



China builds ropeway, roads near tri-junction

Beijing has been improving infrastructure and arranging additional deployments along the eastern sector of LAC; officials say there is lot of activity near Doklam that saw face-off in 2017

Subasini Haldar
Dinakar Puri
NEW DELHI

China has set up a ropeway near the Torsa Nala on its side of the India-Bhutan-China tri-junction, and is strengthening roads and other infrastructure along the entire eastern sector, according to defence sources.

In the Yangtse area of Tawang sector in Arunachal Pradesh, which saw a scuffle last week, defence officials with knowledge of the area said China had stepped up patrols some years ago to assert its claims in the area, after finding that their grazers could not move in and out. "What irks the People's Liberation Army (PLA) is that the Indian Army holds



Border woes: Kupup in Sikkim is the closest point to Doklam that saw a face-off between Indian and Chinese troops in 2017.

the dominating heights which give a complete view of the bowl," noted two of the sources.

Yangtse ingress points
The Chinese usually patrol two to three times a year, before and after winter, one of the sources said, adding that there are four major ingress points in the

Yangtse area which the PLA uses to enter the region. Yangtse is located 30-35 km northeast of Tawang and is at an altitude of around 17,000 feet. The PLA has installed a ropeway close to the Torsa Nala on their side near the confluence point, and some new anchor points of the ropeway have been re-



cently observed, said one of the sources cited above. Officials said that there is also lot of activity near the Torsa Nala near Doklam, a location that saw a 73-day stand-off between Indian and Chinese forces in 2017.

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States can enact laws on uniform civil code, Law Minister tells Rajya Sabha

The Hindu Bureau
NEW DELHI

The States are empowered to enact personal laws that decide issues such as succession, marriage and divorce, in their endeavour to secure a uniform civil code (UCC), Law Minister Kiren Rijiju informed the Rajya Sabha on Thursday.

The Minister made these remarks in a written reply to a question posed by Communist Party of India (Marxist) member John Brittas, asking whether the Centre was aware of the States formulating their own laws with respect to the uniform civil code. "Yes, sir," said Mr. Rijiju. "Article 44 of the Constitution provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Mr. Rijiju added, "Perso-

'Till new system comes, vacancies will be an issue'

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The Law Minister's com-

ments assume significance given the backdrop of several Bharatiya Janata Party-ruled States announcing their intention to implement the UCC.

Taking the lead
While Uttarakhand was the first to set up a panel to explore the possibility of a common civil code, the Gujarat government also announced its intention of doing so just ahead of its Assembly election.

The party had made the implementation of the UCC a part of its Himachal Pradesh manifesto as well, although it lost the Assembly election. Earlier this month, Madhya Pradesh Chief Minister Shivraj Singh Chouhan said a committee would be constituted to implement the UCC.

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IN BRIEF

Bones found in forest belong to Shradha: police

NEW DELHI
Nearly a month after Aftab Poonawalla, 28, was arrested for murdering his live-in partner, Shradha Walkar, Delhi Police said most of the bones recovered from the Chhatrapur forest in the ongoing investigation belong to her. » Page 2

Parliamentary panel quizzes DIAL officials

NEW DELHI
A parliamentary panel has questioned the officials of Delhi International Airport Limited on infrastructure gaps at the Indira Gandhi International airport resulting in overcrowding and long lines in the recent past. » Page 14

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States can enact laws on uniform civil code, Law Minister tells Rajya Sabha

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Need a new appointment system to fill vacancies in higher judiciary: Rijiju

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India test-fires Agni-V ballistic missile with 5,000km range

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Public servants can be found guilty of graft on circumstantial proof: SC

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Quiz of the Day

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01

States can enact laws on uniform civil code, Law Minister tells Rajya Sabha

What is UCC?

The UCC refers to a common set of laws governing personal matters such as marriage, divorce, adoption, inheritance and succession for all citizens, irrespective of religion.



Historical perspective

Pre-Independence (colonial era)

- The **Lex Loci Report** of October 1840- It stressed the importance and necessity of uniformity in the codification of Indian law, relating to crimes, evidence and contract. But, it also recommended that personal laws of Hindus and Muslims should be kept outside such codification.
- The Queen's 1859 Proclamation- It promised absolute non-interference in religious matters.
- **So while criminal laws were codified and became common for the whole country, personal laws continue to be governed by separate codes for different communities.**

Post-Colonial era (1947-1985)

- During the drafting of the constitution, prominent leaders like Jawaharlal Nehru and Dr B.R Ambedkar pushed for a uniform civil code. However, they included the UCC in the Directive Principles of State Policy (DPSP, Article 44) mainly due to opposition from religious fundamentalists and a lack of awareness among the masses during the time.

