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Letter from the Executive Board

Dear Party representatives,

We welcome you all and congratulate you on being a part of this committee. The committee would focus on political intellectual and analytical application and strategic application of thoughts in resolving impending politically and socially sensitive issues and discussions on forming future policies for the nation on the said agenda. Kindly note, we are not looking statements that would be a copy paste of what the portfolio you are representing have already stated; instead, we seek an understanding of the issue from you, while knowing and understanding your impending political and ideological limitations as well as an understanding of the immediate and long-term consequences of your statements, actions and solutions. Your political identity is an integral part of the purpose of the committee and we look forward to your portfolio representation. This Introductory guide is as abstract as possible and would just give you a basic perspective on what you can expect from the committee and areas in which your research should be focused at this given point in time. Given, the diverse nature of this committee, your presence of mind and politico-analytical aptitude is something which we as the executive board would be looking to test. That being said, kindly do not limit your research to the areas highlighted further but ensure that you logically deduce and push your research to areas associated with the issues mentioned. This background guide should be used as an introductory guide only. We would encourage all of you to go beyond this guide to research and use this as an introductory guide. Kindly do contact us in case of any doubts or clarification.

Regards,

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Valid Sources

1. Government Reports (Each ministry publishes its own reports including External Affairs Ministry)
2. PTI, PIB
3. Government Websites
4. Government run News channels i.e., RSTV, LSTV, DD News
5. Standing Committee Reports/ Commission Reports

AGENDA 1) Discussing the socio-political situation of Marginalized communities in India.

INTRODUCTION

Marginalized communities include those who have been historically excluded from involvement in our cities, as well as those continuing to face other barriers to civic participation. This includes those marginalized by factors like race, wealth, immigration status, and sexual orientation. The specific groups that are disadvantaged will also vary from one place to another. Marginality is an experience that affects millions of people throughout the world. People who are marginalized have relatively little control over their lives, and the resources available to them. This results in making them handicapped in delivering contribution to society. A vicious circle is set up whereby their lack of positive and supportive relationships means that they are prevented from participating in local life, which in turn leads to further isolation. This has a tremendous impact on the development of human beings, as well as on society at large.

Marginality and Identity Politics

A term coined by the Combahee River Collective who were a group of women working towards the active participation of Black women in politics back in 1977. The term connotes a wide range of political activities and theoretical analysis of circumstances of injustice or oppression of certain social groups and their attempts to reclaim a higher self-determination and political freedom to participate in society on equal terms with other members of the society.

India's Demography and Marginalization

India has had an enormous task of dealing with four key identities in India, language, caste, religion and tribe.

Language- As per 2001 census, 22 languages are spoken in India with Hindi being top with 41.03%.

It also reported 6 religions, Hindu, Islam, Christianity, Sikhs, Buddhists, and Jains recording 80.5%, 13.4%, 2.3%, 1.9%, 0.8% and 0.4% respectively.

The 2019 share of population based on caste is reported to be Scheduled Tribes 9%, Dalits 20%, forward Caste 30% and other backward class 41%.

Identity politics Constitutional Safeguards

Right to equality(Article14-18)

- (a) Equality before law and equal protection of laws(Article14)
- (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.(Article15)
- (c) Equality of opportunity in matters of public employment(Article16)
- (d) Abolition of untouchability and prohibition of its practice(Article17)
- (e) Abolition of titles except military and academic(Article18)

Right to freedom

- (a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, (vi) profession(Article 19).
- (b) Protection in respect of conviction for offences (Article 20).
- (c) Protection of life and personal liberty(Article 21)
- (d) Right of elementary education (Article21A)
- (e) Protection against arrest and detention in certain cases(Article22)

Right against exploitation (Article 23-24)

- (a) Prohibition of traffic in human beings and forced labour (Article23).
- (b) Prohibition of employment of children I factories, etc.(Article24)

Right of freedom of religion (Article25-28)

- (a) Freedom of conscience and free profession, practice and propagation of religion (Article25)
- (b) Freedom to manage religious affairs(article27)
- (c) Freedom from payment of taxes for promotion of any religion (Article27)
- (d) Freedom from attending religious instruction or worship in certain educational institutions (Article28)

Cultural and educational rights (Article 29-30)

- (a) Protection of language, script and culture if minorities (Article29)
- (b) Right of minorities to establish and administer educational institutional (Article30)

Article 39 A To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provision for securing just and humane conditions of work and for maternity relief. Article 51(A) (e) is related to women. It states that; It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women. Article 243 D: Reservation of seats.

Article 243 D(1) Seats shall be reserved for – (a) The Scheduled Castes; and (b) The Scheduled Tribes

Article 243 D(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled tribes.

Article 243 D(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.

Article 243 D (4) Not less than one- third of the total number of offices of Chairpersons in the Panchayat at each level to be reserved for women.

Article 243 T: Reservation of seats

Article 243 T (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.

Article 243 T (4) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide

The above mentioned provisions of the Constitution pay particular attention to the sacrosanct nature of our individuality and the need to protect the same so as to better be able develop to our full potential in the most dignified way by allowing for equal opportunities in all areas of life (social, economic and political etc.).

WOMEN

Under different economic conditions, and under the influence of specific historical, cultural, legal and religious factors, marginalization is one of the manifestations of gender inequality. In other words, women may be excluded from certain jobs and occupations, incorporated into

certain others, and marginalized in others. In general, they are always marginalized relative to men, in every country and culture. Women (or, men) don't present a homogeneous category where members have common interests, abilities, or practices. Women belonging to lower classes, lower castes, illiterate, and the poorest region have different levels of marginalization than their better-off counterparts. Discrimination against women in India begins from birth as girl children are normally aborted due to preference for a male child resulting in the population ratio of 1000 boys to 908 girls. This all stems from the highly patriarchal norms of Indian society. Reports also show 42% of married women in India were married as children (District Information System for Education (DISE), 1 in every 3 child brides in the world is a girl in India (UNICEF), more than 45 lakh girls under 15 years of age who are married with children. Out of these, 70% of the girls have 2 children.

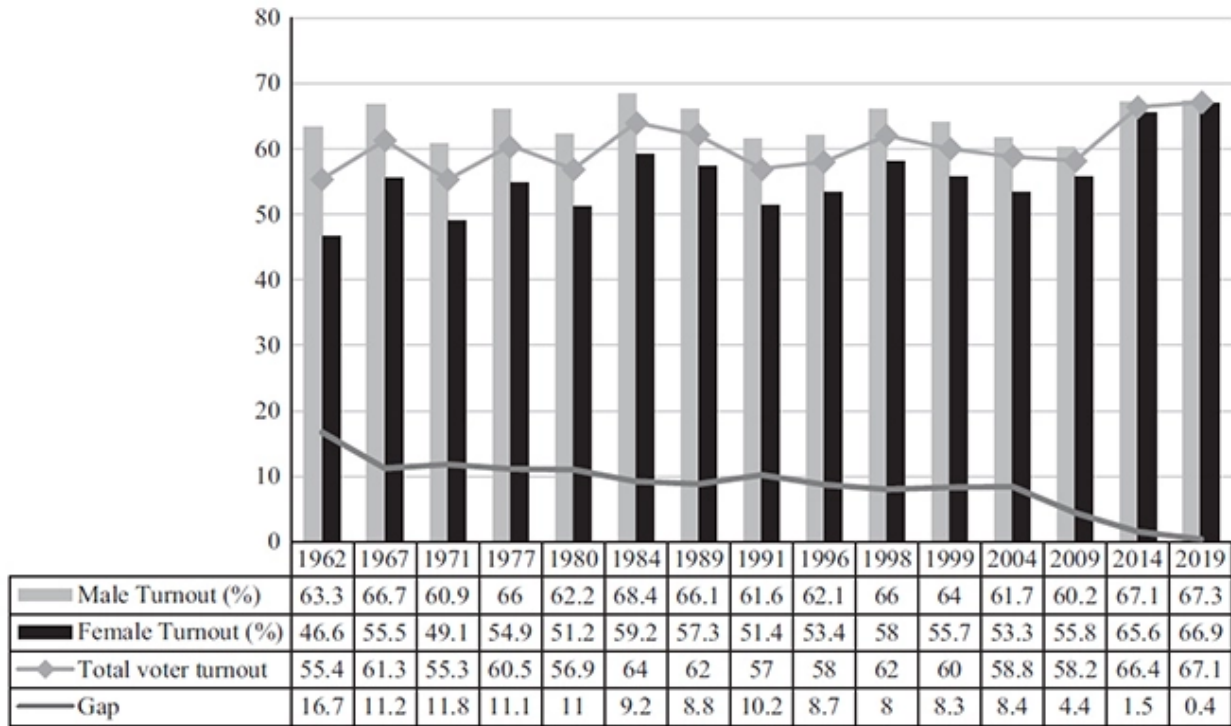
India has a history of marginalization and exploitation of women framed by patriarchal social structures and mindsets. Beginning in the 19th century, social reform movements succeeded in pushing for women's well-being and empowerment. The Indian freedom movement, starting with the *swadeshi* in Bengal (1905-08) also witnessed the impressive participation of women, who organized political demonstrations and mobilized resources, as well as occupied leadership positions in those movements. After India attained independence, its Constitution guaranteed equal status for men and women in all political, social and economic spheres. Part III of the Constitution guarantees the fundamental rights of men and women. The Directive Principles of State Policy ensure economic empowerment by providing for equal pay for equal work by both men and women, humane conditions of work, and maternity relief. Any Indian citizen who is registered as a voter and is over 25, can contest elections to the lower house of Parliament (Lok Sabha) or the state legislative assemblies; for the upper house (Rajya Sabha) the minimum age is 30. Articles 325 and 326 of the Constitution guarantee political equality and the right to vote.

