Polity notes by Apala Mishra

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Words- in your answer, don't forget citizen-citizen awareness, public trust and credibility, citizen empowerment.

Don't forget DIGITAL aspect

- **Confidence building measures**
- **Unfolding an ambitious roadmap of peace and progress**
- **Ushering in new era of inclusive development and transparent governance**
- **Participatory socio economic development**
- **Responsive governance tailored to meet local exigencies**

Notes by Apala Mishra (Upsc AIR 09)

• Indian Constitution- historical underpinnings, evolution, features, amendments, significant provisions and basic structure.	
Even BJP governments in different States, including Gujarat, have reduced fines under the amended Motor Vehicles Act despite the Centre justifying the hefty fines. This proves the futility of one nation, one law. Not all Hindus in the country are governed by one law. Marriages amongst close relatives is prohibited by the Hindu Marriage Act of 1955, but is considered auspicious in the south. The Hindu Code Bill recognises customs of different Hindu communities. Even the Hindu Succession Act of 1956 made several compromises and could not make daughter a coparcener till 2005. Wives are still not coparceners. Even today, property devolves first to Class I heirs and if there are no Class I heirs, then to Class II heirs. While heirs of sons are Class I heirs, those of daughters are not. Even among Class II heirs, preference is given to the male line. If a couple does not have a child, the property of not only the husband but also of the wife goes to the husband's parents. Similarly, there is no uniform applicability of personal laws among Muslims and Christians. The Constitution protects the local customs of Nagaland, Meghalaya and Mizoram. In fact, let's leave aside discriminatory personal laws; even land laws enacted after 1950 in a number of States are gender unjust. These laws have been exempted from judicial scrutiny and have been included in the Ninth Schedule. No blueprint of a UCC has been prepared yet. No expert committees, like the Hindu Law Committee of	• The **Brandenburg Test** is a legal framework used to determine whether or not free speech can be limited in cases where it stands to incite violence or crime. According to the Brandenburg Test, the government may legally prohibit speech if: Speech is "directed to inciting or producing imminent lawless action" **and** Speech is "likely to incite or produce such action" • Talking to the American political journalist, Norman Cousins, in 1961, Jawaharlal Nehru shared his idea of democracy: **"I would say that democracy is not only political, not only economic, but something of the mind."** Nehru emphasised democracy as "a certain tolerance of others and even of others' opinions… a certain contemplative tendency and a certain inquisitive search for truth." Democracy for Nehru was akin to **a political culture where a hundred opinions could bloom.** • **Nehru, Discovery of India- "a buddhist or jain in India is 100% product of Indian thought and culture, yet neither is a Hindu by faith."** • Octavio Paz in book IN LIGHT OF INDIA- "India as a county and as a history is much greater than Hinduism" • 1774 EDMUND Burke's famous speech on representation - representative should think of what is good for the country and not just for his constituents. • Pluralism and tolerance are essential virtues and constitute the building blocks of a truly free and democratic society. • Our constitution is a consequence of our democratic culture which reflects our ancient values • **Pillars of democracy : 3D i.e. Debate, Discuss and Dialogue** • **Democracy can't be restricted to elections and government. Democracy is strengthened by "Jan Bhagidari" i.e. People Participation** • **Jan Bhagidari is the biggest asset of democracy** • **Dissent is the safety valve of a democracy** • **"man is born free but everywhere he goes he is in chains" rousseau** • Gandhiji "I understand democracy as something that gives the weaker the same chance as the strong." • Erosion of democracy occurs when there is excessive concentration of power in a single authority , accompanied with curbs on the media. • **Abraham lincoln gettysburg speech- democracy of the people, for the people, by the people.** • Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.Benjamin Franklin • John Locke's dictum that 'wherever law ends, tyranny begins.' Also- 'justice is the first virtue of social institutions' and that in 'a just society the liberties of equal citizenship are taken as settled and the rights secured by justice and are not subject to political bargaining or to the calculus of social interest.' • SEDITION- **The National Crime Records Bureau (NCRB),** though, has only been collecting separate data on sedition cases since 2014. In 2014, there were 47 cases of sedition but that number increased to 70 in 2018 • Kerela law curbing free speech
• Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure,	• As Gandhi knew: We can either be free together or not at all. (ON FEDERALISM) • S. R. Bommai case- SC held that states are not mere "appendages" of the centre • **MGNREGA-** Kerela is stepping up pressure on the centre to release its Rs.1114 crore due to workers • **conclusion for federalism—>** Among the present governmet's various intellectual misgivings, the biggest of them is perhaps its inability to make a distinction between unity and uniformity. Uniformity is not an essential condition for unity. On the contrary, a celebration of plurality may foster greater unity in a nation such as ours. The days of imperialistic London are over. It is the era of Gandhinagar, Chennai, Lucknow and Kolkata.
• Separation of powers between various organs dispute redressal mechanisms and institutions.	Hand written notes.