Some of the reforms of this period were:-

- **The Hindu code bill -**
 - The bill was drafted by Dr.B R Ambedkar to reform Hindu laws, which legalized divorce, opposed polygamy, gave rights of inheritance to daughters. Amidst intense opposition of the code, a diluted version was passed via four different laws.
- **Succession Act-**
 - The Hindu Succession Act, 1956, originally did not give daughters inheritance rights in ancestral property. They could only ask for a right to sustenance from a joint Hindu family. But this disparity was removed by an amendment to the Act on September 9, 2005
- **The Hindu Marriage Act**
- **Minority and Guardianship Act**
- **Adoptions and Maintenance Act**
- **Special Marriage Act:**
 - It was enacted in 1954 which provided for civil marriages outside of any religious personal law.

Constitutional provisions suggesting UCC

Article 44:

- This Article of the Constitution makes a reference to a UCC and says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."
- This is in the chapter dealing with the Directive Principles of State Policy and is therefore presumed to be advisory in nature.

Article 37:

- States that the vision of a Uniform Civil Code (along with other directive principles) is enshrined in the Indian Constitution as a goal towards which the nation should strive, but it isn't a fundamental right or a Constitutional guarantee.
- One can't approach the court to demand a UCC. But that doesn't mean courts can't opine on the matter

Judicial interventions

Shah Bano case (1985):-

- Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days).
- Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife.
- Impact – After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed **The Muslim Women's (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.**

Daniel Latifi Case:-

- **Muslim Women's Act (MWA) was challenged** on the grounds that it violated the right to equality under Articles 14& 15 as well as the right to life under Article 21.
- Thus under the law of the land, **a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.**

Sarla Mudgal Case:-

- The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955. **Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code(IPC).**

John Vallamattom Case:-

- In this case, a priest from Kerala, John Vallamattom **challenged the Constitutional validity of Section 118 of the Indian Succession Act**, which is applicable for non-Hindus in India. Mr Vallamatton contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. **The bench struck down the section as unconstitutional.**

Advantage

- **Uniformity and reduced discord**
 - Common Code would enable uniform civil principles to be applied to the entire Nation.
- **Secularism and Women's Rights**
 - UCC would help end gender discrimination and overall discrimination on religious grounds and strengthen the secular fabric of the nation.
- **Ease of Administration**
 - UCC would make it easy to administer the huge population base of India.
- **Global Scenario:**
 - The personal laws of minorities were not recognised in any of the advanced Muslim countries.
 - Eg., in Turkey and Egypt, no minority in these countries were permitted to have their own personal laws.

Disadvantage

- **Hampering diversity and multiculturalism**
 - Indian society has a unique identity in the form of its being diverse and multicultural, and unified law might do away with these unique characteristics of this nation.
- **Violation of fundamental rights**
 - Religious bodies oppose a uniform civil code on the ground that it would be interference in religious affairs which would violate fundamental rights guaranteed under Article 25 of the constitution.
- **May lead to communal unrest**
 - It would be a tyranny to the minority and when implemented could bring a lot of unrest in the country.

“cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation”

Need a new appointment system to fill vacancies in higher judiciary: Rijiju

The Law Minister said the government had returned 20 names to the Collegium, but it had appointed 165 judges across various High Courts, making it the highest for a calendar year.

The Hindu Bureau
NEW DELHI

The issue of vacancies and appointments in the higher judiciary will continue to arise until a new system is created, Law Minister Kiren Rijiju told the Rajya Sabha on Thursday.

The Law Minister's comments, made while giving answers to supplementaries during the Question Hour, comes in the midst of an ongoing war of words between the government and the Supreme Court over the delay in appointments to the higher judiciary.

Asked if the government would revive the National Judicial Appointments Commission (NJAC) Act, Mr. Rijiju said that several prominent jurists, retired judges, advocates, and



Questions will keep arising on vacancy of judges and appointments till we create a new system for appointments

KIREN RIJIJU
Law Minister

leaders of political parties have opined that the striking down of the Act by the Supreme Court was not correct. The issue of the NJAC Act, which sought to replace the current Collegium system, has also been raised by Vice-President Jagdeep Dhankhar twice over the past 15 days.