Later, in 1974, the report of the Committee on the Status of Women in India argued for greater representation of women in political institutions and again brought the issue of reservation of seats for women to the fore.

Following Independence, women's participation as voters was not immediately enthusiastic. It increased gradually, however; in the last Lok Sabha election of 2019, almost as many women voted as men—a watershed in India's progress towards gender equality in politics which has been called a “silent revolution of self-empowerment”[24] (see Figure 1). The increased participation, especially since the 1990s, is attributed to a number of factors.

First, higher levels of literacy among women and their greater participation in the workforce have contributed to increasing their political awareness and confidence to cast their vote. Second, the growth of the electronic media and the digital revolution have expanded the reach of awareness campaigns about voting rights, conducted both by Election Commission of India and other organisations. Third, the Election Commission has adopted institutional measures to encourage women to vote, such as ensuring safety by guarding against intimidation, and providing separate queues for women at polling booths. Women-friendly ‘pink booths’ are set up where the entire staff including election officials, police and security personnel, are female. With heightened security measures during elections over the years, violence and intimidation of voters on polling day has largely declined, encouraging more people to participate, and not only the

women. Fourth, reservations for women in panchayats and municipalities have also helped enhance female inclusion in the structures of power at the local level. Fifth, political reforms, technological transformation, and notions of women’s rights are gaining momentum and encouraging more women to vote.



Overall, however, while women candidates in parliamentary elections have increased over time (Figure 2), their proportion compared to male candidates remains low. In the 2019 Lok Sabha elections, of the total of 8,049 candidates in the fray, less than 9 percent were women.

Year of Election	Number of Women Representatives	Percentage of Women Representatives (%)
1951	22	5
1957	22	5
1962	31	6
1967	29	6
1971	28	5
1977	19	4
1980	28	5
1984	43	8
1989	29	6
1991	39	7
1996	40	7
1998	43	8
1999	49	9
2004	45	8
2009	59	11
2014	66	12
2019	78	14

III. Challenges in Women's Representation in National and State Legislatures

Once reserved seats were constitutionally mandated for women, they participated more in representative politics at the local level. Why then has female representation in Parliament and state legislatures remained low? The reasons are many and correlated, and their intersections need to be studied properly. Societal prejudices, a male-dominated political party structure, family obligations, resource scarcity, and various structural hindrances all impede greater participation among women as contestants and winners in parliamentary or state assembly elections.

Inaccessibility of Institutions

Political parties remain the fundamental political vehicle through which parliamentary and state legislative elections in India are fought and won, and the electoral prospects of independent candidates remain weak. Getting a party ticket to contest a suitable parliamentary seat remains the key prerequisite for all aspiring candidates. Ticket distribution is mostly a centralised process in political parties in India, although this is not unique to the country. Election records show that most political parties, though pledging in their constitutions to provide adequate representation to women, in practice give far too few party tickets to women candidates. To be sure, the performance is uneven, and some parties fare better than others.

DIFFERENT STATUTORY BODIES AND POLICY DEALING WITH WOMEN IN INDIA

National Commission for Women: In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

The National Plan of Action for the Girl Child (1991-2000): The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

National Policy for the Empowerment of Women, 2001: The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a National Policy for the Empowerment of Women in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women in socio-economic and politico-cultural aspects, by creating in them awareness on various issues in relation to their empowerment

SCHEMES BY FOR WOMEN EMPOWERMENT IN INDIA

Kindly do analyze the following schemes for the purpose of debate.

1. Beti Bachao Beti Padhao Scheme
2. One Stop Centre Scheme
3. Women Helpline Scheme
4. UJJAWALA : A Comprehensive Scheme for Prevention of trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation
5. Sakhi Niwas
6. Ministry approves new projects under Ujjawala Scheme and continues existing projects
7. SWADHAR Greh (A Scheme for Women in Difficult Circumstances)
8. NARI SHAKTI PURASKAR
9. Awardees of Stree Shakti Puruskar, 2014 & Awardees of Nari Shakti Puruskar
10. Women Helpline Scheme
11. NIRBHAYA

12. Mahila police Volunteers
13. Mahila Shakti Kendras (MSK)

WOMENS RESERVATION BILL AND ITS NEED

The Constitution (108th Amendment) Bill, 2008, commonly known as the Women's Reservation Bill, is a bill that seeks to reserve one-third of seats for women in Lok Sabha and state legislative assemblies. Introduced in 2008, it also provides one-third of the total number of seat reservations for Scheduled castes and Scheduled Tribes to be reserved for the women of those groups. Similar bills were introduced thrice previously in the late '90s. However, all these bills lapsed with the dissolution of their respective Lok Sabha.

LAWS RELATED TO WOMEN EMPOWERMENT

Kindly do analyze the following laws for the purpose of debate .

Indian Penal Code:

Indian Penal Code 1860, chapter XVI deals with offences affecting the human body, however, if we look at the broader perspective there are many provisions under Indian Penal Code which indirectly deals with Sexual Offence and can be categorized as

- 1) Obscenity and Indecent Representation.
- 2) Eve Teasing, Improper Touching etc
- 3) Sexual Harassment
- 4) Molestation and indecent assault
- 5) Rape
- 6) Dowry Deaths and Bride Burning

That to deal with such deviant acts India Penal Code has prescribed the quantum of punishment.

(i) Rape (Sec. 376):

A rapist shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(ii) Kidnapping & Abduction for different purposes (Sec. 363-373) :

any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B):

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in-laws or husband, for or in connection with, any demand of dowry, such death shall be called dowry death. Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.

(iv) Torture, both mental and physical (Sec. 498-A):

Husband or relative of husband of a woman subjecting her to cruelty shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(v) Molestation (Sec. 354):

Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

(vi) Sexual Harassment (Sec. 509):

Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Special Laws

Although all laws are not gender-specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

(I) The Dowry Prohibition Act 1961:

This act prohibits the request, payment or acceptance of a dowry “as consideration for the marriage”, where “dowry” is defined as a gift demanded or given as a precondition for a marriage. However, as per section 3(2) of the Act, gifts given without a precondition are not considered dowry. Asking for or giving of dowry can be punished by imprisonment of up to six months, a fine of up to Rs. 15000 or the amount of dowry (whichever is higher), or imprisonment up to 5 years. It replaced several pieces of anti-dowry legislation that had been enacted by various Indian states.

(II) The Immoral Traffic (Suppression) Act (SITA) (1956):

It is the primary law dealing with the status of sex workers. According to this law, prostitutes can practise their trade privately but cannot legally solicit customers in public. Organized prostitution

(brothels, prostitution rings, pimping, etc.) is illegal. As long as it is done individually and voluntarily, a woman can use her body in exchange for material benefit. In particular, the law forbids a sex worker to carry on her profession within 200 yards of a public place. Unlike as is the case with other professions, sex workers are not protected under normal labour laws, but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.

(III) The Protection of Women from Domestic Violence Act 2005:

It is an Act of the Parliament of India enacted to protect women from domestic violence. Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.

Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(IV) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

It is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Act will ensure that women are protected against sexual harassment at all the workplaces, be it in public or private. This will contribute to the realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth. Under the Act, which also covers students in schools and colleges, as well as patients in hospitals, employers and local authorities, will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

(V) The Family Courts Act, 1984:

The Court established to conclude upon matters relating to family law like matrimonial reliefs, custody of children, maintenance for wife and children etc is termed as Family Court. The Status of Women Committee in 1975 together with the report of the 59th Law Commission recommended the Central Government to establish a separate judicial forum to settle family disputes immediately before the beginning of the trial proceedings. Hence it was decided to establish a family court in India by the Act of 1984. The Family Court shall have the same status as that of a District Court and shall exercise the jurisdiction accordingly and also empowered to initiate suits and proceedings in par with the conditions stipulated by the Act. Where there is any chance for settlement of the dispute between the parties, the Family Court shall postpone the proceedings and take steps for settlement at the earliest. Under the Act, a party to the dispute cannot claim the service of a legal practitioner as of right, but the Court shall have the power to appoint a legal professional. An aggrieved party may, however, prefer an appeal to the High Court from an order of the Family Court. The High Court shall frame rules in the matters connected therewith, after publishing in the Gazette. The Act also confers power on the Central and State Government to formulate rules as prescribed under the Act.