• Parliament and State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these.	• FALL IN NUMBER OF BILLS GOING FOR PARLIAMENTARY SCRUTINY-
	  • In 14th Lok sabha, 60 percent of bills were sent to standing committees
	  • 15th ls- 71 percent
	  • 16th lok sabha- only 26 percent
	• PARLIAMENTARY COMMITTEES-
	  • According to data shared by the chairman VP Venkiah Naidu, only 18 out of the 80 RS MPs attended all the meetings of their committees. The chairman also stressed that the absence of MPs has a larger impact, as each member of a committee represents 25 of his parliamentary colleagues in these meetings.
	  • Woodrow Wilson, before he became the 28th president of the United States, wrote in 1885: "…it is not far from the truth to say that **Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work."**
	  • Since time on the floor of the house is allocated on the basis of party strength, many MPs only get a couple of minutes to make their point. This is not the case with committee meetings, where MPs can contribute extensively to the discussions of the committee.
	  • **Venkaiah Naidu** had recently suggested that MPs should have longer tenure in committees so that they could build up their expertise in subject areas. Very often, MPs experience a knowledge gap when dealing with specialised subjects. In 2005, speaker **Somnath Chatterjee** was inclined towards associating external experts with parliamentary committees to support the committees in analysing legislations and policies.
	  • Conclusion- **Parliamentary committees are the brain of Parliament.** They give the institution the ability to **identify pressing and prospective issues, suggest solutions, and highlight gaps** in implementation. Supporting and encouraging MPs to engage in Parliamentary committees will ensure that the Parliament becomes the **intellectual compass for good governance** in the country
	• Modi ji + Vajpayee- rajya sabha may be second house but not secondary.
	• **Section 94 of the Representation of People Act** upholds the privilege of the voter to maintain confidentiality about her choice of vote.