30% vacancy

As on December 9, 777 judges are working in the High Courts against the sanctioned strength of 1,108, leaving a vacancy of

331 or 30%. To fill these vacancies, 147 proposals are at various stages of discussion between the Supreme Court Collegium and the Union government, while the names for another 184 vacancies are yet to be received by the Collegiums of various High Courts.

In a written response, the Minister said that while the government had returned 20 names back to the Collegium, it has appointed 165 judges across various High Courts, making it the highest for a calendar year.

calendar year.

Mr. Rijiju said the total number of cases pending in various courts is about to touch five crore, adding that the impact of such a huge pendency of court cases on the public is obvious. "Currently, the government has limited powers to fill the vacancies [in courts]," he said, adding that the Centre cannot look for names other than those recommended by the Collegium.

The Law Minister said that somehow he felt that "we are not working as per the spirit of the House and feelings of the people of the country". "We are giving our full support to reduce pendency of cases. But questions will keep arising on vacancy of judges and appointments till we create a new system for appointments," he added.

02

Need a new appointment system to fill vacancies in higher judiciary: Rijiju

What is Collegium system?

9th December THNA



Art. 124

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted

First Judges Case (1981)

- S.P. Gupta v Union of India
- Consultation doesn't mean concurrence

9th December THNA



Second Judges Case (1993)

- Consultation means concurrence



Advice of SC

- President under the provisions of Art. 143 asked advice on whether the advice of CJI is his sole opinion or not?



Third Judges Case (1998)

- SC clarified that it is not the sole opinion of CJI and he must consult 4 other senior most SC judges.
- Expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues



99th Amendment

- Parliament enacted 99th CAA and formed National Judicial appointments committee to make judicial appointments



Fourth Judges Case (2015)

- The NJAC Act was termed unconstitutional and was struck down, citing it as having affected the independence of the judiciary

Issues with the current collegium system

9th December THNA

The collegium system does not provide any guidelines or criteria for the appointment of the Supreme Court judges and it increases the ambit of favouritism.

In the collegium system, there are no criteria for testing the candidate or for doing a background check to establish the credibility of the candidate. The absence of an administrative body is also a reason for worry because it means that the members of the collegium system are not answerable for the selection of any of the judges.

The 'Second Judges Case' established the supremacy of the judiciary over the executive. This system disturbs the principle of check and balance. The check and balance principle is necessary because it ensures that no organ of democracy is exercising its power in an excessive manner.

NJAC was struck down for its unconstitutionality, but a closer look at the collegium system tells us that even though the collegium system is not mentioned anywhere in the Constitution, rather it has evolved over a period of time from different landmark cases.

The collegium system lacks transparency.

Nepotism has been often witnessed in the judiciary due to a lack of criteria for the appointment of judges. Nepotism leads to mediocrity due to biases in the judicial setup.



India test-fires Agni-V ballistic missile with 5,000 km range

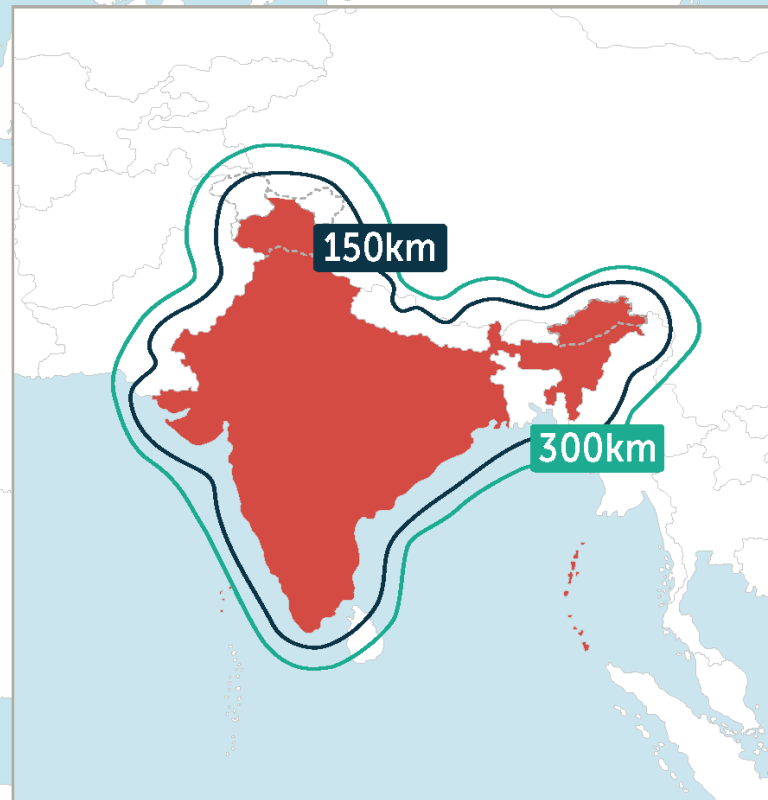
India on Thursday successfully test-fired nuclear-capable ballistic missile Agni-V that can strike targets at ranges up to 5,000 km, marking a significant boost to the country's strategic deterrence, people familiar with the development said. The test-firing of the missile from the APJ Abdul Kalam Island off Odisha coast comes amid India's lingering border row with China. Agni-V can bring almost the entire Asia including the northernmost part of China and regions in Europe under its striking range. PTI