(VI) The Special Marriage Act, 1954:

It is enacted to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by either party. The Act originated from a piece of legislation proposed during the late 19th century. The Special Marriage Act, 1954 replaced the old Act III, 1872. The new enactment has 3 major objectives:

To provide a special form of marriage in certain cases,
To provide for the registration of certain marriages and,
To provide for divorce.

(VII) The Marriage Laws (Amendment) Bill, 2010:

To amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to making divorce easier on ground of irretrievable breakdown of marriage was introduced in the parliament in 2012. The Bill replaces the words “not earlier than six months” in Section 13-B with the words “Upon receipt of a petition.” It also provides a better safe guard to wife by inserting section 13D by which the wife may oppose the grant of a decree on the ground that the dissolution of the marriage will resultingly rive financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage. New section 13E provides restriction on decree for divorce affecting children born out of wedlock and states that a court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

(VIII) The Maternity Benefit Act, 1961 (Amended in 1995) :

The Maternity Benefit Act, 1961 protects the employment of women during the time of her maternity and entitles her of a ‘maternity benefit’ – i.e. full paid leave during her absence from work – to take care for her child for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

(IX) The Medical Termination of Pregnancy (MTP) Act 1971,

It was enacted by the Indian Parliament in the year 1971 with the intention of reducing the incidence of illegal abortion and consequent maternal mortality and morbidity. The MTP Act came into effect from 1 April 1972 and was amended in the years 1975, 2002 and 2017. Pregnancies not exceeding 12 weeks may be terminated based on a single opinion formed in good faith. In case of pregnancies exceeding 12 weeks but less than 20 weeks, termination needs opinion of two doctors. The Act clearly states the conditions under which a pregnancy can be ended or aborted, the persons who are qualified to conduct the abortion and the place of implementation. Some of these qualifications are as follows:

Schedule Caste and Schedule tribe

A discussion on emancipation and development of schedule caste and scheduled tribes in India is legitimate within modern historical canon as also in the on-going political and economic reforms. The situation of dalits and their voice for betterment needs to be heeded considering the teeming numbers of oppressed – the dalits, who are perpetual victims of marginalization and socio-economic exclusion. India's 170 million of oppressed and marginalized sections of society (i.e. about 16.23 per cent of India's population, according to the 2011 Census) have for thousands of years remained neglected and ignored in the social milieu. Indian society is a marginalised society consisting of diverse groups of dalits, backward classes and women who have different socio-economic characteristics and problems

1. Scheduled Castes (SCs), who constitute 16.6% of our population as per 2011 Census, have historically suffered social and educational disabilities and economic deprivation arising therefrom. With a view to bring them in the mainstream by socially and to economically strengthen them, special provisions have been enshrined in the Constitution for advancement of their interests. These provisions range from measures to remove any kind of social disabilities imposed on them to ensure equality of opportunity in every sphere, to measures of positive discrimination to bring them on par with the rest of the population.
2. Article 46 of Part IV ("Directive Principles of State Policy") of the Constitution enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people, in particular, of the Scheduled Castes and the Scheduled Tribes. Article 38(2) in the same Part also enjoins upon the State to minimize inequities in income and to endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.
3. Since Independence, the Government had taken a number of initiatives for development of SCs, which had yielded positive outcomes, and had also resulted in narrowing the gap between the Scheduled Castes and the rest of the population. However, the focus of most of the welfare Schemes of SCs had been mainly centered on individual beneficiaries, rather than on the integrated development of SC pockets.

Dalits: The Concept

Dalit is a self-designation for a group of people traditionally regarded as lower class. They are a mixed population of numerous caste groups all over South Asia and speak various languages (Geetanjali, 2011). Traditionally, there are four principal castes (divided into many sub-categories) and one category of people who fall outside the caste system – the dalits. The word dalit – literally (in Hindi/Marati) translating to “oppressed” or “broken” – is generally used to refer to people who were once known as ‘untouchables’, those belonging to castes outside the fourfold Hindu Varna system. They are Antyaja, i.e., outside the Varna system (Mehrotra, n.d.). The Dalits are called by various other names also: Dasyu, Dasa, Atisudra, Panchama,

Tirukulattar, Adikarnataka, Adi Dravida, Schedule Caste (SC) etc. but Ambedkar termed them as 'Depressed Class'.

Within the dalit community, there are many divisions into sub-castes. Dalits are divided into leather workers, street sweepers, cobblers, agricultural workers, and manual "scavengers". The latter group considered the lowest of the low and officially estimated at one million, traditionally are responsible for digging village graves, disposing of dead animals, and cleaning human excreta. Approximately three-quarters of the dalit workforce are in the agricultural sector of the economy. A majority of the country's forty million people who are bonded laborers are Dalits. These jobs rarely provide enough income for dalits to feed their families or to send their children to school. As a result, many dalits are impoverished, uneducated, and illiterate. The average household income for dalits was 17,465 in 1998, just 68 per cent of the national average. In 2000, as against the national average of Rs.4485, the per capita income of SCs was 3,237. The average weekly wage earning of an SC worker was 174.50 compared to 197.05 for other non-SC/ST workers. In 2000, 35.4 percent of the SC population was below the poverty line in rural areas as against 21 per cent among others ('Others' everywhere means non-SC/ST); in urban areas the gap was larger – 39 per cent of SC as against only 15 per cent among others. Less than 10 percent of Dalit households can afford safe drinking water, electricity and toilets, which is indicative of their deplorable social condition. Moreover, dalits are daily victims of the worst crimes and atrocities, far outnumbering other sections of society in that respect as well. The vast majority of these crimes remain unreported due to omnipresent fear, and those that are reported are often ignored by police or end up languishing in the backlogged court system. Between 1992 and 2000, a total of 334,459 cases were registered nationwide with the police as cognisable crimes against SCs.

Reservation in India & its Constitutional Provisions

The exact necessities for the reservation in services in favor of the members of the SC/STs have been made in the Constitution of India. They are as follows:

Article 338 B provides for constitution of a National Commission for Backward Classes (NCBC), inter-alia, "to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards". Further as per clause (9) of this Article, the Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes.

vi. Article 340 of the Constitution deals with appointment of a Commission to investigate the conditions of backward classes. A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

vii. Articles 15 and 16, also enable reservation for Backward Classes in admission to educational institutions, and in public employment.

viii. Article 15(6) and 16(6) of the Constitution enables reservations for economically weaker sections in admission to Central Government educational institutions, and in public employment.

ix. Article 41 provides for "Right to work, Right to education and Right to public assistance in case of unemployment, old age, sickness and disablement and in other cases of

undeserved want.

x. Article 47 provides for “Duty of the State to raise the level of nutrition and the standard of living and to improve public health” and makes provisions for inter-alia, curbing consumption of intoxicating substances, which are injurious to health.

xi. “Article 342A provide for notification of the list of Socially and Educationally Backward Classes by the President and prescribes the procedure for inclusion or exclusion of Castes/Communities from such a list.”

xii. Article 366 (26 C) states “socially and educationally backward classes “means such backward classes are so deemed under article 342A for the purposes of the Central government or the State or Union territory, as the case may be’

Impact of Reservation policy in reducing caste inequality

Various cases of violence have been reported against Dalits in recent years. They are subject to exploitation since earlier times. A famous incident was of Phoolan Devi’s exploitation by the upper caste people. Phoolan Devi was born in a small town of Uttar Pradesh where girls were like burden. Like every low caste girl who is to work for the upper caste families, she was married at an age of eleven years to a heartless man in his thirties in return for a bovine. In the wake of being assaulted by her husband for many years, she somehow figured out how to escape from her spouse and joined a gang of bandits. Later, after a battle she was assaulted by upper caste bandits. She was secured up in Behmai, a village of Thakurs. For about fourteen days, a gathering of Thakur assaulted Phoolan, on numerous occasions until the point that she lost consciousness.

Later she herself became the gang leader and took revenge. This shows her story of courage by not getting suppressed by upper caste people. Another case like this was reported on February 29, 2016. Raju Bairwa, a schedule caste was called to help in marriage arrangements at his village in Rajasthan. His spouse discovered him by the riverside extremely injured. The culprits had placed sand in his mouth, so he wouldn't have the capacity to scream. Later he died. The family had been hassled and debilitated for a long time over a land dispute in spite of the fact that they legally possessed the land which was in question with upper caste villagers.

So, the crime against Dalits have not yet stopped but the reservation system has contributed to a large extent in reducing caste inequality and changing the mentality of the society. Reservation is considered a Positive discrimination. As in the olden days, lower castes were badly harassed and discriminated against. To uplift the lower castes and give them equal opportunities, reservations are a must. When there are two parties which are not equal then it is not fair to treat them equally. The existing situation of inequality has to be removed first. How to do it? The most disadvantaged among the two have to be provided with a positively discriminated treatment so that they can make use of the opportunity to become equals. Hence, Reservations in case of Sc/St are inevitable for rapidly developing nations like ours. Reservations reflect the principle of "EQUALITY" enshrined in the Constitution. People do rise from the worst circumstances in life to reach respectable positions due to reservations. Not all people who take reservations lack merit/talent, but they didn't have resources to work hard.

