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02nd JULY, 2024

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S.NO.	TOPIC
1.	SUBJECTS IN VARIOUS LISTS
2.	AT THE END OF PRIDE MONTH, ASSESSING THE LGBTQIA+ COMMUNITIES' RIGHT
3.	WHAT IS ON THE AGENDA FOR THE 16TH FINANCE COMMISSION?

SUBJECTS IN VARIOUS LISTS

Subjects in the List:

7th Schedule

- ❖ The seventh schedule under Article 246 of the constitution deals with the division of powers between the union and the states.
- ❖ It contains three lists- Union List, State List and Concurrent List.
- ❖ The union list details the subjects on which Parliament may make laws while the state list details those under the purview of state legislatures.
- ❖ The concurrent list on the other hand has subjects in which both Parliament and state legislatures have jurisdiction.
- ❖ However the Constitution provides federal supremacy to Parliament on concurrent list items in case of a conflict.

DISTRIBUTION OF LEGISLATIVE POWERS





Evolution of 7th Schedule:

- ❖ The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 100 subjects (originally 97 subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, interstate trade and commerce, census, audit and so on.
- ❖ The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 61 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture prisons, local government, fisheries, markets, theaters, gambling and so on.
- ❖ Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others.
- ❖ The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.
- ❖ Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state even though that matter is one which is enumerated in the State List. This provision has reference to the Union Territories or the Acquired Territories (if any).
- ❖ The 101st Amendment Act of 2018 has made a special provision with respect to goods and services tax. The Parliament and the state legislature have power to make laws with respect to goods and services tax imposed by the Union or by the State. Further, the parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of inter-state trade or commerce.
- ❖ The power to make laws with respect to residuary, subjects (i.e. the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.
- ❖ From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.
- ❖ In US, the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states.
- ❖ The Australian Constitution followed the American pattern of single enumeration of powers.
- ❖ In Canada, on the other hand, there is a double enumeration— Federal and Provincial, and the residuary powers are vested in the Centre.
- ❖ The Government of India Act of 1935 provided for a three-fold enumeration. viz.. federal provincial and concurrent.



- ❖ The present Constitution follows the scheme of this act but with one difference that is under this act the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the governor general of India. In this respect, India follows the Canadian precedent
- ❖ The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List.
- ❖ Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List it is the former that should prevail.
- ❖ In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List the Central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the president and has received his assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter
- ❖ The 1983 Sarkaria Commission essentially blessed the status quo: “After a careful analysis and examination of the entries in the concurrent list, we have come to the conclusion that a good enough case does not exist for amending the Constitution to transfer any entry in the concurrent list to the state list.” But it did concede that before legislating on items in the concurrent list, the Union government should consult the states.
- ❖ Roughly 20 years down the line from 1983, nothing changed. In 2002, the National Commission to Review the Working of the Constitution (Venkatachaliah Commission) submitted its report, and said: “There is, however, no formal institutional structure that requires mandatory consultation between the Union and the states in the area of legislation under the concurrent list.”

Need to relook and revise the Seventh Schedule:

- ❖ Over time, many constitutional amendments have led to changes in the Seventh Schedule. An item from the state list moving to the concurrent list, or an item from the concurrent list moving to the Union list, represents centralization
- ❖ The 1976 amendment was a clear push towards centralization. Thus, amendments to the Seventh Schedule since 1950 have reinforced centralization, and not neutralized that trend
- ❖ The 1971 report of Rajamannar Committee, formally known as CentreState Relations Inquiry Committee, put it thus: “The Committee is of the opinion that it is desirable to constitute a High Power Commission, consisting of eminent lawyers and jurists and elderly statesmen with administrative experience to examine the entries of Lists I and III in the Seventh Schedule to the Constitution and suggest redistribution of the entries.
- ❖ Most people will agree India’s administrative and governance template needs greater decentralization. The substantive point is about a re-look at the Seventh Schedule.
- ❖ There are pending reforms pertain to factor markets—land, labour, natural resources. In a heterogeneous country, the labour conditions are not uniform across the states. In global negotiations, it is often argued that country at different levels of development value labour, or the environment, differently. That logic should also apply to the states, which are at different levels of development. Hence, should labour be on the concurrent list, or should be moved to the state list



- ❖ Commissions that delved into Union-state relations have typically focused on other matters (such as Article 356), treating the Seventh Schedule in passing. The Seventh Schedule deserves independent scrutiny, asking questions on the basis of first principles.

