



# POLITY

# PART - 2

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# UNION EXECUTIVE

Student Notes:

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## 1. Introduction

India adopted the Westminster model of democracy, wherein Parliament is the supreme law-making body. However, it is the executive that has the sole authority and responsibility for the daily administration of the country. It is this branch of the government that executes or enforces the laws made by the Parliament.

The President, Vice President, Prime Minister, Council of Ministers, and the Attorney General form the Union Executive. A similar structure operates at the level of States too, wherein the Governor, Chief Minister, Council of Ministers, and the Advocate General form the State executive.

## 2. President

A Cabinet form of government usually has two executives – one, the real head, and other, the titular or ceremonial head. It is the President, who is the titular head in India. His office is largely ceremonial in nature.

Such a titular head is needed because:

- The President's office can be considered above party politics, and is a symbol of unity, integrity and solidarity of the nation
- As the life of Council of Ministers is uncertain and subject to it enjoying majority in the Lok Sabha, there has to be an office, with a fixed term, to ensure continuity in administration
- An additional reason in the context of India is federalism. Members of State Legislative Assemblies also participate in the President's elections; and hence the President can be said to represent the States too, apart from the Union.

According to Article 52, *there shall be a President of India who would be the Head of the Union Executive*. Here, the word "shall" means that there would always be a President of India. The post shall never lie vacant. It cannot be abolished. Election of the President must be completed before the expiry of his term. In case of temporary absence due to illness etc., it would be the Vice President who holds the Office of the President, until the President resumes his duties.

### 2.1. Qualification

In order to be qualified for election as President, a person must:

- be a citizen of India
- have completed 35 yrs. of age
- be qualified to contest elections as a member of the Lok Sabha (House of the People)
- not hold any office of profit under the Government of India or the Government of any State or any local or other authority subject to the control of any of the said Government (Art. 58).

### 2.2. Conditions of the President's Office

- The President shall not be a member of any house of Union or State legislature. This implies that if such member is elected as President, he shall be deemed to have vacated his seat in that house on which he enters upon his office as President.
- The President shall not hold any other office of profit.
- He is entitled, without payment of rent, to the use of his official residence (the Rashtrapati Bhavan).
- The emoluments and allowances of the President as may be determined by Parliament cannot be diminished during his term of office.

## 2.3. Term of Office

The President holds the office for a term of 5 years from the date on which he enters upon his office. However, the President's office may terminate within the term of five years, in either of the following two ways:

- By resignation in writing under his hand addressed to the Vice-President of India.
- By removal for violation of the Constitution, by the process of impeachment (Art. 56). The only ground for impeachment specified in Art. 61 (1) is 'violation of the Constitution' (to be discussed in detail later).

## 2.4. Election Procedure

The President of India is elected by indirect election, i.e. by an electoral college, in accordance with the system of proportional representation by means of a single transferable vote, and the voting is by secret ballot.

### 2.4.1. Electoral College

The **Electoral College** consists of:

- Elected Members of both the Houses of Parliament.
- Elected members of Legislative Assemblies of States.
- Elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry (included by 70<sup>th</sup> Constitutional Amendment Act, 1992).

This implies, that the following members are **not allowed to vote** in the Presidential election:

- Nominated members of the Lok Sabha.
- Nominated members of the Rajya Sabha.
- Nominated members of the Legislative Assemblies of State.
- Elected and Nominated members of the Legislative Councils of States.
- Nominated members of the Legislative Assembly of Delhi & Puducherry.

The Parliament has powers to regulate by law, the matters relating to the elections of the President and the Vice President (VP). As per the Presidential and Vice-Presidential Elections Act, a candidate, to be nominated for the office of the President, needs 50 electors as proposers and 50 electors as seconders (elector here implies a member of the President's electoral college) for his or her name to appear on the ballot.

As far as practicable, there shall be uniformity of representation of the different States at the election, according to the population and the total number of elected members of the Legislative Assembly of each State, and parity shall also be maintained between the States as a whole and the Union (Art. 55). In this way, the President shall be a representative of the nation as well as a representative of the people in the different States. It also gives recognition to the status of the States in the federal system.

In order to secure uniformity in the scale of representation of the different States, it is provided that every elected member of the Legislative Assembly (Vidhan Sabha) of a State has to cast as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Assembly, and if, after taking the said multiples of one thousand, the remainder is not less than five hundred, the votes of each member referred to above are further increased by one. To put it in simpler words, each member of the Electoral College who is a member of a State Legislative Assembly (MLA) will have a number of votes calculated as follows:

**Value of the vote of an MLA = (Total Population of the State)/ (Total number of elected members in the Legislative Assembly X 1000)**

Fractions exceeding one-half being counted as one.

