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# POLITY PART-4

# EMERGENCY PROVISIONS

Student Notes:

## Contents

Student Notes:

# 1. Introduction

The Constitution of India has provided certain Emergency provisions to enable the state in dealing with any abnormal situation in a competent manner. They allow the state to defend the **sovereignty, unity, integrity** and **security** of the country. Further, they also act as a bulwark to preserve the **democratic political system**, and the **Constitution** itself. These provisions are contained in its **Part XVIII,** from **Articles 352 to 360.**

## 1.1. What is an Emergency?

During an Emergency, the Union government becomes all powerful and the federal structure gets **converted into a unitary one** without a formal amendment of the Constitution. This kind of transformation of the political system from 'federal during normal times' to 'unitary during emergency' is a **unique feature of the Indian Constitution**.

**Sources of Emergency Provisions**
These framework of emergency provisions was influenced by the relevant provisions of the **Government of India Act, 1935** and the Constitution of **Weimer Republic of Germany.**

In doing so, the Constitution of India has envisaged **three kinds of emergencies**–

1. **National Emergency-** An emergency due to war, external aggression or armed rebellion.
2. **State Emergency-** An emergency due to the failure of the constitutional machinery in the states.
3. **Financial Emergency-** An emergency due to a threat to the financial stability or credit of India.

# 2. National Emergency (Article 352)

## 2.1. Grounds for National Emergency

- Under **Article 352**, the President can declare a national emergency, when the security of India or a part of it is threatened by war, external aggression or armed rebellion.
    - When a national emergency is declared on the ground of **'war'** or **'external aggression'**, it is known as **'External Emergency'**. On the other hand, when it is declared on the ground of **'armed rebellion'**, it is known as **'Internal Emergency'**

The Constitution employs the expression '**proclamation of emergency**' to denote an emergency of this type.

- The **44th Amendment Act of 1978** substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance'.
    - The term 'internal disturbance' was replaced because there was an opinion that this particular term had been misinterpreted, leading to **political victimization of the states**.
- It may be noted that the President can declare a national emergency **even before the actual occurrence of war or external aggression or armed rebellion**, if he is satisfied that there is an imminent danger.
    - This provision has been provided for situations, wherein the executive may be able to pre-empt any imminent crisis.
- The President can also issue **different proclamations** on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation.
    - This provision was added by the **38th Amendment Act of 1975.**

Student Notes:

## 2.2. Territorial extent

- A proclamation of national emergency may be applicable to the entire country or only a part of it. The **42nd Amendment Act of 1976** enabled the President to limit the operation of a National Emergency to a specified part of India.

## 2.3. Procedures and safeguards

- **Concurrence of the Cabinet-** The President can proclaim a national emergency only after **receiving a written recommendation from the Cabinet.**
  - This means that the emergency can be declared only on the concurrence of the Cabinet and not merely on the advice of the Prime Minister.
  - The **44th Amendment Act** of 1978 introduced this safeguard to eliminate any possibility of the Prime Minister alone taking a decision in this regard as happened during 1975.
- **Approval from the Parliament-** The proclamation of National Emergency **must be approved (ratified) by both** the Houses of the Parliament **within one month** from the date of its issue by a special majority.
  - Originally, the period allowed for approval by the Parliament was **two months**, but it was reduced by the 44th Amendment Act of 1978.
  - However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
  - If the Lok Sabha stands dissolved at the time of the declaration of emergency, then it must be approved by the reconstituted Lok Sabha within thirty days from its first sitting, provided the Rajya Sabha has approved it in the meantime.

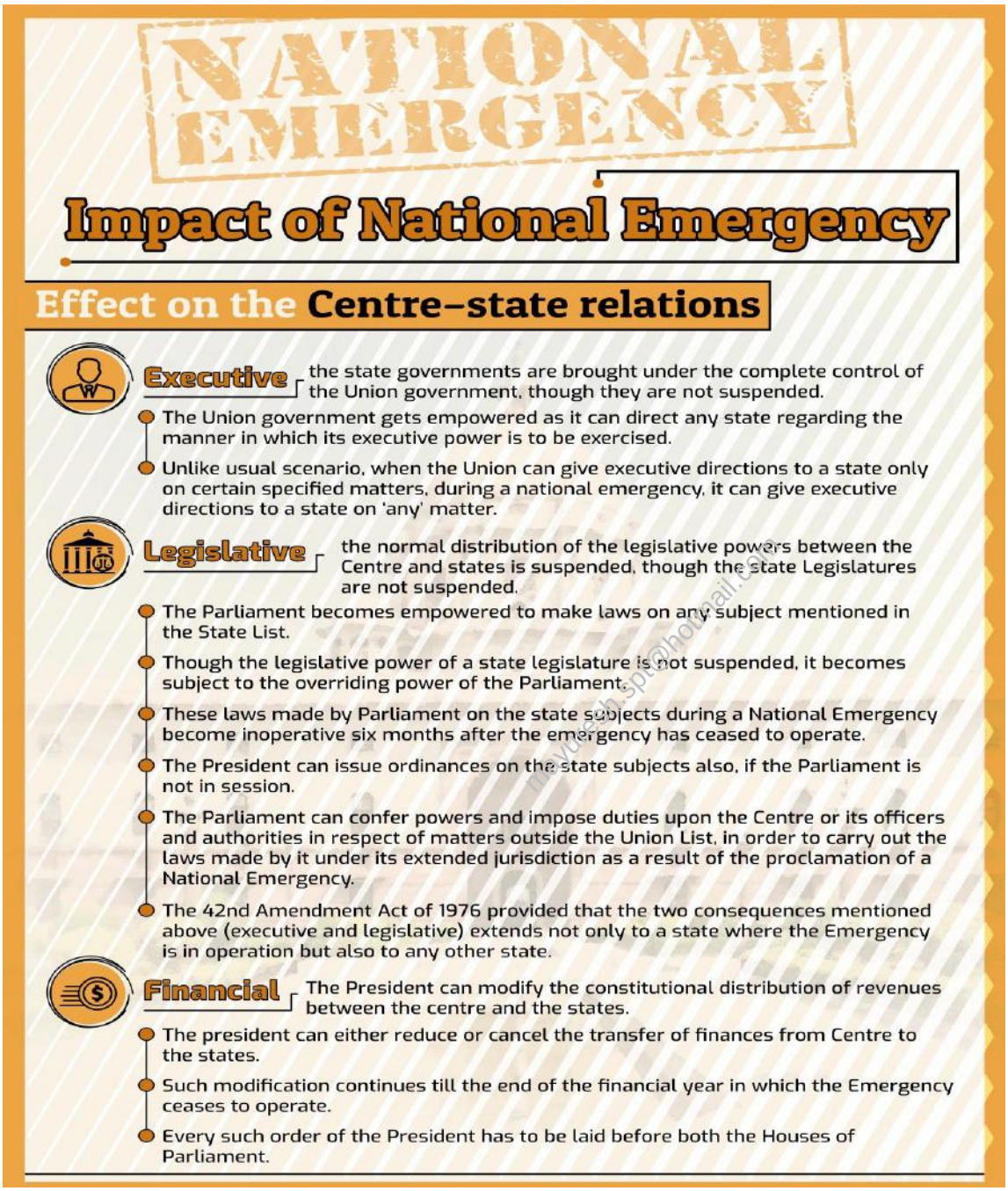
> **Use of special majority has a special significance**: Since the emergency tilts the polity in favor of the Union Government, it can be considered as a virtual amendment of the Constitution, thereby requiring a special majority to change the balance of powers between the States and the Center.

- **Duration of Emergency-** After approval by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months.
  - This provision for periodical Parliamentary approval was also added by the 44th Amendment Act of 1978.
  - All such resolutions **must be passed by a special majority**, that is, majority of the total membership of that house and majority of not less than two-thirds of the members of that House present and voting (this special majority provision was also introduced by the 44th Const. Amendment, 1978)
- **Revocation of National Emergency** – Lok Sabha has the powers to initiate proceedings for the discontinuation of the emergency. Lok Sabha can issue a notice in writing, signed by not less than one-tenth of the total members, with the intention to move a resolution. This resolution should be addressed to the Speaker, if the house is in session or the President otherwise.
  - A **special sitting of the house** shall be held **within 14 days from the date** on which such notice is received for the purpose of considering such a resolution. The resolution has to be passed by a simple majority to cancel the emergency. It can additionally be re-invoked by the President on the advice of Council of Ministers.

Student Notes:

## 2.4. Impacts of National Emergency

- The declaration of National Emergency brings about a lot of change in the constitutional set up of the country. The immediate effect of such a declaration is that the federal structure of the country is folded to a unitary one for purposes of uniformity of administration.
- The President acquires certain extra ordinary powers. He can issue directions or instructions to any State indicating the manner in which their executive power is to be exercised.
- These effects can be classified in the following way (refer the infographics)-
  1. **Effect on Centre-State Relations**
  2. **Effect on life of legislature**
  3. **Effect on the Fundamental Rights**



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## Effect on the life of legislature

The normal tenure of Lok Sabha and state legislative assemblies can be extended by the Parliament, while a proclamation of National Emergency is in operation.

**Lok Sabha** – the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time).

- However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. E.g. the term of the Fifth Lok Sabha (1971-1977) was extended two times by one year at a time.

**State legislative assemblies**

the life of a state legislative assembly may be extended by one year each time (for any length of time), subject to a maximum period of six months after the Emergency has ceased to operate.

## Effect on the Fundamental Rights

Articles 358 and 359 describe the effect of a National Emergency on the Fundamental Rights.

### Distinction between Article 358 & 359

| | Article 358 | Article 359 |
|---|---|---|
| Which Fundamental Right? | Confined to FR under Article 19 only | Extends to all those FRs whose enforcement is suspended by the Presidential Order. |
| Coverage | Suspends Article 19 completely | does not empower the suspension of the enforcement of Articles 20 and 21. |
| Type of Suspension | Automatically suspends as soon as the emergency is declared. | Not automatic, rather only empowers the president to suspend the enforcement of the specified FRs. |
| Operation | Operates only in case of External Emergency and not in case of Internal Emergency. | Operates in case of both External Emergency as well as Internal Emergency |
| Duration | Suspends FRs under Article 19 for the entire duration of Emergency | Suspends for a period specified by the president which may either be the entire duration of Emergency or a shorter period. |
| Territorial extent | Extends to the entire country | Extend to the entire country or a part of it. |
| State's Power | Enables the State to make any law or take any executive action inconsistent with FRs under Article 19 | Enables the State to make any law or take any executive action inconsistent with those FRs whose enforcement is suspended by the Presidential Order. |

## 2.5. Instances of imposition of Article 352

- Such an emergency under Article 352 has been invoked thrice.
  - **First**, in October 1962 at the time of Chinese aggression this emergency was proclaimed for the first time and continued till January 1968.
  - For the **second time**, it was declared in December 1971, at the time of Indo-Pak war and it continued up to March 1977.

Student Notes:

- For the **third time**, the President declared it in June 1975 on account of internal political crisis that continued till March 1977.
- Post 1977, no such emergency has been pronounced and the 44th Amendment to the Constitution introduced its own safeguards with regard to the said provision.

## 2.6. Judicial Review and Article 352

- The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from judicial review.
  - But this provision was subsequently deleted by the 44th Amendment Act of 1978.
- Further, in the ***Minerva Mills* case** (1980), the Supreme Court held that the proclamation of a National Emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

# 3. State Emergency (Articles 356 and 365)

**Article 356** of the Constitution was one of the most keenly debated and discussed in the Constituent Assembly. In the words of **Dr. Ambedkar** "such articles will never be called into operation and that they would remain a dead letter". Such a hope got buried within one year of the working of the Constitution, when in June 1951, the **Punjab Government was dismissed despite having a clear majority in the Assembly.** Since then, till now Article 356 has been used **approximately 120 times**.

- State Emergency is also known as **President's Rule** or **Constitutional Emergency**.
- However, the Constitution **does not use** the word 'emergency' for this situation.

## 3.1. Grounds for President's Rule

- The President's Rule can be proclaimed under Article 356 on two grounds—one mentioned in Article 356 itself and another in Article 365.
  - **Art 356** provides for the proclamation by the President of India, on receipt of report from the Governor of a State or otherwise, if he is satisfied that a situation has arisen in which the ***government of a State cannot be carried on in accordance with the provisions of the Constitution***.
  - Article 365 is said be a precursor to article 356. Article 365 imposes a duty on the Union to ensure that the government in every state is carried on as per the provisions of the Constitution. Whereas Article 356 confers power upon the Union to ensure that Article 355 becomes effective.

## 3.2. Procedures and safeguards

- The proclamation should be approved by a **simple majority within two months** by both the Houses of Parliament, otherwise it ceases to exist after two months. Thereafter, it remains in force for **six months**. This period can be extended for another six months if it is further approved by both the Houses.
- The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule **beyond one year**. But, no such approval may be given, continuing the operation of a Proclamation beyond one year from the date of its issue **except under certain conditions as mentioned below**:
  - Proclamation of Emergency is in operation in the State or in the whole of India
  - Election Commission has certified that general elections cannot be held in the state. Even if the above conditions are met, emergency cannot be extended beyond a period of three years.
- There is no provision in Article 356, similar to that in Article 352, which enables the Lok Sabha to disapprove the resolution for the continuance in force of such a Proclamation.
- President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Student Notes:

## 3.3. Difference between National Emergency & President rule:

| National Emergency (Article 352) | President's Rule (Article 356) |
|---|---|
| It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion | It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion. |
| During its operation, the state executive and legislature continue to function and exercise the powers assigned to then under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state. | During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre. |
| Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority. | Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts. |
| There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval fo Parliament for every six months. | There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state. |
| Under this, the relationship of the Centre with all the states undergoes a modification. | Under this, the relationship of only the state under emergency with the Centre undergoes a modification. |
| Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority. | Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority. |
| It affects fundamental rights of the citizens. | It has no effect on Fundamental Rights of the citizens. |
| Lok Sabha can pass a resolution for its revocation. | There is no such provision. It scan be revoked by the President only on his own. |

## 3.4. Effects of State Emergency

The **President acquires the following extraordinary powers** when the President's Rule is imposed in a state:

1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
2. He can declare that the powers of the state legislature are to be exercised by the Parliament.
3. He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

- When the President's Rule is imposed in a state, the President dismisses the **State Council of Ministers**, headed by the Chief Minister (however, the powers of the High Court are not affected). The **State Governor**, on behalf of the President, carries on the State administration with the help of the Chief Secretary of the State, or the advisors appointed by the President.
- **State assembly** may be dissolved or suspended depending upon prevailing circumstances.
  - Such a Proclamation may declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament.
- As per **Article 357**, the Parliament may confer this legislative power on the President and authorize him to further delegate it to any other authority.

Student Notes:

- The Parliament can authorize the President to sanction expenditure from the **Consolidated Fund of the State.**

## 3.5. Instances of imposition of Article 356

- **Jammu and Kashmir (2019)**: J&K was placed under Governor's Rule after one of the coalition partners pulled out of government. Governor's rule was proclaimed under the section 92 of the Constitution of J&K with President of India's concurrence.
- **Arunachal Pradesh and Uttarakhand (2017):** President's Rule was imposed in two states. In Uttarakhand, the role the Centre played was scrutinized and the President's proclamation was challenged; whereas in Arunachal Pradesh, the Governor was reprimanded. The Congress reclaimed power in Uttarakhand after the Supreme Court directed a floor test and in Arunachal Pradesh, the "unconstitutional" use of powers by the Governor was proclaimed as adequate to hand over the reins to the Congress government.
- **Delhi 2014:** Delhi was put under President's rule in February 2014, when Chief Minister Arvind Kejriwal resigned. The Assembly was placed under suspended animation and this promulgation was approved by the Parliament in the budget session. The assembly has still not been dissolved. By June, the first six-month period would end and then it would either be extended by six months or fresh elections would be held after dissolving the assembly.
- **Bihar 2005-06**: Bihar assembly was dissolved in 2005 after President's rule had been declared in the state, three months before, as the state assembly elections had resulted in a hung assembly. The decision, when challenged in the Supreme Court resulted in the Governor drawing the ire of the Court for not discharging constitutional duties with a sense of impartiality. As per the Court, there were hidden political motives in this particular action, so as to prevent the formation of government by a particular party. When the Governor justified his actions on basis of fear of defection the court asserted that it is the Speaker's duty to prevent defection, while the Governor's duty is limited to swear in the party with majority.

## 3.6. Observations of various Committees/Commissions

**Sarkaria Commission (1987)**

- Article 356 should be used very sparingly, in extreme cases and only as a matter of last resort.
- The Commission also recommended that any imposition of Article 356 should be accompanied with a report by Governor to the President with relevant facts and details.
- No dissolution of Assembly till proclamation is ratified by the parliament

**National Commission for Reviewing the Working of Constitution (2002)**

- A warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.
- The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.
- The Governor's report, on the basis of which a proclamation under Article 356(1) is issued, should be given wide publicity in all the media and in full.
- Safeguards corresponding to that of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a proclamation.

Student Notes:

**Punchhi Commission (2008)**

- The commission recommended imposition of **localized emergency** i.e. only a district or a part of a district to be brought under Governor's rule instead of the entire state. Such an imposition should not be of a duration exceeding three months.
- It also recommended suitable amendments be made in Article 356 to incorporate the guidelines of Supreme Court in S.R Bommai case (1994) with regards to invoking of the article.

**Law Commission**

- Situation could have been better handled by the use of Article 355, than imposition of Article 356. As per the Commission, hardly any effort has been made to operationalize the Article 355.

## 3.7. Judicial review and Article 356

The question of judicial review under Article 356 has come up for consideration before the Courts in several circumstances.

The first such instance was in the Kerala High Court in **K.K. Aboo v. Union of India case.** In that case the Court refused to go into the constitutionality of the proclamation under Article 356. The scope was considered in greater detail in a later case in 1974 where it was held that judicial review was barred for a proclamation under Article 356 as the Presidential satisfaction is basically a political issue and the Court did not want to go into an intrinsic political question. Thus, the Courts for a long time gave support to the action of the Central Government. Interestingly, none of them came for consideration before the Supreme Court.

The principle that such Presidential Proclamation is not immune from judicial review was first established in the case of ***State of Rajasthan v. Union of India*** and has been expanded in the case of ***S.R. Bommai v. Union of India.***

**State of Rajasthan v. Union of India case judgment, 1977**

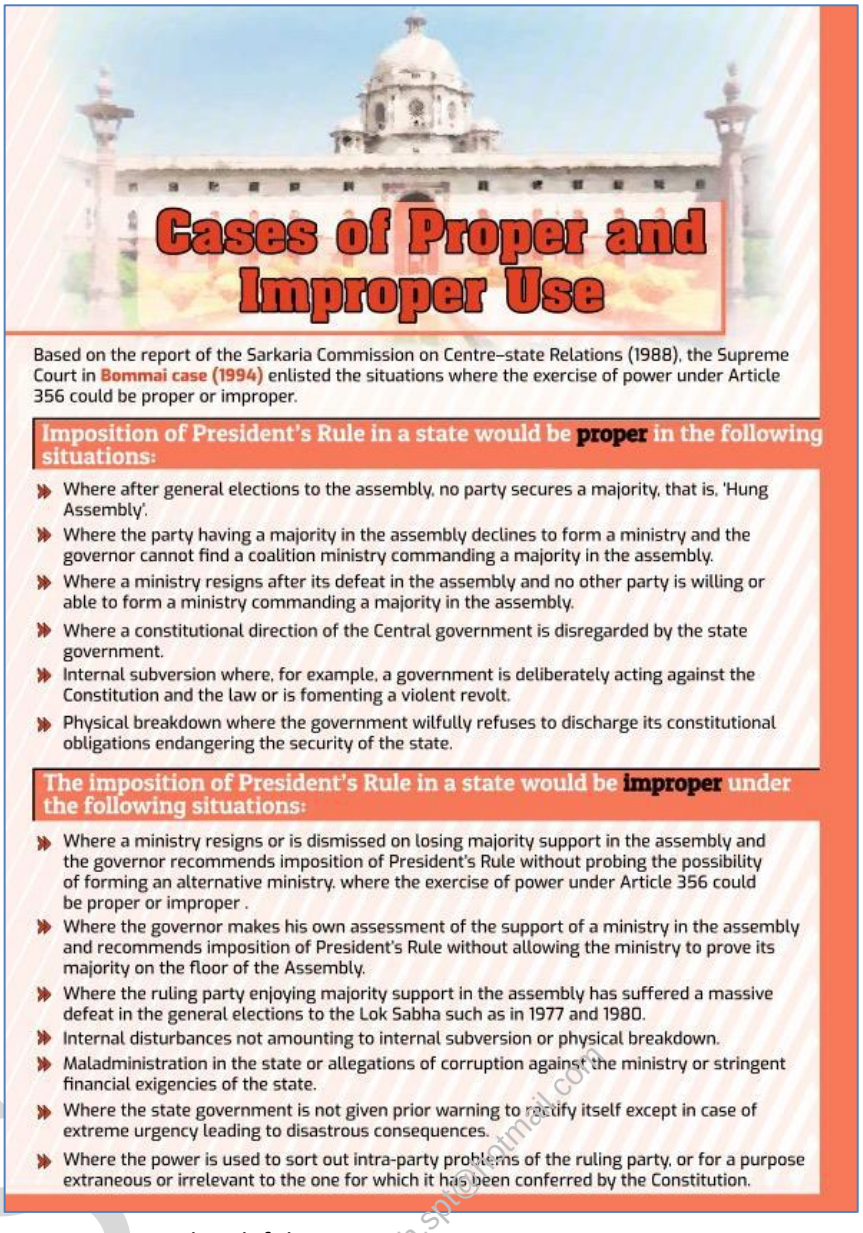
- The Court does judicial review on limited grounds.
- It said that immunity for Presidential action, could not exist in case of mala fide or irrelevant grounds.

*During the State of Rajasthan case, Article 356 contained clause (5), which was inserted by the Thirty-Eighth Amendment by which the satisfaction of the President was made final and conclusive and that satisfaction was not open to be questioned in any court on any ground. Clause (5) was deleted by the 44th amendment in 1978.*

**S.R. Bommai case Judgment,1994**

- As per the Supreme Court, Article 74(2) (which states that advice given by CoM cannot be enquired into by judiciary) does not impose any restriction on the court from examining the material on basis of which President formed his satisfaction.
- The Proclamation under Article 356 is **not immune from judicial review**. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds.
- The power conferred by Article 356 upon the President is a **conditioned power**. It is not an absolute power. It also stated that the power of President is limited by article 356(3), which requires parliamentary approval of the emergency. This implies that President **shall not dissolve the assembly till the time it is approved by the Parliament.**
- It stated that as far as possible the Centre should issue a warning notice to the erring state asking for reasons

- Once the proclamation is issued, the Government has to go. There is no room for holding that the President can take over some of the functions and powers of the State Government while keeping the State Government in office. There cannot be two Governments in one sphere.
- **Secularism is a basic feature** of the constitution and its violation by the State government makes it liable to be dismissed as per article 356.
- The Court also reiterated its power to provide remedy and reinstate the government if intentions are proved malafide.




**Rameshwar Prasad & Ors vs Union of India, 2006 (The defection case)**

- One of the questions of far reaching consequence that arose in this case was whether the dissolution of Assembly under Article 356 of the Constitution of India can be ordered to prevent the staking of claim by a political party on the ground that the majority has been obtained by illegal means and defection(horse trading) are rampant. The court observed:
  - That the scope of Judicial Review was broadened in the case of S.R. Bommai.
  - It examined the merits of the Governor's report and came to the conclusion that **for fighting social evils like defection, Article 356 cannot be invoked.** As the Governor's report did not give any reason for the Presidential Proclamation except defection, so, the Proclamation was declared as unconstitutional.
  - On whether Article 361 grants immunity* to the Governor the Court said that such immunity does not take away power of the Court to examine validity of the action, including on the ground of malafide.

The Supreme Court has thus created safeguards with regard to the utilization of Article 356. Several expert committees have lauded such safeguards to be adopted through constitutional amendments to ensure smooth Centre-State relations and effective Constitutional governance.

Student Notes:

Emergence of coalition governments has restricted the imposition of the President's rule in the states. The arbitrariness, which was associated with the one party rule at the Centre has gone and this has greatly brought down the number of cases of President's rule.

* The Governor is not answerable to any Court for exercise and performance of powers and duties of his office or for any act done or purporting to be done by him in the exercise of those powers and duties.

# 4. Financial Emergency (Article 360)

## 4.1. Grounds for Financial Emergency

- The President proclaims Financial Emergency under Article 360, if he is satisfied that the financial stability or credibility of India, or any part thereof is threatened.
  - The satisfaction of the President is **not beyond judicial review**.

## 4.2. Procedures and safeguards

- This proclamation must be approved **within two months** from the date of its issue by the Parliament. If the Lok Sabha is dissolved within that period of two months, the proclamation has to be approved within thirty days of the first sitting of the newly constituted Lok Sabha. It can continue for an indefinite period, till it is revoked by the President.
- There is **no maximum period** prescribed for its operation; and repeated parliamentary approval is not required for its continuation
- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority.
- Financial Emergency may be revoked by the president at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

## 4.3. Effects of Financial Emergency

- During the period of Financial Emergency, the President can give directions to the States to observe the canons of financial propriety.
- He can issue directions to reduce the salaries and allowances of all or any class of persons serving under the State, or the Union **including the judges of the Supreme Court and High Court.**
- All **money** and **financial bills** passed by the State Legislature can be reserved for the President's consideration during the period of Financial Emergency.
- A state of Financial Emergency **has not been declared so far in the country**, even though the country did face a severe economic crisis in the years 1990-1991.

# 5. Criticisms of Emergency Provisions

- **Violates the fundamental rights of citizens-** During the national emergency imposed between 1975-1977, various violations of fundamental rights of citizens were reported by the **Shah Commission** which was setup to inquire into all the excesses committed in that period. It was noted that various police excesses, torture and family planning atrocities were committed by the state authorities.
- **Imposed on political grounds-** The president's rule have been imposed on political grounds to prevent a party from forming or running a government**.**
- **Not exhausting all options-** Under the president's rule, the state assemblies have been dissolved without giving a chance to other political parties to form governments.
- **Compromises the federal spirit of the Constitution-** The emergency provisions were provided in the Constitution as an exceptional tool in the hands of the Union government. According to the Sarkaria Commission's Report, which analysed 75 cases of President's Rule

from June 1951 to May 1987, and found that Article 356 was not meant for use in 52 out of these 75 cases. No other provision has been **used, misused and abused like Article 356** of the Constitution.

Student Notes:

## 6. Important Articles related to Emergency Provisions

| | |
|---|---|
| **Article 352** | **Proclamation of Emergency** |
| **Article 353** | Effect of Proclamation of Emergency |
| **Article 354** | Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation |
| **Article 355** | Duty of the Union to protect states against external aggression and internal disturbance |
| **Article 356** | Provisions in case of failure of constitutional machinery in states |
| **Article 357** | Exercise of legislative powers under proclamation issued under Article 356 |
| **Article 358** | Suspension of provisions of Article 19 during Emergencies |
| **Article 359** | Suspension of the enforcement of the rights conferred by Part III during Emergencies<br>Application of this part to the state of Punjab under **Article 359A** was repealed |
| **Article 360** | Provisions as to Financial Emergency |

## 7. UPSC Previous Years Questions

**Mains**

**1.** Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remains in force? (2018)

**Prelims**

- Which of the following are not necessarily the consequences of the proclamation of the President's rule in a State?
  1. Dissolution of the State Legislative Assembly
  2. Removal of the Council of Ministers in the State
  3. Dissolution of the local bodies

  Select the correct answer using the code given below:
  (a) 1 and 2 only (b) 1 and 3 only (c) 2 and 3 only (d) 1, 2 and 3
- If the President of India exercises his power as provided under Article 356 of the Constitution of a particular State, then
  (a) the Assembly of the State is automatically dissolved.
  (b) the powers of the Legislature of that State shall be exercisable by or under the authority of the Parliament.
  (c) Article 19 is suspended in that State.
  (d) the President can make laws relating to that State

## 8. Vision IAS Previous Years Questions

***1. Compare and contrast the National Emergency and President's Rule in terms of their declaration and effects on fundamental rights as well as centre-state relations. 2019-1228-14***

***Approach:***

- Explain different grounds of imposition of national emergency and President's rule.
- Compare and contrast their effects on fundamental rights.
- State their impact on centre-state relations.

Student Notes:

***Answer:***

National emergency under article 352 can be proclaimed when the security of India or a part of it is threatened by war, external aggression or armed rebellion. President's rule is an emergency declared under article 356 due to the failure of the constitutional machinery in the states. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.

**Effects on Fundamental rights**

When a proclamation of national emergency is made, the six fundamental Rights under article 19 are automatically suspended on the ground of war or external aggression. The president can also suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency except for article 20 and 21. Also, only those laws which are related with the emergency are protected from being challenged and not the other laws. Also, the executive action taken only under such a law is protected.

President's rule, on the other hand, has no effect on Fundamental Rights of the citizens.

**Effects on Centre-state relations**

While a **proclamation of national emergency** is in force, the normal fabric of the Centre–state relations undergoes a basic change in the following manner:

- **Executive:** the Centre becomes entitled to give executive directions to a state on 'any' matter.
- **Legislative**: Parliament becomes empowered to make laws on any subject mentioned in the State List. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament. The President can issue ordinances on the state subjects also, if the Parliament is not in session.
- **Financial:** The President can modify the constitutional distribution of revenues between the centre and the states and the modification continue till the end of the financial year in which the Emergency ceases to operate.

**During President's rule** the state government is dismissed. The state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre. The Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him. In general, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts.

***2. Explain the grounds on which a National Emergency can be declared and highlight its effects on Centre-state relations and Fundamental Rights.***

***Approach:***

- Briefly explain the meaning of National Emergency as envisaged in the constitution.
- Mention the grounds on which the National Emergency can be declared.
- Discuss the effects of National Emergency on Centre-state relations and Fundamental Rights separately.
- Briefly conclude the answer recommending its minimal use.

***Answer:***

Student Notes:

The provision of National Emergency was inserted in the constitution to enable the Central government to meet any abnormal situation effectively and to safeguard the sovereignty, unity, integrity and security of the country.

Under **Article 352**, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion after receiving a written recommendation from the cabinet. It can also be declared pre-emptively (in case of imminent danger). It has been proclaimed only three times so far —in **1962**, **1971** and **1975**.

**Effect of National Emergency on Centre-State Relations** – It converts the federal structure into a unitary one without a formal amendment of the Constitution. Specifically, consider the effect on:

- **Executive** – The Centre becomes entitled to give executive directions to a state on 'any' matter unlike in normal times where executive directions can only be on certain specified matters. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.
- **Legislative** – The Parliament is empowered to make laws on any subject in the State List. Although the legislative power of a state legislature is not suspended, it becomes subservient to the Parliament. The President can also issue ordinances on the state subjects, if Parliament is not in session.
- **Financial** - The President is empowered to modify the constitutional distribution of revenues between the centre and the states. Hence, the President can either reduce or cancel the transfer of finances from Centre to the states.

**Effect of National Emergency on Fundamental Rights** – It allows the Centre to curtail or suspend freedom of the citizens, as is detailed below:

- **Under Article 358,** the six Fundamental Rights under Article 19 are automatically suspended, requiring no separate order.
- **Under Article 359,** the remaining Fundamental Rights (except Article 20 and 21) can be suspended only through a specific order of the President. These rights are not suspended, but only the right to seek remedy or their enforcement is suspended.

The state can make any law or take action that takes away the rights under Article 19 or other specified right under Article 359. Any such law or executive action cannot be challenged on the ground of inconsistency. Further, the legislative and executive actions during the emergency cannot be challenged even after the emergency ceases to operate.

When the National Emergency ceases to operate, Article 19 is automatically revived. Any law made during Emergency, to the extent of inconsistency, ceases to have effect.

The proclamation of emergency is a serious matter as it disturbs the normal fabric of the Constitution and curtails the rights of the states (federal structure) as well people (fundamental rights) and hence, must be used sparingly.

Student Notes:

***3. What was hoped to be a 'dead-letter' of the Constitution has become one of the most controversial provisions. Discuss in the context of Article 356. 2019-20-1220***

***Approach:***

- Briefly explain Article 356 and the grounds for its imposition.
- Explain why it was hoped to be a 'dead-letter'.
- Discuss how it has become the most controversial provisions of the Constitution.

***Answer:***

Article 356 of the Indian Constitution empowers the Centre to take over the State Government on certain grounds. Popularly known as the President's rule it authorizes the President to assume both legislative and executive powers of the state.

**Grounds for imposition:**

- **Art. 355**: It shall be the duty of the Union to protect every State against **external aggression** and **internal disturbance** and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.
- **Art. 365**: When State fails to comply with or give effect to any direction from the Centre.

It was hoped to be a **dead-letter** and was supposed to be used as a measure of last resort because:

- It is an extraordinary device in the hands of the Centre.
- It alters and infringes upon the federal feature of the Indian Constitution.
- It goes against the people's mandate by removing the democratically elected State Government.

It has become **controversial** due to the following reasons:

- **Frequent use**: Since 1950, the President's Rule has been imposed on over 100 occasions.
- Imposition on **arbitrary grounds** for political or personal reasons.
- Imposition when there are **different parties** at the Centre and State level.
- The expression '**breakdown of constitutional machinery'** is not defined in the Constitution.
- Misuse of Art. 365 as '**directions from the Centre'** are vague and unexplained.
- Biased and **distorted reports** sent by the Governor to the Centre, which results in imposition of President's rule.
- A law made by the Parliament during State Emergency continues to be operative even after it.

The **Sarkaria Commission** has recommended rare use of this article i.e. only after all the other alternatives are exhausted. In ***S.R.Bommai* vs. *Union of India* (1994)**, the SC held that the President's proclamation imposing President's rule is subject to judicial review and is liable to be struck down if it is based on irrelevant and malafide sources/intentions. The courts can reinstate the State Government in such a case. This was recently upheld in the ***Nabam Rebia and etc.* vs. *Deputy Speaker and Ors. 2016.***

Even after the SC ruling, many State governments were dismissed without the compulsory floor test. Therefore, it is imperative to follow the SC directives in letter and spirit to promote the ideal of cooperative federalism.

Student Notes:

***4. Highlight the extent of President's powers under Article 352. Comment on the judicial scrutiny of proclamation and the exercise of executive powers under National Emergency. How is this power different from the one bestowed under Article 356?2018-19-1049***

***Approach:***

- Stating the mandate of Article 352, highlight the President's power under 352.
- State the role of judicial scrutiny and exercise of executive powers when National Emergency comes in operation.
- Mention the differences in the nature of powers between Article 352 and 356 on various parameters.

***Answer:***

Part XVIII of the Constitution outlines the procedure in which the normal Federal Constitution can be adapted to abnormal situations effectively and confers extraordinary powers upon the Union. These Emergency provisions help in guarding the democracy against the forces of disintegration, thus safeguarding the sovereignty, integrity and security of the country.

**Extent of President's powers under Article 352**

President can declare a national emergency if he/she is satisfied that a grave emergency exists whereby the security of India or a part of it is threatened by war or external aggression or armed rebellion. When doing so, President has following powers:

- President can issue directions to the states as to the manner in which the executive power of the states is to be exercised.
- In the event of military conflict, the President is also authorised to suspend Article 19. He can also restrict the enforcement of all fundamental rights except for article 20 and 21

However, the President cannot act unilaterally. Such a proclamation can be declared only on the written advice of the Cabinet subject to the approval by both the Houses of Parliament.

**Judicial scrutiny of proclamation**

Earlier, President's 'satisfaction' amounted to 'subjective satisfaction', which could not be challenged in a court of law under any circumstances. But Supreme Court in the **Minerva Mills case** held that there is no bar to judicial review of the validity of a Proclamation of Emergency issued by the President under **Article 352 (1)**. Constitutionality of Proclamation can be questioned in the court of law on the grounds of mala-fide intention.

However, court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not. Court cannot go further into question of correctness of the facts and circumstances on which the satisfaction of the Government is based.

**Exercise of Executive Powers**

- During the operation of a Proclamation of Emergency the executive power of the Union extends to directing any State regarding the manner in which its executive power is to be exercised.
- Unlike normal times, when Centre can only issue directions on certain specified matters, during the Emergency, Centre becomes entitled to give executive directions to a state on 'any' matter.

Student Notes:

- Thus, the distribution of powers stands suspended and state governments are brought under the effective control of the Central government.

**Difference in the nature of powers between Article 352 and Article 356**

| Parameter | Article 352 | Article 356 |
|---|---|---|
| Effect on legislative and executive functions | State Legislature and the State Executive continue to function. Centre gets concurrent powers of legislation and administration in State matters. | State executive is dismissed and state legislature is either suspended or dissolved. President administers the state through the Governor and Parliament makes laws for the state. |
| Centre-State Relationship | Nature of relationship of all the states changes with respect to the Centre | Relationship of only one state changes with the Centre |
| Law making powers | Only Parliament can make laws on the subjects enumerated in the State List. | Parliament can delegate the law making power to President or any other authority. |
| Effect on Fundamental Rights | It affects Fundamental Rights. | It does not affect Fundamental Rights. |

# ELECTIONS IN INDIA

Student Notes:

## Contents

Student Notes:

Student Notes:

# 1. The Electoral Process

## 1.1. Introduction

Elections are that part of the electoral system which makes use of all those means whereby a person becomes a member of an elected assembly. The Indian Constitution attaches special significance to independent electoral machinery for the conduct of elections. It puts in place an **Election Commission of India**, which is responsible for **superintendence, direction and control** of all elections. It is responsible for **conducting elections to both the Houses of Parliament and State Legislatures and for the offices of President and Vice-President**. Besides, it is also responsible for the **preparation revision, maintenance and update of the list of voters**. It **delimits constituencies** for election to the Parliament and the State Legislatures, fixes the election programme and settles election disputes. It performs many other functions related to elections.

## 1.2. Objectives of our founding fathers

Our founding fathers conceived of a **representative parliamentary democracy** as the most suited to our ethos, background and needs. They advocated **equal participation of all the adult citizens** in the democratic process **without any discrimination**. At that time, the makers of the constitution did not require much debate to decide that all adult citizens (having attained **21 years of age**) will be entitled to vote in elections irrespective of education, caste, race, religion or gender. This criterion was subsequently revised and brought down to 18 years of age.

In comparison with other older democracies, this was probably the first time anywhere that adult suffrage was implemented at one go rather than incrementally. Given the state of our nascent republic, universal adult franchise was a bold and ambitious political experiment and a symbol of the abiding faith that the founders reposed in the agency and wisdom of great masses of the country.

## 1.3 Brief Overview of the Election Process in India

Broadly, there are **3 levels** to which elected officials can be appointed: **Centre**, **State**, and **Local Bodies**. Elections in India are held to elect members of the Lok Sabha, Rajya Sabha, State Assemblies, Legislative Council, to the posts of President, Vice-President, Local Bodies, Municipal Corporation, Gram Panchayat, Zila Panchayat and Block Panchayat**.**

The stages of the election process of India can be thought to begin with the **delimitation of constituencies** wherein the entire area (the whole country in the case of Lok Sabha elections and that particular state in the case of Legislative Assembly elections) is divided into constituencies. Thereafter, the **electoral roll** i.e. voters' list for each constituency is prepared/revised and published.

The Election Commission (EC) normally announces **schedule of elections** a few weeks before the formal process is set in motion. The **Model Code of Conduct** for guidance of candidates and political parties comes immediately into effect after such announcement.

The formal process for the elections starts with notification calling upon the electorate to elect Members of a House. As soon as Notifications are issued, candidates can start **filing their nominations** in the constituencies from where they wish to contest. These are **scrutinized by the Returning Officer** of the constituency concerned. The next stage is the **campaign** by all the candidates and the parties. The election campaign ends 48 hours before the **polling**. The last step is the **counting of votes and declaration of result**.

Student Notes:

## 1.4. Types of Voting Systems

### 1.4.1. First past the post System/Plurality System

In elections held under FPTP, each voter makes a mark next to one candidate on the ballot paper or on the Electronic Voting Machine. This system is a "**plurality**" voting system i.e. the candidate who secures the **highest number of votes** in that constituency is declared elected. It is important to note that in this system whoever has more votes than all other candidates is declared elected. The **winning candidate need not secure a majority of the votes**. This is the method of election prescribed by the Indian Constitution for most of the elections. The problem with this system is that it follows a winner takes all approach i.e. The votes that go to all the losing candidates are wasted. For instance, if a party gets only 25% of the votes in every constituency, but everyone else gets even less votes. In that case, the party could win all the seats with only 25% votes or even less. This leads to a large section of electors without representation.

### 1.4.2. Proportional Representation Systems

The basic principles underlying proportional representation elections are that all voters deserve representation and that all political groups in society deserve to be represented in our legislatures in proportion to their strength in the electorate. This can be achieved in various ways:

**a. Party List Voting**

Party list voting systems are the most common form of proportional representation constituting over 80% of the PR systems used worldwide. It is followed in most European democracies and in many newly democratized countries, including South Africa.

Legislators are elected in large, multi-member districts. Each party puts up a list of candidates equal to the number of seats in the district. Independent candidates may also run, and they are listed separately as if they are their own party.

On the ballot, voters indicate their preference for a particular party and the parties then receive seats in proportion to their share of the vote. For instance, in a five-member district, if a party wins 40% of the vote, it would win two of the five seats. The two winning candidates would be chosen according to their position on the list.

There are two types of list systems:

- Closed list
- Open list.

In a closed list system, the party fixes the order in which the candidates are listed and elected, and the voter simply casts a vote for the party as a whole. Voters are not able to indicate their preference for any candidates on the list, but must accept the list in the order presented by the party. Winning candidates are selected in the exact order they appear on the original list.

The Open list system allows voters to express a preference for particular candidates, not just parties. Voters are presented with unordered or random lists of candidates chosen in party primaries. They cannot vote for a party directly, but must cast a vote for an individual candidate. This vote counts for the specific candidate as well as for the party. The final order completely depends on the number of votes won by each candidate on the list. The most popular candidates rise to the top of the list and have a better chance of being elected.

**b. Mixed-Member Proportional Voting**

It is also known as "the additional member system," "compensatory PR," the "two vote system," and "the German system." People cast votes on a double ballot. On one side of the ballot i.e. District List, they vote for a district representative. This part of the ballot is a single-member district plurality contest to see which person will represent the district in the legislature. The person with the most votes wins. Usually half of the seats in the legislature are filled in this way. So in a hypothetical 100-member state legislature, the winners of these district contests would occupy 50 of the seats.

On the other part of the ballot i.e. National Party List, voters indicate their choice among the parties, and the other half of the seats in the legislature are filled from regional lists of candidates chosen by these parties. These party list votes are counted on a national basis to determine the total portion of the legislature that each party deserves. Candidates from each party's lists are then added to its district winners until that party achieves its appropriate share of seats.

For instance, in the district elections (first part of the ballot), party A won 28 seats. It won 40% of the party list votes in the 100-member state legislature (second part of the ballot). Hence, they would be entitled to a total of 40 of the 100 seats. But they already elected 28 of their candidates in district elections, they would then add 12 more (i.e. remainder of the two 40-28=12) from their regional party lists to come up to their quota of 40 seats.

| Political Parties | Number of District Seats won | Percentage of National Party List Vote | Total No. of seats deserved by the Party | Number of seats added from Party List |
|---|---|---|---|---|
| **A** | 28 | 40% | 40 | 12 |
| **B** | 18 | 36% | 36 | 18 |
| **C** | 4 | 18% | 18 | 14 |
| **D** | 0 | 6% | 6 | 6 |
| **Total** | **50** | **100%** | **100** | **50** |

**c. Alternative Vote System/Preferential Voting System/Single Transferrable Voting System**

In elections held under the Alternative Vote, each voter may rank candidates in order of preference (1, 2, 3 etc.). After marking their first preference, voters may then choose to express further preferences for as many, or as few, candidates as they wish.

The count begins by allocating votes in line with first preferences. If a candidate has an "absolute majority" – more than 50% – of the votes after this allocation they are elected.

If no candidate has an absolute majority, then the candidate in last place is eliminated and their votes are reallocated according to the next highest preference expressed on each ballot paper; if a voter has not marked a preference for any candidate that remains in the contest, then the ballot paper is set aside from the count.

This process continues until a candidate has an absolute majority of the votes left in the count, and is elected. This system of **proportional representation by single transferable vote** is used for the **election of the President of India** and **elections to Rajya Sabha seats**.

## 1.5. Provisions of the Constitution

**Article 326** of the Constitution enfranchises all the adult citizens (not less than 18 years of age) and empowers them to vote at the elections to the Lok Sabha and the State Assemblies.

**Article 324** vests the superintendence, direction and control of the preparation of electoral rolls and conduct of elections in an independent Election Commission.

**Articles 243K and 243ZA** delineate to the State Election Commissions the responsibility for elections to local bodies – Panchayats and Municipalities.

Student Notes:

# 2. Composition of the Elected Houses

## 2.1. Lok Sabha

**Article 81** of the Constitution provides for the maximum number of seats in the Lok Sabha or **House of People. It shall consist of—**

**(a) not more than 530 chosen by direct election from territorial constituencies in States, and,**
**(b) not more than 20 to represent Union territories, chosen in such manner as Parliament may by law provide.**

It further provides that:

(a) Each State shall be allotted number of seats in Lok Sabha in such manner that the ratio between number of seats and population of the State is, so far as practicable, the same for all States. This is, however, not applicable for the allotment of seats in the House of the People to any State with a population up to six millions.
(b) Each State shall be divided into territorial constituencies in such manner that the ratio between population of each constituency and number of seats allotted to it is, so far as practicable, the same throughout the State.

For the purposes of allotment of seats, the population of States shall be taken to be the same as ascertained at the last census. The present figure has been arrived at on the basis of 2001 Census. This is meant to secure uniformity in the scale of representation for the States in the Lok Sabha.

Under **Article 330** of the Constitution, seats are to be reserved in the House of the people for the **Scheduled Castes** and the **Scheduled Tribes**.

## 2.2. State Legislative Assemblies

**Article 170** of the Constitution lays down the maximum and minimum number of seats for the Legislative Assembly of each State to be chosen by direct election from territorial constituencies in the State. Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

Each State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Under Article 332, seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in the State Legislative Assemblies.

## 2.3. Rajya Sabha

**Article 80** of the Constitution lays down the maximum strength of Rajya Sabha. It has been fixed at 250, out of which 12 members are nominated by the President and 238 are representatives of the States and of the two Union Territories.

The **Fourth Schedule** to the Constitution provides for allocation of seats to the States and Union Territories in Rajya Sabha. The allocation of seats is made on the basis of the population of each State.

## 2.4. Legislative Council

**Article 171** of the Constitution provides for the composition of the Legislative Council. The total number of members in the Legislative Council of a State having a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State and not be less than forty.

Student Notes:

Of the total number of members of the Legislative Council of a State—

(a) one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India;

(c) one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor.

# 3. Delimitation of Constituencies for Elections to the Lok Sabha/Legislative Assemblies

For electoral purposes, the entire country is divided into geographical areas known as constituencies each returning one member to the Parliament or the State Assembly. There are two types of constituencies:

a) Parliamentary constituencies
b) Assembly constituencies.

Each parliamentary constituency consists of an integral number of assembly constituencies. This number varies from State to State. For the purpose of determining the number of seats to be allotted to the States in the Lok Sabha and the seats, if any, to be reserved for Scheduled Castes and Scheduled Tribes, the total population of all the States is divided by the total number of seats in the House of the People. This gives the **average population per seat**. The population of each State is then divided by this number to arrive at the number of seats to be allotted to that State.