Practice Question:

Q.1 Discuss the historical evolution of the governance of education in India postindependence, particularly focusing on the placement of 'education' in the concurrent list through constitutional amendments. (150 Words /10 marks)

AT THE END OF PRIDE MONTH, ASSESSING THE LGBTQIA+ COMMUNITIES' RIGHT

At the end of Pride Month, assessing the LGBTQIA+ communities' rights

The decriminalisation of Section 377 in 2018 was a huge victory for LGBTQIA+ communities, but the road towards equality before the law is long

DATA POINT

Nitika Francis

Every year, June is observed as Pride Month the world over. The contributions of members of the LGBTQIA+ communities are commemorated, and love, diversity, and acceptance are celebrated. This year, too, pride marches were held across India, not only in metropolises, but also in smaller towns.

The rights and status of the LGBTQIA+ communities vary across the world. **Map 1** shows the legal status of same-sex acts in different countries as of 2024. At present, as many as 59 countries penalise any expression of queerness. In countries such as Ghana and Indonesia, those engaging in homosexual activities are punished with imprisonment or worse, death.

While 79 countries have banned same-sex marriage, 37 have fully legalised it. **Map 2** shows the status of same-sex marriage in different countries around the world as of 2024.

A few countries have also left the communities unrecognised, rendering their status ambiguous. India falls under this category. Some have allowed same-sex couples to opt for civil unions. While the Supreme Court of India decriminalised homosexuality in 2018 by partially striking down Section 377 of the Indian Penal Code, the Indian queer communities' plea to the Court to legalise same-sex unions was rejected in October 2023. Indian courts have acknowledged same-sex couples' right to cohabitation.

Although being queer is not a crime in India any more, people who identify as queer still face discrimination, harassment, and exclusion. They are not afforded the legal aid necessary to protect themselves from discrimination.

Transgender and intersex employees in India can seek legal re-

course in the face of discrimination on the basis of gender in hiring, promotion, termination, or harassment. The Transgender Persons (Protection of Rights) Act, 2019, prohibits unfair treatment with regard to employment, education, healthcare, public facilities, residence, and more.

India is one of the four countries in the world that provides employee legal aid only on the basis of gender identity, including transgender persons. However, employees are not guaranteed any legal aid when discriminated against on the basis of sexual orientation. There is no means of legally registering or identifying one's sexuality. Legal aid is available on the basis of sexual orientation in 27 countries.

In 90 countries around the world, there are no legal protections available to queer employees. **Map 3** shows different countries' stances on employee discrimination on the basis of gender and sexuality, as of 2024.

In India, members of the LGBTQIA+ communities cannot be recognised as co-parents to an adopted child. However, as per the Juvenile Justice (Care and Protection of Children) Act, 2015, a prospective adoptive parent is allowed to adopt a child irrespective of marital status.

Currently, 39 countries around the world allow same-sex parents to adopt children, and 45 countries have banned the same. However, 100 countries have arrangements similar to India, wherein single parents are allowed to adopt children, with certain conditions.

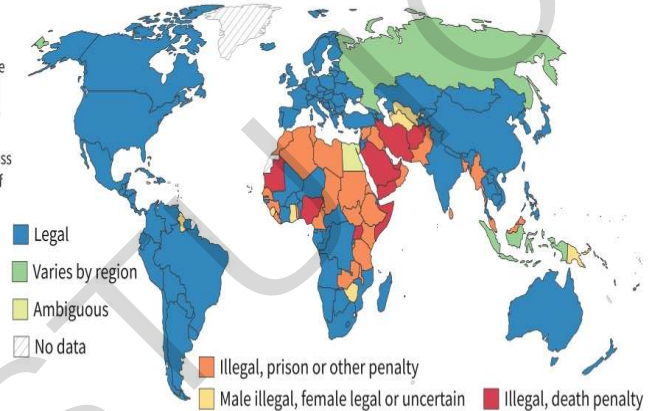
The decriminalisation of Section 377 was undoubtedly a huge victory for the LGBTQIA+ communities in India.

However, queer people still struggle to fight for their constitutional rights, for acceptance in their families, for recognition and growth in their jobs, for equality and justice in their everyday lives and interactions, and overall inclusion.