When they were studying in candlelight nobody came with a bulb. Reservation compensates them for inequality in their resources to achieve their aim. It gives voice to the oppressed classes and shows them a path to progress. Thus, it helps in removing the inequality among different castes by bringing them at the same level with other upper castes. So, seats are reserved in Lok Sabha for SC, ST so that they get a chance of decision making and present their views and ideas on different aspects of society. Because they had been deprived of these rights for centuries. Poor people cannot afford to send their children to school because the opportunity cost of sending the children to school is very high as they make valuable contributions to the household economy. These children since their birth have seen financial problems in their families and they also want to provide a good standard of living to their family. They can't even afford coaching or give fees to big institutions. So, the reservation policy has given hope to such a category to pursue good education by getting seats reserved for them at various job and college entrances thereby they can improve the economic status of their families. It has been effective also as there are many citizens who are Dalits or OBCs and are excelling in various fields like Kalpana Saroj, Ilaiyaraaja. This policy is framed for the betterment of backward classes, but no one can ignore its disadvantage because it defeats meritocracy that is accessibility of options to the most capable and deserving candidate. So, the reservation system is an affirmative action but only to the extent, it is not exploited. But with the passage of time, we have deviated from our initial goal of introducing the reservation policy.

Division of the society-It leads to the division of the society into various castes. Today we stand partitioned generally into Hindu, Muslim, SC, ST and OBCs with more current reservations. The Mandal Commission developed eleven indicators of social, educational, and economic backwardness. One indicator was being considered backward by other castes or classes. Other indicators included depending mainly on manual labor for livelihood and having an average value of family assets at least 25 percent below the state average. In addition to identifying backward classes among Hindus, the Mandal Commission identified backward classes among non-Hindus (e.g., Muslims, Sikhs, Christians, and Buddhists) if they had belonged to untouchable castes before they converted to a non-Hindu religion, or if Hindu castes with the same occupational names, such as dhobi (launderer), lohar (iron worker), nai (barber), or teli (oil presser), were considered backward. In February 1980 the Mandal Commission conducted a nationwide socioeconomic field survey in which it gathered interview data from two villages and one urban block in 405 of the nation's 406 districts. The field survey data, combined with information from the 1961 census, various states lists of their backward classes, and personal knowledge of Commission members and others, enabled the Mandal Commission to generate an all-India other backward classes (OBC) list of 3,743 castes and a more underprivileged depressed backward classes list of 2,108 castes. On 7 August 1990 Prime Minister V. P. Singh announced in the Parliament that his government would implement the Mandal Commission recommendations. This was followed by the violent objections in the northern part of India.

Indra Sawhney Case 1992: The 27% reservation quota for backward classes and the government notification reserving 10% government jobs for economically backward classes among the higher castes was challenged in the Supreme Court in the Indra Sawhney Case of 1992. On 16 November

1992 the Supreme Court upheld the Mandal Commission 27 percent quota for backward classes as well as the principle that the combined scheduled-caste, scheduled-tribe, and backward-class beneficiaries should not exceed 50 percent of India's population. At the same time, the court also struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes. The opinion of the Supreme Court in the Indra Sawhney case is summarized as below: Backward Classes of the Citizens of in Article 16(4) can be identified on the basis of caste and not only on the economic basis. Article 16(4) is not an exception to Article 16(1) The backward classes in Article 16(4) are not similar to as socially backward classes in Article 15(4) i.e. SC and ST Creamy layer can be and must be eliminated from the Backward Classes. Article 16(4) permits the classification of backwards classes into more backward classes.

State of Kerala v. N.M. Thomas: The Supreme Court held that it was permissible to give preferential treatment to Scheduled Castes/Tribes under Art. 16(1) outside Art. 16(4).the Court observed: Art. 16(4) is not in the nature of an exception of Art. 16(1). It is a facet of Art. 16(1) which fosters and furthers the idea of equality of opportunity with special reference to an under privileged and deprived class of citizens. Thus, Art. 16(1) being a facet of the doctrine of equality enshrined in Art. 14 permits reasonable classification just as Art. 14 does. The majority ruled that Art. 16(4) is not an exception to Art. 16(1). Art. 16(1) it permits reasonable classification for attaining equality of opportunity assured by it. 10)Ashoka Kumar Thakur v. State of Bihar: The Supreme Court has assessed the validity of unrealistically high levels of income or holdings of other conditions prescribed by the Legislatures of UP and Bihar as criteria to identify the creamy layer. The Supreme Court has quashed these conditions as discriminatory. The Court has ruled that these conditions laid down by the two States have no 'nexus' with the object sought to be achieved. The criterion laid down by the two States to identify the creamy layer are violative of Art. 16(4), wholly arbitrary, violative of Art. 14, and against the law laid down by the Supreme Court in the 12 Mandal case, where the Court has expressed the view that a member of the All India Service without anything more ought to be regarded as belonging to the "creamy layer".

Participants may also refer to the *Jarnail Singh vs Lachhmi Narain Gupta case*, *M Nagaraj vs Union of India case*.

Rationale Behind giving reservation

- The underlying theory for the provision of reservation by the government is the under-representation of the identifiable groups as a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST).
- The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity.

Present Status of reservation policy in India and facts about reservation system in India

After introducing the provision for reservation once, it got related to vote bank politics and the following governments and the Indian Parliament routinely extended this period, without any free

and fair revisions. Later, reservations were introduced for other sections as well.

- The Supreme Court ruling that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. The central government

of India reserves 27% of higher education for Other Backward Castes, and individual states may legislate further reservations.

- Reservation in most states is at 50%, but certain Indian states like Rajasthan have proposed a 68% reservation that includes a 14% reservation for forward castes in services and education.

- However, there are states laws that exceed this 50% limit, and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69% and is applicable

to about 87% of the population in the state of Tamil Nadu.

Schemes

Kindly do research on the following schemes and formulate discussions on the same.

Educational Schemes

- National Fellowship for OBC Students (NF-OBC)
- Construction of Hostels for OBC Boys and Girls
- Dr. Ambedkar Scheme of Interest Subsidy on Educational Loan for Overseas Studies for OBCs & EBCs
- Pre- Matric Scholarships Scheme for Scheduled Castes & Others
- Post-Matric Scholarship for SC students
- Upgradation Of Merit Of SC Students
- Central Sector Scholarship of Top Class Education for SC Students
- National Overseas scholarship
- National Fellowship for Scheduled Caste Students
- Free Coaching Scheme for SC and OBC Students
- Pre-Matric Scholarship for OBC Students

Schemes for Economic Development

- Credit Enhancement Guarantee Scheme for the Scheduled Castes (SCs)
- National Safai Karamcharis Finance and Development Corporation (NSKFDC)
- National Scheduled Castes Finance and Development Corporation (NSFDC)
- Special Central Assistance to Scheduled Caste Sub Plan (SCA to SCSP)
- Scheme of Assistance to Scheduled Castes Development Corporations (SCDCs)
- Self Employment Scheme for Rehabilitation of Manual Scavengers (SRMS)
- Pradhan Mantri Dakshta Aur Kushalta Sampann Hitgrahi (PM-DAKSH) Yojana

Schemes for Social Empowerment

- Schemes undertaken by NBCFDC for promoting Social Empowerment

- Centrally Sponsored Scheme for implementation of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
- Pradhan Mantri Adarsh Gram Yojana (PMAGY)
- Support for Marginalized Individuals for Livelihood and Enterprise (SMILE)
- Pradhan Mantri Anusuchit Jaati Abhyuday Yojna (PM-AJAY)

LGBTQ COMMUNITIES

The LGBT communities all around the world have been in a constant battle against the discrimination they face on a daily basis. In the west the LGBT movement, had emerged “with and out of the women’s movements, foregrounded the idea of pleasure, the LGBT movement here really came into existence piggybacking on the AIDS crisis and articulated itself necessarily in the languages of crisis, violence and remedial action , not pleasure.”(Tellis: 2011) Even though in the academic filed sexuality was shown to be embedded in various discourses it wasn’t accepted or understood by the state. Also no debate about sexual desire has ever come up with sexual agency as the base.

CRIMINALISATION OF HOMOSEXUALITY

Not many people were familiar with section 377 of the Indian Penal code till the recent movement that took place on a large scale in order to repeal it. This struggle has been a long one, Section 377 dates all the way back to 1861, during the British rule in India when any sexual activities that went “against the order of nature” was criminalized including homosexual acts. The concept of what is natural and what is unnatural in itself can be looked at as a problem. Just because some people have different preferences, does it make them or their choices unnatural?