• Structure, organisation and functioning of the Executive and Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.	• **2nd ARC recommendations on office of Profit:** The Law should be amended to define office of profit based on the following principles: ☐ **All offices in purely advisory bodies where the experience, insights and expertise of a legislator would be inputs in governmental policy shall not be treated as offices of profit.** ☐ All offices involving **executive decision making** and control of public funds, directly deciding policy or authorizing or approving expenditure **shall be treated as offices of profit.** ☐ If a serving Minister is a member or head of certain organizations, where close coordination between the Council of Ministers and the organization is vital for the functioning of government, it shall not be treated as office of profit.
	• **267 law commission report-** hate speech
	• **NEW DESPOTISM-** it has been seen that Rule of Law isn't practiced in its real sense. Several reasons are attributed for it: **1.Growth of Administrative Law 2.Growth of Delegated Legislation 3. Internal and External Emergencies.** These developments have been termed as **'New Despotism'**. New Despotism: it is defined as prevalence of conditions wherein Bureaucrats enjoy disproportionate power.
	• **Anti defection law example-** Haryana speaker disqualifies five INLD MLAs under anti-defection law in September 2019
	• Educational institutions and non-profits that get "substantial funds" from the government fall under the purview of the Right to Information Act, 2005, said the Supreme Court on September 17, 2019.
	• DISSENT- Amartya Sen in his "The Argumentative Indian" is of the view that India has been a land of debate since ancient times. Through debate our civilization has evolved. However the quality of political debate in India is decreasing
	• **Winston Churchill - first came the nation, then the constituents and then the party.**
	• "Rule of law and maintenance of order is the science of governance" kautilya arthashastra.
	• **43% newly-elected Lok Sabha MPs have criminal record: ADR**
	• GOVERNOR
	  • CONCERNS-
	  • the appointment process of Governors has made the office vulnerable to the influence of the Union government. Over the years, occupants of this office have continued to look towards New Delhi for guidance. The dangers of this habit are cautioned by lawyer and constitutional expert A.G. Noorani, who argued that a "state's autonomy comes to naught if its people's mandate can be defied or ignored by a central appointee."
	  • In the Karnataka and Maharashtra cases, it is evident that the Governors invited the leader of the Ruling party when they did not have the support of the majority in the respective Legislative Assemblies.
	  • The Justice P.V. Rajamannar Committee, which was tasked by the Tamil Nadu government to look into Centre-State relations in 1969, recommended that State governments be included in the appointment process of Governors to drastically reduce their discretionary powers. The call to rectify the imbalance in Centre-State equations must begin with such a reform.
	  • Furthermore, for too long, Governors have enjoyed a legal immunity, granted by the Constitution, on account of their sovereign functions
	  • A nine-judge Constitution Bench of the court in the Bommai case, which is the reigning authority on the use and misuse of Article 356, had held that political whim or fancy cannot form the basis for the President to proclaim central rule in a State.