03

India test-fires Agni-V ballistic missile with 5,000km range

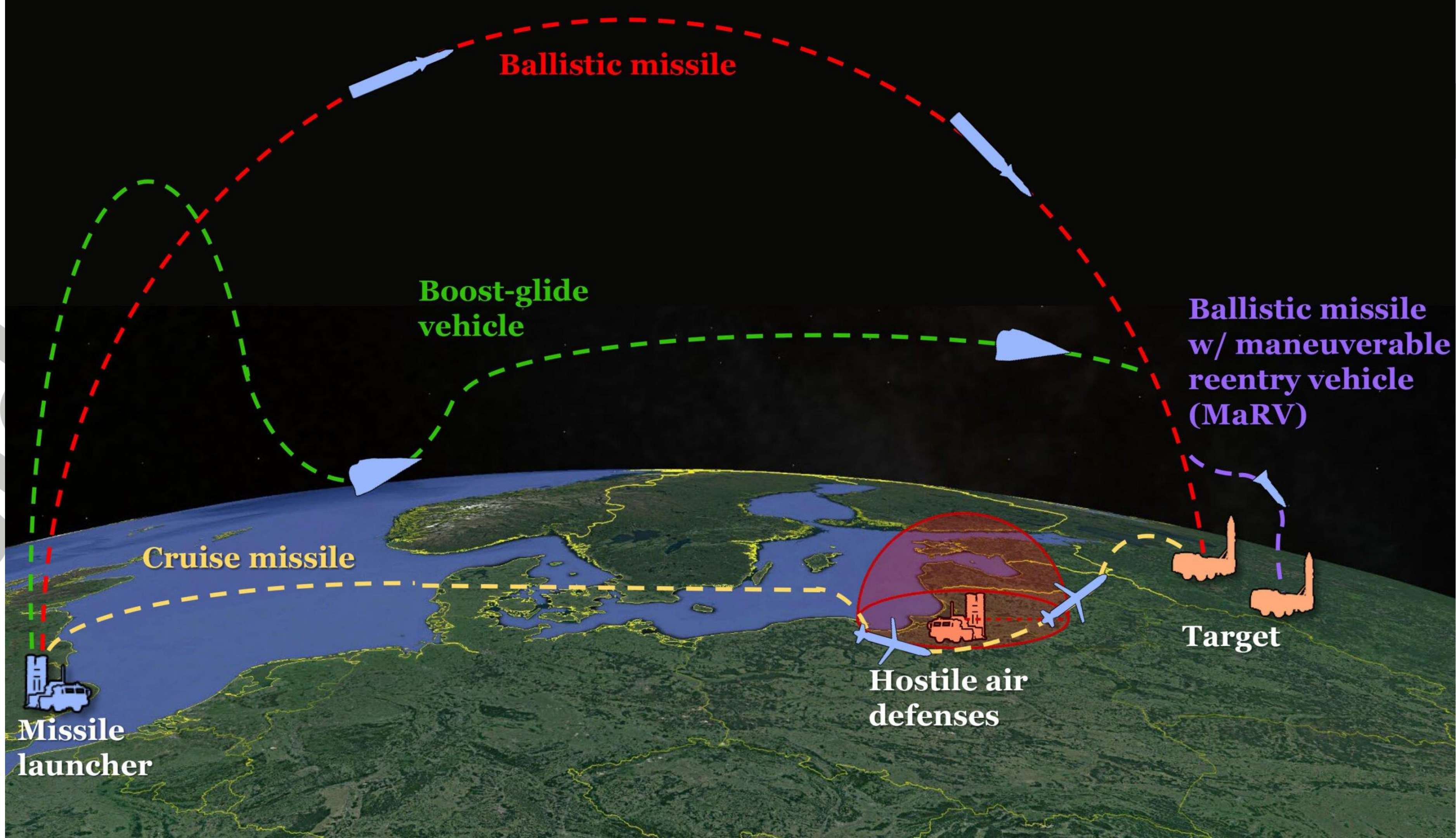


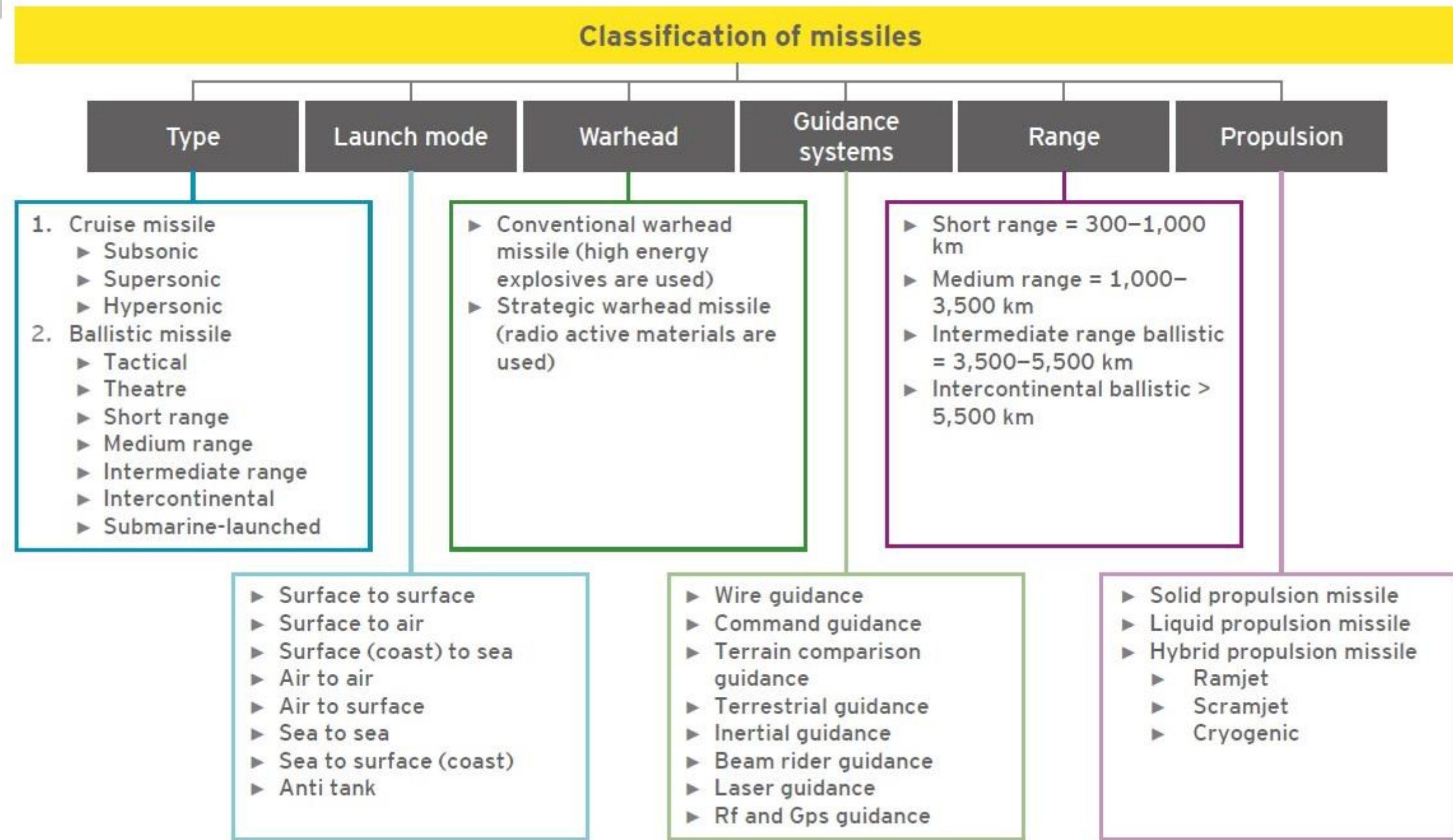
INDIA'S BALLISTIC & CRUISE MISSILES



India's missile forces largely support its nuclear deterrent posture against its main rivals China and Pakistan. To increase its nuclear forces' survivability, India has been diversifying its delivery platforms beyond land-based missiles and aircraft to include submarine-launched weapons. Although India primarily develops its ballistic missiles indigenously, New Delhi has collaborated with Russia on supersonic cruise missile development.