Section 377, IPC reads as:

“377. Unnatural offences.— *Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.*”

On 2nd July 2009 the High Court of Delhi declared gay sex legal, with respect to sex between consenting adults, but on 11th December, 2013 the Supreme Court went back to the old constitution and reinforced section 377. Despite all the government petitions to review and drop the ban on gay sex the apex court refused to do so and stuck to their verdict. One wrong judgment put to test all the hard work invested by the LGBT activists in order to spread

awareness regarding the topic and also to liberate hundreds of individuals who identified themselves as a part of the LGBT society.

Ever since the Supreme Court came out with such an unfair verdict there has been a lot of discussion and debate regarding this topic across the globe. In many parts of the country the LGBT society protested against this verdict by organizing various peace walks and pride parades in order to create awareness regarding this subject. These pride parades included not just homosexual people but also many heterosexual people who felt that this was a wrong step taken by the Supreme Court.

Effects of section 377

Poulomi Banerjee in her article shows us how this verdict has become a menace for many people who belong to the LGBT society and gives us accounts of many such instances. She tells us about a transgendered individual from Kolkata who was ill-treated and insulted by people from his neighborhood. While he was returning home... Some people on the street threw eggs at him. A day or two earlier, a group of approximately seven men from the neighborhood had blocked his way, demanding to know how much they would have to pay him in return for sexual favors” (Banerjee, 2014). This is something many homosexual people face on a daily basis. And what are they supposed to do about it? Go to the police? Well they can't, because the police themselves harass them and misuse the law. “There have been cases where two boys were seen holding hands or kissing and been harassed by the police. They either beat them up or threaten them with arrest and demand money to let them off. Demands for sexual favors in return of non-prosecution are also common,” says Kolkata-based activist Pawan Dhall, as accounted by Banerjee in her article.

It's sad to see that while on one hand we have people coming forward and taking part in the awareness campaigns and resent the Supreme Court's judgment, on the other hand there are still many people who believe that having any other sexual orientation except that of a heterosexual is unnatural and not just against nature, but against the will of God. There are a number of people who believe that the Supreme Court has made the perfect decision and it that their decision couldn't get any better. An article published by the Hindustan Times quotes the general secretary of the All Indian Muslim Personal Law Board, Mr. Abdul Raheem Quraishi as saying, “We know that homosexuality is against nature...it goes against all its laws and it is what led to the spread of HIV/AIDS” (HTC & AFP, 2013).

While the justification for this judgment given by many is similar to that of Mr. Quraishi regarding HIV/AIDS one must also remember that HIV/AIDS is not only a problem among homosexuals. Putting an end to oral and anal sex is not going to stop HIV/AIDS from spreading. Anyone who has unprotected sexual intercourse (not just oral and anal but also peno-vaginal) with an infected individual is susceptible to HIV infection. In fact “The United Nations Development Programme on HIV/AIDS had argued in 2008 that decriminalizing homosexuality would help India to combat the spread of HIV/AIDS which affects an estimated 2.5 million people here.”(HTC & AFP, 2013)

More than being a way to keep AIDS away, section 377 is more to do with the prevalence of How does one call this judgment fair if a section of people are treated so badly just because of difference in choice? What happens to the right to equality and freedom of choice? The 377 verdict seems to have simply ignored even the basic human rights of Article 14 and 15 of the constitution that guarantees every individual the right to equality and prohibits discrimination of any kind based on caste, sex, religion, race or even place of birth. If two individuals mutually consent to indulge in gay sex, why should anyone have a problem with it? This is another contradiction as Article 21 of the constitution guarantees an individual the right to freedom, privacy and personal liberty, hence guarantying protection of intimate sexual relationships, between consenting adults, from any intrusion of the state legislation. The Supreme Court seems to have kept a blind eye to these rights. Yes, it would be a horse of a different color if one individual was forcing another into the act, and that in all senses could be considered rape as well.

Did Section 377 only affect the LGBT Community?

Section 377 states that anything but heterosexual sex is “against the law of nature” hence against the law. Terming sexual acts like anal sex and oral sex as “gay sex” or “homosexual acts” is another problem. Banerjee in her article quotes Ashok Row Kavi, (activist and chair of the Humsafar trust-a homosexual community based organization) saying “A study conducted by the Family Planning Association of India has found that a good number of heterosexual couples in India engage in anal sex. So, under provisions of section 377, they too can face criminal proceedings. So how can we term such sexual practices as being “gay” or “homosexual” when there are large numbers of heterosexual couples who indulge in such sexual practices?. India is known as the country of Kamasutra, in which oral sex and various other styles of sex are described in detail but now according to 377 any sexual act that is not peno-vaginal is a crime.

While some may say, “Section 377 does not criminalize homosexuality. You cannot be arrested for being gay. But you can be arrested for engaging in non-peno-vaginal sex,” (Banerjee, 2014) for some people this may be satisfactory unless they realize that the whole point of this fight against 377 is that, it is not just about sex, “There is a close link between the act and the identity” (Banerjee, 2014). If any two people are in a relationship and wish to have an intimate relationship under mutual consent, shouldn’t they have the free will to have the sort of relationship they want? For those who say that this judgment is valid on the basis of religion and culture, should realize that even God is said to have given humans the free will to choose their own lifestyle.

For many years homosexuality had been considered to occur in an individual due to being a part of wrong environmental influences. There also was a point in time when homosexuality was considered to be a mental illness/disease even by the American Psychiatric Association, but sometime in 1973 they removed homosexuality from the diagnostic and statistical manual of mental illnesses. But many people till date live with the impression that homosexuality is an illness. In the recent past we have witnessed many ministers and government officials who wish to open rehabs for homosexuals, so as to “fix” their “problem” for the “betterment” of society.

Navtej Singh Johar V. Union of India

India witnessed an increasing number of LGBT rights protests when some high profile names including hotelier Keshav Suri, Ritu Dalmia, dancer Navtej Singh Johar among many others came forward and filed the petition before the Supreme court challenging the constitutional validity of Section 377 of IPC.

Arguments: The Supreme court agreed to refer the issue to a larger bench and heard several petitions in relation to it. The Government further stated that it will not interfere and will leave the matter to be decided in accordance with the wisdom of the court. Arguments were advanced that section 377 violated the constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination.

Judgement: The Court finally gave its verdict on 6th September 2018 and it can be summarised as follows:

1. The court unanimously ruled that Section 377 is unconstitutional as it infringes the fundamental rights of intimacy, autonomy and identity. and decriminalized homosexuality by reading down Section 377 to exclude consensual intercourse between adults of the same sex/gender.
2. The court rationalized that the Section 377 is vague and does not create intelligible differentia between what is “natural” and what is “unnatural”. It also curbs freedom of expressing one’s sexual identity, ie. right to freedom of expression as enshrined under Article 19 of the Indian constitution.
3. The court further opined that sexual orientation is an inherent part of self-identity and invalidating the same is denying the right to life and the fact that they constitute a minuscule section of the population cannot be a valid justification to deny them this right.
4. The court also heavily criticized the Koushal judgment and called it irrational, arbitrary and manifestly unconstitutional.
5. It was also emphasized that discrimination on the basis of sexual orientation is unconstitutional considering it is a natural phenomenon as proven by scientific and biological facts.
6. The Supreme court also directed the government to create public awareness regarding LGBT rights and to eliminate the stigma surrounding the LGBT people. The judges further elaborated upon the issues surrounding mental health, dignity, privacy, right to self-determination and transgenders.

The transgender community in India has been the worst sufferer of exploitation amongst the whole LGBT+ community due to their degraded social, educational and economical status. These people have never been considered as a part of society and have always been subjected to exploitation, ostracisation, humiliation and violence either in the hands of society or the authorities in power. The constant rejection and not having access to resources, these people often resort to beggary or prostitution, making them more vulnerable to discrimination, STD's and crimes such as human trafficking.

But the 2014 Judgement of the Supreme Court brought in a new ray of hope and euphoria for these transgender people as for the first time in the history, they were recognised as the third gender.

Issue: In *National Legal Services Authority v Union of India*, the Supreme Court had to decide upon the question of whether there was a need to recognise the hijra and transgender community as a third gender for the purposes of public health, education, employment, reservation and other welfare schemes.

Judgement: The Supreme Court in its landmark judgement created the 'third gender' status for hijras or transgenders. As earlier, the transgender people were forced to describe themselves as either male or female, but after the judgement, they could proudly identify themselves as transgender. But apart from this, what made this judgement so special was that it laid down the framework to guarantee the transgender community a whole spectrum of basic human rights which can be surmised as follows:

1. The court held that the non-recognition of their identities was in violation of Article 14,15,16 and 21 of the Constitution of India.
2. The Supreme court further directed the Government of India to treat the members of "Third Gender" as an economically and socially backward class.
3. It was also stipulated that government should make proper policies for the transgender community in the light of Articles 15(2) and 16(4) to ensure equality of opportunity in education and employment As per the judgement, the third gender would be categorised as other backward classes [OBC] to confer them the benefit of reservation in relation to government jobs and educational institutions.
4. The court also took cognizance that a conflict between one's birth gender and identity is not essentially a pathological condition. So, rather than adopting a "treatment of the abnormality", the focus should be on "resolving distress over a mismatch".