• judiciary AND Police
 	
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	• In Anita Kushwaha v. Pushpa Sudan (2016) the Supreme Court ruled "Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe.
	• Conclusion- judiciary has the most imp role in maintaining trust and credibility in democracy in a diverse country like india.
	• Pendency of cases-
	  • VP M Venkaiah Naidu made the following suggestions;
	  • Institute four regional Benches to tackle the enormous backlog of cases, and to ensure their speedy disposal.
	  • The court should be split into two divisions.
	  • Judicial pendency- while simplistic input-output model suggests to increase the number of judges, the suggestion conveniently masks the deeper systemic flaw in the judicial system that causes such high pendency.
	  • "Zero pendency Courts" project in Delhi
	  • DAKSH- a Non profit org based in Bengaluru working on judicial reforms.
	  • Suggestions from Economic Survey 2018: Expanding judicial capacity in the lower courts and reducing the existing burden on the high court and Supreme Court. Need to downsize original and commercial jurisdiction of High courts and enabling the lower judiciary to deal with such cases.
	• DEATH PENALTY
	  • It is not the severity of punishment, but the CERTAINTY of the punishment that deters rule violations.(ON DEATH PENALTY)
	  • The severity of punishment is not a substitute for state capacity (ON DEATH PENALTY)
	  • Justice can never be instant. Justice would lose it's character if it became 'revenge' - SA Bobde
	  • **JUSTICE J.S. VERMA COMMITTEE 2013-** against death penalty for rape cases
	  ★• 262 law commission report 2015- against death penalty except in terror cases
	• POLICE
	  • A new report titled "**Status of Policing in India Report 2019**: Police Adequacy and Working Conditions" was released by Common Cause and the Lokniti programme of the Centre for the Study of Developing Societies (CSDS).
	  • **28% police personnel believe that pressure from politicians is the biggest hindrance in a crime investigation.**
	  • The **sixth National Police Commission report**, which was released in 1983, recommended the introduction of a police commissionerate system in cities with a population of 5 lakh and above, as well as in places having special conditions.
	  • PRISON REFORMS
	  • National crime records bureau "prison statistics of India 2017 report" - avg occupancy rate of 115% with as high as 165% in states like U. P.
	  • As per a Law Commission report from 2001, **more than 14 lakh people (14,57,779) were held under preventive laws in India.**
	  • **Amitava Roy committee recommendations-**
	  Key recommendations:
	  • Every new prisoner should be allowed a free phone call a day to his family members to see him through his first week in jail.
	  • Modern cooking facilities, canteens to buy essential items and trial through video-conferencing should be made available.
	  • **Speedy trial remains one of the best ways to remedy the unwarranted phenomenon of over-crowding.**
	  • There should be at least one lawyer for every 30 prisoners, which is not the case at present.
	  • Special fast-track courts should be set up to deal exclusively with petty offences which have been pending for more than five years.
	  • **Justice Mulla Committee**
	  Two points.
	  1. National Prison Commission,NPC- to bring modernisation of prisons
	  2. Indian prisons and correctional services as an all India service.
	  • **Krishna Iyer committee on women prisoners: recommended recruitment of more women in police force.**
	  • **Krishna Iyer Committee:** In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders
	  • Sandeep Saxena committee formed to look into voting rights of prisoners. Under Section 62(5) of the Representation of the People Act, 1951, individuals in lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote.
	  • **"In my opinion, undertrials should be allowed to vote. This is because there are many people, awaiting trial, who have spent more time in prison than the actual term their alleged crime merits. Their numbers are much bigger than convicts," said Prof Jagdeep Chhokar, founder of the Association of Democratic Reforms, an advocacy group that works on electoral reforms.**
	  • Supreme court- public authority. CJI- under RTI.
	  • "judicial independence is not secured by the secrecy of cloistered halls" justice D Y Chandrachud.
	  • **India's per capita expenditure on free legal aid is 75 paise per annum. According to the India Justice report 2019.**
	• **Fake encounters-** As many as 2,560 cases of extra-judicial killings have been recorded in the country since 1993, of which the 1, 224 were found to be fake encounters by the NHRC
	  ENCOUNTER KILLINGS
	  • JUSTICE DELAYED IS JUSTICE DENIED, JUSTICE HURRIED IS JUSTICE BURRIED.
	  • INCREASINGLY REFLECT THE **IDEA OF "POWER" RATHER THAN "JUSTICE".**
	  • Such executions will "only kill the criminals, not the crime"
	  • We, in India, continue to follow a "culture of control" and a tendency to "govern through crime"
	  • Revived the debate on **"right to kill"**
	  • Fake encounters and extra judicial killings= ugly reality of our country
	  • Is India moving from "rule of law" to "rule of gun"?
	  • Instance justice can never be based on revenge - CJI S. A. Bobde
	  • Right thing to do? - appoint senior judges in fast track courts with time limits. No adjournments.
	  • UN working group on "enforced or involuntary disappearances" noted that **guilty officials are generally not punished incase of fake encounters**.
	  • India is bound by Resolution 1989/65 of May 24,1989 which had recommended principles on tha "Effective prevention and investigation of extra legal arbitrary and summary executions"
	  • **SC in Om Prakash & ors vs state of jharkhand 2012** - such killings must be deprecated. They are not recognized as legal by our criminal justice administration system. They amount to State Terrorism. "
	  • NEED OF THE HOUR
	  ▪ 1. Fast track courts to deal with crimes of heinous nature. As per the latest National Crime Records Bureau data, there were 1.33 lakh rape cases and 90,205 POCSO cases pending trial at the end of 2016.
	  ▪ 2. Manual on Human Rights for Police Officers, issued by the National Human Rights Commission (NHRC) needs to be adhered to. This calls for reforms in police training.
	  ▪ 3. The Supreme Court 16 point guidelines in the matters of investigating police encounters laid down in PUCL v. State of Maharastra needs to be adhered to.
	  ▪ 4. There is an urgent need for reforms in the criminal justice system as the conviction rate for rape cases stood at 25.5 percent as per NCRB data.
	  ▪ 5. Judicial vacancies also result in the pendency of cases and delayed justice.
	  ▪ 6. Institutional reform of police processes, including investigation of crimes, professionalization and rationalization of court systems with the induction of technology and limiting appeal procedures to the minimum required.
	  • Instances like the 2017 Ryan International School murder case and the Arushi Talwar murder case, where innocent persons were framed by police initially, highlight how hysteric media trials shape public opinion.