A uniformity of representation to Scheduled Castes ad Scheduled Tribes has also been ensured by stipulating that the **number of seats reserved** in any State or Union Territory for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the **same proportion** to the **total number of seats allotted** to that State or Union Territory in the House of the People as the **population of the Scheduled Castes or of the Scheduled Tribes** in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears **to the total population** of the State or Union Territory.



## 3.1. Readjustment of Seats after every Census

**Article 82** of the Constitution declares that upon the completion of each census, the allocation of seats in the House of the People to the States and division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine.

**Article 170** makes provision in regard to the seats in the State Legislative Assemblies and the division of the States into territorial constituencies. **Article 327** gives specific power to Parliament to make elaborate provision for such readjustment including delimitation of constituencies and all other related matters. The delimitation of constituencies is done by the **Delimitation Commission** as per provisions of the Delimitation Act. Delimitation Commissions have been set up four times in the past viz. 1952, 1963, 1973 and 2002 under Delimitation Commission Acts of 1952, 1962, 1972 and 2002 respectively.

As per Article 82 of the Constitution of India, there has to be readjustment of seats after each census (every 10 years) and such adjustment should be based on the population. However, the 42nd Amendment Act of 1976, provisions were included in **Articles 55, 82, 170 and 330** of the Constitution not to make any changes to the number of Lok Sabha seats, Assembly seats etc. until the figures from the first Census after the year 2000 have been published. This ban on readjustment was extended for another 25 years (ie, upto year 2026) by the **84th Amendment Act of 2001**.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in the states on the basis of the population figures of 1991 census. Subsequently, the **87thAmendment Act of 2003** provided for the delimitation of constituencies on the basis of **2001 census** and not 1991 census. However, this can be done without altering the number of seats allotted to each state in the Lok Sabha.

## 4. Preparation/Revision of Electoral Rolls

The electoral process begins with the preparation of electoral rolls. If the rolls are incomplete or defective, the whole electoral process is vitiated. **Article 325** provides for a general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State. No person can be excluded from inclusion in any such roll or claim to be included in any special electoral roll on grounds only of religion, race, caste, sex or any of them.

At present, the **Election Commission (EC)** is responsible for preparing the electoral rolls for **assembly and parliamentary constituencies**. The **State Election Commissions** are responsible for electoral rolls for **local body elections**. In some States, the EC and State Election Commissions (SECs) have agreed to coordinate the preparation of electoral rolls.

The electoral roll for a constituency contains the names of all the persons eligible to vote at an election in that constituency. Unless otherwise directed by the Election Commission, the roll is revised before each general election, by-election or mid-term election in a constituency. It may also be revised in any year if so directed by the Election Commission.

| | |
|---|---|
| **General Election** | Election **to constitute a new Lok Sabha or Assembly** upon completion of the term of the previously constituted body is called General Election. |
| **By-Election** | If at any time there is a **mid-term vacancy due to the death or resignation of a member** either in Lok Sabha or Legislative Assembly only one seat falls vacant. The election for that seat is known as by-election. |
| **Mid-term Election** | If the Lok Sabha or State Assembly is **dissolved before completion of five years** and the election is held to constitute new Lok Sabha or new State Assembly, etc. is called midterm election. |

**In a Union territory where there is no Legislative Assembly, rolls are prepared and revised separately for the parliamentary constituencies.** Any person whose name is not included in the electoral roll of a constituency may get his name included by making an application to the electoral registration officer of the constituency concerned.

There are two methods of revising the electoral rolls:

1. **Intensive revision:** Intensive revision is **carried out by house to house visits** by enumerators who enter the names of all citizens ordinarily residing in a house and who have attained the age of 18 years and above on the qualifying date.
2. **Summary Revision:** In summary revision, no house to house visits are made. The existing rolls with supplements, if any, are published for **inviting claims and objections**. After the disposal of claims and objections the rolls are finally published with supplements.

Student Notes:

# 5. Voter Registration

The Constitution under **Article 326** confers the **right to vote** at an election on every adult citizen unless disqualified under the Constitution or law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice.

## 5.1. Eligibility

The Constitution provides that every person who is **not less than eighteen years of age** on the qualifying date, and who is **ordinarily resident in a constituency** is entitled to be registered as a voter in the electoral roll of that constituency. The original **Article 326**, providing for adult suffrage fixed the age of eligibility to vote for elections to the Lok Sabha and Vidhan Sabhas, at 21 years, but by the **61st Amendment** to this clause passed in 1989, it has been reduced to **18 years.**

In order to be allotted a polling booth at the time of elections, eligible citizens are required to register themselves as voters and get a voter ID card. They can do the same by filling up and submitting **Form-6** to the Electoral Registration Officer of their constituency.

**One Registration**: No person is entitled to be registered in the electoral roll of more than one Constituency; and no one can be registered in any electoral roll more than once.

In 1993, the Election Commission of India ordered the making of photo identity cards for all voters of the country in an attempt to improve the accuracy of the electoral rolls and prevent electoral fraud. The voter ID card or **EPIC (Electors Photo Identity Card)** is an identification card issued by the Election Commission to all eligible voters to enable voter identification on Election Day.

## 5.2. Disqualification

Persons disqualified for registration as voters are:

- persons who are not citizens of India, or
- persons who are of unsound mind and stand so declared by a competent court, or
- persons who for the time being are disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

The name of a person who becomes disqualified after registration is struck off the electoral roll.

## 5.3. Categories of Voters/Electors

Electors are citizens who are eligible to vote in India. They are of three main types or categories

- **General/Resident Electors:** residents of India who can vote in a polling booth.
- **Service Electors:** residents of India who work for the Indian Government away from their home or are in the Armed Forces.
- **Overseas Electors:** non-residential Indians who have not taken citizenship of any other country.

### 5.3.1. General Voters

Every Indian citizen who has attained the age of 18 years on the qualifying date i.e. first day of January of the year of revision of electoral roll, unless otherwise disqualified, is eligible to be registered as a voter in the roll of the part/polling area of the constituency where he is ordinarily resident.

### 5.3.2. Service Voters

The following persons (and their wives if they reside with them) have the right to be registered in the electoral rolls of the constituencies in which they would be residing but for their services:

(a) Members of the armed forces of the Union.

(b) Members of a force to which the Army Act, 1950, applies.

(c) Members of an armed police force of a State serving outside the State.

(d) Those employed under the Government of India, in a post outside India.

### 5.3.3. Overseas Voters

In order to qualify as a voter, the person must reside in the particular constituency. Thus, NRIs are prohibited from participating in the voting process, except in one case. If the NRI happens to be an Indian citizen employed under Government of India and is currently posted overseas, he or she may get registered as a voter.

## 5.4. Members of Parliament and State Legislatures

As members of Parliament and State Legislatures are required to remain away from their constituencies for a considerable part of the year in connection with their duties as such members, they may not be in a position to verify whether their names in the electoral rolls are continued from time to time, particularly when the rolls are revised. The Election Commission has, therefore, a system of special check in regard to their inclusion in the electoral rolls.

- Exhaustive lists of the names of all sitting members of Parliament and the State Legislatures are prepared in respect of every assembly constituency.
- The Chief Election Officer sends this list to the electoral registration officer of the constituency concerned.
- This list is kept up-to-date and the electoral registration officer is kept informed from time to time of all changes therein.
- At the time of the publication of the draft electoral rolls the electoral registration officer concerned has to certify to the Chief Electoral Officer that the name of every member of Parliament or State Legislature is included in the roll if he continues to be eligible for such inclusion.

***Can a person confined in Jail vote?***
No, a person confined in jail cannot vote in an election in India. As per the provisions given in **The Representation of the People Act, 1951**, (RPA) Section 62 (5), a person in prison, "under sentence of imprisonment or transportation or otherwise, or in the lawful custody of the police" is not eligible to cast his vote in an election.

# 6. Qualifications & Disqualifications for a Candidate

## 6.1. Qualifications

The qualifications for a Member of Parliament & State Legislature as laid down under **Article 84 & Article 173 of the Constitution** are that he/she should:

(i) be a citizen of India,
(ii) be not less than 30 years of age in the case of the Council of States/Legislative Council and not less than 25 years of age in the case of the House of the people/Legislative Assembly, and
(iii) be possessing such other qualifications as may be laid down by Parliament.

The **Representation of the People Act (RPA), 1951** requires that he/she should be an elector for a parliamentary constituency in India i.e. his/her **name should be registered in any parliamentary constituency**. For seats reserved for Scheduled Castes and Scheduled Tribes, a candidate should belong to those castes or tribes. A member of the Scheduled Caste or Scheduled Tribe is, however, not disqualified to contest election from a general seat, i.e., seat not reserved for members of those castes or tribes, if he is otherwise qualified to contest such a seat.

Student Notes:

Student Notes:

A candidate is required to make and subscribe before a person authorised in that behalf by the Election Commission, **an oath or affirmation of allegiance** to the Constitution and to uphold the sovereignty and integrity of India.

## 6.2. Disqualifications

Under **Article 102(1) & Article 191(1)**, a person is disqualified for being chosen as, and for being, a member of either House of Parliament/State Legislature if he/she:

a) holds any office of profit under the central or any state government, other than an office declared by Parliament by law not to disqualify its holder; or
b) is of unsound mind and stands so declared by a competent court; or
c) is an undischarged insolvent; or
d) is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is underany acknowledgement of allegiance or adherence to a foreign state; or
e) is otherwise disqualified by or under any law made by Parliament.

Clause (2) of the Article clarifies that a person shall not be deemed to hold an **office of profit** by reason only that he is a Minister either for the Union or for such State.

Other criteria for disqualification from the membership of a Legislature are provided for by the Representation of the People Act, 1951.

# 7. Officers on Poll Duty

To ensure that elections are held in free and fair manner, the Election Commission appoints polling personnel to assist in the election work. These personnel are drawn from amongst magistrates, police officers, civil servants, clerks, typists, school teachers, drivers, peons etc. There are three main officials who play very important role in the conduct of free and fair election. They are:

## 7.1. Chief Electoral Officer

The Election Commission of India nominates or designates an Officer of the Government of the State/Union Territory as the **Chief Electoral Officer in consultation with that State Government/Union Territory Administration.** Chief Electoral Officer of a State/ Union Territory is authorized to supervise the election work in the State/Union Territory subject to the overall superintendence, direction and control of the Election Commission.

## 7.2. District Election Officer

The EC nominates an Officer of the State Government as the **District Election Officer (DEO)** in consultation with the State Government. The District Election Officer is **authorized to coordinate and supervise all work in the district or in the area within his jurisdiction** in connection with the conduct of all elections to Parliament and the Legislature of the State subject to the superintendence, direction and control of the Chief Electoral Officer.

With the previous approval of the Election Commission, DEO provides a sufficient number of polling stations for every constituency, the whole or greater part of which lies within his jurisdiction, and publishes a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided.

## 7.3. Observer

The Election Commission may nominate an Observer who shall be an officer of Government **to watch the conduct of election or elections in a constituency or a group of constituencies.** Earlier, the appointment of Observers was made under the plenary powers of the Commission. But with the amendments made to the Representation of the People Act, 1951 in 1996, these are now statutory appointments. They report directly to the Commission.

The Observer has the power to direct the Returning Officer for the constituency or for any of the constituencies for which he has been nominated**, to stop the counting of votes at any time before the declaration of the result or not to declare the result** if in his opinion booth capturing has taken place. In case of stopping the counting of votes or non-declaration of result, a report shall be sent by the Observer to the EC, which issue appropriate directions.

Student Notes:

## 7.4. Returning Officer

The Election Commission of India nominates or designates an officer of the Government or a local authority as the **Returning Officer** for each of the assembly and parliamentary constituencies in consultation with the State Government/Union Territory Administration. Same person can be appointed as the Returning Officer for more than one constituency. In addition, the Election Commission of India may appoint one or more **Assistant Returning Officers** for each of the assembly and parliamentary constituencies to assist the Returning Officer in the performance of his functions in connection with the conduct of elections. Every such person must be an officer of Government or of a local authority.

Every Assistant Returning Officer, subject to the control of the Returning Officer, is competent to perform all or any of the functions of the Returning Officer, except functions which relate the scrutiny of nominations unless the Returning Officer is unavoidably prevented from performing the said function. While Returning Officer may always include an Assistant Returning Officer in performing any function which he is authorized to perform him, it is the general duty of the Returning Officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by RPA, 1951 and rules or orders made thereunder.

## 7.5. Presiding Officer

The District Election Officer appoints a presiding officer for each polling station. Same person can be the presiding officer for more than one polling station in the same premises. It is the general duty of the presiding officer at a polling station to keep order and to see that the poll is fairly taken.

## 7.6. Polling Officer

A polling officer performs all or any of the functions of a presiding officer based upon his direction. If a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the District Election Officer accordingly. It is the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.

# 8. Election Notification

The electoral process for the elections to the Parliament starts with **Presidential notification** calling upon all the parliamentary constituencies to elect members to constitute a new House of the People either on the expiry of the tenure of the existing House or on its dissolution.

As soon as the notification is issued, the **Election Commission shall, by notification**, appoint:

a) the last date for making nominations;
b) the last date for the withdrawal of candidatures;
c) the date or dates on which a poll shall, if necessary, be taken, and
d) the date before which the election shall be completed.

Student Notes:

## 8.1. Nomination Process

On the issue of notification, the **Returning Officer** shall give public notice of the intended election in such form and manner as may be prescribed, **inviting nominations** of candidates for such election and specifying place at which the nomination papers are to be delivered.

On or before the date appointed, each candidate shall either in person or by his proposer, deliver to the Returning Officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. If the candidate belongs to a recognised national/state party, he/she would require only one elector of the constituency as **proposer**, under Section 33 of RPA, 1951. It also provides that as an independent candidate or a candidate of an unrecognised political party, ten electors from the constituency should subscribe his/her nomination paper as proposers.

In a constituency where any seat is reserved, a candidate shall not be deemed to fill that seat unless his nomination paper contains a **declaration** specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a scheduled caste or tribe of the State.

The candidate is also required to make **declarations** in the nomination form regarding his affiliation to a political party, if any, with name, and the choice of three election symbols in order of his preference.

As per Section 33 (7) of RPA 1951, a person cannot contest from more than **two constituencies** for a Lok Sabha/Vidhan Sabha election.

Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency, or a certified copy of the relevant entries in such roll shall be produced before the Returning Officer at the time of scrutiny.

## 8.2. Deposits for Election

A candidate seeking election to the Parliament is required to deposit a fixed amount as security. The deposit will be refunded if the candidate is elected or has obtained more than one sixth of the total number of valid votes polled in the constituency. The deposit is intended to ensure that the candidate is a serious contestant.

In other cases, the deposit will be forfeited. If a candidate was a contesting candidate in more than one constituency for the same House of a legislature, he is entitled to the refund of only one deposit. If, however, he was contesting an Assembly seat and a Lok Sabha seat simultaneously, he would get a refund of the deposits made in both, provided that he obtains more than one-sixth of the total number of valid votes polled in each constituency. As per Section 34(1)(a) of the RPA, 1951, every candidate is required to make a security deposit of Rs. 25,000 for Lok Sabha elections (Rs 12,500 for SC/ST candidates). As per Sec. 34(1)(b) of the RPA 1951, a general candidate for contesting an Assembly election will have to make a security deposit of Rs. 10,000 and Rs. 5,000 for SC/ST candidates.

## 8.3. Scrutiny of Nominations

On the date fixed for the scrutiny of nominations, the candidates, their election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate, may attend the proceedings for scrutiny.

The **Returning Officer** is given the power to examine the nomination papers and decide objections which may be made to any nomination.

A nomination paper will be rejected if:

- the candidate is either not qualified or is disqualified in law to be such member;

- the nomination paper has not been submitted in the prescribed manner and within the stipulated time or is not accompanied by the necessary deposit;
- and the signature of the candidate or the proposer on the nomination paper is not genuine.

The Returning Officer is not authorised to reject any nomination on the ground of any defect which is not of a substantial character. He/she is required to record reasons for rejecting a nomination paper.

## 8.4. Withdrawal of Candidature

Any candidate may withdraw his candidature by a notice in writing either himself or through his proposer or election agent, who should be duly authorised by the candidate, to present such notice on the last date fixed for such purpose. The notice of withdrawal is **irrevocable**.

Immediately after the expiry of the period within which candidatures may be withdrawn, the **Returning Officer is required to prepare and publish a list of contesting candidates**. If there is only one duly nominated candidate, the election will be an uncontested one and the Returning Officer will declare that candidate elected immediately after the expiry of the time for the withdrawal of candidature.

# 9. Recognition of Parties

One of the important functions of the Election Commission is to recognise political parties as all India (National) or State (Regional) Political Parties. A political party shall be treated as a **recognised political party** in a State, if and only if the political party fulfills any of the following conditions:

- At General Elections or Legislative Assembly elections, the party has won 3% of seats in the legislative assembly of the State (subject to a minimum of 3 seats).
- At a Lok Sabha General Elections, the party has won 1 Lok sabha seat for every 25 Lok Sabha seat allotted for the State.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled minimum of 6% of votes in a State and in addition it has won 1 Lok Sabha or 2 Legislative Assembly seats.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled 8% of votes in a State.

**For National Party Status**:

- The party wins 2% of seats in the Lok Sabha (11 seats) from at least 3 different States.
- At a General Election to Lok Sabha or Legislative Assembly, the party polls 6% of votes in four States and in addition it wins 4 Lok Sabha seats.
- A party gets recognition as State Party in four or more States.

Both national and state parties have to fulfill these conditions for all subsequent Lok Sabha or State Assembly elections. Else, they lose their status.

# 10. Election Campaign

The **Conduct of Elections Rules, 1961** under the Representation of the People Act, 1951 provides for an interval between the last date fixed for the withdrawal of candidatures and the date of the poll. This period is utilised by the candidates for canvassing and educating the electors.

## 10.1. Duration of Election Campaign

After the last date of filing nominations, usually two days are provided for the candidates to withdraw their nominations. From the last day of withdrawing the nominations to the polling day, a candidate is given around 14 days for campaigning in which the last 48 hours prior to the

Student Notes:

polling the candidate is not allowed to hold rallies, road shows or any campaign which involves a gathering. The last 48 hours are called the **Silence Period**, during which no active campaigning by candidates or political parties is allowed, and television or any digital media cannot carry any election-related matter. Star campaigners and other political leaders are to refrain from addressing the media by way of press conferences and giving interviews on election matters

## 10.2. Campaigning Guidelines and Model Code of Conduct

On the eve of every general elections some guidelines are issued by the Election Commission whereby candidates are instructed to follow certain norms in carrying out their election campaign. Most of these relate to what is called the Model Code of Conduct (MCC). The MCC is a set of norms for conduct and behavior on the part of the Parties and candidates, in particular. Model Code of Conduct for guidance of political parties and candidates is a small but unique document that contains the following 8 parts:

(i) **Part I** of Model Code lays stress on certain minimum standards of good behaviour and conduct of political parties, candidates and their workers and supporters during the election campaigns;
(ii) **Parts II and III** deal with the holding of public meetings and taking out processions by political parties and candidates;
(iii) **Parts IV and V** describe as to how political parties and candidates should conduct themselves on the polling day and at the polling booths;
(iv) **Part VI** exhorts political parties and candidates to bring their complaints to the notice of the observers appointed by the Election Commission for remedial action;
(v) **Part VII** deals with the parties in power. This part is, in essence, the flesh and blood of Model Code, which deals with several issues relating to Government and its Ministers, such as visits of Ministers, use of Government transport and Government accommodation, announcements of various schemes and projects etc.

The newly added **Part VIII** says that **election manifestoes** shall not contain anything repugnant to the ideals and principles enshrined in the **Constitution** and further that it shall be consistent with the letter and spirit of other provisions of Model Code.

# 11. The Poll

Following the last date of withdrawal of candidatures to the date of poll when the candidates and political parties are busy in electioneering, the District Election Officer/Returning Officer makes necessary arrangements for holding the poll, such as setting up of the polling stations, appointment of polling parties to man the polling stations, etc.

## 11.1. Polling Stations

Each constituency is divided into a number of polling areas. For each polling area, one or more polling stations are provided according to the number of voters.

Outside each polling station there will be displayed prominently a notice specifying the polling area, the electors of which are entitled to vote at the polling station and a list of the contesting candidates.

## 11.2. Fixing time for poll

According to Section 56 of the Representation of the People Act, 1951 the Election Commission shall notify the hours during which the poll will take place, but the total period allotted on any date for polling in an election of a Parliamentary or Assembly constituency should not be less than eight hours.

Student Notes:

## 11.3. Secret Ballot

Section 39 in the Conduct of Elections Rules, 1961 provide for the maintenance of secrecy of voting by electors within polling station and voting procedure. It lays down some safeguards such as every elector shall maintain secrecy of voting within the polling station; every elector shall vote without undue delay; No elector shall be allowed to enter a voting compartment when another elector is inside it et al.

## 11.4. One Person One Vote

Section 62 of the RPA, 1951 specifies that no person shall vote in more than one constituency of the same class and no person shall vote in the same constituency more than once.

## 11.5. Personation

In order to prevent the same person from personating another voter and voting again, every voter's left forefinger will be marked by one of the polling officers with indeliable ink before he/she goes to cast his/her vote.

# 12. Conducting Elections

The Election Commission of India (EC) uses **Electronic Voting Machines** (EVM) to conduct elections. Since 2000, ECI has conducted 113 assembly elections and three general elections using EVMs. **Voter Verified Paper Audit Trail** (VVPAT) system was added to EVMs in 2013 to increase transparency and improve voter confidence in the system. The VVPAT system generates a printed paper slip bearing the name and election symbol of the candidate.

## 12.1. Counting of Votes

The Returning Officer (RO) is responsible for conducting elections in a constituency, which also includes counting of votes. Ideally counting of votes for a constituency is done at one place. However, if a constituency has multiple assembly segments, counting can take place at different locations under the direct supervision of an Assistant Returning Officer (ARO).

Counting is performed by counting supervisors appointed by the RO. Counting staff is appointed through a three stage randomisation process to ensure impartiality. Candidates along with their counting agents and election agents are also present in the counting hall.

Counting of votes begins with Electronically Transmitted Postal Ballots (ETPB) and Postal Ballots (PB). These votes are counted under the direct supervision of the RO. In each round of counting, votes from 14 EVMs are counted. In case of simultaneous parliamentary and assembly elections, the first seven tables are used for counting votes for assembly elections, and the rest for parliamentary elections. At the end of each round of counting, the results from 14 EVMs are declared.

In 2019, the Supreme Court of India instructed ECI that printed VVPAT slips from randomly selected five polling stations in each assembly segment of a parliamentary constituency should be matched with EVMs. This implies that VVPAT paper slips need to be matched for about 25-50 machines for each parliamentary constituency. This process requires personal supervision of RO/ARO. The ECI has decided that the counting of five VVPATs will be done sequentially.[5] The RO can declare the final result for the constituency after the VVPAT matching process has been completed.

If there is a discrepancy between VVPAT count and EVM results, the printed paper slips count is taken as final. ECI has not clarified whether there would be any further action (such as counting of all VVPATs in a constituency or assembly segment) if there is a discrepancy in the counts of one of the five VVPATs.

Student Notes:

## 12.2. Recording of Result

After completion of counting, the total number of votes polled by each candidate is recorded in a result sheet and is also announced to those present at the counting.

## 12.3. Equality of votes

If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

## 12.4. Declaration of Result

When the counting of the votes is finally completed and the Returning Officer has completed and signed the result sheet, he/she will forthwith declare the candidate who has obtained the largest number of valid votes to be duly elected.

The Election Commission may, for any special reason, direct the Returning Officer not to declare the result; and in that event the declaration will be withheld in accordance with such direction.

## 12.5. Recount

When the announcement of the total votes polled by a candidate is made, a candidate or his agent dissatisfied with the counting may, in writing, apply for recounting giving reasons why such recount is asked for. A recount may be demanded when the votes obtained by two candidates are very close and there may be a possibility of a small number of votes changing the result. The Returning Officer's decision on any such application is final.

No demand for a recount can be made after the Returning Officer has completed and signed the result sheet. The Supreme Court has held that there can never be any hard and fast rule as to the circumstances when an order of recount would be permissible and it should always be dependent upon the circumstances of the case.

## 12.6. Reporting of Result

As soon as the result of an election has been declared, the Returning Officer shall report the result to the appropriate authority and the Election Commission shall get it published in the official gazette in India.

The date on which a candidate is declared by the Returning Officer to have been elected to any House of Parliament or State Legislature, shall be date of election of that candidate.

# 13. Disputes Regarding Elections

## 13.1. Election Petitions

**Section 80 of the RPA, 1951** provides for a mechanism to settle disputes related to elections. It requires matters of election to be challenged by an election petition.

## 13.2. Presentation of Petitions

- There can be one or more grounds for presenting an election petition calling in question any election
- It can be presented by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate i.e. a candidate who has been declared elected as a member, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

- "Elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

## 13.3. Jurisdiction

The High Court has the jurisdiction to try an election petition.

## 13.4. Decision of the High Court

At the conclusion of the trial of an election petition the High Court shall make an order—

(a) dismissing the election petition; or
(b) declaring the election of all or any of the returned candidates to be void;
(c) declaring the election, of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

# 14. Process of Election to the Rajya Sabha

The representatives of the States and of the Union Territories in the Rajya Sabha are elected by the method of **indirect election**. The representatives of each State and two Union territories are **elected by the elected members** of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory. This is done in accordance with the system of **proportional representation by means of the single transferable vote**.

The **Electoral College** for the National Capital Territory of Delhi consists of the elected members of the Legislative Assembly of Delhi, and that for Puducherry consists of the elected members of the Puducherry Legislative Assembly.

Every State has a specific quota of seats in the Rajya Sabha which is fixed as per Schedule 4 of the constitution. Elections to 1/3 of these seats occur every 2 years. The members are elected by the respective State legislative assemblies. The voters are the MLAs in that State. **Every voter is required to rank candidates according to her or his preference**. To be declared the winner, a candidate must secure a **minimum quota of votes**, which is determined by a formula:

**(Total number of votes polled/Total number of candidates to be elected+1)+1**

Consider an example, wherein 4 Rajya Sabha members have to be elected by the 200 MLAs in a state. The winner would have to obtain (200/4+1)+1 i.e. 41 votes.

- When the votes are counted, it is done on the basis of first preference votes secured by each candidate, of which the candidate has secured the first preference votes.
- If after the counting of all first preference votes, required number of candidates fail to fulfil the quota, the candidate who secured the lowest votes of first preference is eliminated and his/her votes are transferred to those who are mentioned as second preference on those ballot papers.
- This process continues till the required number of candidates are declared elected.

# 15. Process of Election to Local Bodies

**Article 243C (1)**, provides for the composition of Panchayats, wherein it states that the Legislature of a State may make provisions by law, with respect to the composition of Panchayats. It is subject to the condition that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall be the same throughout the State so far as practicable.

## 15.1. Delimitation of Constituencies

Each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

Student Notes:

All the seats in a Panchayat shall be filled by persons chosen **by direct election** from territorial constituencies in the Panchayat area.

## 15.2. Disputes Regarding Elections to Panchayats

**Article 243-O** stipulates that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

It further states that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court.

# 16. Conducting Elections to Municipalities

**Article 243-R**, provides for the conduct of elections to all the seats in a Municipality. These seats are to be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. Each Municipal area shall be divided into territorial constituencies to be known as wards.

## 16.1. Disputes Regarding Elections to Panchayats

**Article 243-ZG** stipulates that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, under article 243ZA shall not be called in question in any court.

It provides for an election petition, presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State, to call in question election to any Municipality.

# 17. Identifying problem areas with elections in India

The main problem areas may be identified to be as follows:

1. **Increasing cost of elections** leading to unethical, illegal and even mafia provided electoral funding, corruption, criminalisation and black money generation in various forms.
2. With the constituents/electors being the same for all directly elected representatives from the lowest Panchayat level to the Lok Sabha level, there are **competing role expectations and conflict of perceptions** e.g. the constituents expect even members of the Union Parliament to attend to their purely local problems.
3. With the **electorate having no role in the selection of candidates** and with majority of candidates being elected by minority of votes under the **first-past-the-post system**, the representative character of the representatives itself becomes doubtful and their representational legitimacy is seriously eroded. In many cases, more votes are cast against the winning candidates than for them. One of the significant probable causes may be the mismatch between the majoritarian or first-past-the-post system and the multiplicity of parties and large number of independents.
4. The question of defections under the **Tenth Schedule**.
5. Inaccurate and flawed electoral rolls and voter identity leading to **rigging and denial of voting rights** to a large number of citizens.
6. **Booth capturing and fraudulent voting** by rigging and impersonation.
7. **Use of raw muscle power** in the form of intimidation of voters either to vote against their will or not to vote at all, thus taking away the right of free voting from large sections of society and distorting the result thereby.
8. Involvement of **officials and local administration in subverting the electoral process**.
9. **Engineered mistakes** in counting of votes.

10. **Criminalisation of the electoral process** i.e. increasing number of contestants with serious criminal antecedents.
11. **Divisive and disruptive tendencies** including the misuse of religion and caste in the process of political mobilization of group identities on non-ideological lines.
12. An **ineffective and slow judicial process of dealing with election petitions**, rendering the whole process quite often meaningless.
13. **Fake and non-serious candidates** who create major practical difficulties and are also used indirectly to subvert the electoral process.
14. **Incongruities in delimitation of constituencies** resulting in poor representation.
15. Problems of **instability, hung legislative houses** and their relation to the electoral laws and processes.
16. Last but not the least, loss of systemic legitimacy due to **decay in the standards of political morality and decline in the spirit of service and sacrifice** in public life

Student Notes:

## 18. Attempts at Electoral Reforms and Previous Committees/Panels

The task of reforming election process in India is nothing new. The question of bringing about comprehensive changes in the election laws and electoral processes has been receiving the attention at various levels right from the time of the first general election. Several Committees and Panels have been assigned this task earlier. The most prominent of these official exercises in this regard have been:

- The Goswami Committee on Electoral Reforms (1990)
- The Vohra Committee Report (1993)
- The Indrajit Gupta Committee on State Funding of Elections (1998)
- The Law Commission Report on Reform of the Electoral Laws (1999)
- The National Commission to Review the Working of the Constitution (2001)
- The ECI – Proposed Electoral Reforms (2004)
- The Second Administrative Reforms Commission (2008)
- The ECI Proposed Electoral Reforms (2016)

Some of the **main recommendations** of the aforementioned committees and panels are as under:

**Criminalization of Politics**

Over the last two decades, the influence of criminals in the political arena has shown a tremendous increase. Earlier these criminal elements used to influence the elections from outside but now they have become a part of the political system by contesting the elections themselves. The Supreme Court made the disclosure of criminal antecedents of candidates mandatory; following which Election Commission of India started asking candidates contesting elections to the Parliament and State Assemblies to file affidavits in the specified format disclosing the same as essential parts of their nomination forms.

**Money Power in Elections**

It is widely believed that contesting an election in India costs a significant amount of money that is often much greater than the prescribed limits. The high cost of elections creates a high degree of compulsion for corruption in the public arena, that the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts, etc., and that Electoral compulsions for funds become the foundation of the whole super structure of corruption.

Student Notes:

- In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should also apply to the political parties. As of now, there is no limit on how much a political party can spend on elections.
- There is also a need to curb the high cost of campaigning to provide a level playing field for anyone who wants to contest elections.
- Another recommendation that has been suggested by previous committees to reduce the cost of elections is state funding of elections. The idea is to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources. However, before that elections need to be freed from the influence of all vitiating factors, particularly, criminalization of politics.

**Misuse of Caste and Religion for Electoral Gains**

The use of religion, caste, community, tribe, and any other form of group identity for electoral gain or for gathering political support should not be allowed and the Representation of the People Act, 1951, be suitably amended to give the Election Commission powers to take deterrent actions against those candidates and political parties who resort to it. Such actions should include, but not limited to, disqualifying candidates from contesting elections and de-registering the offending political parties. Political parties should also not be allowed to use overtly religious, caste, community, tribe, and other such expressions and words in their names.

**Regulating Political Parties**

It is a desirable objective to promote the progressive polarization of political ideologies and to reduce less serious political activity. The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller parties is discouraged. There are more than 1600 political parties registered with the ECI, however, only a few ever contest elections. ECI should be authorized to de-register such parties, which do not contest elections.

**Political Reforms**

The underlying democratic foundations are severely lacking in the political system in India. No electoral system can provide real and effective representation for the larger societal aspirations unless the political system underlying it is not democratic in real terms. Some of the areas of concern are:

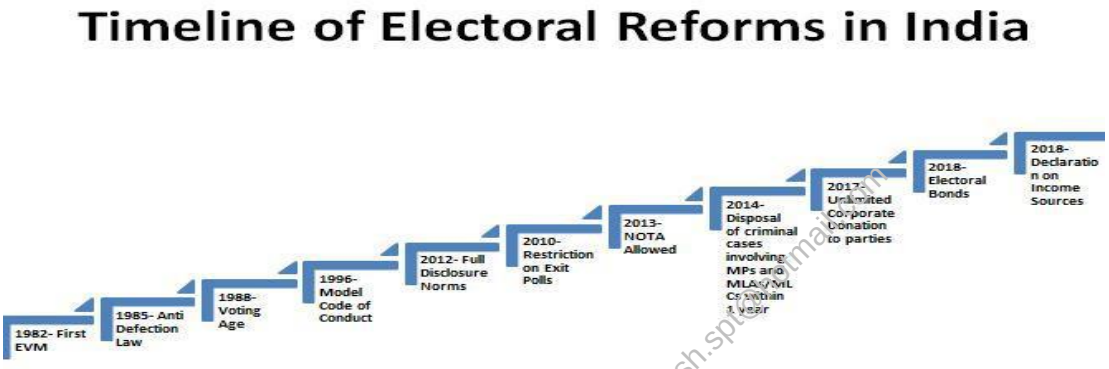
- **Institutionalization of political parties:** There is a need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party, derecognition of parties.
- **Structural and organizational reforms:** Party organizations-- National, State and local levels; Inner party democracy-- regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
- **Party system and governance:** There must be mechanisms to make parties viable instruments of good governance. Deeper political reforms can be presented in three interrelated but distinct parts:
    - **Registration and de-registration of political parties:** The authority for registration, de-registration, recognition and de-recognition of parties and for appointing the body of auditors should be the Election Commission. The decisions of the ECI should be final subject to review only by the Supreme Court of India.
    - **Internal democracy in political parties:** It is absolutely beyond any doubt that political parties are sine qua non of a representative democracy. Political parties which function in a democracy, and claim to be defenders of democracy at every opportunity should function in a democratic manner in their own internal functioning.

Student Notes:

- ✓ Lack of internal democracy makes political parties over-centralized.
- ✓ Moreover, in a party, which does not have internal democracy, power will be exercised more remotely from the members of the party. This increases the distance between authority and accountability.
- ✓ Additionally, in large political parties without internal democracy, there will be very few decision makers.

Hence, provisions should be made to introduce inner-party democracy within the political parties. This should include mandatory secret ballot voting for all elections for all inner party posts and selection of candidates by the registered members, overseen by Election Commission of India.

- **Financial transparency in political parties:** This is also one of the fundamental deeper political reforms that is a necessary precondition that must be satisfied before any meaningful electoral reforms can actually take place on the ground. Bulk of the donations is currently from unknown sources of funds and the introduction of 'Electoral Bonds' has made the financial transparency even more opaque than earlier.
  - ✓ Political parties should be required to maintain proper accounts in predetermined account heads and such accounts should be audited by auditors recommended and approved by the Comptroller and Auditor General of India (CAG), and available for the information of the public.
  - ✓ For bringing a sense of discipline and order into the working of our political system and in the conduct of elections, it is necessary to provide by law for the formation, functioning, income and expenditure and the internal working of the recognized political parties both at the national and State level. There must be a comprehensive law be enacted to regulate the functioning of political parties.




## 19. General Elections 2014 Factsheet

Out of 834,101,479 registered electors, male electors constituted 52.4 % while female electors constituted 47.6 %.

In absolute numbers, out of the total 834,101,479 electors, 553,801,801 people constituting 66.4 % cast their votes in the 2014 General Elections.

Uttar Pradesh with more than 13.90 crore electors or 16.66 % of the national electorate has the largest number of electors, while Sikkim with around 3.71 lakh electors or 0.04 % of the national electorate has the smallest number of electors.

The transgender persons were allowed in the electoral rolls for the first time with gender written as 'Others'.

| | |
|---|---|
| **Total Number of Electors** | **834,101,497** |
| **Total Number of Electors who voted** | **553,801,801 (66.4%)** |
| **Total number of Male and Female Voters** | **293,236,779 Males (67.09%)** |

| | |
|---|---|
| | **260,565,022 Females (65.63%)** |
| **Largest number of Electors in a constituency** | **Malkajgiri, Andhra Pradesh, 3,183,325** |
| **Lowest number of Electors in a constituency** | **Lakshadweep, 49,922** |
| **Maximum contestants in a Parliamentary constituency** | **Chennai (South), 42 contestants** |
| **Polling station with the least number of Electors** | **18 with less than or equal to 10 electors** |
| **Maximum women contestants in a State** | **Uttar Pradesh (126 contestants)** |

Student Notes:

464 parties participated in the elections vis-a-vis only 53 parties in the First General Elections.

A total of 8251 candidates contested the elections, out of which 668 were women and 7,578 were men and 5 were transgenders.

The 2014 General Elections saw the lowest ever number of Independent candidates getting elected. Out of a total of 8251 contestants, 3235 were Independent candidates and out of this, only 3 candidates were elected.

The percentage of NOTA votes in the 2014 General Elections was 1.08. In certain constituencies, the number of NOTA votes was many times more than the winning margins.

Out of total of 8251 candidates contested, 668 were women.

A record number of 62 women were elected as compared to 59 women elected in the General Elections 2009.

Student Notes:

# REPRESENTATION OF THE PEOPLE ACT, MODEL CODE OF CONDUCT AND ELECTION RELATED JUDGEMENTS

## Contents

Student Notes:

Student Notes:

# 1. Provisions related to Elections in the Indian Constitution

Elections in India are covered under **Part XV** of Indian Constitution, which includes **Articles 324 to 329**. This part provides for **Election Commission** (Art 324), **Universal Suffrage** (Art 325) and **Adult suffrage** (Art 326). **Article 327** enables Parliament to enact provisions for elections and **Article 328** provides that states can enact provisions for House or Houses of the State Legislature, if the Centre has not provided for the same. **Under Article 329**, courts are barred from questioning the **Delimitation Act** brought by the Parliament and it also mentions that disputes related to elections can be called in question only by an **election petition** in a manner and to the authority as decided by the appropriate legislature.

Accordingly, the Parliament under Article 327 enacted certain provisions, namely:

1. **Representation of People Act, 1950:** The Representation of People Act 1950, which provides for allocation of seats and delimitation of constituencies of the Parliament and state legislature, officers related to conduct of elections, preparation of electoral rolls and manner of filling seats in the Council of States allotted to Union Territories.
2. **The Representation of People Act, 1951**: It provides for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.
3. **Delimitation Commission Act, 1952**: It provides for the readjustment of seats, delimitation and reservation of territorial constituencies and other related matters.
4. **The Presidential and Vice-Presidential Election Act 1952**: It provides for the conduct of Presidential and Vice- Presidential election and mechanism for the settlement of any dispute arising out of such elections.

# 2. Introduction to the Representation of the People Act 1950 and 1951

The Representation of the People Act was enacted by the provisional Parliament under **Article 327** of Indian Constitution, before the first general election in 1951-52. **Art 327** states that subject to the provisions of our Constitution, the Parliament is empowered to make provisions by law, with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or Houses of the State Legislature, including preparation of electoral rolls, the delimitation of constituencies and all other necessary matters.

Representation of People Act has undergone several amendments since it was enacted. The RPA 1950 has **8 parts and 43 sections**, while the RPA, 1951 has 13 parts from **Part I** to **Part XI** with additional parts of **IV-A** and **V-A** and **192 sections**.

## 2.1. Salient features of Representation of the People Act

The Representation of People Act provides for the following:

1. **Conduct of elections** of the Houses of Parliament and to the House or Houses of the Legislature of each State.
2. Details about the **structure of administrative machinery** for the conduct of elections.
3. **Qualifications and disqualifications** for membership of those Houses.
4. **Qualifications and disqualification of voters** and preparation of **Electoral Rolls.**
5. **Corrupt practices and other offences** at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Student Notes:

# 3. Representation of People Act, 1950

## 3.1. Allocation of Seats

### 3.1.1. Lok Sabha

RPA, 1950 provides for the allocation of seats to the States in the House of the People and also the number of seats, to be reserved for the Scheduled Castes and for the Scheduled Tribes of each State shall be as shown in its First Schedule.

### 3.1.2. Legislative Assemblies

It specifies the total number of seats in the Legislative Assembly of each State including the number of reserved seats, in its Second Schedule. Furthermore, it provides that these seats are to be filled by persons chosen by direct election from Assembly Constituencies.

### 3.1.3. Legislative Councils

The third schedule of the RPA 1950, provides for the allocation of seats in the Legislative Councils of the States having such Councils. These seats shall include the seats to be filled by elected as well as nominated candidates.

## 3.2. Officers

The RPA, 1950 also lists the administrative machinery required **to prepare, correct and update electoral rolls** for free and fair elections in the country. As such, it provides for the following officers required to be appointed:

### 3.2.1. Chief electoral officers

There shall be a chief electoral officer, for each state, who shall be designated or nominated by the Election Commission, in consultation with that Government. He shall supervise the preparation, revision and correction of all electoral rolls in the State under superintendence, direction and control of the Election Commission.

### 3.2.2. District election officers

For each district in a State, the Election Commission shall designate or nominate one or more district election officers, in consultation with the Government of the State. The district election officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the preparation and revision of the electoral rolls for all parliamentary, assembly and council constituencies within the district and such other functions as may be entrusted to him by the Election Commission and the chief electoral officer.

### 3.2.3. Electoral registration officers

The Election Commission shall designate or nominate Electoral Registration Officers for each parliamentary, assembly and Council constituency, in consultation with the Government of the State in which the constituency is situated. He is entrusted with the preparation and revision of electoral rolls for each such constituency.

## 3.3. Electoral Rolls for Assembly and Parliamentary Constituencies

The RPA, 1950 provides for the preparation, correction and revision of Electoral rolls for both parliamentary and legislative assembly constituencies. Besides it also has provisions for Council constituencies.

- **Assembly Constituencies:** The RPA, 1950 specifies that for every assembly constituency, there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission.

Student Notes:

- **Parliamentary Constituencies:** The electoral roll for every parliamentary constituency, other than a parliamentary constituency in a Union territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency. It shall **not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency**.

The electoral roll for each constituency is prepared in the prescribed manner and comes into force immediately upon its final publication in accordance with the rules made under RPA, 1950. This electoral roll:

**(a)** shall, unless otherwise directed by the Election Commission, be **revised** in the prescribed manner by reference to the **qualifying date**
   a. **before each general election** to the House of the People or to the Legislative Assembly of a State; and
   b. **before each bye-election** to fill a casual vacancy in a seat allotted to the constituency;

**(b)** shall be revised in any year, if such revision has been directed by the Election Commission.

If the electoral roll is not revised, the validity or continued operation of the previous electoral roll shall not be affected. Besides, the Election Commission may direct a **special revision** of the electoral roll for any constituency or part of a constituency at any time in such manner as it thinks fit.

### 3.3.1. Disqualifications for registration in an electoral roll

A person shall be disqualified for registration in an electoral roll if he:

**(a)** is **not a citizen of India**; or
**(b)** is of **unsound mind** and stands so declared by a competent court; or
**(c)** is for the time being **disqualified from voting** under the provisions of any law relating to corrupt practices and other offences in connection with elections.

The name of any person who becomes so disqualified after registration is struck off the electoral roll in which it is included. It is important to note that **a person shall not be entitled to be registered in the electoral roll for more than one constituency**. Furthermore, **no person shall be entitled to be registered in the electoral roll for any constituency more than once**.

### 3.3.2. Correction of entries in electoral rolls

The **electoral registration officer** for a constituency can demand an **amendment, transposition or deletion** of an entry on an electoral roll. He can do that on the basis of an **application** made to him or on **his own motion**. Such an application is to be followed by an **inquiry**, at the end of which if he is satisfied that any entry in the electoral roll of the constituency:

**(a)** is erroneous or defective in any particular,
**(b)** should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or
**(c)** should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll

However, the electoral registration officer shall give a **reasonable opportunity**, to the person concerned, of being heard before taking any action in relation to him.

### 3.3.3. Inclusion of names in electoral rolls

Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll. The electoral registration officer shall direct his name to be included, if he is satisfied that the applicant is entitled to be registered in the electoral roll.

If the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

It is to be remembered that no amendment, transposition, deletion or inclusion of an entry can be made to an electoral roll:

i. after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised; and
ii. before the completion of that election.

## 3.4. Electoral Rolls for Council Constituencies

The RPA, 1950 provides for provisions regarding preparation of Electoral Rolls for the purposes of elections to Council Constituencies.

### 3.4.1. Local Authorities' Constituency

In any local authorities' constituency

**(a)** the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule of RPA, 1950
**(b)** every member of each such local authority within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency

### 3.4.2. Graduates' and Teachers' Constituencies:

In the graduates' constituencies and the teachers' constituencies, the concerned State Government with the concurrence of the Election Commission may specify

**(a)** the qualifications which shall be deemed to be equivalent to that of a graduate of a university in the territory of India, and
**(b)** the educational institutions within the State not lower in standard than that of a secondary school.

Every person who is ordinarily resident in a graduates' constituency and has, for at least three years, been either a graduate of a University in the territory of India or in possession of any of the qualifications specified by the State Government concerned, shall be entitled to be registered in the electoral roll for that constituency; and

Every person who is ordinarily resident in a teachers' constituency, and has, within the six years immediately before the qualifying date for a total period of at least three years, been engaged in teaching in any of the educational institutions specified by the State Government concerned shall be entitled to be registered in the electoral roll for that constituency.

## 3.5. Manner of filling seats in the Council of States to be filled by representatives of Union Territories

### 3.5.1. Constitution of electoral colleges

There shall be an **electoral college for each constituency**, to fill any seat or seats in the Council of States allotted to any Union territory in the Fourth Schedule to the Constitution.

### 3.5.2. Termination of membership of electoral college for certain disqualifications

If a person who is a member of an Electoral College becomes subject to any disqualification for membership of Parliament under the **provisions of any law relating to corrupt and illegal practices and other offences in connection with elections to Parliament**, he shall cease to be such member of the Electoral College.

### 3.5.3. Manner of filling seats in the Council of States allotted to Union territories

The seat or seats in the Council of States allotted to any Union territory in the Fourth Schedule to the Constitution shall be filled by a person or persons elected by the members of the electoral college for that territory, in accordance with the system of proportional representation by means of the single transferable vote.

# 4. Representation of People Act, 1951

## 4.1. Qualifications for Members of Parliament and Members of State Legislature

The Constitution prescribes certain qualifications for a person to be elected as a member of the Union Parliament as well as the State Legislature. It also empowers the Parliament to make such laws that may prescribe further qualifications for such elections. Accordingly, Part II of RPA, 1951 provides for qualifications for Members of Parliament (MPs) and Members of State Legislature (MLAs).