Same-sex Marriages

Special Marriage Act of 1954 lays down provision for people of India and all Indian nationals in foreign countries allowing them to marry irrespective of their faith, caste and religion. So, while the marriage laws in India have evolved progressively with time but there is no such provision for the same-sex couples to marry, which seems reasonable also considering it's only been two

years when the Supreme court decriminalised homosexuality. However, sooner or later the legislature has to deal with these questions.

There are several petitions on same-sex marriages pending with the courts. So the next onus on the LGBT activists is to encourage and demand from the government to formulate legislation permitting LGBTQ couples to marry, adopt and inherit their spouse's property. However, the fact is that although the Union government, in 2018 left it for the court to decide on the legality of section 377, but has also indicated that it is likely to oppose any petition for same-sex marriage.

But this seems to be contradictory in the light of the judicial pronouncements considering that if we really want to adhere to the principle of equality in the context of LGBT people then the right to marry, bequeath property, share insurance (medical and life) are all part of this. Therefore, denial of these basic rights only on the basis of sexual orientation is objectionable and unconstitutional violating the constitutional rights of right to equality (Article 14) and liberty (Article 19).

Relevance of marriage

Marriage has been one of the strongest and most important institutions of human society. With time it has evolved and changed its forms but what didn't change is that marriage continues to be a universal fact. This has more relevance especially in the case of India, where the concept is so deeply entwined that everyone is expected to be a part of it.

In India, marriages and weddings are considered as a sacred thing. Marriage apart from regulating sex life is also a relationship grounded on economical and emotional interdependency. The religious ceremonies conducted are all considered an essential part of marriage. This perhaps explains why the LGBT community in India is so eager to get the legal right to marry or why there are so many instances of gay and lesbian marriages performed in India by the exchange of garlands in temples or quasi-legal friendship contracts in several reported cases.

The denial of marriage rights to LGBTQ+ people deprives same-sex couples of social and legal recognition as well as the state benefits that married persons enjoy. However, it is essential to point out that the institution of marriage since its inception has been exclusionary towards certain communities of people and whenever any group of people has been included or excluded from being able to marry, it has always been accompanied with a battle between public policy, religion, and social norms.

Personal Laws and Same-sex marriages

Family laws in India are categorised under two heads i.e. personal and secular laws:

1. Secular laws are applied to all the citizens regardless of their faith, caste etc. ie. Special Marriage Act.
2. Personal laws differ from religion to religion. There are primarily four personal laws governing marriages in India.
 - Hindus, Sikhs, Buddhists and Jains are governed by the Hindu Marriage Act.
 - Muslims are governed by Sharia law.
 - Christians are governed by Christian marriage Act.
 - Parsis are governed by the Parsi Marriage and Divorce Act, 1936.

On examining the religious standing of same-sex marriages in India it can be summarised as follows:

Hinduism: While the followers of Hinduism have different stances on homosexuality as a whole. However, there is enough literature available in Hinduism that speaks volume about same-sex relationships and as an extension to same-sex marriages.

There are temples carvings in India depicting same-sex relationships. Instances can also be found in various mythical stories such as God Ayappa being born out of Lord Shiva and Lord Vishnu. Story of Bhagiratha being born from two women who had sexual intercourse under divine blessings, description of homosexual acts in Kamasutra, a queer character 'Sikhandi' in Mahabharata and homosexual Tantric rituals are some historical evidences of same-sex relationships. However, in certain texts homosexuality is condemned but it is mainly on the premise that humans give unnecessary importance to sex.

Islam: Islamic Shariah law is extracted from the Quran and Muhammad's Sunnah. It's very clear in Islam that homosexuality is a punishable sin. This view remains the same in all four primary schools of Sunni jurisprudence. Further according to Islamic principles Muhammad stated that effeminate men and masculine women deserves to be cursed and should be thrown out of houses.

Christianity: The only confusion regarding homosexuality in Christianity is about the question that how should homosexuals be treated. Should they be considered as criminals or should their behaviour be rectified. In both cases, the position is clear that homosexuality is condemned in Christianity.

Parsis: In Zoroastrianism too, homosexuality is considered something evil and is strongly forbidden. However, there are certain followers who support LGBT+ people and consider the above interpretation as a distortion of the basic principle of "good thought, good word, good deed".

Jainism and Buddhism: In Jains, the stance is very clear. They discourage all kinds of sexual activities that are not done for the purpose of reproduction which means apart from homosexuality, even premarital sex, heterosexual sex or sex for fun is also not allowed.

While Buddhists say that till the time any sexual activity is consensual and is out of affection it is permissible. Dalai Lama also has a similar stance that homosexual sex is allowed provided nobody is harmed and it's completely consensual.

Sikhism: In Sikhism, since the religious texts remain silent on this aspect they don't hold any same-sex marriages in their gurudwaras.

The significance of discussing the religious standing of same-sex marriages is an essential pre-requisite before drafting any policy or law on same-sex marriages. As essentially all the personal laws governing marriages are derived from the available religious literature itself. So bearing in mind that homosexuality is considered something as vile and unacceptable in most of the religions except Hinduism and Buddhism. Therefore, any amendments in the personal laws regarding LGBT+ cannot be a practical solution in the status quo.

Further, this also must be viewed in the light of the fact that a number of previous attempts to enact uniform civil code (UCC) were met with deep resistance in India as minorities fear that UCC will restrict their freedom of religion. This is primarily the reason why the law commission in August 2018 rejected the UCC as a recommendation.

Making marriage laws inclusive of LGBT+ community

In order to recognize same-sex marriages, some new laws will have to be drafted, modified or inserted, as the present laws cannot be applied in the case of LGBT marriages. There are 3 ways by which the marriage laws can be made LGBT+ inclusive.

1. One view suggests that same-sex marriages can be permitted after reinterpreting, modifying or amending the existing laws or by making the language of the act gender-neutral.
2. The second view suggests that same-sex marriages should be permitted after drafting a whole new Act by considering the LGBT+ as a separate community.
3. The third view suggests that considering India is still not progressive enough and open to the idea of LGBT marriages, the legislature instead of legalising same-sex marriages can rather give them a different status such as that of a civil partnership, where they may not have all the rights of marriage but can still enjoy various other significant rights like sharing of insurance, filing joint tax returns etc. ie. it can be rather recognized as a relationship based on emotional and economical interdependency.

Right Of Disabled In India

Disability must first be defined as it is experienced by all disabled people, regardless of age and gender, including those with sensory, physical and intellectual impairment and mental health difficulties. Then, with

this shared understanding, an assessment can be made of how well disabled people are being supported within mainstream agendas for health and well-being, the

fight against global poverty and the human rights agenda. The chapter then shows how disabled people are taking control over their lives, changing their environments and demanding their right to full participation in society and to equality in freedom and dignity, despite massive violations of their rights and lack of visibility on mainstream development agendas.

The approach to people with disabilities both nationally and internationally, has, for far too long, been built on a model of care and entitlement based on charity and the assumptions that disability is an individual pathology, a condition grounded in the psychological, biological or cognitive impairment of the individual. Having taken note of the historic grounds, which perpetuate on the equalities on the basis of physical and intellectual characteristics, the Commission is committed to create conditions in which persons with disabilities can enjoy their human rights and fundamental freedom on equal basis. This means combating disability based discrimination.

The 1970s marked a new approach to disability. The concept of human rights for disabled persons began to become more accepted internationally. The Declaration on the Rights of Disabled Persons, adopted by the General Assembly on 9 December 1975, encouraged national and international protection of the rights of the disabled. Recognition was given to the fact that disabled persons were entitled to the same political and civil rights as others, including measures necessary to enable them to become self-sufficient.

The declaration reiterated the rights of disabled persons to education, medical services, and placement service. It further recognized their right to economic and social security, to employment, to live with their families, to participate in social and creative events, to be protected against all exploitation, abuse or degrading behavior, and to avail themselves of legal aid.

‘The challenge of integrating and including persons with disabilities in the economic mainstream has not been met. Despite international standards and the implementation of exemplary training and employment legislation, policies and practices in some countries, persons with disabilities, and especially women, youth and those in rural areas, remain disproportionately undereducated, untrained, unemployed, underemployed and poor.

EDUCATION FOR DISABLED

According to the National Sample Survey Organization, 2002 report on ‘Disabled Persons in India’, 55 percent persons with disabilities were illiterate. This is very large and unacceptable percentage. There is a need for mainstreaming of the persons with disabilities in the general education system through Inclusive education. Sarva Shiksha Abhiyan (SSA) launched by the Government has the goal of eight years of elementary schooling for all children including children with disabilities in the age group of 6-14 years by 2010.