Sedition	• Section 124A of IPC • Came into existence in 1870 • British used sedition against freedom fighters like Bal Gangadhar Tilak • Defined as- whoever, by words, either spoken or written, or by signs, brings or attempts to bring into hatred or contempt or disaffection towards government establishes by law. • Kedarnath Singh vs state of Bihar- sedition only in case of incitement of violence • Balwant Singh vs state of Punjab case- raising pro Khalistan slogans cannot amount to sedition. • Law commission- working paper- criticising the government does not amount to sedition. • Examples- sedition charges on Kangana Ranaut, Aseem Trivedi, Umar Khaled • Bombay HC= " need to conduct workshops for police officers for judicious use of invoking section 124 A.
• Salient features of the Representation of People's Act.	
• Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies., Statutory, regulatory and various quasi-judicial bodies •	• **NHRC:** Only 20% of the NHRC's staff is women and **since 2004, there hasn't been a single woman on the governing body**. The legislative requirement of having an ex-CJI as Chairperson and choosing members of the senior judiciary **restricts the potential pool of candidates who can be appointed, especially women.** • **Earlier Supreme Court (SC) has termed CBI as a caged parrot with many masters** on account of political interference in CBI's functioning. • **PSC 85th report wanted to replace Delhi Special Police Establishment (DSPE) Act of 1946 by a new CBI law** • **The 'Report Card on the Performance of Information Commissions in India' was prepared by the Satark Nagrik Sangathan and the Centre for Equity Studies-- The State and Central Information Commissions, which are the courts of appeal under the Act, failed to impose penalties in about 97% of the cases where violations took place in 2018-19.** • The Election Commission of India released the statistical report for general election 2019. • Key findings of the report: • The overall polling percentage in the last parliamentary election, including postal ballots, was 67.4%, which is the highest ever turnout in a Lok Sabha poll. • On the final vote share of national parties, BJP polled 37.76% of valid votes, Congress 19.7%, Trinamool 4.11%, BSP 3.67%, CPM 1.77%, NCP 1.4% and CPI 0.59%. • The national turnout among women electors was marginally higher at 67.18% as compared to male electors (67%). • As per the state-wise turnout figures, Lakshadweep recorded the highest turnout at 85.21% across all states and UTs, followed by Nagaland (83%). Jammu and Kashmir recorded the lowest turnout at 44.97%. • Remedies for electoral bond - 1. Complete transparency 2.political parties under RTI. 3. Voters need to demand changes- must reject candidates that overspend. • Voters need to demand changes and we need voter awareness campaigns. The simple message from voters to political parties could be "we like you, not your big money. If you want, we will all pitch in and give small individual donations." If voters reject candidates and parties that overspend or bribe them, we would have moved democracy one level higher. Most important, the electoral bonds scheme needs to be scrapped. The Supreme Court is hearing a petition on this issue. Let us hope Indian democracy survives without going through another crisis. . RTI- Vacancies- Tripura and Jharkhand have no information commissioners atall • State Info commissions do not have chief info commissioner