### 4.1.1. Constitutional Provisions for Membership of Parliament

The Indian Constitution provides for the following qualifications to become a member of the Parliament. As per **Article 84** of the Constitution, a person is qualified to be a member of parliament provided he:

- is a citizen of India;
- has completed 30 years of age in case of Rajya Sabha and 25 years in case of Lok Sabha;
- possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

### 4.1.2. Qualifications for Membership of Parliament under RPA, 1951

1. **Council of States (Section 3 of RPA, 1951)**
   A person has to be an **elector for a parliamentary constituency** in India to be qualified to be chosen as a representative of any State or Union Territory (UT) in the Council of States. It is not necessary for a person to be an elector in that particular state or UT where he is contesting to be elected as a representative rather he can be an elector anywhere in India.
   **Section 3** of RPA in its original form required the condition of elector 'in that state or territory', but this requirement was dispensed by Representation of People (Amendment) Act, 2003 and it was substituted by elector 'in India'. In 2006, the Hon'ble Supreme Court upheld the validity of this change in '*Kuldip Nayar vs Union of India and Ors. Case*'.
2. **House of the People (Section 4 of RPA, 1951)**:
   To be chosen as a member of the Lok Sabha, a candidate must be an **elector for any Parliamentary constituency in India**. However,
   (a) In order to contest a **seat reserved for the Scheduled Castes/Scheduled Tribe** (other than those in the autonomous districts of Assam) in any State or Union Territory, he must be a **member of any of the Scheduled Castes/Tribe, whether of that State or Union Territory or of any other State or Union Territory** (excluding the tribal areas of Assam), and must be elector for any Parliamentary Constituency. It is to be noted that a member of Schedule Caste or Schedule Tribe can also contest a seat not reserved for them.
   (b) In order to contest a **seat reserved for the Scheduled Tribes in the autonomous districts of Assam**, he must be a member of any of those Scheduled Tribes and must be an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district. The protective mechanism in case of Assam also applies to Lakshadweep and Sikkim.

Student Notes:

### 4.1.3. Constitutional Provisions for membership of a State Legislature

As per **Article 173** of the Constitution of India, to be elected as a member of the state legislature, the person:

- should be a citizen of India
- not less than 25 years of age to be a member of the Legislative Assembly and not less than 30 years to be a member of the Legislative Council.

### 4.1.4. Qualifications for membership of a State Legislature under RPA, 1951

1. **Legislative Assembly**
   **Section 5 of RPA, 1951** requires that
   (a) In order to contest a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State or Union Territory, he must be a member of any of those castes or of those tribes, as the case may be, and must be an elector for any Assembly constituency in that State or Union Territory;
   (b) In order to contest a seat reserved for an autonomous district of Assam, he must be a member of a Scheduled Tribe of any autonomous district and must be an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and
   (c) In order to contest any other seat, he must be an elector for any Assembly constituency in that State or Union Territory.
   (d) In order to be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland for the period referred to in clause (2) of Article 371A, he must be a member of the regional council referred to in that article.
2. **Legislative Council**
   **Section 6 of RPA, 1951** requires that,
   (a) In order to be qualified to contest a seat of Legislative Council of a State or Union Territory to be filled by election, he must be an elector for any Assembly constituency in that State.
   (b) In order to be qualified to be chosen for a seat in the Legislative Council of a State or Union Territory to be filled by nomination by the Governor he must be an ordinarily resident in the State or Union Territory.

## 4.2. Provisions for Disqualification for Membership of Parliament and State Legislatures

### 4.2.1. Constitutional Provisions

Article 102 and Article 191 in the Constitution Of India provides for disqualifications for membership to the Union Parliament and State Legislature respectively. Under these article, a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the State Legislature

**(a)** if he holds any **office of profit** under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
**(b)** if he is of **unsound mind** and stands so declared by a competent court;
**(c)** if he is an **undischarged insolvent**;
**(d)** if he is **not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State**;
**(e)** if he is so **disqualified by or under any law made by Parliament**

Furthermore, it provides that a person shall be disqualified for being a member of either House of Parliament if he is so **disqualified under the Tenth Schedule**. Such disqualification is more commonly referred to as Disqualification under **Anti-Defection law**.

Student Notes:

### 4.2.2. Anti-Defection Law

The Tenth Schedule to the Constitution, popularly known as the Anti-Defection Law, was introduced by the Constitution (Fifty-second Amendment) Act, 1985. It was further amended by the Constitution (Ninety-First Amendment) Act, 2003 and lays down the conditions regarding disqualification on ground of defection. The main provisions of the Tenth Schedule are:

i. An **elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature who is a member of political party** at the time she/he takes her/his seat would be disqualified on the ground of defection if she/he **voluntarily relinquishes her/ his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party.**
ii. An **independent member** of Parliament or a State Legislature will also be disqualified if **she/he joins any political party after her/his election**.
iii. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of her/ his nomination and who has **not become a member of any political party before the expiry of six months** from the date on which she/he takes her/his seat shall be disqualified if she/he joins any political party after the expiry of the said period of six months.
iv. No disqualification would be incurred when a legislature party decides to **merge with another party and such decision is supported by not less than two-thirds of its members.**
v. Special provision has been made to enable a person who has been elected to the office of the **Speaker or the Deputy Speaker** of the House of People or of the Legislative Assembly of a State or to the office of **the Deputy Chairman** of the Council of States or **the Chairman or the Deputy Chairman** of Legislative Council of a State, to **sever her/his connections with her/his political party without incurring disqualification**.
vi. The question as to whether a **member of a House of Parliament or State Legislature** has become subject to disqualification will be determined by the **presiding officer of the House**; whereas the question is with reference to the **Presiding Officer** herself/himself it will be decided by a **member of the House elected by the House on that behalf**.
vii. The **Chairman or the Speaker of a House** has been empowered to **make rules for giving effect to the provisions of the Tenth Schedule**. The rules shall be laid before the House and shall be subject to modifications/disapproval by the House.
viii. The Chairman or the Speaker of a House has been empowered to direct that any wilful contravention by any person of the rules made under paragraph 8 of the Tenth Schedule may be dealt with in the same manner as a breach of privilege of the House.

As per article **361B of the Constitution**, such member of the House belonging to any political party who is disqualified for being a member of the House under the Tenth Schedule shall **also be disqualified to hold any remunerative political post** for duration of the period commencing from the date of her/his disqualification till the date on which the term of her/his office as such member would expire or till the date on which she/he contests an election to a House and is declared elected, whichever is earlier.

Remunerative political post includes any office under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or, under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.

## 4.2.3. Disqualification under RPA, 1951

Student Notes:

Representation of the Peoples Act, 1951 in Chapter III of Part II provides for **8 different grounds for disqualification** for Membership of Parliament and State Legislatures:

1. **Section 8(1) provides for disqualification on conviction for certain offences**
   A person convicted of an offence punishable under the following crimes will be disqualified:
   a. **Crimes under Indian Penal Code 1860:** Disqualification under this provision pertains to various sections and subsections of the IPC. These include:
      i. **Section 153A** i.e. the offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony; or
      ii. Section **171E** i.e. offence of bribery or
      iii. **Section 171F** i.e. offence of undue influence or personation at an election or
      iv. **Section 376(1) or (2) or Section 376A or Section 376B or Section 376C or Section 376D** which include provisions related to to rape; or
      v. **Section 498A** i.e. offence of cruelty towards a woman by husband or relative of a husband or
      vi. **Section 505(2) or (3)** i.e. offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code;
   b. **Protection of Civil Rights Act 1955**, which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising there from;
   c. Section 11 of the **Customs Act, 1962** which relates to the offence of importing or exporting prohibited goods.
   d. Sections 10 to 12 of the **Unlawful Activities (Prevention) Act, 1967**. This offence relates to being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place.
   e. **Foreign Exchange (Regulation) Act,** 1973 related to dealings in foreign exchange, import and export of currency, etc.;
   f. **Narcotic Drugs and Psychotropic Substances Act, 1985** related to produce/ manufacture/cultivate, possess, sell, purchase, transport, store, and/or consume any narcotic drug or psychotropic substance.
   g. Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disruptive activities) of the **Terrorist and Disruptive Activities (Prevention) Act, 1987**;
   h. Section 7 of the **Religious Institutions (Prevention of Misuse) Act, 1988**;
   i. **Offences under various sections of the RPA, 1951:** Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot papers from polling stations) or Section 135A (offence of booth capturing) Section 136(2)(a) (offence of fraudulently defacing or fraudulently destroying any nomination paper) of RPA, 1951;
   j. Section 6 of the **Places of Worship (Special Provisions) Act, 1991**; which relates to the conversion of a place of worship.
   k. Section 2 or Section 3 of the **Prevention of Insults to National Honour Act, 1971**; that relate to the offence of insulting the Indian National Flag or the Constitution of India and that of preventing singing of National Anthem respectively.
   l. Commission of **Sati (Prevention) Act, 1987**;
   m. Prevention of Corruption Act, 1988;
   n. Prevention of Terrorism Act, 2002

Student Notes:

The **period of disqualification** under the above offences will be **six years** from the date of such conviction if sentenced to only fine, and **six years** from release in case of an imprisonment.

2. **Under Section 8(2),** a person convicted for the contravention of any law regarding **prevention of hoarding or profiteering, adulteration of food or drugs or Dowry Prohibition Act, 1961** and sentenced to imprisonment for not less than 6 months.
3. **Under Section 8(3),** a person convicted of **any offence** (other than any offence mentioned in Section 8(1) or Section 8(2)) **and sentenced to imprisonment for not less than two years** will be disqualified from the date of such conviction and will continue to be disqualified for a further period of six years since his release.
4. **Section 8A provides for disqualification on ground of corrupt practices** i.e. a person guilty of certain **corrupt practices** specified **in Section 123** of **RPA, 1951** shall stand disqualified. Such disqualification is subjected to the condition that the charges are established through an **election petition** before the **High Court** and presented to the President as a High Court Order. Further, the **President** will decide upon the disqualification and the duration of such disqualification after obtaining an opinion from the **Election Commission**.
5. **Section 9** provides that a person who having held an office under the Government of India or under the Government of any State in the past and has been dismissed for corruption or for disloyalty to the State will be disqualified for a period of five years from the date of such dismissal.
6. **Section 9A provides for disqualification for government contracts, etc** i.e. person shall be disqualified if there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.
7. **Section 10 provides for disqualification for office under government company** i.e.A person shall be disqualified if, and for so long as, he is a **managing agent, manager or secretary of any company or corporation** (other than a cooperative society) in the capital of which the **appropriate government has not less than twenty-five per cent share.**
8. **Section 10A:** Disqualification for **failure to lodge account of election expenses**.

However it is mentioned in **Section 11 of RPA, 1951** that Election Commission may remove any of the above disqualification except under Section 8A or reduce the period of any such disqualification.

## 4.3. Disqualifications for Voting

**Section 11A of RPA 1951** provides for disqualification arising out of a conviction and corrupt practices. It mentions that if any person is convicted of an offence punishable under

- Section 171E (**offence of bribery**) or
- Section 171F (**offence of undue influence or personation at an election**) of the **Indian Penal Code**; or
- Section 125 (**Promoting enmity between classes in connection with election**) or
- Section 135 (**removal of ballot paper from polling station**) or
- Section 136(2)(a) (**found guilty of some electoral offences, while being an officer in connection with the election**) of **RPA 1951**,

he will be **disqualified for *voting* at any election for a period of six years** from the date of conviction or from the date on which the order takes effect**.** Further, it provides that a person disqualified by a decision of the **President** under Section 8A (**through election petition for corrupt practice**) for any period will be disqualified for the same period for voting at any election**.**

Student Notes:

## 4.4. Provisions related to the declaration of assets and liabilities

**Section 75A of RPA, 1951** states that every elected candidate for either Houses of Parliament shall furnish information regarding relating to the movable and immovable property owned by him, his spouse or his children; the liabilities to any public financial institution or to the Central Government or State Government **within ninety days** from the date of subscribing an oath for taking a seat in Parliament.

The form and manner of furnishing this information shall be prescribed in the rules made by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be. Any willful contravention of such rules by an elected candidate for a House of Parliament is dealt with in the same manner as a **breach of privilege** of the Council of States or the House of the People, as the case may be.

## 4.5. Provisions related to election expenses

According to the **Section 77 of RPA, 1951**, every candidate contesting in election to the House of the People or to the Legislative Assembly of a State, shall, either by himself or by his election agent, keep a **separate and correct account of all expenditure** in connection with the election incurred or authorized by him or by his election agent.

Currently the limits on expenditure by candidates are as follows:

1. **Lok Sabha elections:** maximum of 70 lakhs; for north-eastern and hilly states - 54 lakhs rupees.
2. **State Assembly election:** maximum of 28 lakhs; for north-eastern and hill states - 20 lakhs rupees.

Every contesting candidate at an election shall lodge an account of his election expenses, **with the district election officer,** within thirty days from the date of election of the elected candidate. An incorrect account or expenditure beyond the cap can lead to **disqualification** of the candidate by the ECI for up to three years, under **Section 10A** of the RPA, 1951.

## 4.6. Provisions for settlement of disputes

No election shall be called in question except by an ***election petition*** presented to the **High Court** having jurisdiction of the state involved. Such jurisdiction of High court shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose. An election petition can either be filed by any candidate at such election or by any elector ***within forty-five days*** from, the date of election of the elected candidate.

Following are the grounds on which an election petition may be presented:

**a.** that a returned candidate was ***not qualified***, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 on the date of his election; or
**b.** that any ***corrupt practice*** has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
**c.** that any ***nomination has been improperly rejected***; or
**d.** that the ***result of the election has been materially affected***—
   - **i.** by the improper acceptance or any nomination, or
   - **ii.** by any corrupt practice committed in the interests of the elected candidate by an agent other than his election agent, or
   - **iii.** by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
   - **iv.** by any non—compliance with the provisions of the Constitution or of RPA, 1951 or of any rules or orders made under RPA, 1951.

Every election petition shall be tried as expeditiously as possible and efforts shall be made to conclude the **trial within six months** from the date on which the election petition is presented**.** If the High Court upholds the election petition, it declares the election of the selected candidate to be void. However, an appeal ca be made to the Supreme Court within a period of thirty days from the date of the order of the High Court.

It is to be noted that according to **Section 170** of RPA, 1951 no civil court has jurisdiction to question the legality of any action taken or of any decision given by the returning officer or by any other person appointed under this act in connection with an election.

Student Notes:

## 4.7. Corrupt practices and Electoral Offences

**Corrupt Practices:** Section 123 of RPA, 1951 defines the corrupt practices like bribery, undue influence, inciting religious sentiments, booth capturing etc.

1. **Bribery i.e.** any form of gratification (including gift, reward or an offer) to the electors for voting or refraining from voting and to the candidates for withdrawing or not withdrawing nomination.
2. **Undue influence** includes any direct or indirect interference with the free exercise of any electoral right by the candidate or his election agent. But a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference.
3. Appeal to vote or **refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols** or the use of, or appeal to, **national symbols**, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:
4. The promotion of **feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language**
5. The propagation of the **practice or the commission of sati or its glorification**
6. The publication of any **false statement** of fact in relation to the **personal character or conduct of any candidate**
7. The hiring or procuring of any vehicle or vessel or the **use of such vehicle or vessel for the free conveyance of any elector** (other than the candidate himself, the members of his family or his agent) to or from any polling station.
8. The incurring or authorizing of **expenditure** in contravention of 'Account of election expenses and maximum limit' prescribed under Section 77 of RPA, 1951.
9. Any **assistance** other than voting, that may further the prospects of that candidate's election, **from any person in the service of the Government and belonging to any of the following classes, namely gazetted officers; stipendiary judges and magistrates; members of the armed forces of the Union; members of the police forces; excise officers; revenue officers etc.**
10. **Booth capturing** by a candidate or his agent or other person.

**Electoral Offences:** Chapter III of Part VII of RPA, 1951 provides for the following electoral offences:

1. Promoting Enmity between classes in connection with election
2. Penalty for filing false affidavit, concealing information, cases pending etc.
3. Prohibition of public meetings during period of 48 hours ending with hour fixed for conclusion of poll
4. Restriction on publication and dissemination of result of exit polls, etc.
5. Offences by companies
6. Disturbances at election meetings
7. Restrictions on the printing of pamphlets, posters, etc.
8. Maintenance of secrecy of voting

Student Notes:

9. Officers, etc. at elections not to act for candidates or to influence voting
10. Prohibition of canvassing in or near polling stations
11. Penalty for disorderly conduct (Ex use of loudspeakers etc)in or near polling stations
12. Penalty for misconduct at the polling station
13. Penalty for failure to observe procedure for voting
14. Penalty for illegal hiring or procuring of conveyance at the elections
15. Breaches of official duty in connection with elections
16. Penalty for government servants for acting as election agent, polling agent or counting agent
17. Prohibition of going armed to or near a polling station
18. Removal of ballot papers from polling station to be an offence
19. Offence of booth capturing
20. Grant of paid holiday to employees on the day of poll
21. Liquor not to be sold, given or distributed on polling day

### 4.7.1. Difference between Electoral Offences and Corrupt Practices

| | CORRUPT PRACTICES | ELECTORAL OFFENCES |
|---|---|---|
| **SOURCE** | Corrupt practices at elections are presently specified in s 123 of the 1951 Act | Electoral offences are laid down both in the IPC and in the RPA, 1951 |
| **NET RESULT/EFFECT** | When a corrupt practice is committed by a candidate or by someone else with his consent, it has the effect of vitiating the whole election and will result in the election of the candidate being declared void. | The commission of an electoral offence may not necessarily have such fatal bearing on the election result. |
| **EFFECT ON THE CONSTITUENCY** | The whole constituency suffers in as much as the candidate loses his seat and the constituency goes without representation in the legislature. | Only the persons committing the electoral offences suffer for their criminal liability. |
| **MANNER OF REPORTING AND REDRESSAL** | Any grievance relating to the commission of a corrupt practice can be initiated only after the election is over and only in an election petition in accordance with the provisions of art 329 and the RPA 1951. | Cognisance of an electoral offence can be taken as soon as it is committed and the process of law set in motion immediately thereafter, in the same manner in which any other criminal activity is investigated and tried under the provisions of the CrPC. |
| **PUNISHMENT** | Committing a corrupt practice entails only certain civil disabilities, like, disqualification for voting and for contesting elections for certain period | any electoral offence if committed will be visited with criminal liability and may result in imprisonment or with fine or with both apart from attracting the civil disabilities of voting and contesting g elections in the case of certain specific electoral offences |

Student Notes:

# 5. Code of Conduct

## 5.1. Model code of conduct

**Salient Features of MCC:** The MCC is a **set of norms for conduct and behavior** on the part of the Parties and candidates, in particular. MCC for guidance of political parties and candidates is a small but unique document that contains the following 8 parts:

**(i)** **Part I** of Model Code lays stress on certain minimum standards of good behaviour and conduct of political parties, candidates and their workers and supporters during the election campaigns;

**(ii)** **Parts II and III** deal with the holding of public meetings and taking out processions by political parties and candidates;

**(iii)** **Parts IV and V** describe as to how political parties and candidates should conduct themselves on the polling day and at the polling booths;

**(iv)** **Part VI** exhorts political parties and candidates to bring their complaints to the notice of the observers appointed by the Election Commission for remedial action;

**(v)** **Part VII** deals with the parties in power. This part is, in essence, the flesh and blood of Model Code, which deals with several issues relating to Government and its Ministers, such as visits of Ministers, use of Government transport and Government accommodation, announcements of various schemes and projects etc.

**(vi)** The newly added **Part VIII** says that election manifestoes shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code.

**Need for Model Code of Conduct:** Free and fair elections form the bedrock of democracy. This envisages a level playing field for the contestants and an equal opportunity for all parties for presenting their policies and programmes to voters. In this context the Model Code of Conduct (MCC) gains relevance. The need of MCC is felt for the following reasons:

1. to provide a level playing field for all political parties, keep the campaign fair and healthy, avoid clashes and conflicts between parties, and ensure peace and order.
2. to ensure that the ruling party, either at the Centre or in the states, does not misuse its official position to gain an unfair advantage in an election.

## 5.2. Evolution of Model Code of Conduct:

The uniqueness of the MCC is the fact that **this was a document that originated and evolved with the consensus of the political parties**. The origin of the MCC dates back to 1960 when the MCC started as a small set of *Dos and Don'ts* for the Assembly election in Kerala in 1960. It has evolved several times into its present form ever since:

- In 1968, the Election Commission held meetings with political parties at State level and circulated the Code of Conduct to observe minimum standard of behavior to ensure free and fair elections.
- In 1971-72, during General Election to the House of the People/State Legislative Assemblies the Commission circulated the Code again.
- At the time of general elections to some State Assemblies in 1974, the Commission issued the code of conduct to the political parties in those States.
- The Commission also suggested constituting committees at district level headed by the District Collector and comprising representatives of political parties as members for considering cases of violation of the code and ensuring its compliance by all parties and candidates.
- For the 1977 Lok Sabha general election, the Code was again circulated to the political parties.

- In 1979, Election Commission, in consultation with the political parties further amplified the code, adding a new Section placing restrictions on the "Party in power" so as to prevent cases of abuse of position of power to get undue advantage over other parties and candidates.
- In 1991, the code was consolidated and re-issued in its present form.

## 5.3. Implications of applying the model code of conduct

With the application of MCC in elections, there have been noticeable changes in the manner of conduct of political parties and candidates during elections:

- The present code contains guidelines for general conduct of political parties and candidates (no attack on private life, no appeal to communal feelings, discipline and decorum in meetings, processions, guidelines for party in power – official machinery and facilities not to be used for electioneering, prohibition against Ministers and other authorities in announcing grants, new schemes etc).
- Ministers and those holding public offices are not allowed to combine official visits with electioneering tours.
- Issue of advertisements at the cost of public exchequer is prohibited.
- Grants, new schemes / projects cannot be announced. Even the schemes that may have been announced before the MCC came into force, but that has not actually taken off in terms of implementation on field are also required to be put on hold.
- It is through such restrictions that the advantage of being in power is blunted and the contestants get the opportunity to fight on more or less equal terms.

## 5.4. Enforcement of MCC

MCC has got the judicial recognition of the highest court of land. The dispute over the date when the Model Code of Conduct should come into force, the issuance of the press release by EC announcing the poll dates or the date of actual notification in this regard was resolved in the *Union of India V/s Harbans Sigh Jalal*.

The apex court gave the ruling that the Code of Conduct would come into force the moment the Commission issues the press release, which precedes the notification by a good two weeks. This ruling lay at rest the controversy related to the dates of enforcement of MCC. Thus the MCC remains in force from the date of announcement of elections till the completion of elections.

## 5.5. Contemporary Challenges in implementing Model Code of Conduct

- Emergence of **new forms of electoral malpractices** like manipulation through media which is difficult to trace to specific political parties and candidates.
- **Weakened capacity of the ECI** to respond to violations of MCC in the form of weak or delayed response.
- Use of **third-party contracts** for disseminating most of the election-related information to avoid legal responsibility.
- **Flouting the self-regulatory social media code** evolved by the ECI.
  **Misuse of narrative by the ruling party over sensitive issues** such as national security, disaster management etc, that the ECI observes, do not fall under the ambit of MCC.

## 5.6. Status of Model Code of Conduct

MCC does not a have a statutory backing and it is more a consensus driven code arrived at after consultation with all political parties to ensure free and fair elections and to see that the ruling party does not misuse its dominant position. **Model Code is not a statutory document**. Violation of many of its provisions does not attract any punitive action. Though Model Code

does not have legal sanctity but several of its provisions have enabling laws contained in the Indian Penal Code and the RPA, 1951.

Student Notes:

## 5.7. Should MCC be given legal status?

The Parliamentary Standing Committee on Law and Justice recommended in its 2013 report that statutory status be accorded to the MCC. The rationale for the same is as under:

1. The committee held that **most of the provisions of the MCC are already contained in various laws and are therefore enforceable** like the violation of secrecy of voting, causing enmity among communities, the prohibition of public meetings 48 hours prior to the conclusion of polls. Besides other offences, are covered by the RPA, 1951. Offences like, impersonation at voting, offering inducements to voters, or accepting gratification to do something they never intended, amount to bribery under the Indian Penal Code.
2. The Committee also observed that the **ECI strictly enforces the provisions of MCC which are relatable to other statutes enacted by Parliament or otherwise**. Besides issuing warning/censure to the political parties and candidates concerned, in respect of enforceable provisions, the EC can even de-recognise a political party as National or State Party under Election Symbols (Reservation and Allotment) Order, 1968 even in the case of violation of those provisions of MCC which are not enforceable.
3. Since, the Election Commission claims to have powers to punish political parties through plenary power under Article 324 of Constitution, the committee recommended to enact law for giving statutory back up to MCC **leaving no vacuum for ECI to exercise its power which is residuary in nature.**
4. It suggested that the instructions/orders issued by Election Commission of India under Article 324 of the Constitution sometimes **encroach upon legislative power of Parliament**. Hence, such instructions/orders issued by Election Commission of India may be suitably incorporated in the Representation of People Act, 1951.
5. On the basis of the above, the Standing Committee contended that the MCC as a whole could not be construed merely as voluntary in its application. Furthermore, since most of its provisions are enforceable, the remaining stipulations in the MCC should also be accorded statutory backing.
6. Another reason for the above recommendation by the Standing Committee is the absence of an immediate appeal mechanism against the decision of the returning officer to cancel the nomination of a candidate. In this case, the decision can only be challenged in the High Court after the announcements of election results.

**Arguments against Legal status to MCC:**

1. The decision making power will go to the Judiciary and thus the **swiftness, expedition and promptness** in dealing with the cases of violation of MCC will be gone.
2. If MCC is converted into a law, this would mean that a complaint would lie to the police/Magistrate. The procedures involved in judicial proceedings being what they are, a **decision on such complaints would most likely come only long after the election is completed.**
3. The **legal codification** of these norms would be a potential nightmare, exposing the entire electoral process to needless litigation. The broad objectives of MCC are best achieved by oversight of an impartial election watchdog.
4. The Election Commission itself is of the view that although statutory back up to the code may make it more effective and strengthen its binding nature, it **may complicate the implementation of the code in the middle of elections**.
5. Furthermore, it added that the manner in which violations of MCC have been handled by the Election Commission with speed and urgency, proves that the **code has stood the test of time.** Therefore, it should be left as an established way of enforcing the code.

Student Notes:

6. The Department of Legal Affairs and the Legislative Department, Ministry of Law and Justice added that the Model Code of Conduct by its very **nomenclature** is only a self-regulatory code.

The Election Commission has argued against making the MCC legally binding; stating that elections must be completed within a relatively short time (close to 45 days), and judicial proceedings typically take longer. MCC evolved as part of the ECI's drive to ensure free and fair elections, and was the result of a consensus among major political parties. It has no statutory backing but carries significant moral weight. Given the practical difficulties emerging from giving MCC statutory backing, another alternative would be to strengthen ECI to deal with contemporary challenges, electoral malpractices, Poll Code violations etc.

# 6. Landmark Judgments on issues around Elections

The following Supreme Court judgments were directed towards bringing electoral reforms:

## 6.1. An Accused can contest the election but cannot vote:

**Background**

In 2004, a Public Interest Petition was filed in Patna High Court, by Jan Chaukidar, an NGO, in wake of several malpractices in elections reported in Bihar. In its judgment, the Patna High Court in **Jan Chaukidari vs. Union of India** — upheld by the Supreme Court in 2013— all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand for election.

The judgement relied on **section 4(d) of Representation of People Act, 1951** which says that one of the qualifications for membership of Parliament or State legislature is that the contestant must be an 'elector'. Since Section 62(5) of the Act prevents those in lawful custody from voting, those in such custody are not qualified for membership of legislative bodies.

This verdict was **challenged by Chief Election Commissioner and others in the Supreme Court**. On 10th July 2013, a divisional bench, comprising of Justice AK Patnaik and Justice SJ Mukhopadhaya, **upheld the verdict of Patna High Court**. It was pointed out that section 62(5), clearly lays down that any person, who is under the lawful custody of the police, or under the sentence of imprisonment or transportation or otherwise, is not allowed to vote, and since the person does not qualify as an elector, he cannot stand as a candidate for election to the House.

This judgement was followed by a reaction by the Union Parliament which passed the **Representation of People (Amendment and Validation Act) 2013**. It **amended section 7, 62 and 43** of the RPA, 1951. The major amendment by this act was that of section 62, wherein, it inserted a proviso, that suggested that even if a person is prohibited from voting due to being in police custody or in jail, as long as his name is entered on the electoral roll he shall not cease to be an elector. This implies that he can file nomination for an election. Section 4 of the amendment introduced the retrospective effect. It made the act to be applicable from 10th of July, thus totally nullifying the Supreme Court's ruling.

After the passing of the Amendment Act of 2013, **a PIL *(Manohar Lal Sharma v. Union of India)* was filed in Delhi High Court**. The Court **upheld the Constitutional validity** of an amendment to the Representation of People Act that allowed people jailed before conviction to contest elections. The reasoning behind the judgment was that extending curtailment of the right to vote of a person in prison to the right to stand in election would, leave the door open for practice of 'vendetta politics' by ruling parties.

Furthermore, a Supreme Court Bench headed by ***Chief Justice H.L. Dattu*** on December 07, 2017, dismissed a petition filed against Delhi High Court's order which upheld the Constitutional validity of an amendment to the Representation of People Act that allowed people jailed before conviction to contest elections. Hence, the present legal position on this

issue is that a prisoner, other than the one under preventive detention, is not entitled vote but can contest elections.

Student Notes:

**Analysis of the judgment**

- The judgment says that a person who is confined in a prison or in the lawful custody of police, loses the right to vote (S. 62(5) of RPA, 1951), and is hence disqualified from contesting elections.
- The reasoning is that a person who has no right to vote is disqualified from registering in the electoral rolls **Section 16(1)(c) of RPA, 1950** implying that he/she is not an 'elector' under **Section 2(1)(e) of RPA, 1951**, which is one of the qualifications for "being chosen to fill a seat" of the House of the People and a Legislative Assembly of a State under **Section 4(d) and 5(c) of RPA, 1951.**
- The Supreme Court reasoned that it was **reasonable to deny voting rights** to convicted prisoners, under trials and those in police custody because it was being done **to curb the criminalisation of politics**.
- Further, it took account of **practical considerations** and ruled that the **additional resources** that would be required in terms of infrastructure, security and deployment of extra police forces were legitimate justifications in denying the right to vote to prisoners and those in custody.
- It reasoned that a prisoner was in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment and cannot claim equal freedom of movement, speech and expression with the others who are not in prison.
- However, the decision brings into debate the constitutional soundness of **Section 62(5)**, **1951**. **Right to vote** is a statutory right, and hence is under the regulation by the legislature, subject to Article 325 and 326 of the constitution. While, Section 62(5), is one of the conditions laid down, which has to be looked upon for a person to vote in the election. The Supreme Court had earlier rejected a challenge against the validity of section 62(5) which contended that the section is violative of Article 14, right to equality and Article 21, right to life.
- Even if section 65(2) is considered to be valid, it violates the principle of "Innocent until proven guilty". Under this section, we are placing the people who are accused of an offence under the same category of those who are already convicted and not allowing them to vote.

The **principle of reasonable classification** is valid under Article 14 however; such a classification is averse to classifying reasonably. It gives power to a person to strip off other person from is right to vote, by simply accusing him and accounting him to go to jail. Such a rule negates the very concept of citizenship and denies the person of his right to be heard of in forming the government. If section 62(5), is considered to be valid and abiding to all the constitutional principles, then the rationale given by the Hon'ble Supreme Court behind the decision is logically sound.

## 6.2. MPs, MLAs to be Disqualified on Date of Criminal Conviction

In *Lily Thomas v. Union of India*, 2013 the Supreme Court declared **Section 8 (4)** of the RPA, 1951, (RPA) as unconstitutional. This section allowed legislators a three-month window to appeal against their conviction, effectively delaying their disqualification until such appeals were exhausted.

**Section 8 of RPA, 1951 deals** with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1), (2), and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release. But **Section 8 (4) of RPA gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.**

The Bench found it unconstitutional that convicted persons could be disqualified from contesting elections but could continue to be Members of Parliament and State Legislatures once elected.

Student Notes:

**Analysis of the Judgment:**

- The Constitution enlists the disqualification criteria in Article 102(1). This includes criteria like office of profit, unsound mind, undischarged insolvency and citizenship. This article also empowers the Parliament to make law specifying any other criterion for disqualification. In accordance with the constitutional mandate, the Parliament enacted the RPA 1951, mentioning the disqualification criteria in Section 8.
- The Supreme Court has given two reasons for its verdict:
  - It held **Section 8(4) to be in violation of Article 102 and Article 191** of the Indian Constitution.
  - Second, the Supreme Court held that the Parliament had no legislative competence to enact Section 8(4).
- However, the reasoning of the Supreme Court is difficult to accept, since article 102 clearly empowers the Parliament to define the criterion for disqualification by enacting a law. Furthermore, none of the five clauses of Article 102(1) are attracted to invalidate Section 8(4).
- Also, Entry 72 to List 1 of the 7th Schedule in the Constitution specifically allows Parliament to legislate on elections to Parliament or the State legislatures. It is well-settled that legislative entries in the Constitution are to be widely construed, and in any case Parliament has residual power to legislate under Entry 97 to List 1 of the 7th schedule.

## 6.3. Supreme Court refusal to ban politicians facing criminal charges from elections

- A five-judge Constitution bench headed by Chief Justice Dipak Misra dismissed a batch of petitions seeking the disqualification of politicians from contesting elections once charges are framed against them.
- The petitions were filed by NGO Public Interest Foundation, former Chief Election Commissioner JM Lyngdoh, and Bharatiya Janata Party leader Ashwini Upadhyay.
- The petitioners argued that there were 34% legislators with criminal cases against them after 2014 elections and that it was impossible that Parliament would introduce any law to stop the "criminalisation of politics".
- The government's argument was that a person is presumed to be innocent until proven guilty and added that the court cannot restrict a person's right to vote, which also includes his right to contest.
- The court had earlier also observed that the Supreme Court cannot legislate for Parliament reasoning that they could not add disqualification of candidates on filing of chargesheet in criminal cases.
- However, the court has told Parliament to enact such legislation to ensure that candidates with criminal antecedents do not enter public life.

## 6.4. Voters' Right to Know

In *Public Interest Foundation vs Union of India*, 2020 the Supreme Court directed political parties to publish criminal antecedents of contesting candidates along with reasons for fielding each one of these candidates, notwithstanding their 'winnability'.

**Data on Criminalisation of Politics:** The Association for Democratic Reforms' its report for Lok Sabha 2019 elections recorded the trend in winners with declared criminal cases 3 consecutive Lok Sabha elections. The report made the following observations:

- **Lok Sabha 2019: 233 (49%) of the 539 winners** for Lok Sabha 2019, have declared criminal cases against themselves. Out of these, **159 (29%) winners** have declared **serious criminal cases** including cases related to rape, murder, attempt to murder, kidnapping, crimes against women etc. The **chances of winning for a candidate with criminal cases** in the Lok Sabha 2019 elections were **15.5%** whereas for a candidate with a clean record it is 4.7%.
- **Lok Sabha 2014:** Out of the **542 winners** analysed during Lok Sabha 2014 elections, **185 (34%)** winners have declared criminal cases against themselves. **112 (21%) winners** have declared **serious criminal cases** including cases related to murder, attempt to murder, communal disharmony, kidnapping, crimes against women etc. The **chances of winning** for a candidate with criminal cases in the Lok Sabha 2014 elections were **13%** whereas for a candidate with a clean record it is 5%.
- **Lok Sabha 2009: 158 (30%) of 521 winners** analysed during Lok Sabha 2009 elections, had declared criminal cases against themselves. **77 (15%) winners** had declared **serious criminal cases** against themselves.

Other committees like **Goswami Committee on Electoral Reforms (1990)** and **Vohra Committee Report (1993)** had raised serious concerns regarding criminalization of politics in India. In the **18th Report by the Parliamentary Standing Committee** on Personnel, Public Grievances, Law and Justice on Electoral Reforms, presented to the Rajya Sabha on 15 March 2007, acknowledged the existence of criminal elements in the Indian polity which hit the roots.

In 1999, the **170th Law Commission Report on Electoral Reforms** was the first to suggest that a new Section 4A be added to the Representation of the People Act, 1951 mandating that a person shall be ineligible to contest elections unless they file an affidavit declaring their assets along with a declaration whether charges had been framed against them by a criminal court.

In **2002, the Association of Democratic Reforms** petitioned the Court to have the above recommendation implemented, among others. The Voters' Right to Know has since progressed in the manner described in the table below.

**Evolution of Voters' Right to Know in India**

| | |
|---|---|
| **2 May 2002: Association for Democratic Reforms v. Union of India; and People's Union of Civil Liberties & Anr. v. Union of India & Anr.** | The SC verdict established the filing of affidavits by candidates as the right of the voter.<br>The SC held that the right to information – the right to know antecedents, including the criminal past, or assets of candidates – was a fundamental right under Article 19 (1) (a) of the Constitution and that the information was fundamental for survival of democracy.<br>It directed the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or the State Legislature as a necessary part of the nomination papers on:<br>• whether the candidate has been convicted / acquitted / discharged of any criminal offence in the past – if any,<br>• whether the candidate was accused in any pending case of any offenses punishable with imprisonment for two years or more, and in which charge was framed or cognizance taken by the court. |
| **13 March 2003 People's Union for Civil Liberties v. Union of India** | The SC ruled that voters have a **fundamental right to know** relevant information about candidates and **Section 33B of RPA, 1951** stating that candidates could not be compelled to disclose any information about themselves other than their criminal records was **unconstitutional**. |
| **25 September 2018 Public Interest** | The SC decided that it cannot disqualify candidates, against whom criminal charges have been framed, from contesting elections. |

| | |
|---|---|
| **Foundation v. Union of India** | The Court recommended that Parliament make laws to curb the increasing criminalisation of politics.<br>Further, the SC issued directives to the Election Commission, which in turn mandated the political party as well as candidate with criminal antecedents to publish information on website, newspapers and through television channels on three occasions during the campaign period, before the election. |
| **13 February, 2020: Public Interest Foundation v. Union of India** | Various litigants filed contempt petitions against the EC for not monitoring whether political parties were complying with the directions issued in the 2018 Public Interest Foundation v. Union of India judgement.<br>The Bench re-iterated the Court's 2018 directions and directed the Election Commission to report to the Supreme Court any non-compliance by political parties. It also directed political parties to publish additional information like reasons for selecting a candidate with pending criminal cases. |

Student Notes:

## 6.5. Voter's Right to Cast Negative Vote and Right to Secrecy

With a view to bringing about purity in elections, the Supreme Court, in PUCL v. Union of India, 2013 upheld the constitutional right of citizens to cast a negative vote in elections. PUCL had filed a writ petition under Article 32 challenging the constitutional validity of Rules 41(2) & (3) and 49-O of the Conduct of Election Rules, 1961 stating that these provisions violate the secrecy of voting which is fundamental to the free and fair elections and is required to be maintained as per Section 128 of the Representation of the Peoples Act, 1951 and Rules 39 and 49-M of the Rules.

The Supreme Court held that a voter could exercise the option of negative voting and reject all candidates as unworthy of being elected. The court directed the Election Commission to provide the NOTA button in the EVM.

The NOTA option may force political parties to nominate sound candidates. The bench noted that giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval of the kind of candidates being put up by the parties. Gradually, there will be a systemic change and the parties will be forced to accept the will of the people and field candidates who are known for their integrity.

The **right to cast a negative vote** will foster the purity of the electoral process and also fulfill one of its objectives, namely, wide participation of people. Not allowing a person to cast a negative vote would defeat the very freedom of expression and the right to liberty.

The Bench held that Election Conduct Rules 41(2) and (3) and 49-O of the Rules were *ultra vires* Section 128 of the RPA and Article 19(1)(a) of the Constitution to the extent they violate secrecy of voting.

The two main key components that came out of the Supreme Court judgment are:

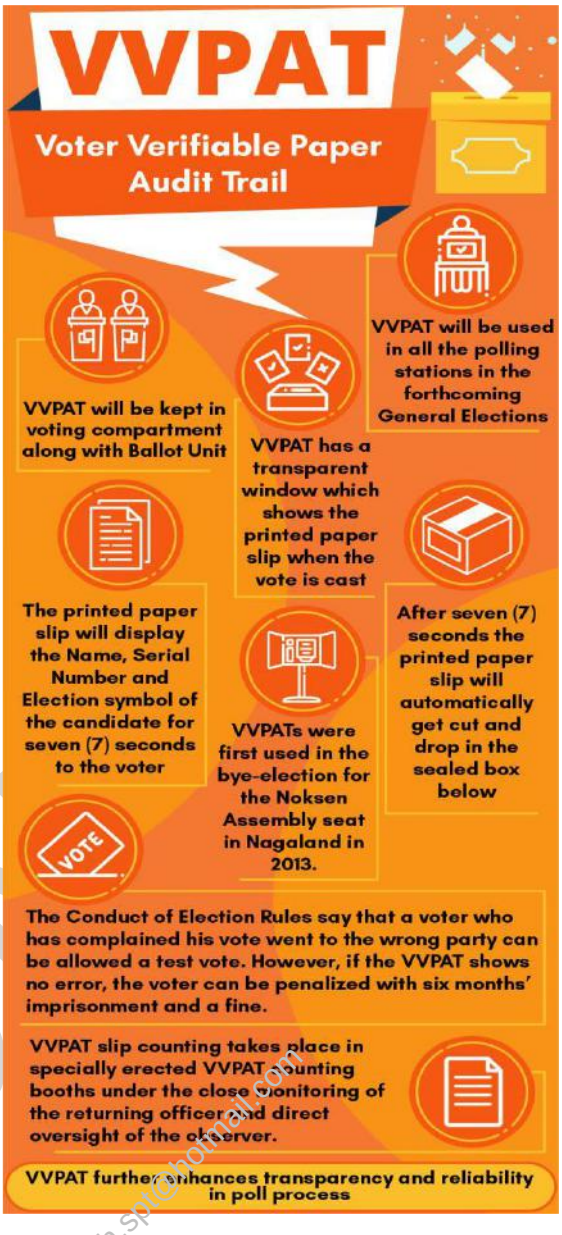
- **Right to vote also includes a right not to vote i.e. right to reject.** This means that a voter has every right not to opt for any of the candidates during an election i.e. the voter reserves the choice to remain neutral. This may happen when a voter feels that none of the candidate in a candidacy deserves to be elected. It happens by the way of his choice, belief, thinking and expression. The Right to reject originates from the freedom of speech and expression.

**Right to secrecy is an integral part of a free and fair election.** This right is central to an elector to cast his vote without fear of reprisal, duress or coercion as per Article 21 of the Indian

Constitution. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections. Any arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14, Article 19(1)(a) and Article 21 of the Indian Constitution.

## 6.6. The VVPAT Ruling

Supreme Court (SC), in the case of **Subramanian Swamy vs. Election Commission of India (ECI)**,2013 held that VVPAT (Vote Verifiable Paper Audit Trial) is "indispensable for free and fair elections". In accordance to that, the Supreme Court directed the ECI to equip Electronic Voting Machines (EVMs) with VVPAT systems to "ensure accuracy of the VVPAT system". The Court directed the government to provide the key financial assistance to the ECI to cause VVPAT systems to be deployed along with EVMs.




Reiterating the stand of the Delhi High Court in an earlier judgment, the Apex Court maintained that costs and finances cannot and should not be a deterrent to the conduct of free and fair elections. Although this ruling boosts accountable voting in India, there remain a few concerns. While this was an exclusive prerogative of the Executive to decide the manner in which fair and efficient elections can be held, but in this case the court not only decided the mechanism but also asked the government to allocate funds.

More recently, the Supreme Court increased voter verified paper audit trail (VVPAT) verification to five random Electronic Voting Machines (EVMs) in each Assembly segment/constituency "to ensure the greatest degree of accuracy, satisfaction in election process.". Earlier, under the ECI guidelines, only the VVPAT slips from one EVM in every Assembly segment/constituency was subjected to physical verification.

A report by the Indian Statistical Institute, said that a sample verification of 479 EVMs

and VVPATs out of a total 10.35 lakh machine would lift public confidence to 99.9936%. The increase to 5 EVMS would result in **8.6 times the sample size** recommended in the Indian Statistical Institute report.

## 6.7. Ruling on Election Manifesto

In a petition filed by S Subramaniam Balaji, challenging the state's decision to distribute freebies, the Supreme Court said that freebies promised by political parties in their election manifestos shake the roots of free and fair polls, and directed the Election Commission to frame guidelines for regulating contents of manifestos.

Student Notes:

Student Notes:

It was stated in the petition that the freebies amounts to bribery under Section 123(1) of the RPA, 1951. The Supreme Court rejected the contention that the promises made by a political party are violative of Section 123(1) of the RPA, 1951. The provisions of the RPA place no fetter on the power of political parties to make promises in the election manifesto, the court held.

The court held that the concept of state largesse is essentially linked to the Directive Principles of State Policy. Whether the state should frame a scheme, which directly gives benefits to improve the living standards or indirectly does so by increasing the means of livelihood, is for the state to decide and the role of the court is very limited in this regard. It held that judicial interference was permissible when the action of the government was unconstitutional and not, when such action was unwise or when the extent of expenditure was not for the good of the state.

The court, however, agreed with the appellant that distribution of freebies of any kind undoubtedly influenced all people.

Considering that there was no enactment that directly governed the contents of the election manifesto, the court directed the EC to frame guidelines for the same in consultation with all the recognised political parties. The court also suggested the enactment of a separate law for governing political parties.

## 6.8. Stay on Caste-Based Rallies in UP

In 2013, the Allahabad High Court stayed caste-based rallies in Uttar Pradesh, This effectively curtailed the use of caste amongst the major political parties to expand their support base, especially before elections.

Holding political rallies by certain groups to address issues specific to them and seeking to win their electoral support is a common practice in the country. The petitioner had argued that there had been a surge of such rallies in the state, damaging social unity and harmony, and that they were against the spirit of the Constitution.

However, this ruling was seen as 'judicial activism' and political parties argued that the legislature's prerogative to make rules should not be curtailed. The reasoning provided is that there is no legal bar to a caste rally, as long as no law is violated. In fact, Article 19(1)(b) of the Constitution gives citizens a Fundamental right to assemble peacefully. A political party can call a meeting of a caste, for example, of Dalits to discuss the problems facing that community, and there is no law barring such a meeting.

## 6.9. Ruling on Nomination Papers

The Supreme Court in, 2013 ruled that the returning officer can reject nomination papers of a candidate for non-disclosure and suppression of information, including that of assets and their criminal background. The apex court said that voters have fundamental right to know about their candidates and leaving columns blank in the nomination paper amounts to violation of their right.

The court passed the judgment on a **PIL filed in 2008 by NGO Resurgence India**, a civil rights group, which detected a trend among candidates of leaving blank the columns demanding critical information about them.

The Election Commission had supported the NGO's plea that no column should be allowed to be left blank which tantamount to concealing information and not filing complete affidavit. It had also taken a stand that the returning officer should be empowered to reject the nomination papers of a candidate who provides incomplete information by leaving some columns blank in the affidavit.

Student Notes:

## 6.10. Right to vote for undertrials

Undertrial prisoners are persons who have not been convicted of the charge(s) for which they have been detained, and are presumed innocent in law. Being a **statutory right**, the legislature can determine the terms on which the **right to vote** is to be enjoyed by the people of India subject to ***Articles 325 and 326*** of the Constitution.

- Section 62(5) of RPA, 1951 governing the "right to vote", stipulates that no person shall vote in any election if they are confined in a prison "under a sentence of imprisonment or transportation or otherwise" or are in the "lawful custody" of the police.
- Chapter 43 of the Reference Handbook on the General Elections, 2014 also makes it clear that "undertrial prisoners" are not eligible to vote, even if their names are on the electoral rolls.
- India denies voting rights to not only individuals convicted of a crime and serving a sentence in prison, but also to undertrials and even those in police custody.