Government of India is providing scholarships to students with disabilities for pursuing studies at post school level. Scholarship is also provided to the children with mental retardation and Cerebral Palsy pursuing education in school i.e. Class IX & X.

Existing Legislation And Institutional Infrastructure

In 1995, the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act was promulgated. The office of Chief Commissioner for Persons with Disabilities has been established for monitoring implementation of various provisions of the Act. The Government of India enacted the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act in 1999. The objective of this Act is to provide support to the creation of enabling climate for as much independence as is possible and to provide for assistive decision making wherever essential. A Board has been constituted to discharge functions as enshrined in the Act.

The Rehabilitation Council of India Act was notified in 1992. This Act provides for regulating the training of rehabilitation professionals and upgrading the quality of professionals. Eighty-sixth amendment of the Constitution passed in 2002 introduced a new Article 21A: Right to Education. This provides “the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.”

The policy framework in the area of disability is enshrined in 3 Acts:

- (i) The Rehabilitation Council of India Act, 1992.
- (ii) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (iii) The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

The Disability Discrimination Act (DDA) 1995[3] aims to end the discrimination that many disabled people face. *This Act has been significantly extended, including by the Disability Discrimination Act 2005. It now gives disabled people rights in the areas of:*

employment

education

access to goods, facilities and services, including larger private clubs and transport services

buying or renting land or property, including making it easier for disabled people to rent property and for tenants to make disability-related adaptations

functions of public bodies, for example issuing of licenses

The Act requires public bodies to promote equality of opportunity for disabled people. It also allows the government to set minimum standards so that disabled people can use public transport easily.

Conclusion

When targeting youth with disabilities, the focus could be on access to higher education, vocational training, and employment opportunities. There are many seats reserved for persons with disabilities lying vacant in the vocational training system. There is also an urgent need to upgrade the existing vocational training opportunities to enhance employment prospects for persons with disabilities. Employment exchanges need to play a more proactive role, in collaboration with DGE&T, to match the increasing numbers of these people, such as by strengthening counseling services and identifying employment opportunities. The Government could play an active role by announcing targeted incentives to the private sector to promote employment opportunities for persons with disabilities.

Older people with disabilities require social security mechanisms to ensure dignified living standards. The amount given through old age pensions, widow pensions, and disability pensions varies from states to states, because welfare is a state subject. These amounts also depend on the prosperity and the priorities of the state. The lack of uniform standards leaves many older disabled people vulnerable.

Public buildings/ places/ transportation systems etc. shall be made barrier free through design changes, use of appropriate material and strict adherence to building bye-laws, space standards for barrier-free built environment.

The Government of India has been assisting the persons with disabilities in procuring durable and scientifically manufactured, modern, standard aids and appliances that can promote their physical, social and psychological rehabilitation, by reducing the effects of disabilities.

SUGGESTED TOPICS TO DISCUSS

- 1) Does the existing reservation system really help the marginalized
- 2) How to reintegrate backward classes and communities within the society
- 3) Discussing the uncodified laws of tribal people
- 4) Legalizing same sex marriages
- 5) Reservation of LGBTQ+ communities
- 6) Increasing the political representation of women in India
- 7) Causes of marginalization of the schedule caste and scheduled tribes in india
- 8) Does the existing reservation system really help the marginalized

- 9) How to reintegrate backward classes and communities within the society
- 10) Discussing the uncodified laws of tribal people
- 11) How can infrastructure be enabled to include disabled people

AGENDA 2: Discussing the electoral reforms in India.

Introduction:

India is the largest democracy in the world. Elections are the most integral and important part of politics in a democratic system of governance. True democracy can function only when elections to the offices of power are held in a free and fair manner.

Issues in Electoral Politics in India

It is generally accepted that while the first three general elections were held in a free and fair manner, a plummeting of standards started during the fourth general elections in 1967. Many consider the electoral system in the country as the basis of political corruption

Money Power

In every constituency, candidates have to spend crores of rupees for campaigning, publicity, etc. Most candidates far exceed the permissible limit of expenses.

Casteism

There are cases of certain caste groups lending strong support to particular political parties. Thus, political parties make offers to win over different caste groups, and caste groups also try to pressurize parties to offer tickets for their members' elections. Voting on caste lines is prevalent in the country and this is a serious blotch on democracy and equality. This also creates rifts in the country.

Muscle Power

In certain parts of the country, there are widespread reports of illegal and untoward incidents during polling such as the use of violence, intimidation, booth capturing, etc.

Lack of Moral Values in Politics

The political corruption in India has led to politics becoming a business. People enter the political arena for making money and retaining their money and power. There are very few leaders who enter politics to make a difference in the lives of their people. The Gandhian values of service and sacrifice are missing from the Indian political scene.

Non-serious Independent candidates

Serious candidates float non-serious candidates in elections to cut a good portion of the votes that would otherwise have gone to rival candidates.

Vote-buying:

The rise of illegitimate expenditure on **vote-buying** has become a matter of great concern as it is making only the rich to be more qualified to become an MP (Member of Parliament) or an MLA (Member of the Legislative Assembly) over a well-qualified public-spirited person.

As can be seen, out of 533 candidates elected to the **17th Lok Sabha** (2019- present), 475 Parliamentarians (accounting for **88%**) are '**crorepatis**'. This reflects the paradoxical situation of poor India with rich Parliamentarians raising concerns about the growing role of money power in politics.

Freebies:

Freebie is something **provided or given free of charge**, ranging from rice at cheapest rates to laptops & bicycles. These promises may be targeted at particular groups of electorate like BPL families, weaker sections of the society, women, handicapped etc. Although, people have many-a-times rejected it, but still, political parties continue to compete with each other by offering such entitlements.

Paid News

Paid news is any news or analysis appearing in any media (Print and Electronic) for a price in cash or kind. An issue like **Paid News** disrupts the level playing field and circumvents the election expenditure limits. This creates a hurdle for the **Election Commission of India (ECI)** to conduct the smooth run-off elections in a **free, fair and transparent manner**.

Issuance of Secret Bonds

Electoral bonds are the bearer bonds that were launched in 2017 in order to cleanse the system of political funding in the country.

However, its anonymous feature in which neither the donor nor the political party is obligated to reveal whom the donation comes from **defeats the fundamental principle of transparency** in political finance (as the voters are unaware of the source of funds that are spent by the political parties in the election process).

Also, as the issuing entity is the **State Bank of India**, i.e. a State-run entity, there is a **fear of retribution** amongst the donors as the government at any point of time can look for the names of the anonymous donors.

Criminalization of Politics

It refers to a situation in which the **anti-social elements** enter the electoral process by contesting elections, getting elected to the legislature, and consequently occupying public offices. This happens due to **existing strong nexus** between the criminals and some politicians abusing the loopholes in the present system.

Flaws in the Criminal Justice System

In India, an accused is presumed to be innocent unless pronounced guilty by the Courts. The **rate of conviction for politicians is abysmally low**, with just **6% in criminal cases**. This implies that a large number of accused politicians with criminal background actually go unpunished from a Court of law, and are not disqualified from contesting elections further.

Lowering of Voting Age:

The 61st Amendment Act to the Constitution reduced the minimum age for voting from 21 to

18 years

Deputation to Election Commission:

All personnel working in preparing, revising and correcting the electoral rolls for elections shall be considered to be on deputation to the EC for the period of such employment, and they shall be superintended by the EC.

Increase in the number of proposers and the security deposit:

The number of electors required to sign as proposers in the nomination papers for elections to the Rajya Sabha and the State Legislative Councils has been raised to 10% of the electors of the constituency or ten such electors, whichever is less chiefly to prevent frivolous candidates. The security deposit has also been hiked to prevent non-serious candidates.

Electronic Voting Machine (EVMs):

First introduced in 1998 during the state elections of Delhi, Madhya Pradesh and Rajasthan, EVMs are used widely now as they are fool-proof, efficient and a better option in terms of the environment.

Disqualification on conviction for violating the National Honours Act, 1971:

This shall lead to disqualification of the person for 6 years from contesting to the Parliament and the state legislatures.

Death of a contesting candidate:

Previously, the election was countermanded on the death of a contesting candidate. In the future, no election will be countermanded on the death of a contesting candidate. If the deceased candidate, however, was set up by a recognized national or state party, then the party concerned will be given an option to nominate another candidate within 7 days of the issue of a notice to that effect to the party concerned

by the Election Commission.

Prohibition on sale of liquor:

No liquor or other intoxicants shall be sold or given or distributed at any shop, eating place, or any other place, whether private or public, within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll.

Time limit for bye-elections:

Bye-elections to any House of Parliament or a State Legislature will now be held within six months of the occurrence of the vacancy in that House.

Electoral Reforms Post 2000**Ceiling on election expenditure:**

At present, there is no limit on the amount a political party can spend in an election or on a candidate. But, the Commission has put a cap on individual candidates' spending. For the Lok Sabha elections, it is Rs. 50 – 70 lakh (depending on the state they are contesting the [Lok Sabha](#) seat from), and Rs. 20 – 28 lakh for an assembly election.