- Important cases

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MACHHI SINGH CASE (1983) AND DEVENDER PAL SINGH CASE (2002)	• Supreme court held that death penalty can be awarded only in rarest of rare cases.
Selvi & Ors vs State of Karnataka & Anr (2010)	• a Supreme Court Bench ruled that no lie detector tests should be administered "except on the basis of consent of the accused". It said that the 'Guidelines for the Administration of Polygraph Test on an Accused' published by the National Human Rights Commission in 2000, must be strictly followed.The Bench took into consideration international norms on human rights, the right to a fair trial, and the right against self-incrimination under Article 20(3) of the Constitution.
Bharat Kumar vs Cpm case	• Sc held that **Bandh is ' illegal because it involves an element of coercion** . It threatens a total Shutdown and paralyses normal life on the other hand a hartal is not illegal provided that proper procedure is followed by hartalis.
Krishna Kumar Singh vs. State of Bihar	The Supreme Court has held that the failure to place an ordinance before the legislature constitutes abuse of power and a fraud on the Constitution.
Harish uppal vs UOI 2002 case-	lawyers can't go on strikes.
SC in Om Prakash & ors vs state of jharkhand 2012 -	Encounters amount to state terrorism
faheema shirin vs state of kerela case	• The **Kerala High Court** has held that **the right to have access to the Internet is part of the fundamental right to education as well as the right to privacy under Article 21** of the Constitution.dit
Sabu Matthew George vs UOI 2018	Internet as a basic fundamental right
Baby Manji Yamada Vs UOI 2008-	• In 2008, a baby (Manji Yamada) born through surrogacy was unable to leave India for three months after her birth because she held neither Indian nor Japanese nationality. The case came before the Supreme Court of India.[16] The issue was resolved after the Japanese government issued a one-year visa to her on humanitarian grounds.
Supreme Court Bar Association v. Union of India (1998)	• It was decided that **article 142** Cannot be used to over-ride the existing law, but only to supplement the law and Can be invoked for procedure purposes only.
"Reptakos" case of 1991	• Supreme Court advocated the concept of right of a living wage.
Hargovind Pant v. Raghukul Tilak 1979-	• SC held Governor is an independent constitutional office and not subordinate to CG
Sarbananda Sonowal versus UOI, 2005	• The SC had held that massive influx of illegal migrants from neighbouring countries amounts to "external aggression and internal disturbance"
Surendra Vassant Sirsat case, 1994	• The Bombay High Court hela that a pro-tem is Speaker of the House "for all purposes with all powers, privileges and immunities" until the Speaker is elected.
Rupa Ashok Hurra vs. Ashok Hurra and Anr. (2002)	• The concept of curative petition was first evolved by the Supreme Court of India in the matter of **Rupa Ashok Hurra vs. Ashok Hurra and Anr. (2002)**,where the question was whether an aggrieved person is entitled to any relief against the final judgement/order of the Supreme Court, after dismissal of a review petition. • The Supreme Court in the said case held that **in order to prevent abuse of its process and to cure gross miscarriage of justice, it may reconsider its judgements in exercise of its inherent powers.** For this purpose, the Court has devised what has been termed as a "curative" petition.
1980 Gurbaksh Singh Sibbia vs State of Punjab case.	ANTICIPATORY BAIL- SC bench ruled that Sec. 438 (1) is to be interpreted in the light of Article 21 of the Constitution (protection of life and personal liberty).
Subhash Kashinath Mahajan v. State of Maharashtra	In March 2018, Supreme Court diluted the stringent provisions of **SC/ST Act ()**.
justice Loya case	SC said PIL had now become a facade for people hungry for publicity or those who wanted to settle personal, business or political scores
'Shirur Mutt' case in 1954.	Doctrine of essentiality
Nikhil Soni case	while dealing with the validity of the practice of Santhara, stated that Santhara is not an essential religious practice and therefore not protected under Article 25
	Ismail Faruqui case- 3. **Ayodhya case-** The Supreme Court upheld the Ismail Faruqui judgment and said a **prayer in the mosque is not part of essential religious practices.** 4. **Sabarimala Case-** The Supreme Court concluded that the practice of banning women from entering the temple is not an essential part of Hinduism, instead, that allowing women devotees in the temple is an essential part of the religion.
Navtej Johar case 2018	Struck down section 377 of IPC
SHAFIN JAHAN VS ASOKAN CASE 2018	Right to choose ones life partner is an important facet of right to life.
Chandra Kumar's case 1997	Writ jurisdiction forms a part of basic structure
Pravasi bhalai sangathan vs UOI	SC recognised the adverse and discriminatory impact of hate speech on individuals
PUCL v. State of Maharastra	The Supreme Court 16 point guidelines in the matters of investigating police encounters laid down in PUCL v. State of Maharastra needs to be adhered to.

- HAMDARD DAWAKHANA VS UOI 1960 CASE- "**Executive**= power to execute, including power to decide whether to apply the law to an area or to determine the time and manner of carrying it into effect"
- 41st Law Commission report 1973- CrPC