The constitutionality of Section 62(5) of the RPA, 1951 was challenged before the Supreme Court in *Anukul Chandra Pradhan v. Union of India1997* as being violative of the right to equality and the right to life under Articles 14 and 21. The Supreme Court took the view that it was reasonable to deny voting rights to convicted prisoners, undertrials and those in police custody. The following arguments had given by the Supreme Court: To curb the criminalisation of politics.

- Practical considerations and requirement of additional resources.
- A prisoner was "in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment [and] cannot claim equal freedom of movement, speech and expression with the others who are not in prison.

Arguments against the Judgement:

- Criminalisation of politics is a larger issue that cannot be handled only by preventing the undertrials to vote.
- Practicality and "resource crunch" are not sound justification to curb civil liberties.
- The SC observation contradicts the principle of "innocent until proven guilty", at the same time, presume undertrials to be guilty as far as voting rights are concerned.

## 6.11. Banning religion and caste from election campaign

A seven-judge **Supreme Court** bench ruled by a 4-3 majority that **"religion, race, caste, community or language would not be allowed to play any role in the electoral process".** It also said that election of a candidate would be declared null and void if an appeal is made to seek votes on these considerations. The court was interpreting the pronoun 'his' used in Section 123 (3) of the Representation of the People Act. The question referred to the Constitution Bench led by Chief Justice of India T.S. Thakur on a batch of election petitions.

**The Judgement**

- The judgment was handed out as an interpretation of **Section 123(3) of RPA, 1951.**
- The bench was interpreting the word **"his" in section 123(3) in RPA, 1951.**
  - The majority believed that "his" here refers to the any candidate or his agent or any other person making the appeal with the consent of the candidate or the elector. To justify this interpretation, the bench took cues from various amendments of RPA.
  - It also said that to maintain the "purity" of the electoral process; certain arguments such as religion, caste and language must be taken off the table.
  - The dissenting judges on other the hand believed that Section 123(3) of the RPA does not require such a broad interpretation and the word "his" does not include the elector/voter.

- The dissenting judges remarked that markers such as religion are deeply rooted in the structure of the Indian society.

**Criticism**

- It is difficult to define what kind of an appeal is religious appeal.
- This interpretation violates the right to freedom of speech under Article 19.
- RPA already has provisions to curb hate speech or speech that spreads enmity.
- A broad interpretation "outlaws" parties like Akali Dal whose very name violates this interpretation.

# 7. Other important issues related to Elections and Electoral Reforms in India

## 7.1. Independence of the Election Commission

The Election Commission of India (ECI) has time and again, sought complete independence from government control. At present, only the Chief Election Commissioner has security of tenure. Also its budget is not a charged expenditure, but is voted by the Parliament.

**Demands made by ECI**

- There is no constitutional protection for all three of its members. Two of its Election Commissioners can be removed by the government on the recommendation of the Chief Election Commissioner.
- Unlike the CAG and UPSC, the ECI budget is not 'charged' upon the Consolidated Fund but voted and approved by Parliament.
- There is no independent secretariat for the ECI due to which it has to depend on DoPT to appoint its officers. If it is approved by the Law Ministry, the poll panel will be free to frame its own recruitment rules and shortlist and appoint officers on its own. It can then also draw competent professionals and experts from the job market.
- At present, the senior most EC is not automatically elevated as CEC. If done, this shall instill a feeling of security in the minds of the ECs in terms of insulation from executive interference in the same manner as CEC.
- Election commission (EC) has urged Law ministry to amend election laws to enable EC to use contempt of court Act against parties making unfounded allegations.

## 7.2. Simultaneous Elections

**Need for Simultaneous Elections:**

There has been a steady discourse regarding the veracity of simultaneous elections to the national and state legislatures, panchayats and urban local bodies. The following arguments augur well in favour of simultaneous elections:

1. **Governance**
   - Allows governments to devote four years for governance. If elections are frequent winning elections becomes the first priority of all politicians during elections.
   - As a result, running an administration and attending to people's grievances take a back-seat for politicians and the bureaucracy rules the roost.
2. **Legislative working**
   - Results in logjam in assemblies/ Lok Sabha as every party wants to be in the spotlight.
   - Vicious circle of continuous elections affects stability. If local elections are included there is always an election taking place in our country.
3. **Economy**
   - Reduce the huge economic burden of frequent elections.

Student Notes:

- Pace of economic development is hampered as Model code of conduct is in operation wherein new welfare schemes and measures are usually not announced.

**IMPORTANT RECOMMENDATIONS OF VARIOUS COMMITTEES ON SIMULTANEOUS ELECTIONS**

The Election Commission of India in its First Annual report, 1983 recommended holding simultaneous elections to the House of the People and the Legislative Assemblies of States. Simultaneous elections were also recommended by the Law Commission of India in its One Hundred Seventieth Report on Reform of Electoral Laws; Parliamentary Standing committee in its 79th report in 2015, and latest by the Niti Ayog in 2017. The key recommendations around conducting simultaneous elections are as follows:

- Advancing elections of some Legislative Assemblies by making necessary orders so that it can be held with the election of Lok Sabha;
- The elections to other Legislative Assemblies should be held by making similar adjustments in phases with a view to reducing its frequency until the desired goal of one election for Lok Sabha and to all the Legislative Assemblies simultaneously is achieved;
- Passing constitutional amendments that can provide for extending or curtailing the term of one or more Legislative Assemblies say for six months or so wherever it is necessary to achieve the said goal.
- However, such amendments to Constitutional or other statutes must be passed on the basis of some agreeable principles, with constitutional and statutory boundaries, which are largely acceptable to various stakeholders - political parties, Governments as well general public/voters:
  - Extension of term of a Legislative Assembly should normally be not preferred unless inevitable;
  - Curtailing term of a Legislative Assembly should be kept minimum to the extent possible;
- An alternative solution could be to hold elections to Lok Sabha/ Legislative Assemblies simultaneously but to withhold the results of elections till after the expiry of term of the Legislative Assembly concerned - the interval not exceeding six months.
- Another proposal would be to consider provisions to have all elections, falling due in a year together in a particular period of the year.

**Challenges related to Simultaneous Elections:**

- It is almost impossible to achieve in practice as Assemblies might get dissolved at an untimely manner due to political realities. Earlier dissolution, which breaches the principle of simultaneous elections, is brought about by several methods like
  - The PM or CM advises the president or the governor, as the case may be, to prematurely dissolve the Lok Sabha or state assembly and force snap elections to gain electoral advantage.
  - By passing the no-confidence motion against a government or defeating the government's confidence motion.
  - Central government has misused its powers under Article 356 by imposing the president's rule in states ruled by opposition parties and dissolving assemblies resulting in premature elections.
- According to Article 85 and Article 174, elections to Lok Sabha and Legislative assemblies have to be held within six months (respectively) of dissolving either of them. This is not feasible if elections are held only at fixed durations. Also, if elections are not held within six months, it would be a travesty of democracy.
- Founding fathers of the Constitution envisaged a federal polity of a sui-generis nature. So, multi-party system with elections is the most fundamental manifestation of this will of the popular sovereign.

Student Notes:

- Frequent elections bring the politicians back to the voters and enhance the answerability and accountability of politicians to the public.
- Will keep the politicians in touch with 'pulse of the public' and the result of elections at various levels can ensure the government the necessary 'course correction'.
- May mix up issues of local and national issues in the minds of the voters, This may give a boost to regional and local issues, while national issues can take a set-back.
- The issue of logistics and requirement of security personnel, election and administrative officials: there is a dearth of enough officials to conduct simultaneous elections throughout the country in one go.

**Way Forward**

- Simultaneous elections to Panchayats, assembly and Lok Sabha are desirable however they are not feasible. To make the election process more transparent, cost effective, peaceful and quick, some easily implementable solutions such as the following can be considered:
  - Cut the role of money power in elections, **putting a cap on political party expenditure** and state-funding of political parties.
  - **Ban on all private, especially corporate funds should be considered.**
  - **Reduce the duration of the election process** by half by conducting the elections in one day.

## 7.3. Exit polls & Opinion polls

**An exit poll** is a **post-election survey** conducted immediately after people have voted. EC bans exit polls **from the time the poll begins till half-an-hour after the polling ends**. Exit poll results cannot be published till the last round of elections is over. It covers even other states when polls are being held in more than one. For eg. In 2017 state elections in Punjab, Goa, UP, Uttarakhand and Manipur, exit poll results cannot be published till voting for the current round of elections in these five states ends.

**An opinion poll** is a **pre-election survey** to gather voters' views on a range of election-related issues. Results of any opinion poll or any other poll survey in any electronic media is prohibited during the period 48 hours, including the hour fixed for conclusion of voting in each of the phases in connection with the elections.

**Significance**

- Opinion and Exit polls are useful **to gain insight into what people think of the policies and programmes of the government**.
- Polls also help people get aware about their rights. It helps the voters decide better thus **enhancing our deliberative democracy.**

**Issues involved**

- Supreme Court in PUCL case (2013) acknowledged the importance of free and fair elections.
- It is alleged that both opinion polls and exit **polls hinder the conduct of free and fair elections**.
- **Influence of Paid news** has further increased the resistance to such polls.
- Voters also have a **fundamental right to information** and media through exit and opinion polls.

**Timeline**

- In 1998 Lok Sabha and State Assembly polls, Election commission introduced guideline under Article 324: While carrying the results of exit and opinion polls, newspapers and channels shall disclose-
  - Sample size of the electorate
  - Details of polling methodology

Student Notes:

- Margin of error
- Background of the polling agency

- In 1999, guidelines were challenged by media and a Constitutional Bench said that ECI cannot enforce guidelines in the absence of statutory sanction. Therefore ECI took them down.
- In 2004 ECI gave recommendation to amend the Representation of the People Act 1951 to ban both exit and opinion polls during a period as specified.
- In 2010, restrictions were imposed **only on exit polls through the introduction of Section 126(A) in RPA, 1951**.
- In 2017, **Election Commission (EC)** said that Predictions by astrologers, Tarot readers and Political analysts on election results cannot be published or broadcast by the media. EC observed such kind of analysis is equivalent Exit polls.

**Way Forward**

- An **independent regulator** that could set up standards of professional integrity for all poll research and accredit the agencies better scrutiny.
- The regulator can also be empowered to setup standards on parameters of survey like sample size, sampling methodology, timeframe, quality of training of research staff etc.

## 7.4. Umesh Sinha Committee on Section 126 of Representation of the People Act, 1951

In the light of increasing influence of digital media, the task of maintaining campaign silence or **election silence** during last 48 hours before the conclusion of polling is becoming increasingly onerous. In this context, committee constituted under the chairmanship of Deputy Election Commissioner Sh. Umesh Sinha reviewed and suggested modifications and changes in the provisions of the Section 126 and other sections ofRPA, 1951, provisions of Model Code of Conduct and any other ECI instruction in this regard.

**Provisions of Section 126 and other related Sections of the Representation of the People Act, 1951:** The committee made the following recommendations

- The provision of 'election silence' be extended to cover print and social media, internet, cable channels and online version of print media.
- Section 126 also restrains display of any election matter by means of cinematograph, television or other similar apparatus.

**Regulation of Media Platforms:** In this respect, the committee suggested that

- The social media agencies must be asked to label political advertisements to separate them from other content, and maintain an account of expenditure incurred by political parties/candidates for advertising on their platforms.
- Social media platforms must work with the Election Commission to evolve a mechanism by which it can flag content violating electoral law and social media sites can take it down as soon as possible.

**Provisions related to the Model Code of Conduct**: The Committee recommended that

- Political parties should release their manifesto at least 72 hours before voting ends in the first phase of polls.

## 7.5. Reforms related to Electoral Finance

### 7.5.1. Funding to Political Parties & Electoral Bonds

The Union Budget 2017-18 announced certain reforms to bring transparency in funding to political parties. These included the following:

Student Notes:

- The maximum amount of cash donation that a political party can receive will be 2000/- from one person.
- Political parties will be entitled to receive donations by cheque or digital mode from their donors.
- An amendment is being proposed to the Reserve Bank of India Act to enable the issuance of electoral bonds (India will be the first country in the world) in accordance with a scheme that the Government of India would frame in this regard.
- Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act.
- The existing exemption to the political parties from payment of income-tax would be available only subject to the fulfillment of above conditions.

**About Electoral bonds**

- The bonds will only be issued by a notified bank. Currently, bond denominations of rupees 1000, 10000, 100000, 1 million and 10 million can be purchased through selected branches of SBI.
- It could only be bought using cheques or digital payments.
- The bonds purchased by donor will be given to a political party for a fixed period of time.
- A political party using their notified bank account can convert these bonds into money.
- All political parties are required to notify their bank account to the Election Commission. This bond will be like a bearer cheque which will facilitate donor's anonymity.

**Background**

The Election Commission had asked the government to amend law to ban anonymous contributions of Rs. 2000 and more to political parties. In a report, the Association for Democratic Reform highlighted that 75% funding to parties came from anonymous sources between 2004-05 to 2014-15.

**Impact of these reforms**

- It will help to root out the problem of financing of Political Parties using black money.
- Money power in elections will decrease significantly as parties can now accept only up to RS 2000 in cash.
- Functioning of Political Parties will become more transparent and thus become more accountable towards public.
- It will reduce nexus between big corporate houses and political parties.
- In long term it will result in ethical politics and reduction in criminalization of politics.

**Challenges**

- The proposal does not disrupt the flow of illicit political donations but only channels it differently, and will not reduce the proportion of cash from unverifiable sources in the total donations received.
- The political parties would now have to do is to find more people to lend their names to these donations, hence transparency would still be compromised in funding.
- Electoral bonds provide a mechanism of anonymity for its buyers. The move though aimed to safeguard general public can be used by corporate houses to fund political parties to develop nexus with party at the receiving end.
- The Budget makes it mandatory for political parties to file returns within a time limit, but in the absence of extreme penal provisions compliance is likely to be low.

**Way forward**

There is a need to put a cap on funding by big corporate houses. Such donations should be made public. Also, a law could be enacted to prohibit political parties giving any undue benefits to corporates. Political parties should be brought under the ambit of RTI as followed in

countries like Bhutan, Germany etc. There should be a cap on the amount a party may receive in cash as a donation. State funding of elections should be considered as recommended by Dinesh Goswami committee (1990). To ensure transparency stricter provisions should be enacted so that parties maintain list of donors and which can be scrutinized easily by IT department. The funds of the political party should be audited by an independent auditor .The responsibility should not be given to the inside auditor. The details should be placed in public domain.

Student Notes:

### 7.5.2. State Funding of Elections

State Funding of elections has been a contested issue when it comes to electoral reforms related to electoral financing and funding. A few government reports have looked at state funding of elections in the past, including:

**Indrajit Gupta Committee (1998):** It endorsed state funding of elections, observing full constitutional, legal justification as well as on ground of public interest. It recommended that state funding of elections can establish a fair playing field for parties with less money. The Committee recommended two limitations to state funding:

- Firstly, that state funds should be given only to national and state parties allotted a symbol and not to independent candidates.
- Secondly, that in the short-term state funding should only be given in kind, in the form of certain facilities to the recognised political parties and their candidates.

The Committee noted that at the time of the report the economic situation of the country only suited partial and not full state funding of elections.

**1999 Law Commission of India:** This report concluded that total state funding of elections is "desirable" so long as political parties are prohibited from taking funds from other sources. The Commission suggested that only partial state funding was possible given the economic conditions of the country at that time.

It also strongly recommended that the appropriate regulatory framework be put in place with regard to political parties (provisions ensuring internal democracy, internal structures and maintenance of accounts, their auditing and submission to Election Commission) before state funding of elections is attempted.

**2nd ARC Report:** The "Ethics in Governance", a report of the Second Administrative Reforms Commission (2008) also recommended partial state funding of elections for the purpose of reducing "illegitimate and unnecessary funding" of elections expenses.

**National Commission to Review the Working of the Constitution, 2001:** It did not endorse state funding of elections but concurred with the 1999 Law Commission report that the appropriate framework for regulation of political parties would need to be implemented before state funding is considered.

**Arguments in favour of state funding**

- State funding increases transparency inside the party and also in candidate finance, as certain restrictions can be put along with state funding
- State funding can limit the influence of wealthy people and rich mafias, thereby purifying the election process
- Through state funding the demand for internal democracy in party, women representations, representations of weaker section can be encouraged.
- In India, with high level of poverty, ordinary citizens cannot be expected to contribute much to the political parties. Therefore, the parties depend upon funding by corporate and rich individuals.

Student Notes:

**Arguments against state funding**

- Through state funding of elections the tax payers are forced to support even those political parties or candidates, whose view they do not subscribe to.
- State funding encourages status quo that keeps the established party or candidate in power and makes it difficult for the new parties.
- State funding increases the distance between political leaders and ordinary citizens as the parties do not depend on the citizens for mobilization of party fund.
- Political parties tend to become organs of the state, rather than being parts of the civil society

## 7.6. Issues related to Electronic Voting Machines

### 7.6.1. Doubts raised over Electronic Voting Machines

**About Electronic Voting Machine (EVM)**

An EVM consists of a "control unit" and a "balloting unit". The control unit is with the Election Commission-appointed polling officer; the balloting unit is in the voting compartment into where voter casts her vote in secret**.** It runs on a single alkaline battery fitted in the control unit, and can even be used in areas that have no electricity. They are manufactured by Electronics Corporation of India Limited (ECIL) and Bharat Electronics Limited (BEL).

**History of EVMs in Indian Elections**

EVMs were first used in India in the 1982 Kerala Assembly elections (by-election). However, SC struck down the election since Representation of People Act, 1951, and Conduct of Elections Rules, 1961, did not allow use of EVMs. Following this, the RPA 1951 was amended in 1988 to allow usage of EVMs. In 1999, they were used for the first time in the entire state for Goa Legislative Assembly elections. In 2004, EVMs were used for the first time in Lok Sabha elections.

Recently, there have been controversies surrounding EVMs regarding their safety feature. Following arguments were raised against their use:

- **Transparency**: An electronic display of the voter's selection may not be the same as the vote stored electronically in the machine's memory. To bridge this gap, VVPATs were introduced. However, EC's VVPAT auditing is restricted to one randomly chosen polling booth per constituency, which will fail to detect faulty EVMs 98%-99% of the time.
- **Verifiability:** It is argued that only the vote number can be verified and not the voting choice.
- **Secrecy:** With the paper ballot, the EC could mix ballot papers from different booths before counting, so that voting preferences could not be connected to a locality. Counting in EVMs is equivalent to booth-wise counting, which allows one to discern voting patterns & renders marginalized communities vulnerable to pressure.
- **Possibility of hacking:** Accusations of EVMs getting hacked or even the possibility of them being hacked creates a mistrust about electoral processes in the minds of the public.
- **Malfunctioning EVMs:** Though provided with specific training for correct usage of EVMs, officers sometimes don't pay attention & connect machines in wrong order.

However, the ECI has time and again upheld the rationale behind the use of EVM's and argued against going back to ballot papers. Following safety features within the EVM's make them safe to use:

- **Non-reprogrammable:** It consists of an integrated circuit (IC) chip that is one time programmable (software burnt at the time of manufacturing) and cannot be reprogrammed.

Student Notes:

- **No external communication:** EVMs are not networked by any wired or wireless system, nor do they have any frequency receiver and data decoder, so there cannot be any external communication. Control Unit (CU) accepts only specially encrypted & dynamically coded data from Ballot Unit (BU).
- Other countries like Netherlands and Germany (which discontinued the use of EVMs) use computer based EVMs which are prone to hacking, while Indian EVMs are standalone machines.
- **Secure Source Code:** Software and source code developed in-house by selected group of engineers in BEL and ECIL.
- **One Vote per Elector:** It allows a voter to cast the vote only once. The next vote can be recorded only after Presiding Officer enables the ballot on CU.
- **Time stamping of votes:** EVMs are installed with real time clock, full display system and time-stamping of every key pressing so there is no possibility of system generated/latent votes.
- **Secure against post-manufacturing tampering:** The machines with self diagnostics shut down automatically in case of tampering.
- **Procedural Checks and Balances:** There are also various Standard Operating Procedures like functional checks, trial run, random allocation, multi-stage testing, dry run and safe & secure storage post voting, included for ensuring free and fair elections.

While there have been cases of "malfunction" (which suggests a technical defect), there has not been any case of proven "tampering'" (manipulation aimed at fraud). In 2017, EC even held an 'EVM Challenge', where it invited political parties to demonstrate/proof any allegations of tampering. However, cost and efficiency considerations are secondary to the integrity of the election. EC must ensure that any unjustified suspicion in the minds of public is removed through:

- 100% deployment of VVPAT in all elections and by-polls and on detection of any faulty EVM in a constituency must entail the VVPAT hand-counting of all the EVMs in that constituency.
- ECI must use Totalizer Machines for counting of votes. It increases the secrecy of voting by counting votes polled at 14 polling booths together, as against the current practice of announcing booth-wise results.
- Regular demonstrations must be organized by EC in all the poll-going States to reduce information gap on EVMs.
- EC should provide training to officers in small batches and focus on hands-on-learning. As a long term structural reform, EC must be provided with an independent secretariat so that it can have a dedicated cadre of officers.



## 7.6.2. Use of Totalizer Machines

Recently, Attorney General and Election Commission opposed Central Government's stand against 'totalizing' of votes for counting after elections. The first recommendation for amending the Election Rules to provide for the use of Totalizer Machine was put forward by Election Commission of India (ECI) in 2008. It was also recommended by Law Commission in its 255th Report of 2015.

**Totalizer Machines**

- A totalizer machine is an interface, to which a cluster of EVMs can be connected simultaneously and the consolidated result of the group of EVMs can be obtained without disclosing the votes polled by a candidate polling-station-wise.
- Counting of votes polling-station-wise reveals the voting trends in each polling station thus leaving the voter open to pre and post poll intimidation, harassment and victimization by the political parties (for e.g. delaying infrastructure developing or other welfare activities).

Student Notes:

- It will add an extra layer of security to the voting process thus upholding the basic principle of secret ballot as the present EVMs do not provide any avenues for mixing of votes. Mixing of votes is analogous to physical mixing of votes as mandated under the Rule no 59A of the Election Rules which states "mixing of votes in cases where it is considered 'absolutely necessary'."
- However, it has been argued that it camouflages the booth-wise performance of candidates which is essential for parties to devise "booth-management" strategies (working at booth level to mobilise voters).

**Way Ahead**

- It can be incorporated by amending the Rule 66A of The Election Rules (dealing with counting of votes where electronic machines are being used) to empower the ECI to decide when and where to employ totalizer after taking into consideration the election context and any threats of intimidation or victimization.
- Further, Booth-management strategy which is of crucial importance to political parties could be even carried with the help of party workers instead of depending upon the poll results.

## 8. UPSC Previous Years' Questions

**1.** On what grounds a people's representative can be disqualified under the Representation of Peoples Act, 1951? Also mention the remedies available to such person against his disqualification.

**2.** In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?

**3.** "Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people." Discuss.

**4.** To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?

## 9. Vision IAS Previous Years' Questions

***1. Election surveys, particularly opinion polls, have recently come under a cloud of controversy because of their ability to influence the voters. Do pre-election opinion polls tangibly influence decisions of voters? Is there a need to impose reasonable restrictions on opinion polls conducted by media.***

***Approach:***

The answer needs to dwell on the broad reasons why the Opinion Polls are being questioned. **Secondly**, highlight the need to impose restrictions on the Opinion Polls along with the view of Election Commission& its guidelines, Supreme Court & Govt. (to lend more weight to the answer). Then, **conclude** the answer by bringing out the utility of the Opinion Polls & the kind of restrictions to be put on them so as to strike a fine balance between the 'use' & 'misuse' of Opinion Polls.

***Answer:***

- The dissemination of results of Opinion Polls receives wide publicity and coverage in the print and electronic media and such dissemination, particularly on the eve of polls, has the potential to influence the electors when they are in the mental process of making up of their minds to vote or not to vote for a certain political party or a candidate esp. the ***'fence sitters' or the 'undecided voters'*** *which can tilt or change the election mandate substantially.*

Student Notes:

- Also, the rate at which the News Media are coming out with the Opinion Polls every alternate day just before the elections , puts a *question mark on the 'efficacy' & the' vested interest' for which Opinion Polls are conducted*
- It is being alleged that Opinion Polls, instead of concentrating on the issues of Governance have been reduced more as a tool to predict seats.

Thus due to the above stated reasons, there has been going on a debate whether to ban opinion polls completely or to impose reasonable restrictions.

***Stand on the Opinion Polls:***

- The **Election Commission submitted a proposal** in 2014 (after consulting political parties) to the government to amend the RPA, 1951, **to legally ban opinion polls** as they **violate the Freedom of Speech & Expression** with which elections should be held i.e. in free & fair manner.
- However t**he Govt.'s stand** on the opinion polls is **unambiguous** & **no concrete position** has been taken as many political parties views have been vacillating & have not reached to a consensus whether to ban opinion polls completely or impose reasonable restrictions.
- The **Supreme Court too, after its 2009 ruling**, has given the liberty to the Election Commission to issue any directions / guidelines with regard to the dissemination of results of both the Exit Polls & Opinion Polls.
- Thus, **Section 126 of RPA, allows EC to ban opinion polls just 48 hours prior to voting.** However, there is **no such ban on results publication by print media**, hence newspapers often exploit this lacuna and circumvent ECI's directions with impunity.

**Pros of imposing Reasonable Restrictions on Opinion Polls:**

- There are **issues of balance between rights of the print and electronic media and the rights of the electorate** in the matter of exercise of their franchise in a free and fair manner, uninfluenced by any extraneous factors. In striking such balance, it would not be unreasonable and unfair to place certain reasonable restrictions on the Opinion Polls particularly on the unverified information.
- Calling for greater disclosure esp. pertaining to **funding** of such Polls will put a check on the ***Media Houses/Corporates*** who owns & funds majority of the Opinion Polls& will ensure they are not manipulated or misused by interested sections for a price in the form of 'Paid News'.
- Some restrictions should be placed on the Opinion Polls so as to ensure more ***transparency in methodology & sample size*** for more objective results.

**Cons of imposing Reasonable Restrictions on Opinion Polls**

Even though there is a ***need to put a check over the misuse as well as to balance the innate utility of the Opinion Polls***, where on one hand, the Opinion polls bring 'informed opinion' to the ***Voters*** & help them to cast their vote objectively; to the ***Political Parties*** they provide the necessary feedback & aids in gauging the mood of the voters which can help them to change/adapt their campaigning issues. Therefore, ***the restrictions on the Opinion Polls should not be to such an extent where they violate their freedom of speech & expression.***

**Conclusion:**

The need of the hour is to ensure that Opinion Polls are more ***'responsible' & 'accountable', &ensure the highest standards while coming out with the surveys*** which would help parties, and voters, make the right decisions &reasonable restrictions should be placed to the extent to ensure free, fair & transparent elections.

Student Notes:

***2. Elections in India have become an "on-going" process, which has impeded efficiency and governance. In this context, critically evaluate the idea of simultaneously holding elections to the Parliament and State Assemblies in India.***

***Approach:***

- First, highlight why the case has come up (or reasons) for the simultaneous elections in India.
- Secondly, the answer need to highlight both the pros and cons of the simultaneous election of Parliament and State Assemblies by linking it separately with its impact on the efficiency and governance of the Government.
- Finally, conclude the answer by taking a balanced view.

***Answer:***

The first election after Independence was held simultaneously for Parliament and State Assemblies in 1952. However, this practice was disrupted after 1967, due to the growth of regional parties and coalition government era, which altered the political climate and led to instability of elected State governments and led to the elections a continuous affair.

**Arguments in favour of simultaneous elections**

- Recently, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice is mulling over the option of conducting Parliamentary and State Assemblies elections simultaneously.
- It feels that it will drastically reduce the cost of elections for both governments and political parties, and the administrative burden on the Election Commission to conduct elections.
- Also, due to elections all round the year and enforcement of the Model Code of Conduct, the development work is hampered in one State or the other, as it prevents both the Central and State governments from taking policy initiatives which contributes to the overall governance deficit.
- Populist measures and policies are rolled out hastily to lure the voters (especially if the party at the Centre is different from that of the State), whereas hard decisions and core issues take a back seat, which keep on lingering in the State.
- Also, the Ministers at the Centre have to take out time to campaign for State Assembly elections esp. if they belong to that particular State where elections are scheduled, which hampers the work at the Centre.
- The Opposition party in order to win seats in the States keep exchanging "heated arguments" over the Govt.'s initiatives and performance which impacts the parliamentary functioning leading to frequent, adjournments, deadlocks, etc. on national issues and bills.
- Therefore, if the polls are held simultaneously, then the party in power - be it a regional or a national party - will have to implement its election manifesto and it cannot hide behind the alibi that a government is not cooperating or there is lack of clarity in policies and other excuses.
- Simultaneous elections can be worked out, as the people have become politically matured to some extent, as there are instances when they have voted for different parties/alliances for Parliament and legislature e.g. recent Delhi elections.

**Arguments against simultaneous elections**

- In 1999, the Law Commission recommended that the cycle of elections every year should be put an end to.
- Synchronized election means fixed tenure of various legislative bodies and fixed election dates has its own practical fallouts.

Student Notes:

- As the Constitution provides for various instruments like No Confidence Motion, defeat of an elected government at the Centre and the States on budget proposals, President's Rule etc., a fixed election date would mean a totally undemocratic situation. The concerned State will have to wait for the next election date and submit to Central rule in the interval, which is against the spirit of democracy and the representative system.
- Fixed tenure model can work more in party-less democracies where candidates are elected for their individual worth and not for their assets to win elections.
- Moreover, in a vibrant democracy, governments cannot be bound to fixed tenure regardless of political sentiment. Because if the party does not deliver on its promises and no other party is judged as promising, the people should have every right to return to a coalition era.

Therefore, the proposal of conducting simultaneous elections should be implemented only after taking into considerations all the aspect and practicalities and the decision should be such as to strengthen our democracy and not serve any political interest.

***3. Repeated violations of the Model Code of Conduct (MCC) have raised questions on its effectiveness. In this light, discuss the idea of making MCC a part of Representation of Peoples Act, 1951.***

***Approach:***

- Provide a brief introduction of MCC and with examples show the criticism it has faced.
- Then, provide the arguments for MCC as part of RPA as well as negative implications of legalizing MCC.
- Provide a balanced conclusion.

***Answer:***

Model Code of Conduct is a set of guidelines issued by the Election Commission of India for conduct of political parties and candidates during elections mainly with respect to speeches, polling day, polling booths, election manifestos, processions and general conduct.

However, this code is frequently violated by political parties. It was very much evident in recently held Bihar elections, where leaders used issues like religion, caste and nationalism to get the favour. Social media is also used for vitiating the election environment.

Consequently, the idea of making MCC statutory part under RPA act 1951 is widely argued on following grounds:

- It will become legal framework which can be justifiable in the court.
- It will also seek to regulate activities in social media.
- This will enable the election commission to take adequate action as per the violation committed by political parties.
- It will create a fair play for all the contestant without vitiating the atmosphere which can lead to law and order problem.

But this action of creating statutory framework has various implications:

- It can blur the image of election commission as neutral body as an action taken by EC can be seen as a biased action.
- If the model code of conduct is converted into a law, it will result into increase litigation and delay the election process.

Student Notes:

- Various political parties also seen this move of legalizing the MCC as an attempt of taking power of election commission.

In addition to this Supreme Court in *Union of India Vs. Harbans Sigh Jalal* opined that legalizing MCC, may not be suitable option, instead following can be done:

- The increase in quantum of punishment in case of violation which is already backed by laws under RPA and IPC.
- Creating more awareness in political parties about MCC by training and awareness programmes.
- Use of whip office in parties to regulate activities during elections.
- Discouraging the violation on social media by amending IT act.

Legalizing the MCC will be an attempt to fill the loopholes in the laws. However, these loopholes can be easily plugged by inner party democracy and pragmatic election commission's decisions.

***4. It has been argued that the 'First past the post' system fails to represent the will of the majority and encourages vote-bank politics. In this context, examine whether India should adopt Proportional Representation System to reform our electoral process.***

***Approach:***

- Briefly discuss both electoral systems.
- Critically analyse both system and their utilization.
- Reasons to consider Proportional Representation in a diverse country like India and complications involved in its implementation.

***Answer:***

India follows FPTP electoral system. There is lot of discussion going around recently after 2014 Lok Sabha Election to consider a different electoral model befitting Indian democratic system. 31% vote share of the largest party in the polls were dubbed as too low for legitimately ruling India and we have seen parties forming government with lower vote share in past elections. So it has been argued that the 'First past the post' system fails to represent the will of the majority and encourages vote-bank politics.

**Examples from across the world:**

Countries in the other part of the world are implementing different models to enhance the quality and efficacy of the representation befitting their diverse cultures and communities to run their Government. For example, In Germany half the Bundestag is elected directly, the other half comes through proportional system, with a cut-off at 5% of the vote share.

**Merits of first past the post system**

- The First Past the Post system is the simplest form of plurality/majority system,
- Uses single member districts and candidate-centred voting.

This system is defended primarily on the grounds of simplicity and its tendency to produce winners and governability.

**Proportional Representation System**

- In Proportional system, seats are decided based on the vote share of the party. The advocates of the PR system argue that, in a country like India this alternative reduces the importance of smaller regional parties, which often cause political instability to achieve their narrow goals.

Student Notes:

- The major political parties with nationwide presence will get more seats because of the percentage of votes polled in their favour and it ensures stability. It will put an end to extreme regionalism and divisive caste and communal politics.

**Problems with PR system**

The people who argue against the PR feel that it will not accommodate the concerns and interests of the miniscule or smaller castes and religions. Because of their smaller number of votes, these areas may not get any representation in the Parliament.

While FPTP may not be representative enough, PR may put smaller and regional parties at an unfair disadvantage. Ultimately, we will have to first decide what we want out of its elections and then choose the electoral system that works for those goals.

***5. Critically discuss the major reforms introduced in the area of electoral funding in Union Budget 2017. Do you think that state funding of elections is a viable idea to check misuse of money power in politics?***

***Approach:***

- Mention the new and amended provisions regarding electoral funding.
- Discuss their rationale and analyse whether they are sufficient to meet the goals of transparency, clean money, etc. in elections.
- Suggest some improvements in the proposed reforms.
- Evaluate state funding of elections on the parameters of viability and their ability to prevent misuse of money power.

***Answer:***

In Budget 2017, the government announced some steps to regulate electoral funding in order to:

- minimize the use of cash, which is mostly ill-gotten and unaccounted; and
- maintain anonymity of the donor to minimize favoritism when one party comes to power.

Following can be highlighted in this context:

- **Ceiling of Rs 2000 on cash donation that a political party can receive from one person in a year.** However, there is no requirement to disclose a contribution by cheque or digital transfer up to Rs 20,000. Also, there is no limit on how much anonymous (from all means) or total cash can a party receive from all sources together.
- **A new scheme of Electoral Bonds** which can be purchased from authorised banks and redeemable only in the designated account of a registered party within a short time (3-4 weeks). It is aimed at reducing cash payments which were abused earlier. However, identity of the donor being secret and without the cap of 7.5% of average 3 year profit that a company can donate to political parties, there is large scope of misuse.
- **Exemption from payment of income tax** has been made subject to timely filing of IT returns by political parties. However, such a provision already exists though routinely flouted

**State funding as remedy to check misuse of money power in politics is advocated by many as it can:**

- Provide level playing field to all in the political fray.
- By infusing white money in politics limit the use of black money.
- Limit the influence of interested money and thereby help curb corruption.

Student Notes:

- Make it possible for the State to encourage or demand best electoral practices from political parties and candidates.

However, there are many limitations to such an idea:

- Conceptually, state funding of elections is based on presumption that there would be then no private funding. EC does not have wherewithal to ensure that.
- Elections are a democratic participatory process. Elector should be allowed to support party he is ideologically aligned to. State funding of elections is therefore antithetical to democracy itself.
- It would put a huge burden on public exchequer.
- A 2003 federal study in the US found it ineffective. Also, experience in Italy, Spain, Australia and Israel showed it neither restricted the sources of funding nor reduced election expenditure — the two main objectives.

This issue has been examined earlier by many committees: the Tarkunde Committee, the Indrajit Gupta Committee (1998), the Committee on Constitutional Reforms and the Law Commission (2015). Interestingly, none of them have unequivocally supported introduction of state funding. State funding of elections is part of a possible solution, though state funding by itself will not do away with the nexus of black money and electoral politics.

***6. Criminalisation of politics remains a key concern for the Indian political system. In this context, analyse the role played by the Supreme Court and Election Commission over the years. Also, in what ways can the media play a positive role?***

***Approach:***

- Briefly discuss the current status of criminalization of politics in India.
- Discuss the various judgments relating to criminalization of politics given by Supreme Court (SC).
- Discuss the role played by the Election Commission over years to check the criminalization of politics.
- Discuss the ways in which media can play a role in cleaning the politics of India.
- Suggest other innovative strategies to decriminalize the politics in India.

***Answer:***

The participation of persons involved in criminal doings, minor or major in political functioning of the country is termed "criminalization of politics". According to ADR's *(Association for Democratic Reforms)* data around 34% of the legislators are having criminal charges while only 0.5% were convicted of criminal charges in a court of law. It has grown multifold mainly due to the unholy nexus between politicians and criminals, where both operate in a mutually beneficial partnership.

**Role played by Supreme Court (SC)**

- In **Lily Thomas case (2013)**, SC ruled that a sitting MP and MLA convicted of a jail term of two years or more would lose their seat in the legislature immediately.
- Introduction of None Of The Above (NOTA) option in **PUCL vs Union of India, 2014** to put moral pressure on political parties to put up clean candidates.
- In **UoI vs ADR 2002,** the SC directed that all the contesting candidates shall disclose their assets and liabilities, criminal conviction, if any, and pending cases in court of law at the time of filling the nomination papers.
- The SC in 1997 directed all the High Courts not to suspend the conviction of a person on appeal if he was convicted and sentenced to imprisonment by a trial court under the Prevention of Corruption Act 1988.

- In **Public Interest Foundation Vs UoI 2014**, the SC directed the trial courts to complete the trial of cases involving the legislators within one year.
- Recently, SC also recommended setting up fast-track courts to deal with the cases involving the legislature.

**Role played by Election Commission of India (ECI)**

- ECI suggested debarring candidates facing serious criminal charges (related to heinous offences such as murder, rape, kidnapping or moral turpitude) in 2015.
- Digitizing the election process by incorporating Electronic Voting Machines and installing CCTV camera at sensitive polling booths to bring more transparency by preventing malpractice of false voting and ballot tampering.
- VVPAT initiative to further enhance accountability in the election process.
- Enforcement of Model Code of Conduct by ECI after announcement of election schedule.

**Role that Media can play**

- Conducting **sting operations** to put forward true nature of a candidate.
- Keeping the **electorate aware and informed** which would ultimately strengthen the democracy.
- **Refusing to advertise** for person involved in criminal activities.
- Keeping **a watch on the funding mechanism** of the political parties i.e. usage of black money.
- Helping security forces to track down the hired goons.

Along with these, other electoral reforms also need to be undertaken such as Right to Reject, Right to Recall, amending Representation of People's Act to debar convicted MPs and MLAs for life from contesting elections, bringing political parties under RTI etc. to ensure that entry of criminal elements in our democratic process is minimized.

***7. It is of paramount importance to ensure that the Election Commission of India (ECI) be fully insulated from political pressure to maintain the purity of elections. In this context, discuss the need to have a relook at the process of appointment and removal of election commissioners to the ECI.***

***Approach:***

- Briefly mention the provisions for the independence of ECI vis-à-vis the process of appointment and removal of election commissioners to the ECI.
- Highlight the issues in this appointment/removal, the recent PIL in SC and the way forward.

***Answer:***

Free and fair elections form the bedrock of any democracy. In India, this herculean task for ensuring this is conferred upon the Election Commission of India under Article 324 of the Indian Constitution for superintendence, direction and control of elections.

In light of its importance, the Constitution has protected its **independence** the following manner:

- The Chief Election Commissioner (CEC) is provided with a security of tenure (i.e. removal on the same grounds as a SC judge).
- The service conditions of the CEC cannot be varied to his disadvantage after his appointment to the post.

Student Notes:

But following **issues** still beset the appointment and removal process of election commissioners to the ECI:

- The Constitution is silent on the qualifications and terms of the members of the Election Commission.
- The Constitution has not debarred the retiring election commissioners from any further appointment by the government.
- The other two election commissioners can be removed merely on the recommendation of the CEC.

In this context, the Supreme Court, under Article 145 (3), has referred a PIL on the need for a law for the appointment of the commissioners to the ECI to a constitution bench. While the executive contends that the appointment is their prerogative, there is merit in framing a law for this purpose because:

- Article 327 states that "Parliament may by law make provision with respect to all matters relating to, or in connection with, elections…" But successive governments have evaded this responsibility to retain their authority over the matters related to appointment.
- Election Commission performs the most vital function viz. *conducting elections*, which should not only be fair but must also be seen as fair. This is possible only if the selection process of the election commissioners is fair.
- The present situation allegedly gives ample room for the ruling party to choose someone whose loyalty is ensured and renders the selection process vulnerable to manipulations and partisanship which is violative of Article 14 of the Constitution.

**Way Forward**

- Many other Constitutional and even non-Constitutional posts such as CVC, CIC, NHRC are filled via a collegium decision, so same practice should be followed in the case of commissioners to the ECI. This has been favored by many former CECs and the Law Commission as well.
- The system of removal is unfair to the two elections commissioners and the protection given to the CEC from removal must extend to all the three commissioners.
- Operational issues need to be resolved:
  - ECI must be given a dedicated and independent secretariat.
  - Expenditures of the ECI must be declared to be 'charged on' the Consolidated Fund of India.
- Given the recent series of allegations against the Election Commission revolving around EVM tampering etc., it is imperative to protect its credibility at all costs to strengthen our vibrant democracy.

***8. What are the challenges posed by paid news and political advertising in conducting free and fair elections? Discuss, in brief, the need to amend the Representation of People's Act to regulate this issue. What other steps can be taken to address it?***

***Approach:***

- Introduce the phenomenon of paid news.
- Enumerate the challenges posed by paid news and political advertising in conducting free and fair elections.
- Highlight the need to amend RPA to regulate this issue.
- List the other steps that can be taken to tackle it.

***Answer:***

Student Notes:

Paid news is an act of publishing a political advertisement in the form of news or analysis in media for a price in cash or kind as consideration. It aims to capitalize on public trust that electors attach to news reports over specified advertisements. Therefore, it misleads the electors in the garb of the news item.

**Challenges posed in conducting free and fair elections**

- It unduly influences public opinion by spreading political agenda and keep citizens away from reality hampering their right to information.
- The expenditure on such news and advertisements are usually in cash or kind, thus making it difficult to trace. This also leads to lack of transparency in election expenditure leading to violation of income tax and election expenditure laws.
- It affects the level playing field and infects the purity of the electoral process by giving an edge to people having money and connections with news channels.

**Need to amend RPA**

Currently, there is no provision in RPA to deal with the paid news. However, the ECI has resorted to Section 10 of the RPA which deals with misreporting of funds and disqualified elected candidates in recent past. However, in absence of a well-defined scope the EC had face legal hurdles. Hence, it is appropriate to amend RPA as recommended by the Law Commission of India, that is including "paid news" in electoral offences with a minimum two-year jail term for publishing or abetting the publishing of paid news.

**Other steps**

- Mandatory disclaimer and disclosure of interest and linkages with other industries.
- Separation of editorial and management and creation of redressal mechanisms.
- Developing media ranking framework and involving academic bodies and civil society in content monitoring.
- Formulating stringent guidelines for the news media on poll coverage.
- Discouraging government campaigns 6 months before elections and ensuring that advertisements are demarcated separately.
- Elevating standards of self-regulation by Press Council of India, News Broadcasting Standards Authority etc.
- Bringing media under the ambit of RTI or similar Act.

Also it is important to evolve a comprehensive policy on social media and online advertising so that these do not become a tool to avert democratic political functioning.

***9. Despite legislative changes with respect to funding of political parties in recent years, many challenges still exist with regards to transparency in electoral funding. Discuss. Can state funding of elections help in addressing these challenges?***

***Approach:***

- Briefly mention few legislative changes in recent years with regard to electoral funding in India.
- Highlight the challenges related to electoral funding in India.
- Explaining concept of state funding of elections give arguments for and against it.
- Conclude on the basis of above arguments.

***Answer:***

Student Notes:

In India, a series of legislative changes have been made to reform electoral funding process and bring in more transparency. Some of them include:

- **Electoral Trusts** were given legal sanctity in 2013 by bringing them under the Section 25 of the Companies Act, 1956. By routing the political contributions through an electoral trust, companies can escape from the dislikes of any political party to which it has not donated.
- **Income Tax Act** has been amended to lower the limit for anonymous cash donations from Rs 20,000 to Rs 2,000 to be received by political parties.
- **Companies Act** was amended which removed the cap where corporate entities could contribute only 7.5 per cent of average net profit in the past three financial years.
    - Besides, previous requirement to disclose the names of beneficiary political parties in companies' profit and loss statements was also done away with. These moves were aimed to curb unaccounted money flowing into the political system.
- **Finance Act 2017,** allows anyone, including corporates, to donate to political parties via electoral bonds**.** This measure was taken to "infuse democratic processes with white money" as it aimed at cheque and digital payments ensuring the identity of donors.

Despite these changes, there are many **challenges related to transparency in electoral funding.** According to Association for Democratic Reforms (ADR), more than half of all the income of national parties in India for 2017-18 is derived from **unknown sources**. Some of these challenges include:

- Some of the steps taken by the government are themselves said to be compromising on transparency. For instance:
    - Schemes like **Electoral Bond** further promote anonymity.
    - Limit for anonymous cash donation is said to be ineffective without a cap on the amount of money that can be collected anonymously through cash
- Political parties are outside the ambit of RTI despite CIC directive in 2013 to comply with the **RTI norms**.
- While there is limit on electoral expenditure for each candidate, there is no such capping for party expenditure.

To overcome these challenges, certain committees and commissions such as Inderjit Gupta Committee, Law Commission, 2nd ARC have advocated state funding of elections. It can help promote transparency in electoral funding in the following manner-

- It is argued that state funding of elections will establish a fair playing field for parties with less money.
- It will also discourage political parties to source funds from illegitimate means, thus breaking the nexus of **business-criminals-politicians.**
- It will encourage individuals with passion for public service but devoid of financial resources to contest elections.

However, there are some concerns regarding state funding of election:

- State funding should not be implemented before functioning and finances of political parties are not made transparent. This is because there is **no guarantee** that state funding of elections will stop the use of undisclosed additional funds by political parties.

- There is a lack of clarity on distribution of funds. For e.g. if parties are given funds on the basis of vote share in previous elections, then the winning party will always have an unfair advantage over others.
- There is also an argument that there will be **misuse of taxpayers' money** on frivolous candidates.

For making electoral funding truly transparent, reforms are needed not only at candidate level at the time of elections but also in political parties, which need to engage in political activity all through the year, whether there is an election or not. For political parties a starting point could be bringing political parties under RTI as recommended by Central Information Commission (CIC).

Student Notes:

# CONSTITUTIONAL BODIES

Student Notes:

## Contents

Student Notes:

Student Notes:

# 1. Election Commission

Election Commission is a permanent and independent body provided in our Constitution to ensure free and fair elections. Article 324 of the Indian Constitution states that power of superintendence, direction and control of elections to the Parliament, State Legislatures, the office of President and Vice-President shall be vested in the Election Commission. Thus, Election Commission is an all-India body and it is common to both Central and State government.