Restriction on exit polls:

The EC issued a statement before the 2019 Lok Sabha elections saying that exit poll results could be broadcast only after the final phase of the elections were over. This was done to avoid prospective voters being misguided or prejudiced in any manner.

Voting through postal ballot:

In 2013, the EC decided to expand the ambit of postal ballot voting in the country. Previously, only Indian staff in missions abroad and defence personnel in a limited way, could vote via postal ballots. Now, there are 6 categories of voters who can use the postal ballot: service voters; special voters; wives of service voters and special voters; voters subjected to preventive detention; voters on election duty and Notified voters.

Awareness Creation:

The government decided to observe January 25th as 'National Voters Day' to mark the EC's founding day.

Measures by Judiciary

Supreme Court in following cases recommended various reforms:

§ In *Union of India versus Association of Democratic Reforms 2002 case*: Contesting candidates need to **disclose** all their assets and liabilities, criminal convictions, etc. at the **time of filing their nomination paper**.

§ In *Ramesh Dalal versus Union of India 2005 case*: A legislator is **disqualified** from contesting elections if, **on the day of filing** the nomination papers, he/she stands convicted in a Court of law.

§ In *Lily Thomas versus Union of India 2013 case*: The nature of

Simultaneous Polls: The time has come to implement simultaneous polls because of its underlying advantages including reducing the costs of holding elections by the ECI and spending by political parties.

Central Legislation: In the *Public Interest Foundation & Ors. vs. Union of India 2018 case*, **SC put the onus on the Parliament** to frame a law to prevent criminalization of politics and take concerted efforts to cleanse the political system of the country.

- o The time has come to frame suitable legislation on the lines of **FRBMA, 2003** (Fiscal Responsibility and Budget Management Act- that puts a cap on fiscal deficit).

- o If a cap is introduced on populist announcements (based on the proportion of budgetary resources they have) by the parties within the ambit of law, then perhaps all political parties will have a level playing field and the unsustainable populist measures could be kept under check.

Law Commission in its 255th Report on Electoral Reforms inter-alia recommended strengthening of the office of the ECI in order to provide more independence and tooth to the institution.

Election Laws (Amendment) Bill, 2021

Recently, the **Election Laws (Amendment) Bill, 2021** was passed in the Lok Sabha. The bill seeks to **link electoral roll data and voter ID cards with the Aadhaar ecosystem**.

The Election Laws (Amendment) Bill, 2021 (Source : PRS India)

The Election Laws (Amendment) Bill, 2021 was introduced in the Lok Sabha on December 20, 2021. The Bill amends the Representation of the People Act, 1950 and the Representation of the People Act, 1951 to implement certain electoral reforms. The 1950 Act provides for allocation of seats and delimitation of constituencies for elections, qualifications of voters, and preparation of electoral rolls. The 1951 Act provides for the conduct of elections, and offences and disputes related to elections.

Linking electoral roll data with Aadhaar: The 1950 Act provides that a person may apply to the electoral registration officer for inclusion of their name in the electoral roll of a constituency. After verification, if the officer is satisfied that the applicant is entitled to registration, he will direct the applicant's name to be included in the electoral roll. The Bill adds that the electoral registration officer may require a person to furnish their Aadhaar number for establishing their identity. If their name is already in the electoral roll, then the Aadhaar number may be required for authentication of entries in the roll. Persons will not be denied inclusion in the electoral roll or have their names deleted from the roll, if they are unable to furnish Aadhaar number due to sufficient cause as prescribed. Such persons may be permitted to furnish alternate documents prescribed by the central government.

Qualifying date for enrolment in electoral roll: Under the 1950 Act, the qualifying date for enrolment in the electoral roll is January 1 of the year in which such roll is being prepared or revised. This implies that a person who turns 18 (i.e., eligible to vote) after January 1 can enrol in the electoral roll only when the roll is prepared/ revised the next year. The Bill amends this to provide four qualifying dates in a calendar year, which will be January 1, April 1, July 1, and October 1.

Requisitioning of premises for election purposes: The 1951 Act permits the state government to requisition premises needed or likely to be needed for being used as polling stations, or for storing ballot boxes after a poll has been conducted. The Bill expands the purposes for which such premises can be requisitioned. These include using the premises for counting, storage of voting machines and poll-related material, and accommodation of security forces and polling personnel.

Gender-neutral provisions: The 1950 Act permits certain persons who are ordinarily resident in a constituency to register in electoral rolls. Such persons include those holding a service qualification, such as members of the armed forces or central government employees posted outside India. The wives of such persons are also deemed to be ordinarily residing in the same constituency if they reside with them. The 1951 Act enables the wife of a person holding a service qualification to vote either in person or by postal ballot. The Bill replaces the term 'wife' with 'spouse' in both the Acts.

Analysis of the salient features of the bill:

De-Duplication of Electoral Roll: It provides for amendment of **section 23 of the Representation of People's Act, 1950**, enabling the linking of electoral roll data with the **Aadhaar ecosystem**.

This aims to curb the menace of **multiple enrolment of the same person in different places**.

This will help in **stopping bogus voting and fraudulent votes**.

This linking is in consonance with **105th report of the Department Related Parliamentary Standing Committee on Personal, Public Grievances and Law and Justice**.

Multiple Qualifying Dates: The citizens get voting rights when they turn 18. However, many are left out of the electoral rolls even after turning 18. This is because in the system, **1st January is the qualifying date.**

According to the bill, **four qualifying dates** will be declared for updating the voting rolls to include those who have turned 18 — the first day of the months of January, April, July and October.

Bringing Gender Neutrality: The language for registration of **‘wives of service voters’ will now be replaced by ‘spouse’**. This will make the laws more “gender- neutral”.

Service voters are those serving in the armed forces, armed police forces of a state serving outside it and government employees posted outside India.

Associated Concerns:

- o **Aadhar is itself not Mandatory:** In 2015, the move to link voter ID to Aadhaar was put on the backburner after the **Supreme Court Judgement**.
 - When it held that **“the Aadhaar card Scheme is purely voluntary”**.
 - Besides this, Aadhaar was only meant to be proof of residence. It is not proof of citizenship.

- o **Fears of Mass Disenfranchisement:** The Bill allows electoral registration officers to ask for Aadhaar numbers of applicants wanting to register as voters to establish the identity of the applicant.

- In the absence of Aadhaar the government would be able to use voter identity details for disenfranchising some people and profile the citizens.

- o **No Data Protection Law:** Experts have said that in the absence of a robust **personal data protection law** (a Bill in that regard is yet to be cleared by Parliament) any move to allow sharing of data can prove to be problematic.

- o **Privacy Concerns:** Electoral data at present is held by the **Election Commission of India (ECI)** in its own database, has its own verification process, and is separate from other government databases.

- The proposed linkage between the Aadhaar and election database will make data available to the ECI and **Unique Identification Authority of India (UIDAI)**.

- This could lead to **infringement of the privacy of citizens**.

What is the government's argument for bringing the Bill?

1. The government says the Bill **incorporates various electoral reforms** that have been discussed for a long time.
2. The government says linking Aadhaar with electoral rolls will solve the problem of multiple enrolments of the same person at different places.

3. Once Aadhaar linkage is achieved, the electoral roll data system will instantly alert the existence of previous registration(s) whenever a person applies for new registration.
4. This will **help in cleaning the electoral roll** to a great extent and facilitate elector registration in the location at which they are 'ordinarily resident'.
5. A **Parliamentary Standing Committee report** on demands of grants of the Law Ministry, had said: The Committee has been advocating linkage of unique Aadhaar ID Card number with voter I-card which would **streamline alterations in EPIC** during change of ordinary residence by the electors.
6. The incidence of multiple entry could also be eliminated which is required in participative democracy.
7. In Parliament, Law Minister said linking Aadhaar with the voter ID card "is voluntary. It is not compulsory or mandatory".

Why should there be a problem with identifying names that appear in multiple rolls?

1. One of the concerns is whether the Bill's implementation will be successful if the linkage is not compulsory.
2. The Bill amends the Representation of the People Act, 1950 and the Representation of the People Act, 1951 to implement certain electoral reforms.
3. The 1950 Act provides that a person may apply to the electoral registration officer for inclusion of their name.
4. The Bill says the electoral registration officer may require a person to furnish their Aadhaar number for establishing their identity.
5. If their name is already in the electoral roll, then the Aadhaar number may be required for authentication of entries in the roll, but people will not be denied inclusion in the electoral roll or have their names deleted, if they are unable to show their Aadhaar cards.

Way Forward

§ **Need for Comprehensive Legislation:** An error-free Electoral Roll is sine qua non of free and fair election. However, the Government should come with a comprehensive bill so that proper discussion can happen in the Parliament.

§ **Need for More Clarification:** The bill should specify the extent of data sharing between the two databases, the methods through which consent will be obtained, and whether consent to link the databases can be revoked.

§ Political parties should have been taken into confidence on how it is being attempted.