Public servants can be found guilty of graft on circumstantial proof: SC

The stink of corruption has a pervasive impact on the efficient administration and governance of the country; large-scale corruption retards nation-building activities and everyone has to suffer on that count, observes the top court


Krishnadas Rajagopal
NEW DELHI

A Constitution Bench of the Supreme Court on Thursday held that the demand and acceptance of bribe or illegal gratification by a public servant can be inferred by a court on circumstantial proof in the absence of direct evidence.

The Bench, led by Justice S. Abdul Nazeer, said the “stink of corruption” has a “pervasive impact” on the efficient administration and governance of the country. Corrupt officials have a demoralising effect on honest public servants. Corruption by public servants has become a “gigantic problem”. Large-scale corruption retards nation-building activities and everyone has to suffer on that count, the court observed.

“We hope and trust that complainants and prosecution make sincere efforts to ensure that corrupt public



 We hope prosecution make sincere efforts to ensure that corrupt public servants are brought to book and convicted

JUSTICE B.V. NAGARATHNA
Supreme Court Judge

servants are brought to book and convicted, so that the administration and governance becomes unpolluted and free from corruption,” Justice B.V. Nagarathna, who authored the judgment for the five-judge Bench, appealed.

The other judges on the Bench were Justices B.R. Gavai, A.S. Bopanna and V. Ramasubramanian.

The court, quoting from its preceding judgments on the Prevention of Corruption (PC) Act, said it is a “sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the

body politics, social fabric of efficiency in the public service and demoralising the honest officers”.

The Bench was answering a reference on the question whether public servants could be convicted for corruption under Section 7 (public servant taking gratification other than legal remuneration in respect of an official act) and 13 (1)(d)(i) and (ii) (criminal misconduct by a public servant) in the absence of direct oral or documentary evidence due to unavailability of the complainant owing to his death or for any other reasons.

“In the absence of the evidence of the complainant (through direct, primary, oral, documentary evidence), it is permissible to draw a deduction of culpability or guilt of a public servant under Sections 7, 13 (1)(d)(i) and (ii) read with 13(2) based on other evidence used by the prosecution,” Justice Nagarathna observed.

The prosecution can prove its case of corruption with the help of any other witness, oral or documentary evidence or circumstantial evidence in cases in which the complainants have turned hostile. The trial would not abate or result in an acquittal.

Justice Nagarathna said if a bribe-giver offers to pay illegal gratification without there being any demand from the public servant and the latter simply accepts the offer and receives the payment, it would be a case of “acceptance” un-

der Section 7 of the PC Act.

On the other hand, if the accused public servant makes a demand for a bribe and accepts the payment, it would be a case of “obtainment” and an offence under 13 (1)(d)(i) and (ii) of the PC Act.

But both the offer by the bribe-giver and the demand and acceptance of the illegal gratification have to be effectively proved by the prosecution as a fact.

“In other words, mere acceptance and receipt of the illegal gratification without anything more would not make it an offence under Section 7 and 13 (1)(d)(i) and (ii) of the Act,” the court said.

Justice Nagarathna interpreted that a court of law could use its discretion to make a “presumption of fact” of the offer made and bribe demanded or accepted by an accused official based on the material on record.

04

Public servants can be found guilty of graft on circumstantial proof: SC

What is Corruption?

- Transparency International (TI) defines corruption as “The abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs”

What are the causes of corruption?