> It must be understood that the Election Commission is not concerned with elections to Panchayats and Municipalities in the states. The Constitution has provided for a separate State Election Commission for this purpose.

## 1.1. Composition and Appointment

Under Article 324, the composition of the Commission has been made flexible and it can consist of one Chief Election Commissioner and such number of other Election Commissioners as the President may fix from time to time. There is also a provision for appointment of Regional Commissioners by the President in consultation with the Election Commission. Originally, the Commission had only a Chief Election Commissioner. It currently consists of a Chief Election Commissioner and two Election Commissioners.

For the first time, two additional Commissioners were appointed on 16$^{th}$October 1989, but they had a very short tenure - till 1$^{st}$January 1990. Later, on 1$^{st}$October 1993, two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making by majority vote.

The Chief Election Commissioner and the two other Election Commissioners are appointment by the President and they have equal powers; receive equal salary and allowances, which are similar to those of a Supreme Court judge. The conditions of service and tenure of Election Commissioners and Regional Commissioners should be decided by the President. Currently, they hold office for a term of six years or until the age of 65 years, whichever is earlier.

## 1.2. Independence of Election Commission

In the performance of its functions, the Election Commission is insulated from executive interference. It is the Commission, which decides the election schedules for the conduct of elections, whether general elections or bye-elections. Again, it is the Commission, which decides on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters. To ensure independent functioning of the Commission, the Constitution provides for the following provisions:

**1)** The Chief Election Commissioner is provided with security of tenure. He cannot be removed from his office except in the same manner and on the same grounds as a Judge of the Supreme Court of India. So, he can be removed by the President on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the grounds of proved misbehaviour or incapacity. Thus, he doesn't hold office during the pleasure of the President, though he is appointed by the President.

**2)** The service conditions of the Chief Election Commissioner can't be varied to his disadvantage after his appointment.

**3)** Any other Election Commissioner or Regional Commissioner cannot be removed from the office, except on the recommendation of the Chief Election Commissioner. (This recommendation clause was disputed when Mr. N. Gopalaswamy recommended the removal of Navin Chawla but the Government refused to accept it.)

## 1.3. Powers and Functions

The powers and functions can be categorized into three categories of Administrative, Advisory and Quasi-Judicial.

### 1.3.1. Administrative

1) To determine the territorial areas of the electoral constituency throughout the country on the basis of Delimitation Commission Act of the Parliament.
2) To prepare and periodically revise electoral rolls and to register all eligible voters.
3) To notify dates and schedules of elections and to scrutinise nomination papers.
4) To appoint officers for enquiring into disputes relating to electoral arrangements.
5) To determine code of conduct to be observed by parties and candidates at the time of elections.
6) To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
7) To request the President or the Governor for relinquishing of staff necessary for conducting elections.
8) To register political parties for the purpose of elections and allot election symbols to them and grant them the status of national or state parties, on the basis of poll performance.
9) To work for Voter Education and Electoral participation.

### 1.3.2. Advisory and Quasi-Judicial

Under the Constitution, the Commission also has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures. Further, the cases of persons found guilty of corrupt practices at elections, which come before the Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period. The opinion of the Commission in all such matters is binding on the President or, as the case may be, the Governor to whom such opinion is tendered.

The Commission has the power to disqualify a candidate, who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. The Commission also has the power for removing or reducing the period of such disqualification, as also other disqualifications under the law. It also acts as a Court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.

It also advises the President on whether elections can be held in a state under the President's rule, in order to extend the period of emergency after one year

**Successes of the ECI in 2019 Lok Sabha Elections:**

**Voter Education and Participation**- The highlight of 2019 was the highest ever voter turnout in a general election so far (67.11%), which proves that the EC's voter education programme SVEEP (Systematic Voters' Education and Electoral Participation) is effective.

**Credibility of voting**- After the counting was done, it was found that there wasn't a single case of a mismatch between the VVPAT slip and the EVM count.

**Actions taken against politicians**- The ECI took strong and unprecedented action against some political leaders in the recent general elections, debarring them from campaigning for up to three days by invoking Article 324.

**Action against money power**- The ECI cancelled the election to Vellore parliamentary constituency in Tamil Nadu after large unaccounted cash was unearthed during an income tax raid.

## 1.4. Contribution and Performance of Election Commission

When India adopted political equality many questions were raised about success of this experiment. Sincere and hard work of the Election Commission has played an important role in answering those critics and various steps taken by the Commission has led to further deepening

of democracy. The Election Commission has played an instrumental role in conducting free and fair elections. Some of its initiatives are as follows:

Student Notes:

1) Electoral Photo Identity Cards (EPICs) were issued in 1993 to prevent electoral fraud. From the 2004 elections, these were made mandatory.
2) Electronic Voting Machines (EVMs) were introduced to improve reliability and efficiency.
3) Declaration of assets and criminal cases pending against candidates made mandatory while filing of nomination form.
4) New guidelines for broadcasting on state-owned electronic media.
5) Computerized electoral rolls.
6) Measures for better enforcement of the Model Code of Conduct.

Recently, the Commission has taken steps to check paid news, use of money power, abuse of social media etc. All these steps will further enhance people's confidence in our parliamentary democracy.

## 1.5. Issues

- **Appointment issues**:
  - **No prescribed qualifications in Constitution**: Members are appointed without any defined criteria or processes.
  - **Appointments liable to politicization**: At present, the appointment is done unilaterally by the government of the day, which raises the potential for partisan appointments, thus diluting its credibility.
- **Security of tenure**: The Constitution has not specified the term of the members of the Election Commission. Further, Election Commissioners are not given the same level of security of tenure as that of CEC.
- **Post-retirement appointment**: The Constitution has not debarred the retiring Election Commissioners from taking up an office of profit under the state or joining a political party after retirement.
- **Financial autonomy**: At present, the budget of ECI is not charged on Consolidated Fund of India which tends to reduce its independence and autonomy.

## 1.6. Way Forward

In its 255th report, the Law Commission recommended a collegium, consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India for the appointment of the Election Commissioners.

**Suggestions to strengthen the ECI-**

- Give constitutional protection for all three-election commissioners as opposed to just one at present.
- Institutionalize the convention where the senior most EC should be automatically elevated as CEC in order to instil a feeling of security in the minds of the ECs and that they are insulated from executive interference in the same manner as CEC.
- Reducing the ECI's dependence on DoPT, Law Ministry and Home Ministry. The ECI should have an independent secretariat for itself and frame its own recruitment rules and shortlist and appoint officers on its own.
- Its expenditures must be charged upon the Consolidated Fund of India similar to other constitutional bodies such as the UPSC.

Elections are the bedrock of democracy and the EC's credibility is central to democratic legitimacy. Hence, the guardian of elections itself needs urgent institutional safeguards to protect its autonomy.

Student Notes:

# 2. Union Public Service Commission

UPSC is the central recruiting agency in India. It is an independent constitutional body whose powers and functions have been elaborately defined in Articles 315 to 323 of the Constitution. It is concerned with recruitment to the All India Services and Central Services- Group A and Group B and advises the government, when consulted, on promotion and disciplinary matters.

## 2.1. Composition and Appointment

UPSC consists of a Chairman and other members appointed by the President of India. The Constitution has not specified the strength of the Commission and left it to the discretion of the President. Usually the Commission consists of nine to eleven members, including the Chairman. Also, no qualification has been prescribed for the Commission's membership, except that one half of the members of the Commission should be such persons who have held office for at least 10 years either under the government of India or under state government. The Constitution also authorises the President to determine the conditions of service of the Chairman and members. The Chairman and members hold office for a term of 6 years or until they attain age of 65 years, whichever is earlier.

## 2.2. Independence of UPSC

UPSC acts as a watchdog of merit while recruiting for various government positions. To ensure its independent functioning following provisions have been provided in the Constitution.

**1)** The Chairman or a member of UPSC can be removed from office by the President only in a manner and on grounds mentioned in the Constitution. Some of the circumstances under which they can be removed are
   a) If he is adjudged insolvent or bankrupt
   b) If he occupies any other office of profit
   c) If he is unfit to continue in office by reason of infirmity of mind or body

   Also, the Chairman and members of UPSC can be removed by the President on the grounds of misbehaviour. However, in this case the President has to refer the matter to the Supreme Court for an enquiry and the advice tended by Supreme Court is binding on the President. Thus, members of UPSC enjoy security of tenure.

**2)** The conditions of service of the Chairman or a member, though determined by the President, cannot be varied to his disadvantage after his appointment.

**3)** The entire expense including the salaries, allowances and pensions of the Chairman and members of the UPSC is charged on the Consolidated Fund of India. Thus, they are not subjected to vote by the Parliament.

**4)** The Chairman of UPSC after ceasing to hold his office is not eligible for further employment in government of India or state.

**5)** A member of UPSC (on ceasing to hold office) is eligible for appointment as the Chairman of UPSC or SPSC, but not for any other employment in the government of India or a state.

**6)** The Chairman or member of UPSC is not eligible for reappointment to that office i.e. not eligible for a second term.

## 2.3. Functions and Responsibilities

**1)** Recruitment to services & posts under the Union and all India services through conduct of competitive examination

**2)** Advising on the suitability of officers for appointment on promotion as well as transfer-on-deputation

**3)** It assists states (if requested by two or more states to do so ) in framing and operating schemes of joint recruitment for any service for which candidate possessing special qualifications are required.

Apart from these functions, jurisdiction of UPSC can also be extended by the Parliament. UPSC presents an annual report to the President regarding its performance, which is placed by the President before both the Houses of Parliament. Along with such report, the government also presents a memorandum explaining reasons for non-acceptance of advice of the Commission. Also, any such non-acceptance must be approved by the appointments committee of Union Cabinet, as individual ministry and department has no power to reject the advice of the UPSC.

Student Notes:

## 2.4. Limitation and Weakness

UPSC is only a central recruiting agency and it is not concerned with the classification of services, pay and service conditions, cadre management, training, reservation etc. The President can also exclude certain posts, services and matters from the purview of UPSC. Even in respect of All India Services and Central Services, the President can lay down regulations to list matters in which it shall not be necessary for UPSC to be consulted. However, such regulations shall be laid before each House of Parliament for at least 14 days and the Parliament can amend or repeal them.

The role of UPSC is not only limited, but also recommendations made by it are only of advisory nature and hence not binding on the government. It is upon the Union government to accept or reject that advice. The only safeguard is the answerability of government to the Parliament for departing from recommendations of the Commission.

## 2.5. Performance of UPSC

UPSC is faced with dual challenges of attracting the best minds in the country and also to make civil service more representative of all sections and regions of society. UPSC has performed well in these tasks and some of major initiatives taken are:

**1)** To conduct civil service examination in all languages mentioned in the eight schedule
**2)** Periodic reform in the examination pattern to suit the needs and demands of an effective and honest public service
**3)** Use of IT in filling of forms, admit card dispatch, grievance redressal etc.

UPSC has maintained high standards of integrity, competitiveness and innovation in its examination process. Its success has been globally recognised and public service commissions of many countries, like Malaysia, have collaborated with UPSC to improve their civil service recruitment processes.

But there has been criticism that UPSC stands low on transparency, as it denies information to candidates regarding cut-offs and marks. However, lately there has an improvement wrt transparency too and the examination process is being conducted in a more student friendly manner.

# 3. State Public Service Commission

Similar to UPSC at the national level, there is a State Public Service Commission at the State level. The Constitution visualises the SPSC to be the 'watchdog of merit system' in the state. It is concerned with the recruitment to the state services and advises the government, when consulted, on promotion and disciplinary matters.

## 3.1. Composition and Appointment

The members of SPSC are appointed by Governor of the state. Similar to UPSC, no qualification has been prescribed for the State Commission's membership, except that one half of the members of the Commission should be such persons who have held office for at least 10 years either under the government of India or under state government. The Constitution also authorises the Governor to determine the conditions of service of the Chairman and members of the Commission. The Chairman and members of Commission hold office for a term of 6 years

or until they attain the age of 62 years, whichever is earlier (in case of UPSC the age limit is 65 years).

Student Notes:

## 3.2. Independence

Various provisions have been provided to ensure independent functioning of SPSC.

1) Although the Chairman and members of SPSC are appointed by the Governor, but they can only be removed by the President (and not by the Governor). The President can remove them on the same grounds and in the same manner as he can remove a Chairman or a member of UPSC.
2) The condition of service of members, though determined by the Governor, cannot be varied to his disadvantage after his appointment.
3) The entire expense of SPSC is charged on the Consolidated Fund of State.
4) The Chairman of SPSC, on ceasing to hold office, is eligible for appointment as the Chairman or member of UPSC or as the Chairman of any other SPSC, but not for any other employment under the government of India or state.
5) Similarly, members on ceasing to hold office are eligible for only being appointed as the Chairman or member of UPSC or as the Chairman of any SPSC, but not for any other employment under government of India or state.
6) The Chairman or member of SPSC is not eligible for reappointment to that office.

## 3.3. Functions and Responsibilities

SPSC performs all those functions in respect of state services as the UPSC does in relation to central services. The Supreme Court has held that if the government fails to consult SPSC in the matters mentioned above, the aggrieved public servant has no remedy in court. Thus, the provision is directory and not mandatory.

Apart from these functions, jurisdiction of SPSC can also be extended by the State Legislature. SPSC presents an annual report to the Governor regarding its performance, which is placed by the Governor before the State Legislature. Along with such report, the government also presents a memorandum explaining reasons for non-acceptance of advice of the Commission.

## 3.4. Limitation and Weakness

SPSC is only a recruiting agency and it is not concerned with the classification of services, pay and service conditions, cadre management, training, reservation etc. The Governor can also exclude posts, services and matters from the purview of SPSC. Even in respect of state services, the Governor can lay down regulations to list matters in which it shall not be necessary for SPSC to be consulted. However, such regulations shall be laid before the State Legislature for at least 14 days and it can amend or repeal them.

The role of SPSC is not only limited, but also recommendations made by it are only of advisory nature and hence not binding on the state government. It is upon the state government to accept or reject that advice. The only safeguard is the answerability of state government to state legislature for departing from recommendations of the Commission.

Also, the emergence of State Vigilance Commission (SVC) in 1964 affected the role of SPSC in disciplinary matters. This is because both are consulted by the government while taking disciplinary action against a civil servant.

## 3.5. Performance of SPSCs

Performance of SPSC has been a mixed bag. While many of them have set high standards in their examination, their performance has been largely marred by corruption, lack of transparency and irregular examinations. Recently, some of them have adopted the line of UPSC and have begun to conduct their examinations in a regular and transparent manner.

Student Notes:

# 4. Finance Commission

Article 280 of the Constitution provides for the Finance Commission. It is constituted by the President of India every fifth year or at such earlier time, as he considers necessary.

## 4.1. Composition

The Finance Commission consists of a chairman and four other members to be appointed by the President. They hold office for such period as specified by the President and are also eligible for reappointment. The Constitution authorizes the Parliament to determine the qualifications of the members of the Commission and the manner in which they should be selected. Accordingly, the Parliament has specified that the chairman should be a person having experience in public affairs and four other members should be selected from amongst the following:

**1)** A judge of high court or one qualified to be appointed as one.
**2)** A person who has specialized knowledge of finance and accounts of the government
**3)** A person who has wide experience in financial matters and in administration
**4)** A person who has special knowledge of economics

## 4.2. Functions

The Finance Commission is required to make recommendations to the President on following matters:

**1)** The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
**2)** The principles that should govern the grants-in-aid (under Article 275 of the Constitution) to the states by Centre out of Consolidated Fund of India.
**3)** The measures needed to augment the Consolidated Fund of a state to supplement the resources of the Panchayats and the municipalities in the state on the basis of recommendations made by the State Finance Commission.
**4)** Any other matter referred to it by the President in the interests of sound finance.

The Commission submits its report to the President. He lays it before both the Houses of the Parliament along with an explanatory memorandum as to the action taken on its recommendations.

The recommendations made by the Finance Commission are only of advisory nature and hence not binding on government. It is up to the union government to implement its recommendations on granting money to states. However, as a convention, its recommendations are accepted by the government.

# 5. National Commission for SCs

National commission for SCs is established by Article 338 of the Constitution. Originally, Article 338 provided for the appointment of a special officer for SCs and STs to investigate all matters relating to the constitutional safeguards for the SCs and STs and report to the President on their working. After a series of progressive steps, in 1990, the 65$^{th}$ constitutional amendment act was enacted, which provided for a high level multi-member National commission for SCs and STs. Again, the 89$^{th}$ constitutional amendment act 2003, bifurcated the combined National Commission for SCs and STs into two separate bodies, namely National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).

National Commission for SCs consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President and their conditions of service and tenure of office are also determined by the President. Under the present rules they hold office for a term of three years.

Student Notes:

## 5.1. Functions of the Commission

1) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working.
2) To enquire into specific complaints with respect to deprivation of rights and safeguards of the SCs.
3) To participate and advice on the socio-economic development of SCs and to evaluate their development under the union or a state.
4) To report to the President regarding working of the safeguards and other measures for protection, welfare and socio-economic development of the SCs.
5) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs.

The Commission is also required to discharge similar functions with regard to Anglo-Indian Community.

The Commission presents an annual report to the President. It can also present a report, as and when it thinks necessary. The President places all such reports before the Parliament, along with a memorandum explaining the action taken on recommendations made by the Commission. The memorandum should also contain the reasons for non-acceptance of any such recommendations. Also, reports relating to states are forwarded by the President to the Governor, who then places it before the state legislature along with action taken report.

## 5.2. Powers of Commission

The Commission is vested with the power to regulate its own procedure. The Commission while investigating any matter or inquiring into any complaint has all the **powers of a civil court trying a suit**. It can summon and enforce the attendance of any person from any part of India and examine him on oath. It also has power to receive evidence on affidavits and requisitioning any public record from court or office. The central and state government are required to consult the commission on all major policy matters affecting the SCs.

# 6. National Commission for STs

Similar to National commission for SCs, Article 338-A of the Constitution provides for National Commission for STs. Its composition, power and functions are similar to that of National Commission for SCs, only difference being that it is concerned with STs.

A separate National Commission for STs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

Besides, functions similar to National Commission on SCs, the following functions were entrusted to the Commission in 2005:

1) Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas.
2) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc. as per law.
3) Measures to be taken for the development of tribals and to work for more viable livelihood strategies.
4) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.
5) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place.

Student Notes:

6) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation.
7) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996.
8) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment.

# 7. National Commission for Backward Classes

The National Commission for Backward Classes (NCBCs) has been constituted under new article 338B of the Constitution of India as amended by the Constitution 102nd Amendment Act 2018.

## 7.1. Composition

The Commission shall consist of a Chairperson, Vice-Chairperson and three other Members.

- the Chairperson shall be appointed from amongst eminent socio-political workers belonging to the socially and educationally backward classes, who inspire confidence amongst the socially and educationally backward classes by their very personality and record of selfless service;
- the Vice-Chairperson and all other Members out of whom, at least two shall be appointed from amongst persons belonging to the socially and educationally backward classes;
- at least one other Member shall be appointed from amongst women;

**Term of Office**: Every Member shall hold office for a term of three years from the date on which the Member assumes such office. The Members shall not be eligible for appointment for more than two terms.

## 7.2. Functions and powers

1) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this 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;
2) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;
3) to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;
4) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
5) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and
6) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

The Commission shall, while investigating any matter or inquiring into any complaint, have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:

1) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
2) requiring the discovery and production of any document;
3) receiving evidence on affidavits;
4) requisitioning any public record or copy thereof from any court or office;
5) issuing commissions for the examination of witnesses and documents;
6) any other matter which the President may, by rule, determine.

# 8. Special Officer for Linguistic Minorities

Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities. Later, the States Reorganization Commission (1953-55) made a recommendation in this regard. Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350-B in Part XVII of the Constitution. This article contains the following provisions:

- There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.
- It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution. He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the governments of the states concerned.

In pursuance of the provision of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957. He is designated as the Commissioner for Linguistic Minorities.

The Commissioner has his headquarters at Allahabad (Uttar Pradesh). He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal). At the Central level, the Commissioner falls under the Ministry of Minority Affairs. Hence, he submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

## 8.1. Role

The Commissioner takes up all the matters pertaining to the grievances arising out of the non-implementation of the Constitutional and Nationally Agreed Scheme of Safeguards provided to linguistic minorities and recommends remedial actions to be taken.

## 8.2. Functions

1) To investigate all matters related to safeguards provided to the linguistic minorities
2) To submit to the President of India, the reports on the status of implementation of the Constitutional and the nationally agreed safeguards for the linguistic minorities
3) To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, review mechanism, etc

## 8.3. Objectives

1) To provide equal opportunities to the linguistic minorities for inclusive development and national integration
2) To spread awareness amongst the linguistic minorities about the safeguards available to them

3) To ensure effective implementation of the safeguards provided for the linguistic minorities in the Constitution and other safeguards, which are agreed to by the states / U.T.s
4) To handle the representations for redress of grievances related to the safeguards for linguistic minorities

Student Notes:

# 9. Comptroller and Auditor General of India

The Constitution, under Article 148, provides for an independent office of Comptroller and Auditor General (CAG) of India. He is the head of Indian Audit and Accounts department. He is the guardian of public purse and his duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. CAG is considered as one of the bulwarks of the democratic system in India, others being Supreme Court, election commission and UPSC. The CAG is appointed by the President of India and holds office for a period of six years or up to age of 65 years, whichever is earlier.

## 9.1. Independence

**1)** The CAG is provided with security of tenure. He cannot be removed from his office except in **the same manner and on the same grounds as a judge of the Supreme Court of India**. So, he can be removed by the President on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the grounds of proved misbehaviour or incapacity. Thus, he doesn't hold office during the pleasure of the President, though he is appointed by the President.
**2)** His salary and service conditions are determined by Parliament and can't be varied to his disadvantage after his appointment.
**3)** He is not eligible for further office under both central as well as state government after he ceases to hold his office.
**4)** The entire expense including the salaries, allowances and pensions of the CAG and persons serving in that office is charged on the Consolidated Fund of India. Thus, they are not subjected to vote of the Parliament.

Further, no minister can represent the CAG in Parliament and no minister can be called upon to take any responsibility for any action done by him.

## 9.2. Power and functions

The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of CAG in relation to the accounts of union and states and of any other authority or body. Accordingly, the Parliament enacted **the CAG's (Duties, Powers and conditions of service) Act, 1971**. This act was amended in 1976 to separate accounts from audit in central government. However, for state Governments both the Audit and Accounts are managed by the CAG.

The powers and functions of CAG are as follows:

**1)** He audits accounts related to all expenditure from the consolidated fund, contingency fund and public account of India; consolidated fund, contingency fund and public account of each state and Union territory (those having such fund)
**2)** He audits the receipts and expenditure of the centre and each state to satisfy himself that rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
**3)** He audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
**4)** He audits the receipts and expenditure of the following:
   **a.** All bodies and authorities substantially financed from the Central or state revenues;
   **b.** Government companies; and
   **c.** Other corporations and bodies, when so required by related laws.

Student Notes:

5) He advises the President with regard to prescription of the form in which the account of centre and states shall be kept.
6) He submits his audit reports of central accounts to the President, who shall in turn place them before both houses of Parliament. Analogously in a state, he submits his audit reports of state accounts to the Governor, who shall in turn place them before state legislature.
7) He ascertains and certifies net proceeds of any tax or duty and his certificate is final in this regard. The 'Net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
8) He compiles and maintains the account of state government. Earlier, he was also responsible for maintenance of account of central government but after 1976 he was relieved of this responsibility.
9) He acts as the *friend, philosopher and guide* to the Public Accounts Committee of the Parliament which exercises detailed financial control on the behalf of Parliament.

The CAG submits three audit reports to the President-audit report on appropriation accounts, audit report on finance account, and audit report on public undertakings. The President lays these reports with both the Houses of Parliament. After this, the Public Accounts Committee examines these reports (only first two, the report on PSUs go to the Committee on Public Undertakings) and lays down its findings in the Parliament.

## 9.3. Role played by CAG

The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration. The accountability of the Executive (council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of CAG. CAG is an agent of Parliament and responsible only to it.

In his audit, the CAG has to ascertain that money was legally available and approved for spending by requisite authority and had been spent on the activities for which it was sanctioned. Such a type of audit is called legal and regulatory audit. In addition to legal and regulatory audit, the CAG also conducts performance audit in which he evaluates the value for money of the output and outcome. He can look into wisdom faithfulness and economy of government expenditure and comment on wastefulness and extravagance of such expenditure.

The name of Comptroller and Auditor General is a misnomer as in practice CAG is fulfilling only the role of an Auditor General and not of a Comptroller. In other words, CAG has no control over the issue of money from the Consolidated Fund and his role is only at audit stage. While in Britain, where CAG has powers of both Comptroller as well as Auditor General, executive can draw money from public exchequer only after approval of the CAG.

The CAG has played an important role in ensuring financial accountability of executive to the Parliament. Recent report of CAG on 2Gspectrum sale and allocation of coal blocks has played an important role by highlighting systemic weaknesses and such reports had played a major role to make governments function with more transparency and accountability. Although the reports are not binding upon the Executive, but they offer a mechanism to hold the Executive responsible for any waste of public money.

## 9.4. Controversies and Criticisms

### 9.4.1. CAG can only bark but not bite

Due to lack of power of disallowance (as with the national auditor of the US and the UK), the CAG has only a recommendatory role to play. But it is not just a symbolic body, its reports create public awareness and put pressure on the Government to take action. It strengthens the Parliamentary control over Executive, which is the foundation of Parliamentary democracy.

When CAG asks for information from various departments, there is a considerable delay and there is no mechanism for CAG to enforce its fiat. It is suggested that the CAG Act of 1971 be amended to provide punitive powers to the CAG in case of delay in submitting information by Govt. agencies.

Student Notes:

### 9.4.2. Can CAG Audit Utility Companies?

Considerable debate has taken place on the issue of whether CAG can audit the power distribution companies or Public-Private Partnership projects. Due to the lack of clarity in the CAG Act, there are no boundaries defined for a CAG audit. In cases where the Government shareholding is more than 50%, it is held that the CAG has the powers to audit such enterprises.

### 9.4.3. Should CAG be a Multi-member body?

Other controversy was regarding whether CAG should be converted to a multi member body on the lines of Election Commission and also if CAG should be appointed by a broad based collegium. The idea was mostly propagated in view of a continuous standoff between the Government and the CAG on the various reports published. In case of EC, it was easier to implement the multimember option as the Constitution provides for a multimember Commission. However, in case of CAG, it would need a constitutional amendment to bring such structural changes. Currently, the CAG is assisted by six Deputy CAG. Thus, the aim of the amendment would be to change the decision making structure of CAG to a majority vote.

## 10. Attorney General of India

The Constitution (Article 76) has provided for the office of Attorney General, as the highest law officer in the country. The Attorney General is appointed by the President of India. He must be the person who is qualified to be a judge of Supreme Court. In other words, he must be a citizen of India and he must have been a judge of some High Court for five years or an advocate of some High Court for ten years or an eminent jurist, in the opinion of the President.

The term of office of Attorney General is **not** fixed by the constitution. He holds office during the pleasure of the President. This means that he may be removed by the President at any time. Conventionally, he resigns when the government resigns or is replaced, as he is appointed on its advice. The Attorney General does not fall in the category of government servants. Further, he is not debarred from private legal practice.



## 10.1. Duties and Functions

As chief law officer of the Government of India, the duties of AG include the following:

**1)** To give advice to the Government of India upon such legal matters, which are referred to him by the President.
**2)** To perform such other duties of legal character that are assigned to him by the President.
**3)** To discharge the functions conferred on him by the Constitution or any other law.

The President has assigned the following duties to the AG:

**1)** To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
**2)** To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.
**3)** To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.

In the performance of his official duties, the AG has the right to audience in all courts in the territory of India. Further**, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote.** It may be noted that the AG is not a member of Cabinet.

Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:

**1)** He should not advice or hold brief against the Government of India
**2)** He should not defend accused persons in criminal prosecutions without the permission of Government of India
**3)** He should not accept appointment as a director in any company or corporation without the permission of Government of India

Solicitor General and Additional Solicitor General are other law officers of Government of India. They assist the AG in fulfilment of his official responsibilities. It should be noted here that only the office of the AG is created by the Constitution under Article 76 and the offices of Solicitor General and Additional Solicitor General are not mentioned in the Constitution.

# 11. Advocate General of State

In a structure parallel to the Union, the Constitution provides for a law officer in the State under Article 165. The Advocate General is appointed by the Governor. He must be a person who is qualified to be appointed a judge of a High Court. He enjoys the same power, duties and conditions of employment as the Attorney General at the Centre in respect of the State.

# 12. Inter-State Council

Article 263 of the Indian Constitution says that, it shall be lawful for the President to establish an Inter State Council (ISC) for inquiring, discussing and advising upon:

- disputes which may have arisen between States;
- subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

## 12.1. Composition

It was set up on the recommendation of Sarkaria Commission by a Presidential Order in 1990. It consists of:

- Prime Minister as the Chairman
- Chief Ministers of all the States
- Chief Ministers of Union Territories having Legislative Assemblies
- Administrators of the Union Territories not having Legislative Assemblies
- Governors of the States under the President's rule
- Six Central Cabinet Ministers, including Home Minister, to be nominated by the PM.

## 12.2. Functions

- It is a recommendatory body on issues relating to interstate, Centre-State, and Centre and Union Territory relations.
- Its function is complementary to Supreme Court's jurisdiction under Art 131 to decide a legal controversy between the governments.
- It is not a permanent constitutional body but it can be established 'at any time' if it appears to the President that the public interests would be served by the establishment of such a council.

Student Notes:

## 12.3. Significance

**ISC standing committee**
The Standing Committee of the Council was set up in 1996 for continuous consultation and processing of matters for the consideration of the council.
The Committee consists of following members:
1. Union Home Minster (Head)
2. Five Union Cabinet Ministers
3. Nine Chief Ministers
The Committee is assisted by Inter-State Council Secretariat, set up in 1991 and headed by a Secretary to Government of India.

- **Constitutional Backing**- Unlike other platforms for Centre State cooperation, ISC has constitutional backing.
- Cooperative federalism- In times of different political parties heading the Centre and various states the need for dialogue assumes a greater importance. Thus, ISC provides a platform for states to discuss their concerns.
- Resolving disputes linked to state-state & centre-state- In 2016 & 2015, 140 & 82 such issues were resolved respectively.
- Decentralized decision making- If the goal of a more decentralised polity, which needs interaction between various levels of government, is to be achieved, Interstate Council is a crucial first step.
- Makes governments more accountable- Given its status as a platform for dialogue and discussion, it makes the governments, both at centre and state level, more accountable for their actions.
- A safety valve- The council helps to bridge the trust deficit between the centre and the states. If not always a problem solver, it at least acted as a safety valve.
- Lack of other avenues: Other constitutional avenue such as Zonal council for such issues, too are restrictive in terms of their geographical scope.

## 12.4. Issues

- It is seen as a mere talk shop. Thus, it needs to show that it can follow up.
- Its recommendations are not binding on the government.
- It does not meet regularly as recently Inter-State Council met after a gap of 12 years.

## 12.5. Way Forward

- The return of the single-party majority government at the Centre has necessitated the strengthening of inter-governmental mechanisms for the harmonious working of the federal structure through institutions like ISC.
- Sarkaria Commission recommended that it needs to be given all the powers contemplated in the Constitution like Art 263(a) which gives it the power to investigate issues of inter-state conflict but was dropped in the Presidential order of 1990.
- It should provide greater opportunities to civil society institutions and the corporate sector to make their representations.
- Further, its secretariat may be shifted from the Union Home Ministry to the Rajya Sabha secretariat so that it would be under the direction of a neutral federal functionary, the vice-president of India rather than Union home minister.
- It should be strengthened as a forum for not just administrative but also political and legislative give and take between centre and states. For instance, while legislating on subjects that have been transferred from the state list to the concurrent list such as education and Forests, the centre must consult states more extensively and offer them greater flexibility.
- Some of the following recommendations of Punchhi commission should also be considered:
  - The Inter-State Council must meet at least thrice in a year on an agenda evolved after proper consultation with States.
  - The Council should have experts in its organizational set up drawn from the disciplines of Law, Management and Political Science besides the All India Services.

- The Council should have functional independence with a professional Secretariat constituted with experts on relevant fields of knowledge supported by Central and State officials on deputation for limited periods.
- After ISC is made a vibrant, negotiating forum for policy development and conflict resolution, the Government may consider the functions for the National Development Council also being transferred to the ISC.

Though, there are other bodies such as the NITI Aayog's Governing Council with similar composition, including the prime minister, chosen cabinet ministers and chief ministers that could address centre-state issues. But, the ISC has constitutional backing, as against the NITI Aayog which only has an executive mandate. This puts the states on more solid footing in building the atmosphere of cooperation needed for calibrating centre-state relations.

# 13. Goods and Services Tax (GST) Council

It is a **constitutional body (Article 279A)** for making recommendations to Union & State Govt. on issues related to GST.

## 13.1. Composition

The Goods and Services Tax Council shall consist of the following members, namely:—
(a) the Union Finance Minister—**Chairperson**;
(b) the Union Minister of State in charge of Revenue or Finance—**Member**;
(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government—**Members**

One-half of the total number of Members of the Goods and Services Tax Council shall constitute the **quorum** at its meetings

Every decision of the council has to be taken by a **majority of not less than three-fourth of the weighted votes of the members present**. The vote of the central government has a weightage of one-third of the total votes cast, and votes of all the state governments together have a weightage of two-thirds of the total votes cast.

**Impact of GST Coucil**

**1. Rationalization of tax rates:** Tax slab/rates have been rationalised and many items kept within the high tax bracket (18-28%) were reviewed and classified as necessities and not luxuries. Only around 200 items such as automobiles, pan masala, five star hotels have been kept in the highest (28%) slab.

**2. Simplification of compliance burden:** This has been done through steps like extending the due dates of filing tax return, introduction of simplified return filing system, nationwide E-Way bill etc.

**3. Relief measures for MSME Sector:** It includes steps like increase in registration threshold limit, Composition Scheme for small taxpayers etc.

**4. Boost to the real estate sector:** It recommended reduction in the rate of GST for under-construction properties @1% (for affordable housing) and 5% (for non-affordable segment).

**5. Other measures:** The Council has also recommended the formation of a Group of Ministers (GoM) to study the revenue trend, analyse the reasons for structural patterns affecting revenue collection in some states, to examine the tax rate and issues in specific sectors such as real estate, lottery, and other issues related to GST. It has also established Grievance Redressal Committees at Zonal/State levels.

### 13.2. Functions

The Goods and Services Tax Council shall make recommendations to the Union and the States on:

1) The taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax
2) The goods and services that may be subjected to, or exempted from the goods and services tax
3) Model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply

Student Notes:

4) The threshold limit of turnover below which goods and services may be exempted from goods and services tax
5) The rates including floor rates with bands of goods and services tax;
6) Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster
7) Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand
8) Any other matter relating to the goods and services tax, as the Council may decide

**National Anti- Profiteering Authority (NAA)**

The National Anti-Profiteering Authority (NAA) has been constituted under Section 171 of the Central Goods and Services Tax Act, 2017.

It is to ensure the reduction in rate of tax or the benefit of input tax credit is passed on to the recipient by way of commensurate reduction in prices.

Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

## 14. UPSC Mains Previous Years' Questions

**1.** "The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss (2019)

**2.** "The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise. (2018)

**3.** In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India? (2018)

**4.** How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss. (2018)

**5.** Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine. (2018)

## 15. Vision IAS Mains Previous Years' Questions

***1. Highlight the Quasi-Judicial and Advisory functions of the Election Commission of India. Do you think the powers of the Election Commission need a relook in context of the challenges it has faced in recent years?***

***Approach:***

- Give a brief introduction about ECI and its role.
- Highlight various quasi-judicial and advisory functions of the ECI.
- Discuss the challenges faced by the ECI which are leading to a relook of the powers of ECI.
- Bring out the steps that can be taken to make ECI more powerful to tackle these challenges.
- Conclude accordingly**.**

***Answer:***

The Constitution of India under Article 324 provides for an independent and permanent Election Commission of India (ECI). It has the powers of superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to the Parliament, the state legislatures, and the offices of the President and the Vice-President.

Student Notes:

**Advisory functions of the ECI**

- It advises the President and Governor on matters relating to the disqualification of the sitting members of the Parliament and state legislatures respectively. Also such an opinion is binding on the President or the Governor.
- It advises the President whether elections can be held in a state under President's rule in order to extend the period of emergency after one year.
- It also gives it opinion to the higher judiciary on the question of disqualifications and the time period for which it lasts.

**Quasi-Judicial functions of the ECI**

- It acts as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
- It has the power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law.
- The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.
- It decides on matters related to violations of Model Code of Conduct.
- It appoints officers for inquiring into disputes relating to electoral management.
- It cancels the polls in the events of rigging, booth capturing, violence and other irregularities.

**However, in recent times, the ECI has been facing many challenges such as:**

- **Conflict between constitutional and legal powers**: The ECI is vested with absolute powers under Article 324, but still has to act according to laws made by Parliament and it cannot transgress the same. For e.g. Despite being the registering authority for political parties under Section 29A of the Representation of the People Act, 1951, it has no power to de-register them even for the gravest of violations.
- **Inadequate capacity**: The ECI has been found dependent on various government departments in terms of office finances, legal expertise, security personnel and other staff.
- **Unable to curb malpractices**: Since the ECI doesn't have necessary powers; it is not able to control criminalization of politics or use of money and muscle power in elections.
- **Upholding its credibility**: ECI's credibility in recent times has been questioned owing to allegations like rampant violation of Model Code of Conduct, debates on working of Electoral Voting Machines, timing of elections and other directions of the commission.

**In the backdrop of these challenges, there is a need to relook the powers of the ECI such as:**

- Give equal constitutional protection for all three-election commissioners as opposed to just the CEC.
- Institutionalize the convention where the senior most EC should be automatically elevated as CEC in order to instil a feeling of security in the minds of the ECs and that they are insulated from executive interference in the same manner as CEC.
- Reducing the ECI's dependence on DoPT, Law Ministry, and Home Ministry. The ECI should have an independent secretariat for itself and frame its own recruitment rules and shortlist and appoint officers on its own.
- Its expenditures must be charged upon the Consolidated Fund of India similar to other constitutional bodies such as the UPSC.
- All provisions of Model code of conduct should have legal backing.

Student Notes:

- ECI should be given more power with regards to disqualification of member post-election and in case of anti-defection too. ECI is also demanding a new section 58 B in RPA, 1951 to deal with money menace similar to section 58 A which is related to booth capturing.
- The Election Commission needs to be given the powers of de-registering a political party

Apart from empowering the ECI, the Law Commission's recommendations in its 255th report can also be considered. It suggested a collegium to improve appointments, consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India for the appointment of the Election Commissioners.

***2. Give an account of the composition and functions of the Finance Commission as mentioned in the Constitution of India.***

***Approach:***

- Briefly mention the constitutional status of Finance Commission and its composition.
- Discuss its major functions as mentioned in the constitution.
- Give a brief conclusion.

***Answer:***

The Finance commission is a constitutional body which is set up at an interval of every five years by the President under Article 280 of the Indian Constitution. It is assigned the task of enabling transfer of resources from the Centre to the states and its distribution among the states to overcome the vertical and horizontal imbalances in India's federal structure.

**Composition of the Finance Commission:**

It consists of a Chairman and four other members, appointed by the President. However, the qualifications of these members and manners of their selection are determined by the Parliament, as authorized by the constitution.

Accordingly, the Chairman must be a person having **'experience in Public Affairs'** and the other four members must be appointed from amongst the following:

- A **High Court Judge** or one qualified to be appointed as such
- A person having **special knowledge of the finance and accounts** of the government
- A person having wide **experience in financial matters and administration**
- A person having **special knowledge of economics**

**Functions of the Finance Commission:**

As mentioned in Article 280 (3), its function is to make recommendations to the President regarding:

- The **distribution of the net proceeds of taxes** between the Union and the States and **the allocation of such proceeds** between the states.
- The **principles which should govern the grants-in-aid** of the revenue of the states out of the Consolidated Fund of India.
- The measures needed **to augment the Consolidated Fund of a State** to supplement the resources of the Panchayats and the Municipalities in the state.
- Any other **matter referred to the commission by the President** in the interests of sound finance.

Hence, Finance Commission is a critical institution to strengthen fiscal federalism and improve the quality of public spending. Till date, fifteen Finance Commissions have been constituted. The most recent was constituted in 2017, headed by Dr. N.K. Singh.

Student Notes:

***3. What are the different institutional arrangements in India to promote cooperation between the Centre and States? Critically analyse the role of Inter-State Council to enhance cooperative federalism in India.***

***Approach:***

- Provide a brief introduction about the need for cooperation between centre and states.
- Write in brief the existing institutional arrangements which enhance Centre-State Cooperation.
- Then, write the aim of Inter-State Council. Analyse the performance of Inter-State Council since its inception.
- Give concluding remarks for the answer with a way forward.

***Answer:***

Cooperation between Centre and States is required to have more interactive, inclusive, transparent and accountable governance. It is also important for harmonious working of the federal structure. Existing institutional mechanisms in India to promote such cooperation include:

- Institutions setup under the **constitution** – These include Rajya Sabha, All India Services, Inter State Council, Finance Commission. Additionally, the Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley. It can also appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to the interstate freedom of trade, commerce and intercourse.
- Institutions setup by **Parliamentary Acts** – These include Five zonal councils under States Reorganization Act 1956 plus North-Eastern Council constituted in 1971.
- Institutions set up by **cabinet resolution** - National Development Council (NDC), National Integration Council, and Planning Commission now replaced by NITI Ayog.
- **Important conferences** held either annually or otherwise to facilitate Centre-state consultations on a wide range of matters. The prominent among them includes – the Governor's conference, the Chief Ministers' conference, the chief secretaries' conference, conference of inspector-general of police, the chief justices' conference, the conference of vice-chancellors etc.
- **Full faith and credit** is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state.

Inter-State Council (ISC) is a recommendatory body to investigate and discuss subjects, in which some or all of the states or the union government have a common interest, recommendations for the better coordination of policy and action, matters of general interest to the states. It was constituted under Article 263 of the Constitution in 1990 based on the Sarkaria Commission's recommendations.

A cooperative federal system needs interactions between the various levels of government, namely, the union, state and local. Therefore, the need for an inter-governmental mechanism is obvious in this system. ISC has proved its mandate to ensure better Centre-state cooperation and resolve Centre-state or inter-state issues. For example-

Student Notes:

- ISC was crucial in the implementation of many of the Sarkaria Commission's 247 other recommendations, such as altering the states' share of central taxes.
- The ISC has constitutional backing, as against the NITI Aayog which only has an executive mandate. This puts the states on more solid footing—an essential ingredient in building the atmosphere of cooperation needed for calibrating centre-state relations.
- The council has helped bridge the trust deficit between the centre and the states. If not always a problem solver, it at least acted as a safety valve

**Underutilisation of ISC**

Inter-State Council was set up as an instrument for cooperation, coordination and evolution of common policies. However, it has been largely underutilised.

- There is no compulsion on government of the day to accept the outcomes of the meetings.
- No frequent meetings. Recently, it was the 11$^{th}$ meeting since 1990.
- Clause A of Article 263, which gave the council the power to investigate issues of inter-state conflict, was dropped in the presidential ordinance establishing the ISC.

The Inter-State Council needs to emerge as an active inter-governmental forum that can be used for evolving policy as well as ensuring its implementation. The States should increasingly use this forum as an effective instrument to strengthen our democracy, our society and our polity. Few suggestions are-

- The ISC needs to be given all the powers contemplated in the Constitution. For example-Clause A of Article 263.
- ISC and NITI Aayog may be merged into one constitutional forum to improve the institutional participation of state governments.
- It should provide greater opportunities to civil society institutions and the corporate sector to make their representations.
- Ensure greater role of states. Cooperation or opposition not for political but policy sake.

# REGULATORY AUTHORITIES IN INDIA

Student Notes:

## Contents

Student Notes:

Student Notes:

# 1. Introduction

Regulation refers to controlling human and societal behavior through rules and orders issues by the executive authority of a government/state. Generally such rules/orders are backed by the force of law. Regulation covers all activities of private or public behaviour that may be detrimental to societal or governmental interests. It is supported by penalties or incentives that ensure compliance.

## 1.1. Background

In the post liberalization era, the state plays less direct role in the economic activities. But it does not mean withdrawal of the state. In India, liberalization meant that the state allowed much more active participation of private players in economic activities while state minimizing regulation. Also the State Owned Enterprises (SOEs) continue to play dominant role in many sectors of the economy.

The Constitution empowers the Union and State Legislatures in India to make laws on various subjects and take up regulatory functions. The state can impose reasonable restrictions on the exercise of various rights conferred by **Article 19** in the interest of public order, sovereignty and integrity of India. Consequently, there is a plethora of laws and rules, which seek to regulate the activities of individuals and groups. The Constitution as well as the laws enacted by Parliament have established the institutions and mechanisms to enforce these laws and rules. Article 53(1) of the Constitution regulates the exercise of the executive powers of the Union. Further, Article 53(3) authorizes the Parliament to confer by law such functions to **'authorities'.**

## 1.2. Need for Regulation

There are three sets of justifications for regulatory interventions:

**(i) Prevention of Market Failure**

Market failure is a condition in which the market mechanism fails to allocate resources efficiently to maximize social welfare. Market failures occur in case of **natural monopolies** or **asymmetric information**, and in the presence **of externalities.**

- A ***natural monopoly*** occurs when an entire market is more efficiently served by one firm instead of two or more firms due to increasing returns to scale. Natural monopolies enjoy scale benefits that protect them from competition. When other firms enter, it leads to inefficient production because the average cost of input is much higher due to entry of multiple firms. For eg: In the transportation sector, Railways is a natural monopoly in India. As it makes sense for single entity to manage the sector as cost of setting up national network of rail lines would be very high.
- ***Asymmetric information*** is a situation where one party in a transaction knows more about the product than another. This prevents the market mechanism from achieving an efficient allocation of resources. This creates a role for regulation of market transactions by a **third party** to **remove or minimize information asymmetries.** In India, considerable information asymmetries exist in the health and education sector.
- ***Externalities*** may be positive or negative impact on the actors that are not directly linked to the concerned production or economic activity. For instance, an industrial plant discharging chemical waste imposes negative externalities on users downstream. Regulation, in such circumstances, is considered appropriate to restore economic efficiency. Putting 'Pigovian Tax' is one of such regulation. Ex – Clean Energy Cess.

**(ii) To check anti-competitive practices** Anti-competitive practices have implications for the economic growth and development of nations. Such practices restrict competition and deteriorate consumer welfare by creating entry barriers and price increases, that impedes to efficiency and innovation.

Student Notes:

Firms may resort to anti-competitive practices such as price fixing, market sharing or abuse of dominant or monopoly power. Laws that empower officials to take action can help deter such practices. Regulation through a set of transparent, consistent, and non-discriminatory rules can create a competitive and dynamic environment in which all the market players can thrive and yield socially optimal outcomes.

**(iii) To promote the public interest**

A third set of justification arises from concerns about the promotion of public interest, which is an important policy objective for governments. **Ensuring fair access, non-discrimination, affirmative action**, or any other matter of public importance can provide an important reason for regulation. Some major regulations in this regard in India are:

- **Support Pricing:** Government offering to buy wheat or rice from farmers at a price which is higher than the market price
- **Public Distribution System**: Supply of food grains at a price which is lower than the market price
- **Free Distribution:** Distribution of piped water and free power to agriculture, which is a regulatory decision to levy zero tariffs, stemming from policy stances

# 2. Regulation in India

## 2.1. Evolution of Regulation in India

The regulatory mechanism in India can broadly be divided into two phases. The first phase spanned from independence (1947) to liberalization reforms (1991). The second phase starts after economic reforms of 1991.