The following example will explain the method of calculation more clearly:

- Suppose the population of state A is 37,129,852. Let us take the total number of elected members in the Legislative Assembly of A to be 276. To obtain the number of votes which each such elected member will be entitled to cast at the election of the President we have first to divide 37,129,852 (which is the population) by 276 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case the quotient is 134,528.449. The number of votes which each such member will be entitled to cast would be  $134,528.449/1000$  i.e. **135** (as fraction is 0.528 which greater than 0.5 thus counted as one).

Each elected member of either House of Parliament (MP) have such number of votes as obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States divided by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

**Value of the vote of an MP = (Total number of votes assigned to the elected members of all the State Assemblies)/(Total number of elected members of both Houses of the Parliament)**

Fractions exceeding one-half being counted as one.

Further, the system of proportional representation by means of a single transferable vote, by secret ballot, ensures that the successful candidate is returned by an absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as:

Electoral Quota= [Total Number of valid votes polled/ $(1+1)=2$ ]+ 1

#### 2.4.2. Manner of Election

Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray.

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballot of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

#### 2.4.3. Issues related to the Election

According to Article 71, all doubts and disputes in connection with the election of the President are inquired into and decided by the Supreme Court of India, whose jurisdiction shall be *exclusive* and *final* (other Courts have no jurisdiction over the same). An election petition calling in question an election to the office of the President may be presented within 30 days from the date of publication of the declaration of the result of election to the Supreme Court. This can be presented by any candidate at such election or any twenty or more electors joined together as petitioners. Petitions can be filled only on two grounds:

- Nomination of the candidate is wrongly rejected
- Elected candidate is wrongly accepted

No election can be questioned on the ground that there was a vacancy in the Electoral College.

In case, the election is declared void by the Supreme Court, acts done by the President prior to the date of such decision of the Supreme Court shall not be invalidated.

#### 2.4.4. Critical Analysis

The system of indirect election was criticized by some as falling short of the democratic ideal underlying universal franchise. But indirect election was supported by the framers of the Constitution, on the following grounds:

- Direct election by an electorate as large as in India, would mean a tremendous loss of time, energy and money.
- Under the system of responsible Government introduced by the Constitution, real power would vest in the Prime Minister, who heads the Council of Minister; so it would be anomalous to elect the President directly by the people without giving him real powers.

Some members of the Constituent Assembly suggested that the President should be elected by the members of the two Houses of Parliament alone. The makers of the Constitution did not prefer this as the Parliament, dominated by one political party, would have invariably chosen a candidate from that party and such a President could not represent the States of the Indian Union. The present system, on the other hand, makes the President a representative of the Union and the States equally.

Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of Presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could be better called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

#### 2.5. Vacancy in the Office of President

Condition of Vacancy	Who shall act as President
On Expiry of his Term of Five Years	Election must be conducted before expiry of the term. If somehow election is delayed, the outgoing President continues to hold the office, until his successor assumes the office.
By his Death, Resignation, Removal by impeachment, Otherwise, for e.g. he becomes disqualified to hold office.	Vice President assumes the office until a new President is elected. Elections are to be held within six months of occurrence of the vacancy.
Illness or Absence from India	Vice President assumes the office until the President resumes his duties.

**Note:** In case the office of Vice President is *vacant*, the Chief Justice of India (or if his office is also vacant, the senior most judge of the Supreme Court available) shall act as the President of India.

When the Vice President, Shri V. V. Giri, who was acting as the President due to the vacancy caused by the death of the President, Dr. Zakir Husain, resigned from the office of the Vice President in 1969, the Chief Justice of India, Shri M. Hidayatullah, discharged the functions of the President.

#### 2.6. Powers and Functions of the President

The powers enjoyed by the President and the functions performed by him are divided into the following heads:

##### 2.6.1. Executive Powers

Article 53(1) provides that executive powers can be exercised by the President either (i) directly

or (ii) through officers subordinated to him.

Here, the 'officers subordinated to him' include the Council of Ministers.

Notably, the Article needs to be read together with Article 74, which provides that:

*There shall be a Council of Ministers, with the Prime Minister as its head, to aid and advice the President.*

Here the word "shall" means that the Constitution doesn't envisage a situation wherein the President can act without the aid and advice of the Council of Ministers. In case, the government has lost majority, the President is to constitute a caretaker government. Invariably, he asks the incumbent government to continue to hold office, until the next government is formed.

