temple
persuasion
Eg: Kisan Union for Western UP
don't develop at All India level
In India, PGs → Executive
Permanent Setup
Decentralized
Bureaucracy (PGs)
local administration
CENTRAL LEVEL PGs in India
ASSOCHAM
FICCI


Pre Independ.
Indira Gandhi & emergency
PUCL was formed
Judiciary Activation
PSC
LPG
Public spirited Citizen (PSC)
Indian Story
Why → Socialist trend + Congress
part of State but very diff. from state
Orientation → Most Powerful are everywhere
Eg: Marwadis Sewa Vadya.
Western World
promotion
advocacy
NGOs are more power
India
perpetuation of particular identity
Region
Religion
Caste based
Lingual
Case engagement
(group of 3-4 peoples finding solutions through route of Judiciary)
How Globalisation reduces capability of politicians to understand the problem?
Climate Change
↳ Rainfall
↳ Impact diff. in diff. cases,
Takeaway uniformity of Changes
Regional parties)
Main Blank is cultural.

EFFECT OF GLOBALISATION

ON CULTURE

ON WOMEN

Westernisation vs modernisation

Ex Incorporation of western culture

Incorporation of modern values

Eg: Consumerism

Dressing Homogenisation of dresses

Food habits
McDonald's

Language
Anglification of National languages and Modification of Modern languages.