- Legacy issues
 - Rampant poverty and empty coffers of the government.
 - Pre liberalization license permit raj catered by Monopolies and restrictive trade practices facilitated the corruption.
- Political system
 - Use of black money in elections to win at any cost.
 - Election funding is not transparent making it prone to the usage of black money.
 - Criminalization of politics.
- Economic structure
 - Unequal distribution of wealth- Transparency International data suggests that corruption is directly proportionate to the economic gap in a nation.
 - Faulty process of liberalisation- we first opened ourselves to the world and then took to legislation for various sectors like FDI, resource auction making it easy for foreign companies to manipulate the system.
- Legal lacunae
 - Archaic laws like IPC 1860 don't capture the complexities of administration and lead to the escape of wrongdoers.
 - Lacunae in the Lokpal act and delays in the appointments both at the state and central levels.
 - Dilution of the RTI act and political misuse of CBI and other agencies.
- Judicial delays
- Lack of protection to good Samaritans
 - Near non-existent whistleblowers protection
- Social problems
 - The mindset of the citizenry that doesn't look at the problems seriously and even accepts it as a necessary part of the system.
 - Increasing consumerism in the new middle class that is ready to bribe to get things done.

What are the impacts of corruption?

- Hindrances to developmental process
 - loss of wealth due to corruption and siphoning away of taxpayers' money leave little to spend in the social sector.
 - many developmental projects cannot be completed or get dragged for decades because of red-tapism, corruption cases raising the expenditure
 - Corruption in the social sectors like PDS, health and education schemes lead to demographic disadvantage.
- Economic loss
 - Corruption in the public services sector carries high risks for conducting good businesses. Companies are likely to unwanted red tapes, petty corruption, bribes for finalizing any procedures or deals.
 - Wrong allocation policies result in undervaluation of resources like Coal blocks, Hydrocarbon projects, Spectrum allocation. Eg. 2G scam, Coalgate. This mismanagement of resources leads to environmental degradation and exploitation.
 - Low tax collection due to tax authority- corporate corruption. It results in low spending in the capital building.
- Harmful to national security
 - We have a history of corruption in defense procurement and consequent litigation. It undermines the preparedness of the armed.
 - Corruption in the border security establishment creates problems of terrorist infiltration. Illegal migration has caused the issue of NRC implementation
- Social sector losses
 - Corruption in government projects targeting poor and vulnerable section of the society increases the economic gap between the rich and the poor
 - Corruption is always paid by the poor. The loss of exchequer by the big scams are always recovered by higher taxes. It hampers intergenerational parity in taxation.
 - The corrupt system denies the poor a chance to improve their status rendering them eternally poor
- Loss of faith in the system
 - On the political front, corruption is a major obstacle to democracy and the rule of law.
 - It then leads to the loss of legitimacy of the political systems and gives free hand to non-state actors. E.g. Left-wing extremism

- **Electoral reforms**
 - Barring the criminals from even participating in the elections as suggested by the election commission.
 - Imposing limits on the overall expenditure of the political parties.
 - Making state funding of elections a reality.
 - Empowering ECI by giving legal force to MCC and making paid news a criminal offence.
- **Strengthening of autonomous institutions**
 - Protecting the autonomy of CIC-giving him a constitutional status
 - Provision of required manpower, infrastructure, training of vigilance agencies
 - Eliminate overlapping of jurisdiction- e.g. Lokpal and CBI
- **Administrative reforms**
 - Establishing the Civil Service Board to curb the excessive political control over the administration
 - Reducing the hierarchy levels in the governments
 - Conducting periodic sensitivity training for the civil servants
 - Simplifying the disciplinary proceedings and strengthening preventive vigilance within the departments to ensure corrupt civil servant do not occupy the sensitive position
- **Governance reforms**
 - e-gov apart from advancing the good governance objectives of accountability and transparency also seeks to reduce the manual interface between state and citizen thus preventing the incidences of bribery
 - Enactment of the right to service act. E.g. Rajasthan social accountability bill
- **Economic reforms**
 - Negating legal lacunae in banking, stock market legislations.
 - Improving corporate governance by implementing corporate governance committee reports
 - Formalisation of the economy
- **Social sector improvements**
 - As Transparency International chairman Delia Ferreira Rubio says, “People’s indifference is the best breeding ground to the corruption”. citizen empowerment is a basic need in the fight against corruption

QUIZ OF THE DAY

Q1. Consider the following statements about Artificial Limbs Manufacturing Corporation (ALIMCO):

1. It is a Central Public Sector unit.
2. It works under the aegis of the Ministry of Commerce and Industry.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Q2. With reference to Sixth Schedule of the Constitution, consider the following statements:

1. It provides for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram to safeguard the rights of the tribal population in these states.
2. It seeks to safeguard the rights of the tribal population through the formation of Autonomous District Councils (ADC).

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2