Post-independence, India experimented with a **"socialist mixed economy model"** with the state retaining dominant control over the economy. . While private sector activity was allowed, the government controlled it through **licensing and quotas** in regard to intermediate goods, imports and outputs. Such controls were complemented by **high tariff** as well. Thus, the government was not only a producer and regulator of strategic and important goods and services, it also exerted direct control over the output of private sector activity. Since electoral consideration affected regulatory actions by the government, such regulation can hardly be labeled as **"independent".**

After 1985, the Indian economy embarked on a process of **domestic reform**, which included– delicensing of industries and abolition of output quotas, permission for private entry into sectors, which were hitherto the monopoly of the government, and liberalization of quotas and tariffs on capital good imports.

From 1991 onwards, liberalization of the **external sector** meant that tariff reductions were extended to almost the entire spectrum of merchandise trade and conditions for foreign investment were simplified and liberalized.

The process of domestic reform and external liberalization is still ongoing. However, the producer profile in various sectors has undergone a significant change with private firms co-existing with government firms in many sectors, which were previously government monopolies (e.g. electricity, telecommunications).

The consensus among decision makers has been that **independent regulation** is required in such sectors to guarantee a level playing field. As a result, independent regulators have been constituted in various sectors.

The government in India, since 1991, has set up a number of independent regulatory authorities to prevent monopolies, permit network industries in a number of real (non-financial) sectors, and govern the financial sector (banking, insurance, capital markets and derivatives).

Independent authorities smoothens the functioning of a complex, modern economy, upholds the wider public interests and protects public commons.

Student Notes:

## 2.2. Types of Regulation in India

Regulation in India can be mapped under three broad categories: economic regulation, regulation in the public interest and environmental regulation.

**(i) Economic Regulation**

Economic regulation aims at **preventing market failure.** This is achieved with rules that proscribe and punish market distorting behavior. For instance, **The Electricity Act of 2003** allows State regulators to fix tariffs for power consumption, thus preventing suppliers from taking advantage of natural monopolies.

**(ii) Regulation in the Public Interest**

This covers areas where industries are failing to meet a standard or uphold something of public importance. For example, adherence to **health and safety** standards is non-negotiable for the state. The Bureau of Indian Standards (BIS) (under Bureau of Indian Standards Act, 1986) sets quality and safety standards for goods produced in the country. Such regulations are necessary due to low level of **consumer awareness.**

**(iii) Environmental Regulation**

A healthy environment is desirable not just for aesthetics, but because environmental degradation imposes costs on land, labour and resources that have important consequences for economic development. In India, environment protection has been given **constitutional status**. The Directive Principles of State Policy state that protecting and improving the environment is the duty of the State as well as citizens of the country. To this end, laws like **Environment (Protection) Act, 1986 as the umbrella legislation** has been enacted**.** Central Pollution Control Board has been established under Water (Prevention and Control of pollution) Act, 1974 that issues rules and regulations prescribing the standards for a clean environment.

**Table 1. List of major regulations in India**

| Act | Purpose |
|---|---|
| Securities Contracts (Regulation) Act, 1956 | To prevent undesirable transactions in securities by regulating the business |
| The Foreign Exchange Management Act (FEMA), 1999 | To facilitate external trade and payments and to promote the orderly development and maintenance of the foreign exchange market. |
| The Foreign Trade (Development and Regulation) Act, 1992 | To provide for development and regulation of foreign trade by facilitating imports into and augmenting exports from India and for matters connected herewith. |
| The Industries Act, 1951 | To empower the Government to take necessary steps for the development of industries; to regulate the pattern and direction of industrial development; and to control the activities, performance and results of industrial undertakings in the public interest. |
| The Indian Contract Act, 1872 | Governing legislation for contracts, which lays down the general principles relating to formation, performance and enforceability of contracts and the rules relating to certain special types of contracts like Indemnity and Guarantee; Bailment and Pledge; as well as Agency. |
| The Sale of Goods Act, 1930 | To protect the interest of buyers and sellers. |
| Indian Patents Act, 2005 | To grant significant economic exclusiveness to manufacturers of patented products with some in-built mechanisms to check extreme causes of competition restriction. |
| The Company Act, 1956 | To regulate setting up and operation of companies in India: it regulates the formation, financing, functioning and winding up of companies. |
| Competition Act, 2002 | To ensure a healthy and fair competition in the market economy and to protect the interests of consumers: aims to prohibit the anti-competitive business practices, abuse of dominance by an enterprise as well as regulate various business combinations such as mergers and acquisitions. |

| Act | Purpose |
|---|---|
| The Trade Marks Act, 1999 | To amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. |
| The Information Technology Act, 2000 | To provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information; to facilitate electronic filing of documents with Government agencies |
| The Consumer Protection Act, 1986 (amended 1993, 2002) COPRA | To protect consumer rights and providing a simple quasi-judicial dispute resolution system for resolving complaints with respect to unfair trade practices. |
| The Industrial Disputes Act, 1947 | To facilitate investigation and settlement of all industrial disputes related to industrial employees and employers. |
| The Factories Act, 1948 | Umbrella legislation to regulate the working conditions in factories. |
| The Indian Trade Unions Act, 1926 | To facilitate the registration of trade unions, their rights, liabilities and responsibilities as well as ensure that their funds are utilised properly: it gives legal and corporate status to registered trade unions and also seeks to protect them from civil or criminal prosecution so that these could carry on their legitimate activities for the benefit of the working class. |
| The Bureau of Indian Standards Act, 1986 | To set standards (quality, safety etc) for various kinds of products to protect consumer safety. |



## 2.3. Categories of Regulators in India

Independent regularity authorities (IRAs) are agencies of modern democratic governments, parts of the executive wing with a certain degree of statutory or constitutional autonomy, reporting directly to the legislature. Like the general executive, they are accountable to the legislature and subject to judicial review.

There are primarily two types of regulatory agencies:

### 2.3.1. Statutory Independent Regulatory Agencies

Regulation by government through its **own Departments or Agencies** directly under its control has always existed. The last century has seen the emergence of a special category of regulatory systems – the Independent Statutory Regulating Agencies. These agencies differ from the conventional regulating system as they are separated from the executive wing of the government and enjoy a certain degree of autonomy. The concept of independent regulations took birth in USA. The basic premise of the establishment of these agencies being that a market based economy needs to be regulated in order to ensure a level playing field to all and also to safeguard the **larger public and national interest**. Other factors, which favoured the creation of independent regulators were:

Student Notes:

i. Increasing complexities and the advancement of technologies required for handling of issues by experts.
ii. Public interest is best served by insulating decision-making in certain issues, from political interference.

In India, with the initiation of the process of economic liberalization in the early 90s, government withdrew from many activities, which hitherto were monopolized by it. The entry of corporate sector necessitated certain measures **to boost the investor competence and to safeguard public interest**. One such measure was setting up of independent regulators. In addition, the traditional departmental structure of government was not best suited to play the dual role of a policy making as well as regulating the sector concerned.

### 2.3.2. Self Regulatory Authorities

These Authorities are created under different laws but they are self-regulatory in nature. The functions of Self-Regulatory Bodies may include:

I. Issues of professional education
II. Matters connected with licensing
III. Ethical conduct of the practitioners.

A self-regulatory authority has the power to create and enforce stand-alone industry and professional regulations and standards on its own. For instance, in the financial sector, the Stock Exchanges (BSE/NSE in India), protect investors by establishing rules, regulations, and set standards of procedures which promote ethics, equality, and professionalism.

Similarly, Press Council of India(PCI) is a self-regulatory watchdog of the press, for the press and by the press, that operates under the Press Council Act of 1978.

## 2.4. Issues Related to Regulation in India

### 2.4.1. Administrative Incoherence

Unlike other countries ( USA have Administrative Procedure Act, 1946), India does not have an overarching administrative law statute in India. This has meant that laws and regulations developed by different regulators lack coherency and clarity leading to administrative tussle and resultant legal struggles. Regulators in India face the issue of overlapping jurisdictions and unclear guidelines. It is widely witnessed in the case of Competition Commission of India and sector regulators like SEBI, TRAI and CERC.

### 2.4.2. Structural Weakness

Regulators in India are often required to make technical determinations. But a large number of posts dedicated to expert members lie vacant. The Central Pollution Control Board has nearly 20 per cent of its sanctioned posts lying vacant as per its last annual report.

The enforcement wing of SEBI lacks the capacity to proactively respond to sophisticated market evolution. It responds with prefer blunt enforcement remedies rather than other more nuanced and complex alternatives.

### 2.4.3. Design of the regulatory bodies

The problem of regulatory design has been most visible in India's banking sector. Even though public sector banks hold two-thirds of the deposits in the formal banking sector, the RBI's powers are limited and its ultimate authority is confined to the regulation of private and cooperative banks. When the government is both owner and regulator, a conflict of interest is inevitable and a level playing field unlikely.

There are also concerns regarding the vertical division of power, as seen in India's power sector. The implementation of the Electricity Act, 2003 has been severely affected by the interaction and misalignment between the state and central governments.

### 2.4.4. Outdated Legal Framework

Technological advancements have warranted a proportional overhaul of the laws and regulations. But regulators in India still work under archaic laws. The telecom sector is, for example, still governed by the Indian Telegraph Act, 1885, despite radical changes in technology and in the character of the sector.

### 2.4.5 Not aligned to global standards

A case in point here is the Indian aviation Industry. Though the airline Industry has expanded rapidly over the years, but norms and regulations set by the industry regulators do not meet the global safety standards. (according to the audit by the International Civil Aviation Organization (ICAO)

## 2.5. Important Regulatory Bodies

Some important regulatory bodies and their powers and functions are listed below. This is not an exhaustive list and only important bodies have been listed.

### 2.5.1. Reserve Bank of India

**Objectives**

The primary objectives of RBI are to supervise and undertake initiatives for the financial sector consisting of commercial banks, financial institutions and non-banking financial companies (NBFCs).

**Legal Framework**

The Reserve Bank of India comes under the purview of the following Acts:

- Reserve Bank of India Act, 1934
- Public Debt Act, 1944
- Banking Regulation Act, 1949
- Foreign Exchange Management Act, 1999
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
- Credit Information Companies(Regulation) Act, 2005
- Payment and Settlement Systems Act, 2007
- Government Securities Regulations, 2007Securitisation

**Major Functions of RBI**

**Monetary Authority**

- Formulating and implementing the monetary policy.
- Maintaining price stability across all sectors while also keeping the objective of growth.

**Regulatory and Supervisory**

- Set parameters for banks and financial Institutions to ensure liquidity and solvency.
- Protect depositors' / public interest and provide economic and cost-effective banking to the public.

**Foreign Exchange Management**

- Oversees the Foreign Exchange Management Act, 1999.
- Facilitate external trade and development of foreign exchange market in India.

**Currency Issuer**

- Ensures availability of adequate amount of good quality currency notes and coins.

Student Notes:

**Developmental role**

- Promotes and performs promotional functions to support national banking and financial objectives.

**Related Functions**

- Provides banking solutions to the central and the state governments and also acts as their banker.

Chief Banker to all banks: maintains banking accounts of all scheduled banks.

**Monetary Policy Committee (MPC)**

- MPC is formed under RBI which is tasked with framing monetary policy using tools like the repo rate, reverse repo rate, bank rate, cash reserve ratio (CRR)
- The primary objective of monetary policy is to maintain price stability while keeping in mind the objective of growth. Price stability is a necessary precondition to sustainable growth. In this pursuit, in May 2016, RBI Act was amended to provide **a statutory basis** for the implementation of the flexible inflation targeting framework.
- The amended RBI Act also provides for the inflation target to be set by the Government of India, in consultation with the RBI, once in every five years.
- Accordingly, the government fixed 4 per cent Consumer Price Index (CPI) inflation as the target for the period from August 5, 2016 to March 31, 2021 with the upper tolerance limit of 6 per cent and the lower tolerance limit of 2 per cent.

**Composition of MPC**

- There are six members in the MPC. Out of them three are from RBI including Governor ( ex-officio Chairperson), the Deputy Governor and one officer from RBI.
  The other three Members of MPC will be appointed by the Central Government, on the recommendations of a Search-cum-Selection Committee. These three Members of MPC will be experts in the field of economics or banking or finance or monetary policy and are appointed for a period of 4 years and shall not be eligible for re-appointment.

**Process of Monetary Policy formulation**

Under the amended RBI Act, the monetary policy making is as under:

- The MPC is required to meet at least four times in a year.
- The quorum for the meeting of the MPC is four members.
- Each member of the MPC has one vote, and in the event of an equality of votes, the Governor has a second or casting vote.
- The resolution adopted by the MPC is published after conclusion of every meeting of the MPC in accordance with the provisions of Chapter III F of the Reserve Bank of India Act, 1934.

On the 14th day, the minutes of the proceedings of the MPC are published which include:

a) the resolution adopted by the MPC
b) the vote of each member on the resolution, ascribed to such member
c) the statement of each member on the resolution adopted.

Once in every six months, the Reserve Bank is required to publish a document called the Monetary Policy Report to explain:

a) The sources of inflation; and
b) the forecast of inflation for 6-18 months ahead.

Student Notes:

As per the target set by MPC in 2016 the current inflation target given for five years expires in 2021. With MPC's term ending in September, it is time to objectively look at the performance of the framework.

**RBI and Government**

In the recent past, there has been tussle between Union government and RBI on several issues: Some of the them include:

**Section 7 of the Reserve Bank of India Act**

Section 7(1) of the RBI Act says: "The Central Government may from time to time give such directions to the Bank as it may, after consultation with the Governor of the Bank, consider necessary in the public interest." Section 7(2) gives the government powers to entrust the running of the RBI to its board of directors. But, RBI is of the opinion it breaches the autonomy of Central Bank.

**RBI's reserves**

The RBI keeps a large reserve of cash in its money jar, which the government is looking to take for its developmental programme. The government may be of the view that the RBI's large reserve cash, if it is sitting idle, may be put into use. But the RBI is called the "lender of last resort" for a reason -- it may need its reserves to step in if a crisis threatens to bring down the entire financial system.

**Dividends to government**

The RBI holds about US$ 540 billion in reserves, which includes foreign currency assets, gold and sovereign debt receipts. The RBI also gives some of the profit it earns from interest on its bonds to the government. But the government wants more "in public interest".

**Handling of weak public sector banks**

Differences between the government and the RBI have cropped up over various issues, including the central bank's handling of weak public sector banks under the PCA framework and ways to resolve bad loans in the power sector. There are also apparent differences between them over tight liquidity and setting up of an independent payments regulator.

**Prompt corrective action or PCA framework**

The government wants the RBI to exempt power companies and NBFCs under the prompt corrective action or PCA framework, which outlines triggers for declaring a loan account as stressed or non-performing asset (NPA). The RBI uses the PCA framework -- based on three parameters -- as an early-warning tool to check danger signs in the health of lenders. The PCA framework is applicable only to commercial banks.

**Easing loans to small and medium enterprises or SMEs**

The government has asked the central bank, reportedly using the privilege provided under Section 7 of the RBI Act, to ease its hold on the reserves for providing liquidity to the market. It has also sought for some constraints on banks for loans to small and medium enterprises or SMEs to be removed.

## 2.5.2. Securities and Exchange Board of India

**What is SEBI?**

- The Securities and Exchange Board of India (SEBi) is a statutory regulatory body established by the Government of India through the SEBI Act, 1992 to regulate the securities market in India and protect the interests of investors in securities.
- SEBI has the power to regulate and perform functions such as check the books of accounts of stock exchanges and call for periodical returns, approve by-laws of stock exchanges, ,

inspect the books of financial intermediaries such as banks, compel certain companies to get listed on one or more stock exchanges, and handle the registration of brokers.

Student Notes:

**What is the purpose of SEBI?**

- SEBI was established to keep a check on unfair and malpractices and protect the investors from such malpractices. The organization was created to meet the requirements of the following **three groups**:
  - **Issuers:** SEBI works toward providing a marketplace to the investors where they can efficiently and fairly raise their funds.
  - **Intermediaries:** SEBI works towards providing a professional and competitive market to the intermediaries
  - **Investors:** SEBI protects and supplies accurate information to investors.

**Objectives of SEBI**

The fundamental objective of SEBI is to safeguard the interest of all the parties involved in trading. It also regulates the functioning of the stock market. SEBI's objectives are

- To monitor the activities of the stock exchange.
- To safeguard the rights of the investors
- To curb fraudulent practices by maintaining a balance between statutory regulations and self-regulation.
- To define the code of conduct for the brokers, underwriters, and other intermediaries.

**Functions of SEBI**

SEBI carries out the following tasks to meet its objectives: **Protective functions**, **Regulatory** functions, and **developmental functions**. Functions that SEBI performs as a part of its protective functions are:

- It checks price manipulation
- It bans Insider trading
- It prohibits unfair and fraudulent trade practices
- It promotes fair code of conduct in the security market
- It takes efforts to educate the investors regarding ways to evaluate the investment options better

As a part of its regulatory functions, SEBI performs the following role:

- It has designed a code of conduct, rules, and regulations to regulate the brokers, underwriters, and other intermediaries
- SEBI also governs a company's takeover.
- It regulates and registers the workings of share transfer agents, stockbrokers, merchant bankers, trustees, and others who are linked with the stock exchange.
- It regulates and registers the mutual funds as well.
- It conducts audits and inquiries of stock exchanges.

As a part of its developmental functions, SEBI performs the following role:

- It facilitates the training of the intermediaries.
- It aims at promoting activities of the stock exchange by having an adoptable and flexible approach.

**(b) An Appraisal / Assessment of SEBI's Work**

- In the recent past, successful cases of grievance redressal by SEBI have increased.. However, a survey shows that most of the investors were not satisfied with the redressal mechanism and result.

Student Notes:

- Moreover, SEBI is not able to do much about **'fly by night'** or **'sign-board'** companies who vanish after collecting huge money.
- SEBI has been too busy in framing rules and regulation giving rise to complex and cumbersome framework, which leaves scope for **discretionary interpretation.**
- It failed to punish those who caused abnormal fluctuations in the market. Due to this, small investors are losing confidence in investing.
- The **autonomy of SEBI** has been compromised as it, more or less, functions as a branch of the Union Finance Ministry.
- Also Despite statutory powers on par with a civil court, SEBI hasn't made much headway when it comes to enforcement.
- Some violations, especially by the larger players are ignored or go unnoticed due to the regulator's limited access, insufficient resources or government intervention.


**Major achievements of SEBI**

- **Dematerialisation of shares**: After Depositors Act, 1996 was passed, physical certificates that were prone to postal delays, theft and forgery were done away with. This also prevented the issue of fake share certificates floating in the market. It enabled electronic trading enabling investors and traders to work from home.
- **Faster Settlement Process**: Sebi is credited with quickly moving from a T+5 settlement cycle in 2001 to T+2 in 2003, or two days between the trade and shares being credited to the buyers' account, down from five.
- **Stronger Regulations:** To bring efficiency in the working of the secondary market, SEBI has laid down specific rules and regulations for intermediaries in the secondary market. They are required to adhere to specific capital adequacy norms, meet certain eligibility criteria and follow a code of conduct towards investors
- **Fostering Mutual Funds Industry:** The Mutual Fund Industry has grown several folds over the years. Till 1990s, the market was monopolized by the UTI. Currently, the Asset Under Management of the Indian MF Industry has grown from ₹ 6.30 trillion as on June 30, 2010 to ₹25.49 trillion as on June 30, 2020 more than 4 fold increase in a span of 10 years.
- **Internet Trading:** SEBI has allowed internet trading under Order Routing System (ORS) through registered stock brokers on behalf of clients. It has thus facilitated investors to buy and sell shares through the internet on their computers. It is a major advancement in trading shares at stock exchanges in India.
- **Circuit – Breaker System:** This system based on the market volatility of individual stocks. According to this system, if market volatility in a stock crosses a certain limit, the trading in this stock is stopped for a few days so that speculators may not take undue advantage.

**Recent developments related to SEBI**

**Merger of Forward Market Commission (FMC) with SEBI**

- Though, Justice BN Srikrishna-led FSLRC recommended unification of the regulators. But it was the fallout of NSEL that prompted finance ministry to merge FMC with SEBI immediately.

- The merger was aimed at streamlining the regulations and curb wild speculations in the commodities market, while facilitating further growth there. It would increase economies of scope and economies of scale for the government, exchanges, financial firms and stakeholders.
- SEBI has also created a separate Commodity Cell and has set up new departments for regulation of commodities derivatives market.

**Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019**

Some of the proposed measures are highlighted below:

- Simplified and expedited registration process with ease in compliance requirements.
- Phasing out of the broad based eligibility criteria for institutional foreign investors.
- FPIs to be re-categorised into two categories - Category I and II, instead of the present regime of three categories.
- Simplified registration for Multiple Investment Manager structures.
- Central banks that are not the members of Bank for International Settlement to also be eligible for FPI registration.
- Entities established in the International Financial Services Centre in India to be deemed to have met the jurisdiction criteria for FPIs.
- Simplified KYC documentation requirements.
- FPIs permitted to transfer off-market unlisted, suspended or illiquid securities to a domestic or foreign investor.
- Offshore Funds floated by Indian Mutual Funds permitted to invest in India after obtaining registration as FPI.
- The requirements for issuance and subscription of Offshore Derivative Instruments have been rationalised.

**Way Forward**

- **Investor Protection and Market Integrity:** Despite its young age, SEBI has done a good job in kepeing the faith in the sanctity of the markets. However, more work can be done on the difficult task of prevention of flow of confidential information, which is evidenced by price movements around earnings, other corporate announcements and front-running of block transactions.
- **Independence and Accountability:** A quasi-legislative and quasi-judicial entity needs independence to be able to do its job effectively. If selective interference from outside were to lead to selective absolution then the trust in the market functioning would break down. It might be best if the regulators reported twice a year to a Parliamentary committee like Humphrey-Hawkins in the US and in return they got full independence to do their job.
- **Development of Markets**: While India boasts a world-class equity market and increasingly important bank assets, its bond market has not kept up. The government bond market remains illiquid. The corporate bond market, in addition, remains restrictive to participants and largely arbitrage-driven.

## 2.5.3. Insurance Regulatory and Development Authority

**Insurance Regulatory and Development Authority** (IRDA) is an autonomous apex statutory body, which regulates and develops the insurance industry in India.

The powers and functions of the Authority are laid down in the IRDAI Act, 1999 and Insurance Act, 1938. The key objectives of the IRDAI include promotion of competition so as to enhance customer satisfaction through increased consumer choice and fair premiums, while ensuring the financial security of the Insurance market.

The Insurance Act, 1938 is the principal Act governing the Insurance sector in India. It provides the powers to IRDAI to frame regulations which lay down the regulatory framework for

supervision of the entities operating in the sector. Further, there are certain other Acts which govern specific lines of Insurance business and functions such as Marine Insurance Act, 1963 and Public Liability Insurance Act, 1991.

**Entities regulated by IRDAI:**

**a. Life Insurance Companies** - Both public and private sector Companies

**b. General Insurance Companies** - Both public and private sector Companies. Among them, there are some standalone Health Insurance Companies which offer health Insurance policies.

**c. Re-Insurance Companies**

**d. Agency Channel**

**e. Intermediaries** which include the following:

- Corporate Agents
- Brokers
- Third Party Administrators
- Surveyors and Loss Assessors.

**(a) Powers and functions**

- Issuing a certificate of registration to the applicant and suspend/ cancel such registration;
- Protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
- Specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
- Promoting efficiency in the conduct of insurance business;
- Calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organizations connected with the insurance business;
- Control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee;
- Regulating investment of funds by insurance companies;
- Adjudication of disputes between insurers and intermediaries or insurance intermediaries.

**Major Functions of Insurance Regulatory and Development Authority of India**


**Source:** Compiled from IRDA Act, 2010.

**Scheme of Insurance Ombudsman:**

- With an objective of providing a forum for resolving disputes and complaints from the aggrieved insured public against Insurance Companies, the Government of India brought "Insurance Ombudsman Rules, 2017".
- These Rules aim at resolving complaints relating to the settlement of disputes with Insurance Companies and their agents and intermediaries in a cost effective, efficient and impartial manner.
- These Rules apply to all the Insurance Companies operating in General Insurance business and Life Insurance business, in Public and Private Sector.

To implement the above Rules, the **Institution of Insurance Ombudsman** has been established and is functioning since 1999. The Ombudsman functions within a set geographical jurisdiction and can entertain disputes relating to:

a) Delay in settlement of claims
b) Any partial or total repudiation of claims by an insurer.
c) Any dispute over premium paid or payable in terms of the policy
d) Misrepresentation of policy terms and conditions at any time in the policy document or policy contract
e) Any dispute on the legal construction of the policies in so far as such disputes relate to claims.
f) Policy servicing related grievances against insurers and their agents and intermediaries
g) Issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer.
h) Non-issue of any insurance policy to customers after receipt of premium in life insurance and general insurance including health insurance.
i) Any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses(a) to (f).

The Insurance Ombudsman is provided with a Secretarial Staff by the IRDAI as may be determined by the Executive Council of Insurers. The total expenses on running the Institution are borne by the Life Insurance Council AND THE General Insurance Council in such proportion as the Executive Council of Insurers may, by a general or special order specify, from time to time.



## 2.5.4. Competition Commission of India

**Competition Commission of India** is a body of the Government of India responsible for enforcing **the Competition Act, 2002** throughout India and to prevent activities that have an adverse effect on competition in India. The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, follows the philosophy of modern competition laws. The Act prohibits

- anti-competitive agreements
- abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and Merger and acquisition), which causes or are likely to cause an appreciable adverse effect on competition within India.

It is the duty of the Commission to:

- eliminate practices having adverse effect on competition,
- promote and sustain competition,
- protect the interests of consumers
- ensure freedom of trade in the markets of India.

Student Notes:

The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

**(a) Function and Responsibilities**

- Make the markets work for the benefit and welfare of consumers.
- Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy.
- Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
- Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law.
- Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

**National Company Law Tribunal**

The tribunal hears appeals against the direction, decision or order passed by CCI. Earlier such appeals were heard by Competition Appellate Tribunal. But the Finance Act, 2017 merged Competition Appellate Tribunal (COMPAT) with the National Company Law Appellate Tribunal (NCLAT).

## 2.5.5. Telecom Regulatory Authority of India (TRAI)

The Telecom Regulatory Authority of India (TRAI) is the independent regulator of the telecommunications business in India.

**Powers and Functions**

- Recommend the need and timing for introduction of new service provider;
- Recommend the terms and conditions of license to a service provider;
- Ensure technical compatibility and effective inter-connection between different service providers;
- Ensure compliance of terms and conditions of licence;
- Facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;
- Protect the interest of the consumers of telecommunication service;
- Inspect the equipment used in the network and recommend the type of equipment to be used by the service providers;
- Settle disputes between service providers.

**Net Neutrality in India**

**What is Net Neutrality?**

The principle of net neutrality states that internet users should be able to access all content on the internet without being discriminated by Telecom Service Providers(TSPs). This means that

(i) all websites or applications should be treated equally by TSPs,
(ii) all applications should be allowed to be accessed at the same internet speed,
(iii) all applications should be accessible for the same cost

**Net Neutrality regulations in India:**

In 2018, India adopted one of the strongest net neutrality regulations of the world. This includes:

- Prohibiting Internet service providers (ISPs) from engaging in “any form of discrimination or interference” in the treatment of online content.

- ISPs will also not be able to engage in practices such as "blocking, degrading, slowing down or granting preferential speeds or treatment to any content".
- Restrictions on service providers from entering into agreements which lead to discriminatory treatment of content on the Internet.

However, critical services like remote surgery and autonomous cars are out of the purview of this framework. The new adoption of new regulations in India means that zero-rating packages like says a Facebook Free Basics, where certain content is provided for free like access to Facebook, also remain illegal in India.

TRAI has notes that "the use of Internet should be facilitated in such a manner that it advances the free speech rights of citizens, by ensuring plurality and diversity of views, opinions, and ideas".

**Telecom Disputes Settlement Appellate Tribunal (TDSAT)**

- Under TRAI Act, 1997 ( amended in 2000), TDSAT was set up to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector.
- In January 2004, the Government included broadcasting and cable services also within the purview of TRAI Act.
- Under Finance Act 2017, the jurisdiction of TDSAT stands extended to matters that lay before the Cyber Appellate Tribunal and also the Airport Economic Regulatory Authority Appellate Tribunal.

It can adjudicate upon any dispute between:

1. Licensor (Central Government) and a licensee.
2. Two or more service providers.
3. Between a service provider and a group of consumers.

## 2.5.6. National Pharmaceuticals Pricing Authority National Pharmaceutical Pricing Authority

- The National Pharmaceutical Pricing Authority (established in 1997) is an attached office Department of Pharmaceuticals
- It has been entrusted with the following function
  - To implement and enforce the provisions of the Drugs Price Control Order (DPCO), 1995/2013 in accordance with the powers delegated to it.
  - To undertake and/or sponsor relevant studies in respect of pricing of drugs/formulations.
  - To monitor the availability of drugs, identify shortages, if any, and to take remedial steps.
  - To collect/maintain data on production, exports and imports, market share of individual companies, profitability of companies etc. for bulk drugs and formulations.
  - To deal with all legal matters arising out of the decisions of the Authority.
  - To render advice to the Central Government on changes/revisions in the drug policy.
  - To render assistance to the Central Government in the parliamentary matters relating to the drug pricing.

## 2.5.7. Insolvency and Bankruptcy Board of India

- The Insolvency and Bankruptcy Board of India (IBBI) is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5 May 2016.It covers Individuals, Companies, Limited Liability Partnerships and Partnership firms.

Student Notes:

- The new code will speed up the resolution process for stressed assets in the country. It attempts to simplify the process of insolvency and bankruptcy proceedings.It handles the cases using two tribunals like NCLT(National company law tribunal) and Debt recovery tribunal.

## 2.5.8. Atomic Energy Regulatory Board

- The Atomic Energy Regulatory Board was constituted in 1983 by the President of India by exercising the powers conferred by Section 27 of the Atomic Energy Act, 1962 to carry out certain regulatory and safety functions under the Act.

**Functions of AERB**

- Develop safety policies in nuclear, radiation and industrial safety areas for facilities under its purview.
- Develop Safety Codes, Guides and Standards for siting, design, construction, commissioning, operation and decommissioning of different types of nuclear and radiation facilities.
- Grant consents for siting, construction, commissioning, operation and decommissioning, after an appropriate safety review and assessment, for establishment of nuclear and radiation facilities.
- Ensure compliance with the regulatory requirements prescribed by AERB during all stages of consenting through a system of review and assessment, regulatory inspection and enforcement.
- Prescribe the acceptance limits of radiation exposure to occupational workers and members of the public and acceptable limits of environmental releases of radioactive substances.
- Review the emergency preparedness plans for nuclear and radiation facilities and during transport of large radioactive sources, irradiated fuel and fissile material.
- Take such steps as necessary to keep the public informed on major issues of radiological safety significance.
- Maintain liaison with statutory bodies in the country as well as abroad regarding safety matters.
- Promote research and development efforts in the areas of safety.
- Review the nuclear and industrial safety aspects in nuclear facilities under its purview.
- Review the safety related nuclear security aspects in nuclear facilities under its purview.
- Notifying to the public, the 'nuclear incident', occurring in the nuclear installations in India, as mandated by the Civil Liability for Nuclear Damage Act, 2010.

## 2.5.9. Central Electricity Regulatory Board

- It is a statutory body functioning with quasi-judicial status under sec – 76 of the Electricity Act 2003

Under the Electricity Act, 2003 the Commission discharges the following functions:-

**Mandatory Functions:**

- to regulate the tariff of generating companies owned or controlled by the Central Government;
- to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- to regulate the inter-State transmission of electricity;
- to determine tariff for inter-State transmission of electricity;

- to issue licences to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
- Improve access to information for all stakeholders.
- to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

**Advisory Functions:**

- formulation of National Electricity Policy and Tariff Policy;
- promotion of competition, efficiency and economy in the activities of the electricity industry;
- promotion of investment in electricity industry;
- any other matter referred to the Central Commission by the Central Government.

### 2.5.10. Food Safety and Standard Authority of India

- The Food Safety and Standards Authority of India is an autonomous body established under the Ministry of Health & Family Welfare, Government of India. The FSSAI has been established under the Food Safety and Standards Act, 2006

**Function:**

- Framing of regulations to lay down the Standards and guidelines in relation to articles of food.
- Laying down mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management system for food businesses.
- Laying down procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories.
- To provide scientific advice and technical support to Central Government and State Governments in the matters of framing the policy and rules in of food safety and nutrition.
- Collect and collate data regarding food consumption, incidence and prevalence of biological risk, contaminants in food, residues of various, contaminants in foods products, identification of emerging risks and introduction of rapid alert system.
- Creating an information network across the country so that the public, consumers, Panchayats etc receive rapid, reliable and objective information about food safety and issues of concern.
- Provide training programmes for persons who are involved or intend to get involved in food businesses.
- Contribute to the development of international technical standards for food, sanitary and phyto-sanitary standards.
- Promote general awareness about food safety and food standards.

## 2.6. Interaction between Policy Makers and Regulators and its Current Status

- The role of **regulator** is to achieve **predetermined policy objectives** and maintain competitive conditions in the market by ensuring that all the stakeholders follows the basic rules of the game.
- On the other hand, the role of **policy makers** is to provide long-term objectives and vision to the development of a country. Policy makers issue policy guidelines, which set out national priorities for sustainable development of sectors and measures for servicing disadvantaged sections of consumers.
- However, while in theory policy makers and regulators have distinctly different roles, in reality the regulator and policy makers **share common responsibilities** – ensuring orderly and sustained growth of the sector, attracting private investment, enhancing consumer protection and so on.

Student Notes:

- Given that regulatory bodies are often created to achieve predetermined policy objectives, an absolute divorce between the two is not desirable and proper interaction between them becomes very important.
- At the same time, it is equally important to ensure that the regulator's domain is not encroached upon by the government in the name of achieving policy objectives. This calls for creating a clear **distinction between policy and regulation,** which is often missing in India.
- India lacks an overarching policy that specify the sector wise roles and responsibilities of the regulators. As a result, when the need arises, the concerned ministries draft a Bill as per its convenience to change regulatory mandates.
- The results in regulators that merely work as an extension of the Ministry. This impinges on the independence of the regulators and conflicting responsibilities.
- Lack of interaction of the regulator with the policy maker resulting in confusion regarding respective domains coupled with inadequate empowerment has made regulators ineffective.
- To cite a case, the Department of Telecommunications (DoT) announced certain proposals (on Access Deficit Charges, one India call rate and inter-connection usage charges) to restructure the tariff regime in telecommunications, considering these to be policy issues. However, the sector regulator, TRAI, objected to these proposals.
- The manner of **consultations between the RBI and the Ministry of Finance** is a good model. he RBI holds consultations with the latter on a regular basis, at formal and informal levels, without compromising its autonomy.

## 2.7. Participation of Stakeholders in the Regulatory Process

- For the orderly growth of a sector, a regular consultation among the industry, the government, the regulators and other stakeholders such as consumers is essential.
- A mechanism for periodic meetings involving these can help the regulator understand stakeholder **problems and concerns**.
- Such forums also enable the regulator to **explain the rationale** of various regulatory decisions. However, not much thought has been given by most regulators to ensuring a representative consultative process.
- There is another very important reason for having a representative regulatory process. In India, regulatory reforms, which have accompanied economic reforms, have been marked by **lack of consumer participation**.
- Consumers, being largely **unorganised,** have been largely bypassed by the reform process (except in a few cases where consumer concerns have been highlighted by the media), which has been influenced by a strong business lobby.
- In India, a few sector regulators such as Central Electricity Regulatory Commission (CERC) and TRAI have created participation mechanisms by **constituting Advisory Committees with representation from consumers and other stakeholders**. The participation of stakeholders, particularly consumers, can be made very effective through well designed and implemented public meetings along with distribution of accessible literature.
- In addition to lack of proper consultation, there is **lack of coordination** between regulators and government departments, responsible for formulating and implementing investment related policies.
- Clear information may empower stakeholders and can inform the decision-making process. However, such information should be taken into account by the regulator while making decisions.
- This can be ensured through accurate documentation of consultations and recourse to effective legal action against the regulator to redress bad decisions.

Student Notes:

## 2.8. Competition Authority vs. Sector Regulators

To strengthen the forces of competition in the market, both competition law and policy (to be enforced by Competition Commission) and market regulatory laws (to be enforced by the regulator) are required. These complement each other. The difference between the two forms of intervention in the market process lies in their nature. A regulator tells the firms what these have to do. A regulator examines issues of technology, cost and process in the industry regulated by it. Competition Authority, on the contrary, tells the firms what they should not do i.e. price fixing, predatory pricing, cartels, discriminatory treatment etc. **The role of the Competition Authority is that of an adjudicator, which acts against anti-competitive practices.** The separation between the ex-ante functions (the regulator's domain) and adjudicatory functions is not perfect and therefore characterized by confusion and disputes in regard to turf.

Further, a sector regulator has a narrow focus, whereas the competition authority has an economy wide remit. The differences in domain also result in differences in views and create tensions between the competition authority and the sector regulator. Not only is there a need to encourage cooperation between the competition authority and sector regulators, there is a need to review the formally legislated working arrangements between the sector regulators and the competition authority to ensure coordination and avoid conflicts of jurisdiction and needless turf battles.

## 2.9. Regulatory Authorities: Consumer Redress

A redressal mechanism is an essential component of the competition legislation of any country. In India too, the MRTPA (Monopolies and Restrictive Trade Practices Act) has inbuilt grievance redressal provisions. However, over the years, because of factors like inadequate budgetary allocation and lack of autonomy the MRTPC (the predecessor of CCI governed by MRTPA) has not been very effective in providing redress and consequently pending cases have kept piling up. The CCI is expected to serve consumers better in terms of redress. In addition to the above, some sector regulators such as telecom, electricity and insurance also have redressal mechanisms: generic complaint redress by TRAI, telephone *adalats* (courts), grievance redressal mechanisms of State Electricity Commissions, the consumer grievance redress cell of the Insurance Regulatory Development Authority (IRDA), insurance ombudsman, banking ombudsman etc.

## 2.10. Regulatory Coherence in India

A robust overarching regulatory philosophy/framework is needed for coordinated development of the economy and its constituent sectors However, Political constraints and government preferences seem to have dominated the reform agenda.

More than twenty years of independent regulation in India have been characterized by the government's inability to create and follow a cogent and coherent approach to independent regulation.

At the state level, **Bureau of Industrial Promotion (BIP)** works as a nodal agency to provide regulatory coherence, i.e. it is the nodal agency for expediting clearance of private sector projects. Being a nodal agency, it interacts with all the regulatory bodies at the state level and tries to ensure coherence among them. But in practice it has not been very effective.

Overall regulatory coherence may be improved by making the following institutional arrangements:

- Sector specific apex bodies need to be established at the Centre. These bodies should be complemented by a well-endowed economy wide regulatory and competition authority in each state.

- An appellate tribunal for all appeals against sector regulators needs to be established. If the workload increases in any one sector, these can be hived off.
- Interface between regulators and the Competition Commission needs to be formalized in legal terms so that there is no conflict between them and impugned parties do not take advantage of the same.
- Multi-stakeholder participation should be the way forward, which can effectively take care of several concerns with regard to regulatory efficacy and accountability. Consumer organizations need to be strengthened with resources so that they can be effective advocates.

## 3. Fiscal Sector Legislative Reforms Commission (FSLRC)

**Background:**

The Financial Sector Legislative Reforms Commission (FSLRC), constituted by the Ministry of Finance in March 2011, was asked to comprehensively review and redraw the legislations governing India's financial system. A former judge of the Supreme Court, Shri B.N. Srikrishna, chaired the Commission. According to FSLRC, the current regulatory architecture is fragmented and is fraught with regulatory gaps, overlaps, inconsistencies and arbitrage. To address this, the FSLRC submitted its report to the Ministry of Finance on March 22, 2013, containing an analysis of the current regulatory architecture and a draft Indian Financial Code to replace bulk of the existing financial laws.

**Analysis by FSLRC**

With respect to regulators, FSLRC stresses the need for both independence and accountability. The draft Indian Financial Code adopts ownership neutrality, whereby the regulatory and supervisory treatment of a financial firm is the same, whether it is a private or public company. The draft Code seeks to move away from the current sector-wise regulation to a system, where the RBI regulates the banking and payments system and a **Unified Financial Agency** subsumes existing regulators like SEBI, IRDA, PFRDA and FMC, to regulate the rest of the financial markets.

- Regulators will have an empowered board with a precise selection-cum-search process for appointment of members.
- The members of a regulatory board can be divided into four categories: the chairperson, executive members, non-executive members and Government nominees. In addition, there is a general framework for establishing advisory councils to support the board.
- All regulatory agencies will be funded completely by fees charged to the financial system.
- Finally, the FSLRC envisages a unified Financial Sector Appellate Tribunal (FSAT), subsuming the existing Securities Appellate Tribunal (SAT), to hear all appeals in finance. The table below provides an outline of the FSLRC's proposed regulatory architecture.

| Present | Proposed | Functions |
|---|---|---|
| RBI | RBI | Monetary policy; regulation and supervision of banks; regulation and supervision of payments system. |
| SEBI<br>FMC<br>IRDA<br>PFRDA | Unified Financial Agency (UFA) | Regulation and supervision of all non-bank and payments related markets. |
| Securities Appellate Tribunal (SAT) | Financial Sector Appellate Tribunal (FSAT) | Hear appeals against RBI, the UFA and FRA. |
| Deposit Insurance and Credit Guarantee Corporation (DICGC) | Resolution Corporation | Resolution work across the entire financial system. |

| | | |
|---|---|---|
| Financial Stability Development Council (FSDC) | FSDC | Statutory agency for systemic risk and development. |
| New entities | Debt Management Agency | An independent debt management agency. |
| | Financial Redressal Agency (FRA) | Consumer Complaints |

## 3.1. Comments Relating to Independence of Regulatory Bodies

There are four arguments in favor of independence:

- The regulator is able to set up a specialized workforce that has superior technical knowledge.
- This is assisted by modified human resource and other processes, when compared with the functioning of mainstream government departments.
- With such knowledge, and close observation of the industry, an independent regulator is able to move rapidly in modifying regulations, thus giving malleability to laws.
- The presence of independent regulators improves legal certainty.

## 3.2. Recommendation with Regards to Accountability

- **Avoid conflicting objectives:** This problem is heightened when there are conflicts of interest. It is, hence, desirable to structure regulatory bodies with clarity of purpose and the absence of conflicting objectives.
- **A well structured rule-making process:** To ensure that the benefits of the regulations out weigh the costs, for every proposed regulation there should be:
  - A compact statement of the objects and reasons of the subordinate legislation;
  - A description of the market outcome, which is an inefficient one ("a market failure" in Economics parlance);
  - Demonstration that solving this market failure is within the objectives of the regulator;
  - Clear and precise exposition of the proposed intervention;
  - Demonstration that the proposed intervention is within the powers of the regulator;
  - Demonstration that the proposed intervention would address the identified market failure;
  - Demonstration that the costs to society through complying with the intervention are outweighed by the gains to society from addressing the market failure.
- **The Rule of Law:** A crucial element of accountability and independence of regulators is three core principles of the rule of law:
  - Laws should be known before an action takes place.
  - Laws should be applied uniformly across similar situations.
  - Every application of law should provide the private party with the information for application of the law, the reasoning by which the conclusion was arrived at, and a mechanism for appeal.
- **Reporting:** Once the objectives of an agency have been defined, it is meaningful to ask the agency to report – e.g. in the Annual Report – the extent to which it has achieved these objectives. Each agency should report on how it has fared on pursuing its desired outcomes, and at what cost.

# 4. Recommendations of 2nd ARC

In the 12th report titled, "Citizen Centric Administration", the 2nd ARC noted:

i. **Regulation only where necessary:** It has been argued that India is an over-regulated country, but many of the regulations are not implemented in right earnest. The reasons include –

- the sheer number of such regulations
- outdated regulations that continue to remain on the statute book
- the tendency to over-legislate, as a result the legislation becomes an end in itself; and
- the complex procedural formalities stipulated in these regulations.

It is, therefore, necessary to have a detailed scrutiny of all laws and regulations – Union, State and Local – followed by repeal of unnecessary regulations, updating outdated ones and simplification of the procedures so that compliance becomes easy.

**ii. Regulation to be effective:**

- One of the consequences of a large number of regulations has been the poor standards of their enforcement. Social legislations are a classic example of this.
- Slack enforcement leads to corrupt and unethical practices and the objectives of the legislations are also not met.
- Another reason for the poor enforcement of some regulations is the lack of attention to building capacity in the agencies entrusted with enforcement of such regulations. For example, **the capacity and expertise of the Motor Vehicles Department has not kept pace with the explosive growth of vehicles on the road.**
- The Commission recommended that in order to ensure that the regulatory measures do not degenerate into corrupt practices it is necessary to have an effective supervision of the agencies, which carry out these regulatory functions. This supervision should primarily be carried out internally by the supervisory officers and should be supplemented by a **periodic assessment by an independent agency**.

**iii. Self-regulation is the best form of regulation:**

- In the field of taxation, there has been a shift from departmental assessment to greater reliance on self-assessment. This holds good for Union taxes such as Income tax, State taxes like the VAT and local taxes like the property taxes.
- This principle of **voluntary compliance** can be extended to other fields like **building bye-laws, public health regulations** etc.
- To start with, this principle can straightaway be applied to cases where permission/license is required to be renewed periodically.

**iv. Regulatory procedures to be simple, transparent and citizen friendly:**

- There should be systemic reforms so as to minimize the scope for corruption. These include simplifying transactions, using IT, promoting transparency, reducing discretion, effective supervision etc.

**v. Involving citizens'** groups, professional organizations in the regulation activities:

- **T**he burden of the enforcement machinery can be shared by associating citizens' groups as well as professional organizations to certify compliance and report violations of the regulations to the concerned authorities.
- Recently, in Delhi the procedure for grant of building permissions has been simplified and registered architects have been authorized to certify the building plans of houses. This has helped in reducing the work of the civic agencies and reduced corruption as well. This principle could be also extended to other spheres of activities.

In the 13th report of 2nd ARC, following steps have been proposed to improve the working of independent regulators:

a. Setting up of a Regulator should be preceded by a detailed review to decide whether the policy regime in the concerned sector is such that the Regulator would be better placed to deliver the policy objectives of the department concerned.
b. In addition to the statutory framework, which underpins the interface between the government and the regulator, each Ministry/Department should evolve a 'Management

Statement' outlining the objectives and roles of each regulator and the guidelines governing their interaction with the government. This would guide both the government department and the Regulator.

c. There is need for **greater uniformity in the terms of appointment, tenure and removal** of various regulatory authorities considering these have been set up with broadly similar objectives and functions and should enjoy the same degree of autonomy. The initial process of appointment of Chairman and Board Members should be transparent, credible and fair.
d. The appointment of the Chairman and Board Members for all such regulatory authorities should be done by the Union/State Governments after an initial screening and recommendation of a panel of names by a Selection Committee. The composition of the Selection Committee should be defined in the respective Acts and may broadly follow the pattern laid down in the Electricity Regulatory Commission Act.
e. The tenure of the Chairman and Board Members could also be made uniform, preferably three years or 65 years of age, whichever is earlier.
f. Legal provisions regarding removal of Board Members should be made uniform, while at the same time ensuring sufficient safeguards against arbitrary removal. This could be achieved by allowing removal by the Union Government only on fulfillment of certain conditions as laid down in Section 6 of the IRDA Act with the additional safeguard that a removal for abuse of power shall be preceded by an enquiry and consultation with UPSC.
g. **Parliamentary oversight** of regulators should be ensured through the respective Departmentally Related Standing Parliamentary Committees.
h. A body of reputed outside experts should propose **guidelines for periodic evaluation of the independent Regulators**. Based on these guidelines, government in consultation with respective Departmentally related Standing Committee of the Parliament should fix the principles on which the Regulators should be evaluated. The annual reports of the regulators should include a report on their performance in the context of these principles. This report should be referred to the respective Parliamentary Committee for discussion.
i. Each statute creating a Regulator should include a provision for an **impact assessment** periodically by an external agency. Once the objective of creating a level playing field is achieved, the intervention of the Regulators could be reduced in a phased manner ultimately leading either to their abolition or to convergence with other Regulators.
j. There is need to achieve greater uniformity in the structure of Regulators.
k. The existing coordination mechanisms such as the Committee of Secretaries/Cabinet Committees, assisted by Secretary (Coordination) could easily ensure that the institutional framework for all Regulators follow, by and large, a uniform pattern.