- He appoints the Prime Minister and other ministers; and they hold office during his pleasure.
- He appoints the Attorney General of India and determines his remuneration. He too holds office during the pleasure of the President.

The President also appoints the following:

- Comptroller and Auditor General of India
- Chief Election Commissioner and other Election Commissioners
- Chairman and Members of the UPSC
- Governors of the States
- Chairman and the members of the Finance Commission
- Judges of High Courts and Supreme Court

In making some of the appointments, the President is required by the Constitution to consult persons other than the ministers as well. Thus, in appointing the Judges of the Supreme Court the President shall consult the Chief Justice of India and such other Judges of the Supreme Court and of the High Courts as he may deem necessary [Art 124(2)].

Moreover, besides the power of appointing the above specified functionaries, the Indian Constitution does not vest in the President any absolute power to appoint *inferior officers* of the Union as is to be found in the *American Constitution*. The Indian Constitution thus seeks to avoid the undesirable 'spoils system' of America. Rather it makes the 'Union Public Services and the Union Public Service Commission' – a legislative subject for the Union Parliament, and by making it obligatory on the part of the President to consult the Public Service Commission in matters relating to appointment [Art. 320(3)], except in certain specified cases.

- The President can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the Prime Minister.
- He can require the Prime Minister to submit, for consideration of the Council of Ministers (CoM), any matter on which a decision has been taken by a minister, but which has not been considered by the CoM.
- He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- He can appoint an inter-state council to promote Centre-state and inter-state cooperation.
- He directly administers the Union Territories through administrators appointed by him.

### **Powers of the President with respect to Administration of Scheduled/Tribal Areas**

1. Power to declare an area as Scheduled Area.
2. Power that an area will cease to be a Scheduled Area.
3. Power to constitute Tribal Advisory Committees.

Student Notes:

4. For peace and good governance of Scheduled Areas in a State, the governor can make regulations. Such regulations will have no effect unless they have been submitted for President's consideration and have received his assent.
5. The President can require the Governor to prepare a report on administration of the area.
6. The President can issue directions with respect to administration of such an area.

Student Notes:

## Extent of Executive Power of the Union

Article 73 provides:

- 1) All those subjects on which the Union Parliament has powers to make law, Union Executive will have powers on such subjects.
- 2) Whatever power and authority emerges because of any treaty or agreement.
- 3) With respect to the Concurrent List, ordinarily the executive powers will be with the states, but if a law made by the Parliament specifically provides that the power is to be exercised by the Union executive, then it is the Union that will exercise executive powers.

Further, Article 53(3) provides:

*If any law passed by the Parliament has given a function to the government of any state, or any other authority, it shall not be understood or deemed to be transferred to the President.*

Notably, Article 53 doesn't prevent the Parliament from giving any executive function by law to any authority, other than the President.

## Powers with respect to allocation and transaction of business

Article 77 provides:

- 1) *All executive action of the Government of India shall be expressed to be taken in the name of the President*
- 2) *Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument, which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President*
- 3) *The President shall make rules for more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business*

However, the executive powers of the President, like his other powers, are subject to the advice of the Council of Ministers, headed by the Prime Minister (Article 74).

### 2.6.2. Legislative Powers

The President is an integral part of the Parliament. He enjoys the following legislative powers:

- The President can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting (in case of ordinary bills and financial bills only) of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- He can address the Parliament at the commencement of the first session after each general election and the first session of each year. Apart from this he can send messages to either House of Parliament on any important matter of national, constitutional or public interest.
- The President can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. He can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.
- The President of India has the power to constitute the Parliament partially, by virtue of his powers to nominate members to both the Houses of the Parliament.

- He can nominate two members from Anglo Indian Community to the Lok Sabha, if he is satisfied that the community is not adequately represented in the House.
  - He can nominate twelve members to the Rajya Sabha from among persons having special knowledge and practical experience of science, art, literature and social service.
- The Constitution requires the previous sanction of the President for introducing certain legislations.
  - For example, a bill, which seeks to create a new state or change the boundary of an existing state or change the name of a state or a bill which would involve expenditure from the Consolidated Fund of India.
  - Money bills also require the previous sanction of the President before their introduction in the Lower House.
  - Besides, all bills after they are passed in the Parliament need his consent to become Acts.
- When a bill is sent to the Parliament after it has been passed by the Parliament, the President can:
  - give his assent to the bill, or
  - withhold his assent to the bill, or
  - return the bill (if it is not a Money Bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

The President may either give or withhold his assent to a Money Bill. A Money Bill cannot be returned to the House, by the President, for its reconsideration. Also, the President is bound to give his assent to a Constitutional Amendment Bill passed by the Parliament by the prescribed majority and, where necessary, ratified by the requisite number of State Legislatures.