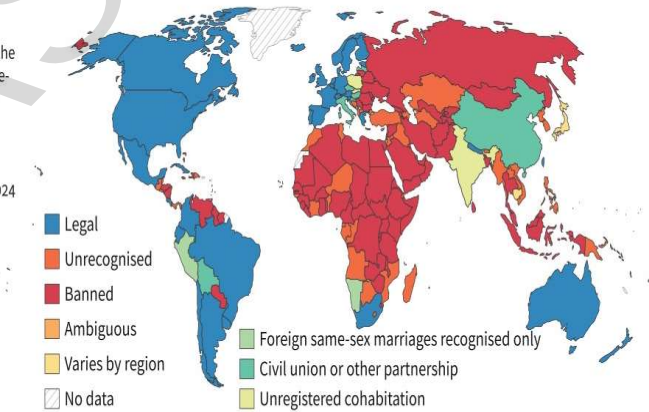
Pride and prejudice

The maps were sourced from Our World in Data

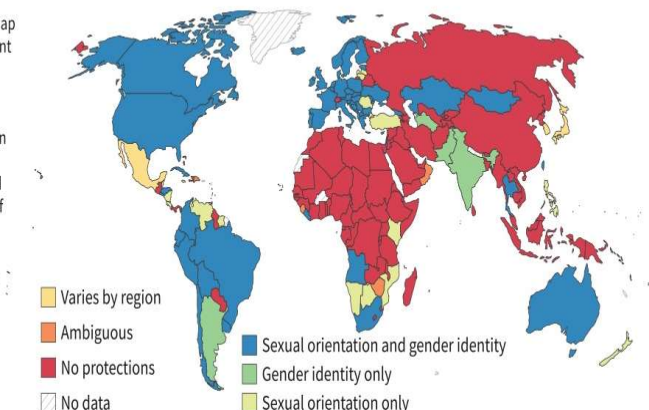
Map 1: The map shows the legal status of same-sex acts in different countries across the world as of 2024



Map 2: The map depicts the status of same-sex marriage in different countries around the world as of 2024



Map 3: The map shows different countries' stances on employee discrimination on the basis of gender and sexuality as of 2024





WHAT IS ON THE AGENDA FOR THE 16TH FINANCE COMMISSION?

What is on the agenda for the 16th Finance Commission?

How do other countries devolve funds to their local governments? Why is the Census significant?

Tikender Singh Panwar

The story so far:

The 16th Finance Commission (FC) has begun its work, established under Article 280 of the Indian Constitution, primarily focusing on the devolution of the consolidated fund. Since the 73rd and 74th constitutional amendments, local bodies have gained significant recognition within the federal system. These amendments introduced sub-clauses 280 (3) (bb) and (c), which mandate the FC to recommend measures to augment State consolidated funds for supporting panchayats and municipalities.

What about cities?

The National Commission on Urbanisation in the mid-80s described cities as "engines of growth." Although this view is somewhat narrow, the reality is that cities contribute around 66% of India's GDP and about 90% of total government revenues. Cities, thus, are an

important spatial zone for the overall development of the country. However, our economic scale is insufficient to meet rising needs. The World Bank estimates that \$840 billion is needed for basic urban infrastructure in the next decade.

Despite the efforts of five commissions since the 11th Finance Commission, financial devolution to cities remain inadequate. The fiscal health of municipalities is poor, affecting both city productivity and quality of life. Rapid urbanisation without appropriate fiscal action has adverse effects on development. Intergovernmental transfers (IGTs) to Urban Local Bodies (ULBs) in India are about 0.5% of GDP, much lower than the 2-5% typical of other developing nations. For instance, South Africa allocates 2.6%, Mexico 1.6%, the Philippines 2.5%, and Brazil 5.1% of their GDPs to their cities. Although IGTs make up about 40% of ULBs' total revenue, issues persist regarding their predictability, earmarking for vulnerable groups, and horizontal equity. IGTs are

crucial for ULBs, given their financial state and the need for stable support until their own revenues improve.

What about the taxation system?

The introduction of the Goods and Service Tax (GST) has reduced ULBs' tax revenue (excluding property tax) from about 23% in 2012-13 to around 9% in 2017-18. IGTs from States to ULBs are very low, with State Finance Commissions recommending only about 7% of States' own revenue in 2018-19. Increasing the quantum of IGTs as a percentage of GDP is necessary. Despite the 74th constitutional amendment's aim to financially strengthen ULBs, progress over three decades has fallen short.

The 13th Finance Commission observed that "parallel agencies and bodies are emasculating local governments both financially and operationally." Local governments require support from Union and State governments through funds, functionaries, and technical aid. However,

the growth of parallel agencies has distorted local governments' roles. Programs like the Member of Parliament Local Area Development Scheme and the Member of Legislative Assembly Local Area Development Scheme exacerbate this issue, distorting the federal structure.