The Report of the **Sixth Central Pay Commission (Government of India, 2008)** contains a list of thirty-six 'regulatory bodies' with the governing Acts of Parliament under which they are set up and the Ministries to which they belong.

**The Second Administrative Reforms Commission (ARC-II)** Report gives a shorter list of only major professional self-regulating authorities then operating in India, each formed under respective Acts of Parliament (year of enactment within brackets):

(a) Bar Council of India (1961),
(b) Previously, Medical Council of India (1956) presently National Testing Agency
(c) Institute of Chartered Accountants of India (1949),
(d) Institute of Cost and Works Accountants of India (1959),
(e) Institute of Company Secretaries of India (1980) and
(f) Council of Architecture (1972) (Government of India, 2008b, p. 113).

The ARC-II has recommended to make their councils as well as committees more inclusive by supplementing the professional members with members from the civil society at large to be nominated by the government in consultation with the concerned regulatory agency.

Student Notes:

Student Notes:

# 5. Single Super-Regulator vs. Multiple Regulators

## 5.1. Arguments in favor of Unified Supervision

- Fragmented supervision may raise concerns about the ability of the financial sector supervisors to form an overall risk assessment of the institution, operating domestically and often internationally, on a consolidated basis, as well as their ability to ensure that supervision is seamless and free of gaps. There are also group-wide risks that may not be adequately addressed by specialist regulators.
- As the lines of demarcation between products and institutions have blurred, different regulators could set different regulations for the same activity for different players. Unified supervision could thus help achieve competitive neutrality. (IRDA and SEBI collision on ULIPs)
- The unified approach allows for the development of regulatory arrangements that are more flexible. Whereas the effectiveness of a system of separate agencies can be impeded by 'turf wars' or a desire to 'pass the buck' or where respective enabling statutes leave doubts about their jurisdiction, these problems can be more easily limited and controlled in a unified organization. (example NSEL crisis)
- Unified supervision could generate economies of scale as a larger organization permits finer specialization of labor and a more intensive utilization of inputs and unification may permit cost savings on the basis of shared infrastructure, administration, and support systems. Unification may also permit the acquisition of information technologies, which become cost-effective only beyond a certain scale of operations and can avoid wasteful duplication of research and information-gathering efforts.
- A final argument in favor of unification is that it improves the accountability of regulation. Under a system of multiple regulatory agencies, it may be more difficult to hold regulators to account for their performance against their statutory objectives, for the costs of regulation, for their disciplinary policies, and for regulatory failures.

## 5.2. Arguments against Unified Regulation

A number of important countries continue to persist with multiple regulators, though regulatory co-ordination has been increasing everywhere. The US, for example, has adopted a model, which blends functional regulation with umbrella supervision. For over 60 years, regulation of financial institutions in the US was divided among several different agencies. The Gramm-Leach-Bliley Act, enacted in November 1999, adheres to the **principle of functional regulation** whereby the primary regulators of insurance companies, investment companies and banks continue to be specialist regulators as earlier. However, the Federal Reserve Board is now entrusted with the role of the umbrella supervisor to regulate the financial holding companies subject to some limitations, which are collectively referred to as *Fed-Lite* provisions.

The persistence of separate regulators in most economies reflects the fact that there are equally compelling arguments against unified supervision. This includes:

- Given the diversity of objectives – ranging from guarding against systemic risk to protecting the individual consumer from fraud – it is possible that a single regulator might not have a clear focus on the objectives and rationale of regulation and might not be able to adequately differentiate between different types of institutions.
- A single unified regulator may also suffer from some diseconomies of scale. One source of inefficiency could arise because a unified agency is effectively a regulatory monopoly, which may give rise to the type of inefficiencies usually associated with monopolies. A particular concern about a monopoly regulator is that its functions could be more rigid and bureaucratic than these separate specialized agencies. It is argued that another source of diseconomies of scale is the tendency for unified agencies to be assigned an ever-increasing range of functions; sometimes called 'Christmas-tree effect'.

Student Notes:

- Some critics argue that the synergy gains from unification will not be very large, i.e. economies of scope are likely to be much less significant than economies of scale. The cultures, focus, and skills of the various supervisors vary markedly. For example, it has been argued that the sources of risks at banks are on the asset side, while most of the risks at insurance companies are on the liability side.
- The public could tend to assume that all creditors of institutions supervised by a given supervisor will receive equal protection, generating 'moral hazard'. Hence depositors and perhaps other creditors of all other financial institutions supervised by the same regulatory authority may expect to be treated in an equivalent manner.
- Another serious disadvantage of a decision to create a unified supervisory agency can be the unpredictability of the change process itself. The first risk is that opening the issue for discussion will set in place a chain of events that will lead to the creation of a unified agency, whether or not it is appropriate to create. The second risk is legislation in that the creation of a unified agency will generally require new legislation, but this creates the possibility that the process will be exploited by special interests. The third risk is a possible reduction in regulating capacity through the loss of key personnel. Another risk is that the management process itself will go off track.

## 6. Future Course of Action

The government is planning to bring following reforms in the institutional framework of regulatory commissions, their role, functions and relationship with the executive and legislature, their interface with markets and people, and processes and methods of regulation including rule making and dispute resolution:

- **Empowering** all regulators to make and enforce regulations, issue licenses and impose punitive measures including suspension or cancellation of licenses; and set performance standards and determine tariffs.
- Ensuring **independence** of regulatory bodies: the government is planning to make the selection process transparent and shorn of interference.
- Fixing the tenure of members: The government is considering stipulation of a uniform tenure of four years for members of all regulatory bodies. Further, to attract **quality personnel** and enrich the functioning of the regulatory body, remuneration would be enhanced and a provision for having a non-governmental representative, such as an academician or a lawyer, as a member would be included.
- **Reducing the overlap** of jurisdiction between the CCI and regulators; the government is planning to define a workable division of labour and increase the interface between the two, which at present is minimal.
- **Introducing multi-sector regulators**: The government is contemplating the establishment of multi-sector regulators for (i) communications; (ii) transport; and (iii) electricity, fuels and gas. This would eliminate proliferation of regulatory commissions, help build capacity and expertise, promote consistency of approach and save on costs. At the State level, a single regulatory commission for all infrastructure sectors may be more productive and cost effective. States should be encouraged to consider this approach and the scope of their existing electricity regulators could be extended to other sectors.
- **Constituting appellate tribunals** on the lines of telecom and electricity appellate tribunals. Another approach under consideration is the constitution of a single appellate tribunal with regional benches for all regulatory commissions.

Student Notes:

## 7. UPSC Previous Years Questions

- "The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain. (2019)
- "For achieving the desired objectives, it is necessary to ensure that the regulatory institutions remain independent and autonomous." Discuss in the light of the experiences in recent past. (2015)
- The setting up of a Rail Tariff Authority to regulate fares will subject the cash strapped Indian Railways to demand subsidy for obligation to operate non-profitable routes and services. Taking into account the experience in the power sector, discuss if the proposed reform is expected to benefit the consumers, the Indian Railways or the private container operators. (2014)
- The product diversification of financial institutions and insurance companies, resulting in overlapping of products and services strengthens the case for the merger of the two regulatory agencies, namely SEBI and IRDA. Justify. (2013)

## 8. Vision IAS Test Series Questions

***1. "To ensure that banks give adequate attention to Financial Inclusion, they must view it as a viable business proposition rather than a regulatory obligation". In this context, discuss the challenges faced in Financial Inclusion in India with special reference to Nachiket Mor Committee recommendations.***

***Approach:***

Firstly, define financial inclusion in brief and then discuss the challenges to financial inclusion in India. Finally bring out the recommendation of Nachiket Mor Committee regarding these challenges.

***Answer:***

Financial Inclusion may be defined as the process of ensuring access to financial services and credit facilities when and where needed by vulnerable groups such as weaker sections and low income groups at affordable cost.

Role of banks is central to the idea of Financial Inclusion. Banks must also see that achieving financial inclusion is necessary for its long-term survival. For example, the banks need to tap into the untapped resources at the village level, which could be used for mobilisation. But as pointed by the deputy Governor of RBI, banks cannot do financial inclusion as "charity" but only as a viable business model and for long- term survival achieving this is a must.

**Challenges faced and Nachiket Mor Panel Report recommendations**

To address the issue of financial inclusion, the Mor panel proposed that every Indian resident above the age of 18, could have a full fledged bank account, automatically opened at the time of issuing the Aadhaar card.

Another challenge is the last mile problem i.e. to find viable last-mile solutions that extend financial access into the hinterland. The panel does not see traditional banks as the answer: since they give loans, a reckless expansion in number of banks can threaten the banking system. Therefore, the committee recommends the creation of a new class of banks that don't do any lending activities. It calls them 'payment banks', with a minimum entry capital of Rs 50 crore—one-tenth the Rs 500 crore norm for full-service banks.

Student Notes:

These could be Banking Correspondent companies. These could be telecom companies offering remittance services via mobile. There are enough kirana stores, enough mobile recharge points that can act as BCs.

The other major challenge as the 2010 microfinance crisis in Andhra Pradesh showed, that companies in the financial inclusion space work with vulnerable segments of the population, and irresponsible lending can push them to the edge and result in defaults.

Accordingly, the committee emphasises "suitability" and "informed consent". It wants all financial institutions to have a "suitability policy" approved by its board. Before pitching a product to a poor customer, companies need to "carry out a limited due diligence of the customer and put in place a process to assess the appropriateness of any product offered to a customer."

Further, another major challenge will be the protection of vulnerable customers. By themselves, 'suitability' and 'informed consent' will not protect vulnerable consumers, the question being how does one ensure compliance?

The committee places some of the onus for this on the companies themselves, asking them to frame relevant internal rules and processes to ensure adherence to suitability. The committee also recommends the finance ministry create "a unified agency for customer grievance redress across all financial products and services". This, it says, should have a presence in every district, and customers should be able to register complaints over the phone, Internet and through the financial services provider directly.

***2. The Press Council of India is a statutory, quasi-judicial body which acts as a watchdog of the press. But it has not been able to fulfil its mandate. Discuss.***

***Approach:***

One needs to first explain the need for a body like PCI in brief. Then explain what the current mandate of PCI is. Finally, elaborate on various issues related to media and functioning of PCI.

***Answer:***

The present Press Council Act need to be fine-tuned, restructured and reformed to make it a comprehensive institution to achieve media accountability besides performing the prescribed functions.

**Requirement of PCI:**

The Press is free as per Article 19(1)(a) of the Constitution, but its responsibility cannot be guaranteed by Constitution. The accountability of the press depends upon various dynamics and the responsive character of the members of profession and that of the organizations like Press Council of India and Journalists' associations. If the press is supposed to be a watchdog of the society, the Press Council of India is expected to be the watchdog of the press. It is a forum where people can send the complaints against irresponsible functioning of media and press persons also can complain about the threats to their functional independence.

As the Government's control over the press would amount to deprivation of freedom of press, a peer group of professionals is ideal to deal with professional aspects of journalism. Thus PCI constituting journalist seeks to self regulate in order to seek highest standards of professional integrity and professionalism in the field of journalism. Thus broadly the mandate of PCI is to first, secure independence of the press and second, making the press accountable.

Student Notes:

However over the years, working of PCI has let much to desire. Some of the lacunae in the functioning of PCI have been:

- There is a need to give it more powers, teeth to enforce its directions and orders to make it almost like a court of law imposing punishments and penalties. Though it is a court for some purposes it has no power of contempt to secure enforcement of its orders, which is a reasonable demand.
- Press Council tends to consider itself as complaints councils and insists on mediating and not on adjudicating against the Media, if they can avoid. On a holistic perspective, the role of Council is not just to satisfy a few individuals or groups who have been hurt by the media; not just to avoid law suits; and not just to discourage the State or limiting the freedom of the Media to make money. The Press Council is meant to improve the Media.
- It should also assume functions like reporting on the state and evolution of the media and periodic audit of the Media in terms of its essential functions.
- The Press Council should take interest in the training of journalists to improve professionalism and take up research on how the media actually functions, what influence it exercises and what citizen need from them.
- The Press Council has no role to play in shaping journalistic education and institutional organization unlike the other professional councils such as Bar Council and Medical Council.
- There is a need for bringing the electronic media under the purview of PCI.
- The PCI is also plagued by conflict of interest since a majority of their members are media-owners.
- PCI has generally been ineffective in checking problems of paid news in recent elections.

***3. "India lacks an independent nuclear regulatory mechanism with the mandate to ensure high standards of safety and security at civilian nuclear facilities." In the light of the above statement examine the prevalent nuclear regulatory mechanism in India. How far can an independent body like Nuclear Safety Regulatory Authority address this issue?***

***Approach:***

Introduce by briefly outlining the importance and need for an independent regulatory mechanism. Also list the reason and recommendations for bringing amendment to nuclear mechanism. Bring out the problems in the present nuclear safety mechanism by giving its criticism. Discuss the alternative to the existing mechanism in the form of NSRA. Bring out the flaws in current proposal of NSRA. Examine what changes will be needed in NSRA so that it becomes capable of addressing the problems of Nuclear safety.

***Answer:***

Lately there has been major need felt for expansion of nuclear facilities in India owing to the rising energy needs. Although these nuclear projects need to be transparent and open to scrutiny for which proper nuclear mechanisms must be in place to check whether the nuclear programs are: in sync with the needs of the masses, are accident secure, and are safe as per the safety standards practiced in country and worldwide.

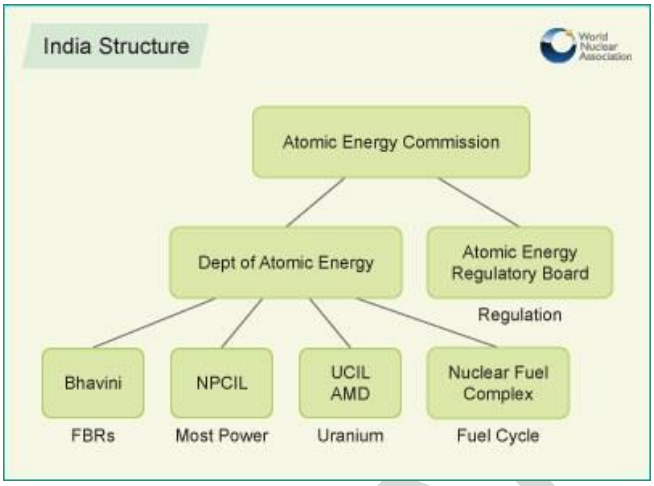
The first demand to amend the nuclear regulatory mechanism in India was raised by Raja Ramanna Committee. The 2014 "Nuclear materials security Index" prepared by Washington based Nuclear Threat Initiative (NTI) has ranked India 23 out of 25 countries with weapons-usable nuclear material. It has been an issue of recent debates again after the recent Mayapuri radiation accident and Fukushima accident.

Student Notes:

Currently Atomic Energy Regulatory Board (AERB) carries the regulatory mechanism regarding the safety and security measures of civil nuclear facilities. But, AERB is not able to deliver its duties properly.

There are several shortcomings that this mechanism faces:

1. The AERB is set up by government order and not by an act.
2. It is not an independent body and is under Department of Atomic energy.
3. It has to report to Atomic Energy Council rather than Parliament.
4. It can oversee only civil nuclear facilities and not the facilities related to defense and strategy etc.




Even CAG's performance audit report in 2012 stated "The legal status of AERB as – an authority subordinate to central Government". The CAG and Public Account Committee in its report criticized the AERB and proposed the formation of a Nuclear Safety Regulator Authority (NSRA). The positives of NSRA are that it will be:

- Set up by an act, and will not depend on the whims and fancies of Government order.
- The NSRA will report to parliament instead of reporting to Atomic energy commission.

But the recent bill proposed for the formation of NSRA too has several shortcomings:

- The NSRA Bill doesn't clearly says that which facilities should be under its authority as the Bill says that the Central Government on the name of defense and security, exempt any radioactive material, nuclear material etc and the premises where these materials are found or the areas associated from the jurisdiction of the authority.
- NSRA is excluded from the purview of RTI Act.

An autonomous body to regulate the nuclear program is a drastic need if India wants to expand its nuclear energy sector which is effective and acceptable to people at large.

1. The selection of its members should be done by a body comprising the leader of Opposition and speaker of Lok Sabha.
2. The nuclear power should not be immune to scrutiny by civil society.

If NSRA as a body for nuclear regulation is provided with appropriate powers and its functioning is kept autonomous and transparent, it will not only ensure successful regulation of India's nuclear program, but it will also enhance the image of India as a nuclear power in front of International community and NSG and it will also win legitimacy in the eyes of the masses.

Student Notes:

***4. A generational shift in railway operations is required. In light of this, discuss the need for an independent tariff and safety regulatory authority of India.***

***Approach:***

- Discuss the need for a regulatory authority for railways.
- Mention why such an authority has not been set up so far, in order to link the answer to the given statement.
- Whilst explaining how this authority would be a "generational" shift, conclude on a positive note.

***Answer:***

- For a long time, pricing – or rather politicisation of pricing – was considered the biggest hurdle in reforming the railways. This led to the origin of an idea to set up a separate tariff regulatory authority. That could delink fare and freight structure from political vagaries.
- Also, recently various reports have highlighted a decline in the share of railways in the inter-modal transport mix of the country. To illustrate, in goods transportation, the share of railways which used to be 71 percent in 1970, dropped to 35 percent in 2007. Even, in passenger transport, the share of railways has plunged from 36 percent in 1970 to almost 14 percent in 2007.

Being managed as a monopoly under the Ministry of Railways, the sector has become politically sensitive. Furthermore, the sector faces acute supply-side shortages due to inadequate infrastructure. Thus, the Govt. is planning to set up Rail Tariff and Safety Regulatory Authority (RTA), an independent institutional mechanism for deciding passenger fares and freight tariff based on efficiency and prevailing market conditions.

- The RTA will monitor efficiency and passenger safety issues as well. Also, the setting up of RTA is in consonance with the recommendations of Sam Pitroda Committee and Bibek Debroy committee.

Need for an Independent tariff and Safety Regulatory Authority of India in Railways:

- The power to fix rail tariff has always rested with the Union Government through the Railway Board, so as to protect passengers from arbitrary hikes by the monopoly supplier. However, in the past ten years, passenger fare has not been increased at all due to populist measures and pressures adopted by different parties and citizens The Railway Board is both the executing and the policy-making body. It acts as the provider as well as the regulator of all services. Thus, there is a conflict of interest. Aggrieved rail users today have no effective redressal mechanism. Indian Railways has remained organisationally unchanged since the formation of the Railway Board in 1905. Unless there is a structural change in this regard, the RTA will not able to make a difference.
- At present, safety in railway operations is being regulated by a body outside the railway system and according to the Railways Act, adherence to safety rules in the railways is overseen by the Commission of Railway Safety (CRS) The Commission of Railway Safety has consistently failed to ensure safety standards.

Thus, in this regard RTA if set up will not only consider the requirements of the Railways but also engage with all stake-holders to usher in a new pricing regime through a transparent process. It will gradually bring down cross subsidization between different segments; will ensure transparency.

Therefore, separation of the policy making functions and management of railways coupled with setting up of an independent regulator, will go a long way in promoting accountability, transparency and both intra and inter modal competition in the railways.

Student Notes:

***5. Review of performance should be a key factor in revising compensation. In this context, critically discuss the practice of appointing pay commissions every ten years to suggest salary revisions for government staff.***

***Approach:***

- Briefly describe Pay Commissions.
- Give the reason for review of compensation as per performance.
- Building on the above, discuss downsides of Pay Commissions.
- Suggest a way forward and conclude.

***Answer:***

The Central Pay Commission (CPC) (and also State Pay Commissions) is set up on a periodic basis by the Government to review and recommend changes in the salary and pension structures of its employees in various civil and military divisions. Since Independence, seven such CPCs have been constituted, with the latest i.e. Seventh Pay Commission's recommendations being accepted in 2016.

An expectation for a just reward is naturally ingrained in every human action. The reward should be commensurate to the efforts in order to incentivize the risk takers, innovators, high performers and discipline the laggards. Thus, review of performance should be a key factor in revising compensation.

Under the present system, the CPC recommends across-the-board pay hike, which has little scope to account in the performance.

**Other concerning issues:**

- Years subsequent to the implementation of CPC's recommendations become fiscally stressful for the Centre and states. For e.g. in 2009-10, the fiscal deficit exceeded 6% post-Sixth CPC's implementation. Most recently, due to the Seventh CPC, additional pay-out accounted for nearly 0.65% of GDP in FY17.
- The recommendations are liable to be influenced by the biasness of its members. For e.g. in 2014, a few retired officers challenged the appointment of an IAS officer in the 7$^{th}$ CPC, in the Delhi High Court.
- Appointment, implementation or timing of the CPC can be potentially politicized and can cause disruptions.

In this context, the following changes are desirable:

- Development of a risk-reward-led annual compensation system.
- Security of tenure to employees so as to reasonably assess his/her performance. Currently, frequent transfers hamper assessment of performance.
- Competency and merit, and not just seniority to be the criteria for higher Central and State appointments and deputations.
- Adoption of annual targets and long-term plans to evaluate individual as well as Department's performance – cues can be taken from the performance management systems deployed in the private sector.
- Job security, tangible and intangible perks and the net Cost-to-Government be quantified to promote transparency of information – government officials often complain about low salaries as compared to the private sector.

As suggested by the Seventh CPC chairman, AK Mathur, the practice of CPC appointment should be replaced with a mechanism of differential pay for different performances reviewed periodically, emulating the productivity and outcome based systems existent in Spain, Singapore, Germany and other nations. Also, CPCs make several recommendations regarding posting, promotions, performance review etc. which are cold shouldered. Hence, adoption of their recommendations must be all encompassing and not limited to salary and pension.

# QUASI JUDICIAL BODIES

Student Notes:

## Contents

Student Notes:

Student Notes:

# 1. Quasi-Judicial Bodies in India

A **quasi-judicial body** is an organization or individual on which powers resembling a court of law have been conferred. Such a body can adjudicate and decide upon a situation and impose penalty upon the guilty or regulate the conduct of an individual or entity.

A quasi-judicial body has also been defined as "an organ of government, other than a court or legislature, which affects the rights of private parties through adjudication or rule-making.

## 1.1. Examples of Quasi-Judicial Bodies

- National and State Human Rights Commissions
- Lok Adalats
- Central and State Information Commissions
- Central Vigilance Commission
- Consumer Disputes Redressal Commission
- Central Administrative Tribunals
- Competition Commission of India
- Appellate Tribunal for Electricity
- Railway Claims Tribunal
- Income Tax Appellate Tribunal
- Intellectual Property Appellate Tribunal

## 1.2. Features of Quasi-Judicial bodies

- These bodies act as a medium where parties can resolve their disputes without approaching the judiciary. These disputes can be in the form of monetary, conduct of rules or any particular dispute that do not directly concern the judiciary.
- These bodies not just give advice or resolve issues, but they also act as a punishing authority concerning matter that involve their jurisdictions, such as the Consumer Disputes Redressal Commissions. The punishments are usually non encroaching on independence of judiciary at any cost.
- These bodies only handle those cases which come under its expertise, such as tax tribunals, unlike the judiciary whose powers are much more wide-ranged.

## 1.3. Reasons for emergence of Quasi-Judicial Bodies in India

- **Overburdening of judiciary**: As the welfare state has grown up in size and functions, more and more litigations are pending in the judiciary, making it over-burdened. It requires having an alternative justice system.
- **Complexity of laws**: With scientific and economic development, laws have become more complex, demanding more technical knowledge about specific sectors.
- **Cost**: Ordinary judiciary has become dilatory and costly, resulting in the emergence of quasi-judicial bodies.
- **Other factors include:**
  - The conventional judiciary is suffering from procedural rigidity, which delays the justice.
  - Further, a bulk of decisions, which affect a private individual come not from courts, but from administrative agencies exercising ad judicatory powers.

## 1.4. Quasi-judicial bodies vs judicial bodies

- Judicial decisions are bound by precedent in common law, whereas quasi-judicial decisions usually are not so bound.
- In the absence of precedent in common law, judicial decisions may create new law, whereas quasi-judicial decisions must be based on conclusions of existing law.
- Quasi-judicial bodies need not follow strict judicial rules of evidence and procedure.

- Quasi-judicial bodies must hold formal hearings only if mandated to do so under their governing laws or regulations.
- Quasi-judicial bodies, unlike courts, may be a party in a matter and issue a decision thereon at the same time.

Student Notes:

**Quasi-judicial Action vs. Administrative Action**

Though the distinction between quasi-judicial and administrative action has become blurred, yet it does not mean that there is no distinction between the two.

In A.K. Kraipak vs. Union of India, the Supreme Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.

Thus broadly speaking, acts, which are required to be done on the **subjective satisfaction** of the administrative authority, are called **'administrative' acts**, while acts, which are required to be done on **objective satisfaction** of the administrative authority, can be termed as **quasi-judicial acts**.

In case of administrative decision there is no legal obligation upon the person charged with the duty of reaching the decision, to consider and weigh submissions and arguments or to collate any evidence. The grounds upon which he acts, and the means which he takes to inform himself before acting are left entirely to his discretion.

However, the Supreme Court observed, "It is well settled that the old distinction between a judicial act and administrative act has withered away and we have been liberated from the pestilent incantation of administrative action."

# 2. Tribunals

There are a large number of laws, which charge the Executive with adjudicatory functions, and the authorities so charged are, in the strict scene, administrative tribunals. These are agencies created by specific enactments.

Administrative adjudication is a term synonymously used with administrative decision-making, which is exercised in a variety of ways. However, the most popular mode of adjudication is through tribunals.

## 2.1. Characteristics of Tribunals

- It is a creation of a statute and required to act openly, fairly and impartially.
- It is bound to act judicially and follow the principles of natural justice.
- An Administrative Tribunal is vested in the judicial power of the State and thereby performs quasi-judicial functions as distinguished from pure administrative functions.
- An administrative Tribunal is not bound by the strict rules of procedure and evidence prescribed by the civil procedure court.

## 2.2. Evolution of Tribunals

The growth of Administrative Tribunals, both in developed and developing countries, has been a significant phenomenon of the twentieth century. In India also, innumerable Tribunals have been set up from time to time, both at the center and the states, covering various areas of activities like trade, industry, banking, taxation etc.

The question of establishment of Administrative Tribunals to provide speedy and inexpensive relief to the government employees, relating to grievances on recruitment and other conditions of service, had been under the consideration of Government of India for a long time. Due to their heavy preoccupation, long pending and backlog of cases, costs involved and time factors, Judicial Courts could not offer the much-needed remedy to government servants, in their disputes with the government. A need arose to set up an institution, which would help in dispensing prompt relief to harassed employees, who perceive a sense of injustice and lack of fair play in dealing with their service grievances. This would motivate the employees better and raise their morale, which in turn would increase their productivity.

**Differences between Article 323A and 323B**

- While Article 323 A contemplates establishment of tribunals for public service matters only, Article 323 B contemplates establishment of tribunals for certain other matters such as taxation, foreign exchange, industrial and labour, land reforms etc.
- While tribunals under Article 323 A can be established only by Parliament, tribunals under Article 323 B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
- Under Article 323 A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no question of hierarchy of tribunals, whereas under Article 323 B a hierarchy of tribunals may be created.

The First ARC and a Committee under J.C. Shah recommended the establishment of an independent tribunal to exclusively deal with service matters. The same was validated by the Supreme Court in 1980.

The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

The Constitution (Article 323-A) empowered the Parliament to provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and constitution of service of persons appointed to public service and posts in connection with the affairs of the union or of any state or local or other authority within the territory of India or under the control of the government or any corporation, owned or controlled by the government.

In pursuance of the provisions of Article 323-A of the Constitution, the Administrative Tribunals Bill was introduced in Lok Sabha and received the assent of the President of India in 1985. The act authorised the Central government to establish one Central Administrative Tribunal and the State Administrative Tribunals.

## 2.3. Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at Delhi and additional benches in different states.

### 2.3.1. Benches

At present, it has 17 regular benches, 15 of which operate at the principal seats of high courts and the remaining two at Jaipur and Lucknow. These benches also hold circuit sittings at other seats of high courts.

### 2.3.2. Jurisdiction

The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it. Its jurisdiction extends to the All-India services, the Central civil services, civil posts under the Centre and civilian employees of defence services. However, the

members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

Student Notes:

### 2.3.3. Composition

- The CAT is a multi-member body consisting of a chairman and members. At present, the sanctioned strength of the Chairman is one and sanctioned strength of the Members is 65.
- A Chairman who has been a sitting or retired Judge of a High Court heads the Central Administrative Tribunal.
- With the amendment in Administrative Tribunals Act, 1985 in 2006, the members have been given the status of judges of High Courts. They are drawn from both judicial and administrative streams and are appointed by the President.

### 2.3.4. Functioning

- The CAT is not bound by the procedure laid down in the Civil Procedure Code of 1908. It is guided by the principles of natural justice. These principles keep the CAT flexible in approach.
- Only a nominal fee of 50 is to be paid by the applicant. The applicant may appear either in person or through a lawyer.

### 2.3.5. Appeals against CAT orders

- Originally, appeals against the orders of the CAT could be made only in the Supreme Court and not in the high courts.
- However, in the Chandra Kumar case (1997), the Supreme Court declared this restriction on the jurisdiction of the high courts as unconstitutional, holding that judicial review is a part of the basic structure of the Constitution.
    - It laid down that appeals against the orders of the CAT shall lie before the division bench of the concerned high court.
- Consequently, now it is not possible for an aggrieved public servant to approach the Supreme Court directly against an order of the CAT, without first going to the concerned high court.

**NOTE:** Kindly refer to the New Rules for Tribunals (2020) mentioned below for provisions related to term, appointment and removal of CAT members.

## 2.4. State Administrative Tribunals

- The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments.
- Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees.
- The chairman and members of the SATs are appointed by the President after consultation with the Governor of the state concerned.
- The act also makes a provision for setting up of Joint Administrative Tribunal (JAT) for two or more states. A JAT exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states.
    - The chairman and members of a JAT are appointed by the President after consultation with the Governors of the concerned states.

## 2.5. Judicial Review of Tribunals decisions

The Administrative Tribunals became an effective and real substitute for the High Courts In **S. P. Sampath Kumar case** (1987).

Student Notes:

However, in **1997**, a seven-Judge Bench of the Supreme Court in ***L. Chandra Kumar case*** (as mentioned above) held that clause 2 (d) of article 323A and clause 3(d) of article 323B, to the extent they empower Parliament to exclude the jurisdiction of the High Courts and the Supreme Court under articles 226/227 and 32 of the Constitution, are unconstitutional. **The Court held that the jurisdiction conferred upon the High Courts under articles 226/227 and upon the Supreme Court under article 32 of the Constitution is part of the inviolable basic structure of our Constitution**.

All decisions of the Administrative Tribunals are subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. As a result, orders of the Administrative Tribunals are being routinely appealed against in High Courts, whereas this was not the position prior to the *L. Chandra Kumar*'s case.

On 18th March 2006, the Administrative Tribunals (Amendment) Bill, 2006 was introduced in Rajya Sabha to amend the Act by incorporating therein, *inter alia*, provisions empowering the Central Government to abolish Administrative Tribunals, and for appeal to High Court to bring the Act in line with *L. Chandra Kumar*.

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 17th Report said that the appeal to High Court is unnecessary, and if a statutory appeal is to be provided it should lie to the Supreme Court only.

The Law Commission also took up the topic suo-moto and agreed with the opinion put forward by the Parliamentary Standing Committee.

## 2.6. Categories of Tribunals in India

There are **four categories** of tribunals in India:

1. **Administrative bodies exercising quasi-judicial functions**, whether as part and parcel of the Department or otherwise.
2. **Administrative adjudicatory bodies**, which are outside the control of the Department involved in the dispute and hence decide disputes like a judge free from judicial bias. For example: **The Income Tax Appellate Tribunal** is under the Ministry of Law and not under Ministry of Finance.
3. **Tribunals constituted under Article 323A and 323B** having constitutional origin and enjoying the powers and status of a High Court.

## 2.7. Issues faced by Tribunals

- **Lack of independence**: Ministries, which are often litigants in the matters sub-judice in the tribunals are the ones that handle staff, finance and administration of tribunal as well. Also, unlike Supreme Court and High Court, procedure for removal lies with the executive.
- **Jurisdiction of High Courts**: By-passing the jurisdiction of High Courts has been a major criticism against tribunals which has been partly resolved under LC Kumar Case where appeals were allowed in division bench of High Courts. This has diluted the original intent behind the formation of tribunals i.e. speedy justice.
- **Administrative concerns**: There is non-uniformity in appointment process, qualification of members, age of retirement, resources and infrastructure of different tribunals working under different ministries which hampers their overall efficiency.
- **Pendency and vacancy**: There is high pendency in tribunals due to reasons such as shortage of personnel et al. According to 272nd Law Commission Report, the pendency figures for the CAT is 44,333 cases.

Student Notes:

## 2.8. National Tribunal Commission (NTC)

The 74th report of the Parliamentary standing committee, endorsing the view of the Law Commission, recommended the creation of a **National Tribunal Commission (NTC)** to regulate issues linked with tribunals such as:

- oversee selection process,
- set eligibility criteria for appointment
- introduction of common eligibility criteria for removal of Chairman and Members
- meeting the requirement of infrastructural and financial resources.

As such the NTC can help in:

- Maintaining independence from the executive since such a body would be established through a law of Parliament.
- Remedy the issue of non-uniformity in administration of tribunals as well as service conditions of tribunal members as a single body will be regulating all tribunals.
- Regularising the system of appointment to tribunals by establishing an Indian Tribunals Service and carrying out an All India Entrance Examination for Tribunals (AIEET).

However, to make NTC successful, one needs to be cautious about issues such as adhering to the standards set by judiciary regarding its composition to maintain its independence, impartial non-partisan appointment to the NTC board, doing away with the system of re-appointment of the tribunal members, ensuring enough political will to reform tribunal system etc.

## 2.9. New Rules for Tribunals (2020)

The 'Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020', were framed by the Ministry of Finance in exercise of powers under Section 184 of the Finance Act 2017.

These rules replace the 2017 Rules, which were struck down by the SC, which directed the government to re-formulate the rules in conformity with the principles delineated by the court.

**Provisions of the New Rules:**

- These apply to 19 Tribunals including Central Administrative Tribunals; Income Tax Appellate Tribunal; Customs, Excise, Service Tax Appellate Tribunal etc.
- Foreigners Tribunals are not covered.
- **Appointment**: appointments to the above Tribunals will be made by Central Government on the recommendations by the "**Search cum Selection Committee**" composed of:
  - The Chief Justice of India, or a judge nominated by the CJI
  - President/chairperson of concerned tribunal
  - Two government secretaries from the concerned ministry/department.
- **Removal**: Search Cum Selection Committee has the power to recommend the removal of a member, and also to conduct inquiry into allegations of misconduct by a member.
- **Qualifications for tribunal members**: Only persons having judicial or legal experience are eligible for appointment.
- **Term**: Rules also provide a fixed term of four years to the Tribunal members.
- **Independence**: The condition in the 2017 Rules (which were set aside by Court) that the members will be eligible for re-appointment has also been dropped in 2020 Rules.

## 2.10. Foreigners Tribunal

Foreigners' Tribunals (FTs) are **quasi-judicial** bodies in India meant to determine whether a person is or is not a foreigner under **Foreigner's Act, 1946**.

Student Notes:

- FTs were **first setup in 1964** and are **unique to Assam**. In rest of the country, a foreigner apprehended by the police for staying illegally is prosecuted in a local court and later deported/put in detention centres.
- Each FT is headed by a member who can be **a retired judicial officer, bureaucrat or lawyer with minimum seven years of legal practice.**
- The Tribunal shall have the **powers of a civil court** while trying a suit under the Code of Civil Procedure, 1908.
- If declared a foreigner or placed under the doubtful category '**the burden of proof lies with the accused**'. A person falling under such a category will have the right to appeal at the Foreigners Tribunal
- The Tribunal can **summon and ask for the attendance** of any person and examine him/her on oath.
- The Tribunal can **ask anyone to produce the required documents**.
- The Tribunal can **commission examining any witness**, as and when required

Earlier, powers to constitute tribunals were vested only with Centre. Recently amended **Foreigners (Tribunal) Order, 2019** has empowered district magistrates in all States & Union Territories to set up tribunals to decide whether a person staying illegally in India is a foreigner or not.

It has also empowered individuals to approach the Tribunals. Earlier, only the State administration could move the Tribunal against a suspect. The **time limit for filing of appeals** before the Foreigners Tribunal has been extended from 60 days to **120 days**.

## 2.11. National Green Tribunal (NGT)

NGT was established under the National Green Tribunal Act, 2010 for effective and expeditious disposal of cases relating to environmental protection. India became the third country in the world to set up a specialised environmental tribunal, only after Australia and New Zealand, and the first developing country to do so.

New Delhi is NGT's Principal Bench with Bhopal, Pune, Kolkata and Chennai being other benches.

### 2.11.1. Composition

- The Tribunal comprises of the Chairperson, the Judicial Members and Expert Members. They shall hold office for term of five years and are not eligible for reappointment.
- The Chairperson is appointed by the Central Government in consultation with Chief Justice of India (CJI).
- A Selection Committee shall be formed by central government to appoint the Judicial Members and Expert Members.
- There are to be least 10 and maximum 20 full time Judicial members as well as Expert Members in the tribunal.
- Only an existing or retired judge of a High Court or Supreme Court can be a judicial member
- Expert members need to have been in any environment related field with at least 15 years of administrative experience.

### 2.11.2. Jurisdiction

The NGT adjudicates matters relating to following legislations:

- Water (Prevention and Control of Pollution) Act, 1974,
- Water (Prevention and Control of Pollution) Cess Act, 1977,
- Forest (Conservation) Act, 1980,

Student Notes:

- Air (Prevention and Control of Pollution) Act, 1981,
- Environment (Protection) Act, 1986,
- The Public Liability Insurance Act, 1991 and
- Biological Diversity Act, 2002.

### 2.11.3. Powers and Functions

- NGT is mandated to make disposal of applications or appeals finally within 6 months of filing of the same.
- As per the NGT Act, NGT does not have the power to take *suo motu* cognisance.
  *Note-*The Supreme Court, in 2019, has agreed to examine a legal question whether the National Green Tribunal (NGT), established in 2010 to deal with cases pertaining to environmental issues, has the power to take cognisance of a matter on its own. The matter is sub judice.*
- As per Section 22 of the NGT Act, appeals from NGT lie directly to the Supreme Court.
  *Note- *The Supreme Court has clarified that an appeal under Section 22 of the NGT Act cannot be treated as a matter of right unless it involves a substantial question of law.*
- The Tribunal is not bound by the procedure laid down under the Code of Civil Procedure 1908, but shall be guided by principles of 'natural justice'.
- While passing any order/decision/ award, it shall apply the principles of sustainable development, the precautionary principle and the polluter pays principle.
- NGT by an order, can provide
  - relief and compensation to the victims of pollution and other environmental damage (including accident occurring while handling any hazardous substance),
  - for restitution of property damaged, and
  - for restitution of the environment for such area or areas, as the Tribunal may think fit.
- The NGT Act also provides a procedure for a penalty for non-compliance:
  - Imprisonment for a term which may extend to three years,
  - Fine which may extend to ten crore rupees, and
  - Both fine and imprisonment

## 3. Lok Adalats

The concept of Lok Adalat (People's Court) is an innovative Indian contribution to the world jurisprudence.

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the victims for satisfactory settlement of their disputes.

This system is based on Gandhian principles. It is one of the components of **ADR (Alternative Dispute Resolution) systems.** This concept of settlement of disputes through mediation, negotiation or arbitration is conceptualized and institutionalized in the philosophy of Lok Adalat. It involves people who are directly or indirectly affected by dispute resolution. It has proved to be a very effective alternative to litigation.

### 3.1. Origin of Lok Adalats

The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat. Maharashtra commenced the Lok Nyayalaya in 1984.

The advent of **Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats**, pursuant to the constitutional mandate in Article 39A (free legal aid to the poor and weaker sections of the society and justice for all) of the Constitution of India. It contains provisions such as:

- This Act mandates constitution of legal services authorities to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- It also mandates organization of Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity.
- The award passed by the Lok Adalat formulating the terms of compromise will have the force of decree of a court, which can be executed as a civil court decree.

The evolution of movement called Lok Adalat was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice.

- The parties don't have to be represented by the lawyers and are encouraged to interact with judge who helps in arriving at amicable settlement.
- **No fee** is paid by the parties.
- Strict rule of Civil Procedural Court and Evidence is not applied.
- Decision is by informal sitting and **binding on the parties** and **no appeal lies against the order of the Lok Adalat.**

## 3.2. Jurisdiction of Lok Adalats

A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

i. any case pending before; or
ii. any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

The Lok Adalat can compromise and settle even criminal cases, which are compoundable under the relevant laws.

Compoundable offences are those that can be compromised, i.e. the complainant can agree to take back the charges levied against the accused.

Lok Adalats have competence to deal with a number of cases like:

- Compoundable civil, revenue and criminal cases
- Motor accident compensation claims cases
- Partition Claims
- Damages Cases
- Matrimonial and family disputes
- Mutation of lands case
- Land Pattas cases
- Bonded Labor cases
- Land acquisition disputes
- Bank's unpaid loan cases
- Arrears of retirement benefits cases
- Family Court cases
- Cases, which are not sub-judice

## 3.3. Powers of Lok Adalats

- The Lok Adalat shall have the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:
  - Power to summon and enforce the attendance of any witness and to examine him/her on oath.
  - Power to enforce the discovery and production of any document.
  - Power to receive evidence on affidavits,

Student Notes:

- Power for requisitioning of any public record or document or copy thereof or from any court.
- Such other matters as may be prescribed.

- Every Lok Adalat shall have the power to specify its own procedure for the determination of any dispute coming before it.
- All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of IPC.
- Every Lok Adalat shall be deemed to be a Civil Court for the purpose of Sec 195 and Chapter XXVI of CrPC.

## 3.4. Permanent Lok Adalats

In 2002, the Parliament brought about certain amendments to the Legal Services Authorities Act, 1987 to institutionalize the Lok Adalats by making them a permanent body to settle the disputes related to public utility services such as transport, postal, telegraph etc.

- Permanent Lok Adalats have been set up as permanent bodies with a Chairman and two members for providing compulsory **pre-litigative** mechanism for conciliation and settlement of cases relating to public utility services.
- The **jurisdiction** of the Permanent Lok Adalats is upto Rs. One Crore.
- The **award** of the Permanent Lok Adalat is final and binding upon the parties

Kindly note that Permanent Lok Adalats have jurisdiction over pre-litigation matters only, while Lok Adalat have jurisdiction over pending and pre-litigation matters. Otherwise, Permanent Lok Adalats have the same powers that are vested in the Lok Adalats.

**Mobile Lok Adalats** are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism.

## 3.5. Advantages of Lok Adalats

- **Speedy Justice a**nd Saving From The Lengthy Court Procedures
  - Lok adalats ensure speedier justice because it can be conducted at suitable places, arranged very fast, in local languages too, even for the illiterates.
  - The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Hence, Lok Adalats are also known as “People’s Festivals of Justice”
  - The victims and the offender may be represented by their advocate or they can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons thereof, which is not possible in a regular court of law.
- **Economical justice**
  - There is no court fee in Lok Adalat. If the case is already filed in the regular court, the fee paid is refunded in the manner provided under the Court Fees Act if the dispute is settled at the Lok Adalat. This kind of refund is an incentive given to parties to negotiate for settlement.
- **Unburdening of Courts by reducing the backlog of cases**
  - In a Lok Adalat, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgment by consent.
- **Maintenance of Cordial Relations**
  - The main thrust of Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court.

Student Notes:

- While conducting the proceedings, a Lok Adalat acts as a conciliator and not as an arbitrator. Its role is to persuade the parties to hit upon a solution and help in reconciling the contesting differences.
- Lok Adalats are also required to follow the principles of natural justice and other legal principles.

## 3.6. Issues with Lok Adalats

- **Lack of confidentiality**: Lok Adalat proceedings are held in the open court and any member of public may witness these proceedings. Thus, the element of confidentiality is lacking. This also impedes the process of exploration of various resolution options and ultimately the success rate in matters where parties desire confidentiality.
- **Aura of Court proceedings**: Lok Adalats are fora where voluntary efforts intended to bring about settlement of disputes between the parties are made through conciliatory and persuasive efforts. However, they are conducted in regular courts only. Therefore, some amount of formality still remains attached with Lok Adalats.
- **Needs consent of both parties**: The most important factor to be considered while deciding the cases at the Lok Adalat is the consent of both the parties. It cannot be forced on any party that the matter has to be decided by the Lok Adalat.
- **Other issues**
  - The biggest disadvantage with Lok Adalats is that repeated sittings at short intervals with the same judge are almost not possible which breaks the continuity of the deliberations.
  - It cannot be said that the parties remain in absolute control of the proceedings in contradistinction to what happens in mediation

## 3.7. Measures to improve functioning of Lok Adalats

- Establishing permanent and continuous Lok Adalats in all the Districts in the country for the disposal of pending matters as well as disputes at pre-litigative stage.
- Establishing separate Permanent and Continuous Lok Adalats for Government departments, PSUs etc. for disposal of pending cases.
- Appointment of "Legal Aid Counsel" in all Courts of Magistrates in the country.
- Sensitization of Judicial officers in regard of Legal Services Scheme.
- Legal literacy and legal aid programmes need to expand to take care of poor and ignorant by organizing awareness camps at grass-root level besides, the mass media like newspapers, television and radios can also be desirable for this purpose.
- To increase its utility, the concerned Legal Services Authority should disseminate information to the public about the holding of various Lok Adalat by it and success achieved thereby in providing speedy, equitable and inexpensive justice.
- There is need for improvement in quality of legal aid provided by lawyers and advocates. The remunerations offered from legal services authorities to lawyers should be revised and thus encouraged to render effective legal assistance to needy persons.

The Lok Adalat Movement can be successful only if the people participate on voluntary basis in the functioning of Lok Adalat. This can be achieved by restraining themselves from invoking the jurisdiction of traditional Courts in trifle disputes. Further, the endeavour should be to organize more and more Lok Adalats, ensure greater participation, reduce formalism, spare more time and personalized attention thereby ensuring quality justice through Lok Adalats.

# 4. National Human Rights Commission (NHRC)

In keeping with spirit of human rights movement all over the world, National Human Rights Commission (NHRC) came into existence in India through an Ordinance promulgated on 28th September 1993 by the President of India. However, soon the ordinance was replaced by a

statute called **Protection of Human Rights Act, 1993** (which came into force in 1994). This Act provides for setting up NHRC at Centre as well as one Commission each at State level.

National Human Rights Commission is designed to protect human rights, defined as "rights relating to life, liberty, equality and dignity of individual guaranteed by Constitution or embodied in International Covenant and which are enforceable by Courts in India".

In 2019, the **Protection of Human Rights (Amendment) Act** was enacted in order to make NHRC more inclusive and efficient in its functioning.

Student Notes:

## 4.1. Comparison of 2019 Amended Act with the 1993 Act

| Provisions | Original Act of 1993 | Amended Act of 2019 |
|---|---|---|
| **Composition of NHRC** | • Under the Act, the chairperson of the NHRC is a person who has been a Chief Justice of the Supreme Court.<br>• The Act provides for two persons having knowledge of human rights to be appointed as members of the NHRC.<br>• Under the Act, chairpersons of various commissions such as the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, and National Commission for Women are members of the NHRC. | • The Act amends this to provide that a person who has been Chief Justice of the Supreme Court, or a **Judge of the Supreme Court** will be the chairperson of the NHRC.<br>• The Act amends this to allow **three members** to be appointed, of which **at least one will be a woman.**<br>• The Act provides for **including** the chairpersons of the **National Commission for Backward Classes**, the **National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities** as members of the NHRC. |
| **Chairperson of SHRC** | • Under the Act, the chairperson of a SHRC is a person who has been a Chief Justice of a High Court. | • The Act amends this to provide that a person who has been Chief Justice or **Judge of a High Court** will be chairperson of a SHRC. |
| **Term of office** | • The Act states that the chairperson and members of the NHRC and SHRC will hold office for five years or till the age of seventy years, whichever is earlier.<br>• Further, the Act allows for the reappointment of members of the NHRC and SHRCs for a period of five years. | • The Act reduces the term of office to **three years** or till the age of seventy years, whichever is earlier.<br>• The Act **removes the five-year limit for reappointment.** |
| **Union Territories** | | The Act provides that the central government may confer on a SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC. |

## 4.2. Need for the amendment in the 1993 Act

- The NHRC was denied A-grade accreditation in 2017 by the Global Alliance of National Human Rights Institutions (GANHRI), a UN body based in Geneva, due Commission's failure in ensuring gender balance and pluralism in its staff and lack of transparency in selecting its members and rising political interference.

- However, in February 2018, GANHRI, re-accredited India's apex rights watchdog with the 'A' status.

- Demand from the certain State Governments had also proposed for amendment of the Act, as they had been facing difficulties in finding suitable candidates to the post of Chairperson of the respective State Commissions owing to the existing eligibility criteria to the said post.

## 4.3. Significance of the amendment

- **Compliance with the Paris Principles**: The proposed amendments will enable both the National Commission as well as the State Commissions to be more compliant with the Paris Principles concerning its autonomy, independence, pluralism and wide- ranging functions in order to effectively protect and promote human rights.
- **Filling up the Vacancies**: The appointment conditions/eligibility have been relaxed which will ensure that the vacancies are filled without delay.
- **Enabling conditions to incorporate Civil Society**: Effort is to also to increase the presence of civil Society in the composition of the Commission.
- **Ease of accessibility**: The applicants in Union Territories can now appeal in the Human Rights Commission of nearby states instead of coming all the way to Delhi.

## 4.4. Composition of NHRC

Post the 2019 Amendment Act, the NHRC consists of: The Chairman and Four members (excluding the ex-officio members)

- A Chairperson, who has been a Chief Justice of India or a Judge of the Supreme Court.
- One member who is, or has been, a Judge of the Supreme Court of India, or, One member who is, or has been, the Chief Justice of a High Court.
- Three Members, out of which at least one shall be a woman to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- In addition, the Chairpersons of National Commissions viz., National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women, National Commission for Minorities, National Commission for Backward Classes, National Commission for Protection of Child Rights; and the Chief Commissioner for Persons with Disabilities serve as ex officio members.

## 4.5. Appointment

The Chairperson and members of the NHRC are appointed by the President of India, on the recommendation of a Committee consisting of:

- The Prime Minister (Chairperson)
- The Home Minister
- The Leader of Opposition in the Lok Sabha
- The Leader of Opposition in the Rajya Sabha
- The Speaker of the Lok Sabha
- The Deputy Chairman of the Rajya Sabha

## 4.6. Removal

The President may remove the Chairperson or any other Member if he:

- Is adjudged an insolvent; or
- Engages during his term of office in any paid employment outside the duties of his office; or
- Is unfit to continue in office by reason of infirmity of mind or body; or
- Is of unsound mind and stands so declared by a competent court; or
- Is convicted and sentenced to imprisonment for an offence, which in the opinion of the President involves moral turpitude.

Additionally, the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the Chairman or a member.

Student Notes:

## 4.7. Emoluments

The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment.

## 4.8. Functions of NHRC

- Proactively or reactively **inquire into violations of human rights** or negligence in the prevention of such violation by a public servant
- By leave of the court, to **intervene in court proceeding relating to human rights**.
- **Visit any jail or other institution** under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for study of the living conditions of the inmates and make recommendations.
- **Review the Constitutional or legal safeguards** in force for the protection of human rights and recommend measures for their effective implementation.
- **Review the factors**, including acts of terrorism that **inhibit the enjoyment of human rights** and recommend appropriate remedial measures.
- **Study treaties and other international instruments on human rights** and make recommendations for their effective implementation.
- **Undertake and promote research in the field of human rights**.
- Engage in **human rights education among various sections of society** and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- **Encourage the efforts of NGOs** and institutions working in the field of human rights.
- Such other function as it may consider it necessary for the protection of human rights.

## 4.9. Working of NHRC

The Commission has all powers of a Civil Court. It has its own investigating staff for investigation into complaints of Human Rights violations. It is open to it to utilize services of any officer or investigation agency of the Central Government or any State Government.

The Commission while inquiring into complaints of violations of human rights may call for information or report from the Central Government or any State Government, or any other authority or organization subordinate thereto within such time as may be specified by it.

The Commission is not empowered to inquire into any matter **after the expiry of one year** from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence.

The Commission may take any of following steps upon completion of an enquiry:

- Where enquiry discloses the Commission of violation of Human Rights or negligence in prevention of violation of Human Rights by a public servant, it may recommend to the concerned Government or authority initiation of proceedings for prosecution or such other function.
- It may recommend to the concerned government or authority to make payment of compensation or damages to the victim.
- Approach SC or HC concerned for such directions, orders, or writs as the court may deem necessary.

Student Notes:

- Recommend to the concerned Government or authority for grant of such immediate interim relief to victim or members of his family.

## 4.10. Strengths of NHRC

- The **selection procedure** of the members of NHRC is the main factor of its strength. The composition of the Selection Committee is such that it involves members of ruling as well as opposition party and both the Houses of Parliament. Also, the composition of NHRC is such that it involves Legislative, Executive, Judiciary, academicians and NGOs. This gives the Commission a broad vision to deal with the issues of Human Rights.
- **Financial autonomy**, **though limited**, has provided NHRC independence of Central Government. The Commission is free to make its own budget and spend it according to its own planning. The draft of the proposed budget is placed before both the Houses of Parliament and after the approval of the budget, the Government, without making any amendment, has to provide finances to the Commission.
- The Commission has the power to conduct ***suo-moto*** **inquiry** into the complaints of Human Rights violations.
- **Easy accessibility** to the Commission has made it one of the most popular organizations. Anyone can approach NHRC through telephone, letter, application, mobile phone and the Internet. All the documents, reports, newsletters, speeches, etc. of the Commission are also available on this website. The status of the complaint too can be known through its website. The popularity and trust on NHRC is quite evident from the fact that while it had registered only 496 complaints in 1993-94, in 2004-05 the total number of cases were 74,4019.
- NHRC has **advised the government** a number of times on the issues of Human Rights. Be it the cases of custodial deaths or suicide by the farmers or health issues or POTA, child marriage, trafficking of women and children etc., the government has been taking suggestions from NHRC.
- NHRC, in a true democratic fashion, has worked immensely to create **awareness among public on Human Rights issues** through seminars, workshops, lectures, literature, NGOs' participation, universities' collaborations, etc.
- The Commission has **extended its sphere** from time to time. Support for right to information, health care issues, disables' rights, HIV/AIDS patients' rights etc. are some of the issues where NHRC has worked successfully.

## 4.11. Weaknesses of NHRC

- In the process of selection of the members of the Commission, the Chairman is not consulted.
- it does not have powers to investigate armed forces, BSF or any other paramilitary forces.
- NHRC is only an investigative and recommendatory body. It does not have power of prosecution.
- It is dependent on the Government for manpower and money. The Central Government shall pay to the Commission by way of grants such sums of money as it may consider fit.

# 5. State Human Rights Commission (SHRC)

**Protection of Human Rights Act, 1993** (which came into force in 1994) provides for setting up NHRC at Centre as well as one Commission (SHRC) each at State level. Although, not every Indian state has created a SHRC yet.

A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution. However, if any such case is already being inquired into by the

National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case

Student Notes:

## 5.1. Composition of SHRC

The State Human Rights Commission is a multi-member body consisting of a chairperson and few members. The chairperson should be a retired Chief Justice of a High Court or Judge of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years' experience as District Judge and a person having knowledge or practical experience with respect to human rights.

## 5.2. Term

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier and are allowed for the reappointment.

## 5.3. Appointment

- The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the Chief Minister as its head, the Speaker of the Legislative Assembly, the state Home Minister and the Leader of the Opposition in the Legislative Assembly.
- In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee. Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.

## 5.4. Removal

Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he can remove the chairperson or a member of the National Human Rights Commission. Thus, he can remove the chairperson or a member under the following circumstances:

- If he is adjudged an insolvent;
- If he engages, during his term of office, in any paid employment outside the duties of his office;
- If he is unfit to continue in office by reason of infirmity of mind or body;
- If he is of unsound mind and stands so declared by a competent court:
- If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the President can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

## 5.5. Emoluments

The salaries, allowances and other conditions of service of the chairman or a member are determined by the state government. But, they cannot be varied to his disadvantage after his appointment

## 5.6. Functions of SHRC

- To **inquire into any violation of human rights** or negligence in the prevention of such violation by a public servant, **either suo motu or on a petition** presented to it or on an order of a court.

Student Notes:

- To **intervene in any proceeding** involving allegation of violation of human rights pending before a court.
- To **visit jails and detention places to study the living conditions** of inmates and make recommendation thereon.
- To **review the constitutional and other legal safeguards** for the protection of human rights and recommend measures for their effective implementation.
- To **review the factors including acts of terrorism that inhibit the enjoyment of human rights** and recommend remedial measures.
- To **study treaties and other international instruments on human rights** and make recommendations for their effective implementation.
- To **undertake and promote research in the field of human rights**.
- To **spread human rights literacy** among the people and promote awareness of the safeguards available for the protection of these rights.
- To **encourage the efforts of non-governmental organizations (NGOs)** working in the field of human rights.
- To undertake such **other functions** as it may consider necessary for the promotion of human rights.

## 5.7. Working of SHRC

The Commission is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the state government or any other authority subordinate thereto.

The Commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look

nto a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

- it may recommend to the state government or authority to make payment of compensation or damages to the victim;
- it may recommend to the state government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- it may recommend to the state government or authority for the grant of immediate interim relief to the victim;
- it may approach the Supreme Court or the state high court for the necessary directions, orders or writs.

The functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the state government or authority. But, it should be informed about the action taken on its recommendations within one month.

The Commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations.

# 6. Central Vigilance Commission (CVC)

The CVC was established in 1964 by an executive resolution upon the recommendation of Santhanam Committee on Prevention of Corruption (1962-64). In 2003, the Parliament enacted a law conferring statutory status on the CVC.

In 2004, the Government of India authorized the CVC as the "Designated Agency" to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action. The CVC is conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.

Student Notes:

## 6.1. Composition and Eligibility

The CVC is composed of a Chairperson (Central Vigilance Commissioner) and not more than two members.

Section 3(3) of the CVC Act, 2003 provides that the Chief Vigilance Commissioner and Vigilance Commissioners shall be appointed from amongst persons-

- Who have been or are in All India Services or any civil service of Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including policy administration; or
- Who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance, and investigations.

The President appoints them upon the recommendation of a committee comprising of:

- The Prime Minister as its head
- Union Minister of Home Affairs
- Leader of Opposition or Leader of largest opposition party in Lok Sabha

They hold office for a term of four years or until they attain the age of sixty-five years, whichever is earlier. They are not eligible for further employment under the Central or a State Government upon expiry of their term.

## 6.2. Removal

The President can remove any member from office under the following circumstances:

- If he is adjudged insolvent; or
- If he has been convicted of an offence which (in the opinion of the Central Government) involves a moral turpitude; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is (in the opinion of the President), unfit to continue in office by reason of infirmity of mind or body; or
- If he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition, the President can remove any member on the grounds of proved misbehaviour or incapacity. However, in this case, the President has to refer the matter to the Supreme Court for an enquiry. If, after the enquiry, the Supreme Court upholds the cause of removal and advises so, the President can remove him. He is deemed to be guilty of misbehavior if:

- He is concerned or interested in any contract or agreement made by the Central Government, or
- He participates in any way in the profit of such contract or agreement or in any benefit or emolument arising there from, otherwise than as a member and in common with the other members of an incorporated company.

Student Notes:

## 6.3. Emoluments

The salary, allowances and other conditions of service of the Central Vigilance Commissioner are similar to those of the Chairman of UPSC and that of the vigilance commissioner are similar to those of a member of UPSC. But they cannot be varied to his disadvantage after his appointment.

## 6.4. Functions

**With respect to CBI:**

- To exercise superintendence over the functioning of the Delhi Special Police Establishment (DSPE) (i.e. CBI) with respect to investigation under the Prevention of Corruption Act, 1988; or offence under CrPC for certain categories of public servants and to give directions to the DSPE for purpose of discharging this responsibility;
- To give directions and to review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the Prevention of Corruption Act;

**With respect to Vigilance:**

- To undertake an inquiry or cause an inquiry or investigation to be made into any transaction in which a public servant working in any organization, to which the executive control of the Government of India extends, is suspected or alleged to have acted for an improper purpose or in a corrupt manner;
- To tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving vigilance angle at different stages i.e. investigation, inquiry, appeal, review etc.
- To exercise a general check and supervision over vigilance and anti-corruption work in Ministries or Departments of the Government of India and other organizations to which the executive power of the Union extends; and
- To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informer and recommend appropriate action.
- The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All India Services.

## 6.5. Working of CVC

- The CVC conducts its proceedings at its headquarters (New Delhi). It has the powers of a Civil Court and is empowered to regulate its own procedure. It may call for information or report from the Central Government or its authorities so as to enable it to exercise general supervision over the vigilance and anti-corruption work.
- The CVC, after receiving the report of the inquiry undertaken by an agency, advises the Central Government or its authorities upon further course of action. The Central Government or its authorities shall consider such advice and take appropriate action. If it does not agree with the advice of the CVC, it shall communicate the reasons for the same to the CVC.
- Annual report of performance of CVC has to be presented to the President. The President places this report before each House of the Parliament.
- All Ministries/Departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organization concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance. He also provides a link between his organization and the Central Vigilance Commission on the one hand and his organization and the Central Bureau of Investigation on the other.

Student Notes:

# 7. Central Bureau of Investigation (CBI)

The CBI owes its origin to the Special Police Establishment, established by Government of India in 1941, to enquire into cases of corruption in the procurement during the Second World War. Later, based on the recommendations of the Santhanam Committee on Prevention of Corruption (1962-64), CBI was established by a resolution of the Ministry of Home Affairs. Later, it was transferred to the Ministry of Personnel and now it enjoys the status of an attached office. (CBI comes under the administrative control of Ministry of Personnel, Public Grievances and Pensions)

The CBI is not a statutory body. It derives its powers from the Delhi Special Police Establishment Act, 1946.The CBI is the main investigating agency of the Central Government. It plays an important role in the prevention of corruption and maintaining integrity in administration. It works under the overall superintendence of Central Vigilance Commission in matters related to the Prevention of Corruption Act, 1988.

## 7.1. Composition of CBI

The CBI is headed by a Director. He is assisted by a Special Director or an Additional Director. Additionally, it has a number of joint directors, deputy inspector generals, superintendents of police and all other usual ranks of police personnel.

The Director of CBI as Inspector-General of Police, Delhi Special Police Establishment, is responsible for the administration of the organization.

The Director of CBI has been provided security of two-year tenure in office by the CVC Act, 2003 (*Vineet Narain Case*).

## 7.2. Organization of CBI

At present (2013), the CBI has the following divisions:

1. Anti-Corruption Division
2. Economic Offences Division
3. Special Crimes Division
4. Policy and International Police Cooperation Division
5. Administration Division
6. Directorate of Prosecution
7. Central Forensic Science Laboratory

## 7.3. Functions of CBI

The functions of CBI are:

- Investigating cases of corruption, bribery and misconduct of Central government employees.
- Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
- Investigating serious crimes, having national and international ramifications, committed by organized gangs of professional criminals.
- Coordinating the activities of the anti-corruption agencies and the various state police forces.
- Taking up, **on the request of a state government,** any case of public importance for investigation.
- Maintaining crime statistics and disseminating criminal information.

The CBI is a multidisciplinary investigation agency of the Government of India and undertakes investigation of corruption-related cases, economic offences and cases of conventional crime. It normally confines its activities in the anti-corruption field to offences committed by the employees of the Central Government and Union Territories and their public sector undertakings.

It takes up investigation of conventional crimes like murder, kidnapping, rape etc., on reference from the state governments or when directed by the Supreme Court/High Courts.

The CBI acts as the "National Central Bureau" of Interpol in India. The Interpol Wing of the CBI coordinates requests for investigation-related activities originating from Indian law enforcement agencies and the member countries of the Interpol.

## 7.4. CBI as 'Caged Parrot' and steps to make it free

The SC raised questions on the CBI's independence while hearing the coal allocation (coalgate) scam case, called it a "caged parrot speaking in its master's voice". The SC had then asked the Centre to make the CBI impartial and said it needs to be ensured that the CBI functions free of all external pressures.

In response to this, the Centre filed an affidavit stating following measures will be adopted to ensure the autonomy of the CBI. Some of those measures have been adopted, such as:

- CBI director is be **appointed by a collegium comprising of the Prime Minister, Chief Justice of India and Leader of the Opposition (or Leader of largest opposition party)**. The CBI director cannot be appointed or removed without the consent of this collegium.
- The CBI director can be removed on the grounds of misbehaviour only by an order from the President after an inquiry.
- There will be an accountability commission headed by three retired Supreme Court or High Court judges. The committee will look into cases of grievances against the CBI.
- The affidavit said that CVC will have the power of superintendence and administration over the CBI for all cases to be probed under the Prevention of Corruption Act but such power would vest in the Centre for rest of the cases.

# 8. Central Information Commission (CIC)

The CIC was established by the Central Government in 2005 in accordance with the provisions of Right to Information Act (2005).

## 8.1. Composition and Appointment

The Commission consists of a Chief Information Commissioner and not more than ten Information Commissioners. They are appointed by the President upon the recommendation of a committee comprising:

- The Prime Minister as Chairperson
- The Leader of Opposition in the Lok Sabha
- A Union Cabinet Minister nominated by the Prime Minister

They should be people of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying any business or pursuing any profession.

## 8.2. Tenure and Removal

Earlier, the members of CIC used to hold office for a term of five years or until they attained the age of sixty-five years, whichever was earlier. **But the RTI Amendment Act**, **2019** has removed

this provision and it states that the Central government will notify the term of office for the CIC and the ICs (at both Central and state level).

They are not eligible for reappointment.

The President can remove any member from office under the following circumstances:

- If he is adjudged insolvent; or
- If he has been convicted of an offence which (in the opinion of the Central Government) involves a moral turpitude; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is (in the opinion of the President), unfit to continue in office by reason of infirmity of mind or body; or
- If he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition, the President can remove any member on the grounds of proved misbehaviour or incapacity. However, in this case, the President has to refer the matter to the Supreme Court for an enquiry. If, after the enquiry, Supreme Court upholds the cause of removal and advises so, the President can remove him. He is deemed to be guilty of misbehaviour if:

- He is concerned or interested in any contract or agreement made by the Central Government, or
- He participates in any way in the profit of such contract or agreement or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company.

## 8.3. Emoluments

Earlier, the salary, allowances and other service conditions of the Chief Information Commissioner were similar to those of the Chief Election Commissioner and that of the Information Commissioner were similar to those of an Election Commissioner.

But the **RTI Amendment Act, 2019** has empowered the Central Government to determine the salaries, allowances, and other terms and conditions of service of the Central and state CIC and ICs. However, they cannot be varied to their disadvantage during service.

## 8.4. Powers and Functions of Information Commissions

- The Central Information Commission/State Information Commission has a duty to receive complaints from any person:
  - Who has not been able to submit an information request because a PIO has not been appointed.
  - Who has been refused information that was requested.
  - Who has received no response to his/her information request within the specified time limits.
  - Who thinks the fees charged are unreasonable.
  - Who thinks information given is incomplete or false or misleading.
  - Any other matter relating to obtaining information under this law.
- Power to order inquiry if there are reasonable grounds (***suo moto* power**)
- The Commission has the powers of Civil Court in following matter:
  - summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
  - requiring the discovery and inspection of documents;
  - receiving evidence on affidavit;
  - requisitioning any public record from any court or office;

Student Notes:

- issuing summons for examination of witnesses or documents; and
- any other matter which may be prescribed.

- All records covered by RTI law (including those covered by exemptions) must be given to CIC/SIC during inquiry for examination.
- Power to secure compliance of its decisions from the public authority includes:
  - Providing access to information in a particular form.
  - Directing the public authority to appoint a PIO/APIO where none exists.
  - Publishing information or categories of information.
  - Making necessary changes to the practices relating to management, maintenance and destruction of records.
  - Enhancing training provision for officials on RTI.
  - Seeking an annual report from the public authority on compliance with this law.
  - Requiring it to compensate for any loss or other detriment suffered by the applicant.
  - Imposing penalties under this law.
  - Rejecting the application.
- The CIC submits annual report to the Central Government, which tables it in both the Houses of Parliament. The SIC will submit the annual report to State Government, which places it before the State Legislature (both Houses wherever applicable).
- When a public authority does not confirm to provisions of RTI Act, the Commission may recommend (to the authority) steps, which ought to be taken for promoting such conformity.

The **State Information Commission** performs similar functions with respect to offices, financial institutions, public sector undertakings, etc. which fall under the concerned State Government.

# 9. Lokpal

The Lokpal and Lokayukta Act, 2013 was enacted after the Indian anti-corruption movement of 2011 with series of protests for the Jan Lokpal Bill. It establishes **Lokpal for the Union and Lokayukta for States** to inquire into allegations of corruption against certain public functionaries.

However, the appointment of the Lokpal was **delayed because of absence of leader of opposition,** who is a member of selection panel to recommend Lokpal. After this the Supreme Court intervened and set deadlines for appointing the Lokpal at the earliest. Hence, the PM-led selection panel, in 2019, cleared the former Supreme Court Judge Pinaki Chandra Ghose as **first Lokpal** of India.

## 9.1. Composition

Lokpal will consist of **a chairperson and a maximum of eight members**, of which 50% shall be judicial members and 50% shall be from SC/ST/OBCs, minorities and women.

## 9.2. Appointment

It is a two-stage process consisting of:

- A **search committee** which recommends a panel of names to the high-power selection committee.
- The **selection committee** comprises the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition, the Chief Justice of India (or his nominee) and an eminent jurist (nominated by President based on the recommendation of other members of the panel).
- President will appoint the recommended names.

Student Notes:

## 9.3. Removal

The Chairperson or any Member shall be removed from his office by order of the President on **grounds of misbehaviour after the Supreme Court report.** For that a petition has to be signed by at least one hundred Members of Parliament.

## 9.4. Jurisdiction

The jurisdiction of Lokpal extends to:

- Anyone who is or has **been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D.**
- The chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either **established by an Act of Parliament or wholly or partly funded by the Centre.**
- Any society or trust or body that receives **foreign contribution above ₹10 lakh.**

### 9.4.1 Exceptions for Prime Minister

- It does not allow a Lokpal inquiry if the allegation against the PM relates to international relations, external and internal security, public order, atomic energy and space.
- Complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of inquiry and at least 2/3rds of the members approve it.
- Such an inquiry against the PM (if conducted) is to be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

## 9.5. Emoluments

- The **salaries, allowances and service conditions** of the Lokpal Chairperson will be the same as those for the Chief Justice of India; those for other members will be the same as those for a judge of the Supreme Court.
- The administrative expenses of the Lokpal, including all **salaries, allowances and pensions of the Chairperson, Members or Secretary or other officers or staff of the Lokpal**, will be charged upon the **Consolidated Fund of India** and any fees or other money taken by the Lokpal shall form part of that Fund.

## 9.6. Functioning

- **Power with respect to CBI**: Power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal. Transfer of officers of CBI investigating cases referred by Lokpal would need approval of Lokpal.
- **Inquiry wing and prosecution wing:** Inquiry Wing for conducting **preliminary inquiry** and Prosecution Wing for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.
- **Timelines for enquiry, investigation:** Act specifies a time limit of **60 days for completion of inquiry and 6 months for completion of investigation** by the CBI. This period of 6 months can be extended by the Lokpal on a written request from CBI.
- **Confiscation of property:** The act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.
- **Special Court** shall be setup to hear and decide the cases referred by the Lokpal.

## 9.7. Issues

- **Requirement of Government Approval:** The Act does not vest power of prior sanction with Lokpal for enquiry and investigation of government officials.

- **Timeframe limitation:** The Act envisages that the Lokpal **shall not inquire into any complaint, made after seven years from the date** on which the offence has been committed. This restricts the scope, especially in relation to some of the large and complex scams that are exposed from time to time.
- **No Suo Moto power with Lokpal:** The Lokpal has been deprived of the authority of taking suo moto cognizance of the cases of corruption and maladministration.
- **Constitution of Lokayukta**: The Act mandates establishment of the Lokayukta in every state within a period of one year from the date of commencement of this Act. However, there are many states who have not taken action in this regard.
- **Power and Jurisdiction of the Lokayuktas in States:** State legislatures are free to determine the powers and jurisdictions of the Lokayukta which may establish weak Lokayuktas.

## 9.8. Way forward

- Lokpal can be given **constitutional status** to make it truly independent of political intervention.
- To prevent **Leader of Opposition** issue in future, an amendment to treat the leader of the largest Opposition party as the Leader of the Opposition for this purpose can be brought as done in respect of appointments of CBI Director and Central Vigilance Commissioner.
- Strict **guidelines and norms need to be setup to ensure** that the institution of Lokpal does not get buried into day to day complaints regarding administrative inefficiency, corruption etc.
- Provisions for the **protection to whistleblowers** shall be included in the Act, which was demanded in Jan Lokpal Bill.

# 10. Press Council of India (PCI)

The Press Council of India functions under the *Press Council Act*, *1978*. It is a statutory, quasi-judicial body which acts as a watchdog to oversee the conduct of the print media (press). It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively.

## 10.1. Composition

The PCI consists of a chairman and 28 other members, who serve for a term of three years.

- The Chairman, by convention a retired judge of the Supreme Court of India, is selected by the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha and a member elected by the PCI.
- The members consist of members of the three Lok Sabha members, two members of the Rajya Sabha, six editors of newspapers, seven working journalists other than editors of newspapers, six persons in the business of managing newspapers, one person who is engaged in the business of managing news agencies, and three persons with special knowledge of public life.

## 10.2. Functions

- The functions of the PCI include among others:
- Helping newspapers maintain their independence;
- Build a code of conduct for journalists and news agencies;
- Help maintain “high standards of public taste” and foster responsibility among citizens;
- Review developments likely to restrict flow of news.

## 10.3. Powers

- The PCI has the power to receive complaints of violation of the journalistic ethics, or professional misconduct by an editor or journalist.
- The PCI is responsible for enquiring in to complaints received. It may summon witnesses and take evidence under oath, demand copies of public records to be submitted, even issue warnings and admonish the newspaper, news agency, editor or journalist.
- The Council is also empowered to make such observations as it may deem fit in respect of the conduct of any authority, including Government, for interfering with the freedom of the press.
- It can even require any newspaper to publish details of the inquiry. Decisions of the PCI are final and cannot be appealed before a court of law.
- The Council has been entrusted by the Parliament with the additional responsibility of functioning as Appellate Authority under the Press and Registration of Books Act, 1867 and the Appellate Board comprises of the Chairman of the Council and a member of the Council. The Board meets regularly and decides the Appeals placed before it.

The Council has rendered its opinion on the references received from Law Commission regarding astrology advertisement. Election Commission of India has also approached the Council for providing some concrete parameters to adjudge Paid News.

## 10.4. Limitations on its powers

- The powers of the PCI are restricted in two ways.
  - The PCI has limited powers of enforcing the guidelines issued. It cannot penalize newspapers, news agencies, editors and journalists for violation of the guidelines.
  - The PCI only overviews the functioning of press media. That is, it can enforce standards upon newspapers, journals, magazines and other forms of print media. It does not have the power to review the functioning of the electronic media like radio, television and internet media.

# 11. National Commission for Minority Educational Institutions (NCMEI)

- NCMEI, a quasi-judicial body, regulates the certification of minority educational institutions all over India.
- Its Chairman should be who has been a Judge of the High Court and three members are to be nominated by Central Government.
- It has the powers of a Civil Court. It has both original and appellate jurisdiction in such matters, as laid down by the SC in Joseph of Cluny v/s The State of West Bengal case.
- It has adjudicatory functions and recommendatory powers.
- It decides on disputes regarding affiliation of a minority educational institution to a university.
- It has power to enquire, suo motu, into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice.

**NCMEI Act** defines MEI as a college or an educational institution established and administered by a minority or minorities.

As per notification of the Government of India, there are **6 notified religious minority communities** - Muslim, Sikh, Christian, Buddhist, Parsis and Jain. **No linguistic minority** has been notified by the Central Government till date.

**Eligibility criteria of MEIs-**

-Educational institution is **established and being administered** by the minority community.

-If it is run by a trust/ registered society, **majority of members** must be from the minority community.

-It has been established **for the benefit** of the minority community.

- It specifies measures to promote and preserve the minority status and character of institutions of their choice established by minorities.
- It can also cancel the minority status granted to institutions if they are found to have violated the conditions of the grant.

## 12. Consumer Disputes Redressal Commissions

Till recently, the Consumer Disputes Redressal Commissions used to function under the ambit of the Consumer Protection Act, 1986. This act has been replaced by the **Consumer Protection Act, 2019**, which envisages setting up of C**onsumer Disputes Redressal Commissions** at the **District, State and National levels** for adjudicating consumer complaints. Appeals from the District and State Commissions will be heard at the next level and from the National Commission by the Supreme Court.

The Commissions will protect the "**consumer rights**" as defined by the 2019 Act as the right:

- to be protected against the marketing of goods, products or services which are hazardous to life and property.
- to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services;
- to be assured of access to a variety of goods, products or services at competitive prices.
- It also includes the right to be heard and to be assured that the consumer's interests will receive due consideration at appropriate forum; and
- the right to consumer awareness.

The powers and jurisdiction of these Commissions have been modified due to the new law, as shown below:

| | 1986 Act | 2019 Act |
|---|---|---|
| **Ambit of law** | All goods and services for consideration, while free and personal services are excluded. | All goods and services, including telecom and housing construction, and all modes of transactions (online, teleshopping, etc.) for consideration. Free and personal services are excluded. |
| **Unfair trade practices** | Includes six types of such practices, like false representation, misleading advertisement. | The Act adds three types of practices to the list, namely:<br>• failure to issue a bill or receipt;<br>• refusal to accept a good returned within 30 days; and<br>• disclosure of personal information given in confidence, unless required by law or in public interest.<br>Contests/ lotteries may be notified as not falling under the ambit of unfair trade practices. |
| **Product liability** | No provision. Consumer could approach civil court but not consumer court. | Claim for product liability can be made against manufacturer, service provider, and seller. |
| **Unfair contracts** | No provision. | The Act recognizes and addresses the menace of unilateral and unfair contracts. |
| **Regulator** | No separate regulator. | Establishes the Central Consumer Protection Authority. |
| **Pecuniary jurisdiction of Commissions** | **District**: Up to Rs 20 lakh;<br>**State**: Between Rs 20 lakh and up to Rs one crore;<br>**National**: Above Rs one crore | **District**: Up to Rs one crore;<br>**State**: Between Rs one crore and up to Rs 10 crore;<br>**National**: above Rs 10 crore. |

| | | |
|---|---|---|
| **Consumer court** | Complaints could be filed in a consumer court where sellers (defendant) office is located. | Complaints can be filed in a consumer court where consumer resides or work. |
| **E-commerce** | No provision. | Defines direct selling, e-commerce and electronic service provider. The central government may prescribe rules for preventing unfair trade practices in e-commerce and direct selling. |
| **Mediation Cells** | No legal Provision. | Court can refer settlement through mediation. |

The **National Commission** is empowered to issue instructions regarding:

- Adoption of uniform procedure in the hearing of the matters,
- Prior service of copies of documents produced by one party to the opposite parties,
- Speedy grant of copies of documents, and
- Generally over-seeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, **without interfering with their quasi-judicial freedom.**
- In order to help achieve the objects of the Consumer Protection Act, the National Commission has also been conferred with the power of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases.

The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/ petition submitted under the Act, a consumer is not required to pay any court fee, but only a nominal fee.

## 13. UPSC Previous Years' Questions

1. "The Central Administrative Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain. (2019)
2. National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of the above observation assess the role of NHRC as an effective complement to the judiciary and the judiciary and other institutions. In promoting and protecting human rights standards. (2014)
3. 'A national Lokpal, however strong it may be, cannot resolve the problems of immorality in public affairs.' Discuss. (2013)

## 14. Vision IAS Previous Years' Questions

1. ***What is the legal sanction behind the establishment of Foreigners' Tribunals? Comment on the need of strict judicial supervision given the context in which they function.***

***Approach:***

- Briefly explain Foreigners Tribunals.
- Explain how they have been created, and mention their powers as well.
- With the help of facts, explain how these tribunals are functioning and whether they require a strict judicial supervision or not.
- Conclude as per the discussion.

***Answer:***

Student Notes:

The Foreigners Tribunal is a quasi-judicial body created through an executive order namely- **Foreigners Tribunal Order, 1964** under **Section 3 the Foreigners Act, 1946**. When referred by the Central/State Government /District Magistrate, foreigner tribunals decide on matters related to:

- Whether a person is a foreigner within the meaning of **Foreigners Act, 1946.**
- Whether a person of Indian origin complies with the requirements under **Clause 6A (Assam Accord) of the Citizenship Act, 1955.**

Foreigners Tribunals can regulate their own procedure. They have **powers equivalent to that of a Civil Court.** They can summon and enforce the attendance of any person and can also examine them under oath. At present, Foreigners Tribunals have been created in Assam to hear appeals of people who are excluded from the final National Register of Citizens (NRC). The judgments of these tribunals can be challenged in higher courts.

**The power to declare a person as foreigner lies with these tribunals only**. Therefore, fair functioning of these bodies is very essential. However, **following issues have been observed**:

- These tribunals have been created through an executive order. This is in **violation of Article 323B** of Indian Constitution, which requires that only the Legislature through law can provide for adjudication of matters by tribunal.
- These Tribunals often fail to mention in the notices to alleged foreigners the main grounds on which that person is alleged to be a foreigner, thus, flouting Section 3(1) of the Foreigners Tribunals Order, 1964 requiring them to mention the main grounds.
- The 1964 order contains **'Judicial Experience'** as an essential appointment criteria, whereas, this eligibility has been relaxed through a notification recently and now **even retired civil servants and advocates with just seven years of practice can be appointed as members** of these tribunals.
- Executive decides the tenure of tribunal members and extension of their terms on the basis of their **'performance'**. Pay and allowances of members are also **regulated by the government**.

Arbitrary decisions and lack of impartiality has been observed during Assam NRC and therefore the Guwahati High Court has ordered fresh hearing by the Foreigners Tribunals (FTs) in many cases. Since, there is a demand for a nation-wide NRC, these FTs must be brought under the strict supervision of concerned High courts and should be freed from the governmental control.



***2. What are the different rights available to the consumers under the Consumer Protection Act, 1986? Explaining the three layered quasi-judicial mechanism put in place under the Act, mention the measures that can be taken to improve the functioning of these forums.***

***Approach:***

- Briefly define consumer rights.
- Mention the rights of the consumers mention in the Consumer protection Act.
- Explain the structure of consumer forums in India.
- Emphasize on the need for improving the functioning of the Consumer Forums.
- Suggest measures.

***Answer:***

Student Notes:

The Consumer Protection Act, 1986 (COPRA) aims at simple, speedy and inexpensive redressal of consumer disputes. The rights recognized under COPRA are:

- **Protection** against marketing of goods and services hazardous to life and property.
- **Information** about quality, quantity, standard and price of goods and services.
- Right to **choose** i.e. right to be assured of satisfactory quality and service at a fair price.
- Right to be **heard** i.e. consumer's interest to receive due consideration at appropriate forums.
- Right to seek **redressal.** It includes right to fair settlement of genuine grievances of the consumer.
- Right to **consumer education.**

**Structure of Consumer Forums in India-** COPRA provides for a 3-tier approach in resolving consumer disputes**:**

- **District Consumer Disputes Redressal Forum:** Entertains cases where the value of claim is up to Rs. 20 lakhs. The District Forums and State Commissions are formed by States with the permission of the Central Government
- **State Consumer Disputes Redressal Forum:** Value of claims exceeds Rs. 20 lakhs up to Rs. 1 Crore.
- **National Consumer Dispute Redressal Forum:** Value of claims exceeds Rs. 1 crore. the National Commission is formed by the Central Government.

**The following measures can be adopted to further strengthen the functioning of these forums:**

- Less emphasis on procedure and more emphasis on effective settlement of the dispute with a focus on the rights of the consumer.
- Introducing provisions regarding **product liability** and **unfair contract** on part of manufacturer / seller/service provider of a defective product.
- Usage of alternate dispute redressal methods making the process of dispute resolution quicker.
- Simplification of the process of adjudication in consumer foras.
- Setting up of a regulator i.e. Central Consumer Protection Authority to promote, protect and enforce consumer rights as a class.
- Establishment of Consumer Councils along with the Consumer Courts to render advise on consumer protection.
- Strong filtering mechanism at entry level to prevent false consumer complaints.

In this context the Consumer Protection Bill, 2018 is a step in the right direction.

***3. Tribunals in India have not just replicated some of the problems that our judiciary suffers from but added a few more. Discuss.***

***Approach:***

- Briefly comment upon the tribunal framework in India and the intention behind creating it.
- Highlight how the problems facing Tribunals are in common with those of Judiciary itself.
- Discuss a few additional problems created by the tribunal network in India.
- Conclude.

***Answer:***

Student Notes:

Tribunals serve as an important specialised dispute resolution mechanism alongside the regular courts. The 42nd Amendment in 1976, which inserted Article 323-A and 323-B in the Constitution, empowered both the Parliament and state legislatures to establish administrative and other tribunals. By involving expert members, administrative and logistical support from the executive, and specialised procedures, tribunals promise a speedy and more technical resolution of disputes under certain statutes.

Unfortunately, despite its intentions, tribunals have often replicated some of the problems our judiciary suffers from and in fact added some more:

**A. Pendency and Vacancy in Tribunals**

**Pendency:** The problem of pendency of cases is neither new nor exclusive to the courts. The 272nd Law Commission Report highlighted pendency figures for the Central Administrative Tribunal (44,333 cases), Income Tax Appellate Tribunal (90,538 cases) and the Armed Forces Tribunal (10,222 cases). The high pendency figures exist despite a high disposal rate. This is often high due to systemic issues like failed hearings, filing delays and absenteeism.
**Vacancy:** Tribunals also suffer from the same problems of shortage of personnel as other courts. The 74th Parliamentary Standing Committee Report analysed a list of 13 tribunals wherein around 40% of a sanctioned strength were lying vacant in 2014.

**B. Lack of Independence with Tribunals:**

**Appointment:** While tribunal chairpersons are appointed after consulting the Chief Justice of India, members are typically recommended by selection committees, which are often not independent, since secretaries of the sponsoring department are a part of them. Moreover, several department bureaucrats are appointed as tribunal members. Since departments also fund and assist with the day-to-day administration of these tribunals, it creates a clear conflict of interest when decisions by these departments are challenged in the tribunals they administer.
**Removal:** Since the procedure for removal of members lies with the executive, there exists a possibility of influencing the decisions passed by the tribunals. No such safeguard as impeachment exists for tribunal members.
**Nodal Ministry:** Tribunals are entirely dependent on their nodal ministries for their day-to-day functioning. These ministries can compromise the functioning of the tribunal by providing inadequate resources with the aim of arm-twisting the tribunal into passing favourable orders or not able to function at all.
**Proclivity to Appoint Retired Judges and Bureaucrats:** It has the potential to compromise the integrity of the judiciary as such positions act as a lure for post-retirement plans for government servants.

**C. Administrative Concerns: Non-Uniformity in Regulation**

**Qualifications:** Different qualification requirements lead to varying competencies, maturity and status of members, which is problematic since tribunals often operate at the same level as that of High Courts.
**Tenure:** Short tenure of 3-5 years precludes the cultivation of domain expertise, which can impact the efficacy of tribunals.
**Variance:** There is a degree of variance in the appointment process, qualification of members, age of retirement, resources and infrastructure of different tribunals. This is due to tribunals operating under different ministries.

**D. Jurisdiction of the High Courts**

Student Notes:

**Direct Appeal to the Supreme Court:** There are issues with provisions allowing for direct appeals to the Supreme Court (SC) thereby by-passing the jurisdiction of the High Courts. Firstly, a direct appeal to the SC is too costly and inaccessible for litigants; and secondly, such a provision of appeal would lead to congestion of the docket of the SC.

Problems pertaining to the lack of independence, ad-hoc regulation and by passing the jurisdiction of High Courts have been the major criticisms against the tribunal system in India. Therefore, any attempts at reform must adequately address these issues.

***4. Effective protection of consumer rights is sine qua non for promoting the culture of good governance. In this context, critically examine the state of consumer rights protection in India and discuss the need for reforms in this regard.***

***Approach:***

- Briefly discuss the present state of consumer rights protection in India and its relevance for good governance.
- Mention the issues faced in effective consumer protection thereby implying the need for its reforms.
- Highlight a few measures needed to ensure proper consumer protection in India.

***Answer:***

Consumer rights in India are protected by the **Consumer Protection Act 1986** which lays down six basic rights for consumer empowerment viz. Right to safety, information, choose, being heard, redressal and education. These rights are imperative for promoting the culture of good governance which focuses on efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation.

In India, the consumer rights are protected through a three tier redressal system at Centre, State and District level to provide simple, speedy and inexpensive redressal to consumer grievances. Despite this, consumer protection in India is facing following **issues**:

- Consumer Protection Act 1986 focuses more on redressal and less on prevention of disputes.
- **Consumer Protection Councils** which are entrusted to protect and promote the consumer rights are toothless and non-existent in many states and districts.
- **Mechanism** for enforcement is available for only 1 out of the 6 rights mentioned in the 1986 Act i.e. right to redressal of grievances.
- Inordinate **delays** in providing justice to the consumers.
- Lack of quality **infrastructure** such as poor laboratory testing facilities, digital infrastructure of the consumer courts etc.
- Poor enforcing mechanisms to ensure minimum **standard** of services and standardization of products.
- **Issues with Consumer Courts**:
  - Inordinate delays in appointment of members of adjudication panels by state governments.
  - Unnecessary technicalities in the judgement's procedures.
  - Frequent adjournments of the proceedings.
  - Miserly compensation discourages consumers to approach these forums.

Student Notes:

- **New issues** have emerged due to the rapid advances in digital technologies such as online frauds, identity thefts, credit card cloning, e-commerce related issues etc.

In order to reform the present state, **Consumer Protection Bill, 2018** needs to be passed quickly. It includes important provisions such as:

- Setting up of an executive agency, to be known as the Central Consumer Protection Agency, to promote, protect and enforce the consumer rights.
- The Bill proposes time-bound settlement of consumer disputes i.e., 3 months from the date of receipt of notice by opposite party and 5 months for cases which involve testing product samples..
- It also proposes use of Alternate Dispute Resolution (ADR) mechanism.
- Penalising of celebrity endorsements for false and misleading advertisements.

An effective Consumer protection movement needs the proactive support of the government, business, civil society, educational and research institutions. It is time that we expand our horizons of consumer protection by recognizing "Digital Content" as a third category along with goods and services (as has been done by the UK recently). Additionally alternative dispute resolution methods like Online Dispute Resolution (ODR) need to be adopted.

**5.** ***During the recent ruling on extra-judicial killings in Manipur, the Supreme court used the expression 'toothless-tiger' to refer to the NHRC. Has the NHRC failed in its mandate to counter systematic human rights violations? Critically analyse its working and suggest some measures to improve its effectiveness.***

***Approach:***

- Briefly introduce NHRC and major reasons behind calling toothless-tiger.
- Discuss the instances where NHRC failed to use its power effectively.
- Discuss various aspects of NHRC working along with supporting and opposing arguments and evidences.
- List the measures to improve its functioning.

***Answer:***

NHRC is a statutory body responsible for protection and promotion of human rights in India. It was sought to be an independent human rights watchdog and stand against violations of rights by state. But its functioning has been checkered and it has been found many a times to be towing the line of state. For instance, recently the Supreme Court, in case of extra-judicial killings in Manipur, observed that NHRC failed to maintain complete information regarding its investigations and the reports submitted are of poor quality.

**Analysis of NHRC's working**

- **Functions and Powers**: For implementation of recommendations, it depends on state and in case of non-implementation; it does not have power to take coercive measures against person or authorities.
- **Acts as Civil Court**: In case of summoning witnesses or documents, NHRC can act as civil court. But it lacks the power to implement orders that the civil courts has. It cannot penalise authorities who do not implement its recommendations in a time bound manner.
- **Availability of Resources**: Due to limited availability of human, financial and material resources, it faces difficulties in performing its role effectively and efficiently. To investigate the cases, it depends on staff recruited by the state. But

the state's ignorance to request to recruit is leading to long delays and inability to follow up on steps undertaken.

- **Limited Specialisation**: Staff mainly consists of operational and administrative members while specialists who can deliver on its mandate are limited. There is serious lack of competencies in jurisprudence, investigation, data collection, documentation, communication and capacity development.
- **Conflict of interest**: While it has to investigate the offences of state officials, its dependence upon state for funds and functionaries. Hence, its independence and impartiality is compromised.
- **Applicability of Act**: NHRC Act gives it power to investigate cases of human right violations in India but excludes J&K. Similarly, NHRC powers with respect to armed forces are limited. Also the act does not categorically empower NHRC to investigate matters of human rights violation by private parties.

**Suggestions**

- Funding of NHRC and SHRCs should be made through budgetary allocations. Increase in funds, reduction of operational costs and improving competencies through more specialists.
- Its recommendations must be implemented by government in a time bound manner and its reports must be sincerely discussed in legislatures.
- Ensure independence and autonomy by providing for Independent recruitment and management of staff.
- Allow NHRC to independently investigate complaints against armed forces personnel.
- Separate body to investigate cases where police are allegedly involved in human rights violation.

Moreover, it is important that the commission does perceive itself as independent. It should believe that it is not answerable to government but citizens. This changed mindset coupled with tangible reforms will go a long way in ensuring its credibility.