How important is the Census?

In the absence of the 2021 Census, reliance on 2011 data is inadequate for evidence-based fiscal devolution. India has approximately 4,000 statutory towns and an equal number of Census towns, with an estimated 23,000 villages, all of which are effectively urban. These figures must be captured by the 16th FC, including the significant migration to Tier-2 and 3 cities.

Thus, the 15th FC's nine guiding principles require a revisit. Not all of them but reference to enhancement in property tax collection in tandem to the State's GST; maintenance of accounts; resource allocation for mitigating pollution; focus on primary health care, solid waste management, drinking water, etc., deserve attention. The 16th FC must consider India's urbanisation dynamism and ensure IGTs to urban areas are at least doubled. A McKinsey Global Institute report warns that if India continues investing in urban infrastructure at current rates, urban infrastructure will fall short, leading to water supply issues and untreated sewage.

Author is former Deputy Mayor, Shimla, and Member, Kerala Urban Commission.

THE GIST

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Finance Commission:

- ❖ Finance Commission is a statutory, independent, non-political body set up by President of India every five years (or earlier) under Article 280 of the Constitution. The Finance Commission of India came into existence in 1951. It was established to define the financial relations between the centre and the state.

Functions of the Finance Commission:

- ❖ Article 280 (3) speaks about the functions of the Finance Commission. The Article states that it shall be the duty of the Commission to make recommendations to the President as to:
 - 1 The net tax proceeds distribution to be divided between the Centre and the states, and the allocation of the same between states. The Commission decides the basis for sharing the divisible taxes by the centre and the states and the principles that govern the grants-in-aid to the states every five years.
 - 2 The principles governing the grants-in-aid to the states by the Centre out of the consolidated fund of India.



- 3 The steps required to extend the consolidated fund of the state to boost the resources of the panchayats and the municipalities of the state on the basis of the recommendations made by the state Finance Commission.
- 4 Any matter in the interest of sound finance may be referred to the Commission by the President.
- 5 As per the Code of Civil Procedure 1908, the FC has all the powers of a Civil Court. It can call witnesses, ask for the production of a public document or record from any office or court.

Composition of Finance Commission in India:

- ❖ Article 280 mentions that a Finance commission should be established at every five year or earlier by the President through an order.
 1. Appointment and Removal: Since, the President can appoint the Finance commission at any time before five year, its appointment and removal is at the discretion of the President (i.e. the government).
 2. The Finance Commission comprises the Chairman and four other members.
 3. The tenure and the salary are decided by the order of the President.
- ❖ The government generally appoints the Finance commission and provides it with a term of reference document, to serve as guiding principles in order to make its recommendations. The commission then studies the fiscal balance of the country and submits its recommendations via a report, which is then laid before the Parliament.

Why is there a need for centre to share taxes with the States?

1. Need for Vertical balance in federalism:

- ❖ In the Federal political structure of the Indian Constitution, there is a tendency in favour of the Centre. In fiscal matters, the Centre is much stronger than the states as the revenue-generating taxes, such as Income tax, corporate tax, and half of GST go to the Union.

Some taxes levied by the Centre, State and Local bodies		
Centre	States	Local bodies
Income Tax	State GST	Tax on Land and Building
Corporation Tax	Tax on Electricity	Vehicle Tax
Central GST	Excise Duty on Alcohol	Tolls
Customs	Stamp Duty	Entertainment Tax

- ❖ Thus, the constitution makers felt a need to make a constitutional provision to mandate the Union to share a portion of its tax revenue with the states under Article 270.
- ❖ In this context, the Finance Commission has been created under article 280. The Finance Commission devises a formula to distribute the net tax proceeds between the Centre and states collectively; that is called vertical balance.



2. Need for Horizontal balance in federalism:

- ❖ The Finance Commission also tells how the taxes are to be distributed between different states to maintain the horizontal balance.
- ❖ Due to vast regional disparities (e.g. Himalayan States), some states are not able to raise adequate resources as compared to other better-positioned states. To maintain equity, the Finance Commission recommends special funds that can be shared with comparatively disadvantaged states from the Centre's pool of taxes.

Question:

Q.2 With reference to the Finance Commission of India, which of the following statements is correct?

(UPSC C.S.E.2011)

- (a) It encourages the inflow of foreign capital for infrastructure development.
- (b) It facilitates the proper distribution of finances among the Public Sector Undertaking.
- (c) It ensures transparency in financial administration.
- (d) None of the statements (a), (b) and (c) given above is correct in this context.