- When a bill passed by a State legislature is reserved by the Governor for consideration of the President, the President can:
  - give his assent to the bill, or
  - withhold his assent to the bill, or
  - direct the Governor to return the bill (if it is not a Money bill) for reconsideration of the State Legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the State Legislature and sent again to him for his reconsideration.
- The President lays reports of the Finance Commission, the Union Public Service Commission, National Commission for SCs and STs, Central Vigilance Commission, Central Information Commission, and the Comptroller and Auditor-General relating to the accounts of the Union etc. before the Parliament.
- According to Article 103, if any question arises that a member of either House of Parliament has become subject to disqualification under Article 102, then the matter shall be referred to the President, whose decision will be final. However, precondition is that the President shall take the opinion of Election Commission before making such a decision and will act according to such an advice.
- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations, but only when the assembly is suspended or dissolved.

### 2.6.3. Emergency Powers

The makers of the Indian Constitution were influenced by the relevant provisions of the Government of India Act, 1935 and the Constitution of Weimer Republic of Germany wherein emergency provisions had been incorporated. In the Constitution of India, three kinds of

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emergencies have been envisaged -National Emergency, State Emergency and Financial Emergency.

To deal with any emergency, the President has been given some extraordinary powers by the Constitution of India.

Student Notes:

### National Emergency (Art. 352)

- 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. The 44<sup>th</sup> 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'.
- 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.
- 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 38<sup>th</sup> Amendment Act of 1975.
- 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'.
- A proclamation of national emergency may be applicable to the entire country or only a part of it. The 42<sup>nd</sup> Amendment Act of 1976 enabled the President to limit the operation of a National Emergency to a specified part of India.
- 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 44<sup>th</sup> Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the Prime Minister alone taking a decision in this regard.
- The 38<sup>th</sup> Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44<sup>th</sup> 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.
- The proclamation of National Emergency must be approved by both the Houses of the Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months, but it was reduced by the 44<sup>th</sup> 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.
- 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 44<sup>th</sup> 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).

- The declaration of National Emergency brings about a lot of **changes 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 law making power of Parliament is extended to the items in the State list.
- 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.
- He is also empowered to rearrange the distribution of revenues between the union and the states to ensure availability of sufficient funds to the central government.
- The fundamental rights granted to the citizens can be reasonably restricted in the greater interest of the country. However, such restrictions are withdrawn immediately after the revocation of emergency. Also, the life of the Parliament may be extended by a year.

Note: Kindly refer to the Vision IAS 'Emergency Provisions' document

### **State Emergency or President's Rule (Arts. 356 and 365)**

- President's Rule is also known as 'State Emergency' or 'Constitutional Emergency'.
- It can be imposed under Article 356 on two grounds - one mentioned in Article 356 itself, i.e. failure of constitutional machinery in the States, and another in Article 365 i.e., failure to comply with or to give effect to directions given by the Union. It is under these that the President proclaims President's Rule.
- Art 356 provides that if the President of India, on receipt of report from the Governor of a State or otherwise, 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, he may declare State Emergency. Such a proclamation may be made by the President, where a State has failed to implement any central directive. Since any dislocation in State administration might affect the national integrity, the provision of President's rule has been provided as a safeguard against such a situation.
- The proclamation should be approved within two months by both the Houses of Parliament. Thereafter, it remains in force for six months. It can be extended for a maximum period of three years with the approval of Parliament, every six months.
- 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.
- Further, the President either suspends or dissolves the State Legislative Assembly. The powers of the State Legislature in that case are exercised by the Parliament. The Parliament may also delegate these powers to the President.

This type of emergency has been invoked on several occasions since 1951. The 44<sup>th</sup> Constitutional Amendment Act has provided that such a proclamation can be challenged in a court of law to check its misuse.

In the famous S. R. Bommai case, the Supreme Court held that the Presidential proclamation imposing state emergency is subject to judicial review.

## Financial Emergency

- The President proclaims Financial Emergency under article 360, if he is satisfied that the financial stability or credit of India, or any part thereof is threatened.
- 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.
- 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.

## 2.6.4. Financial Powers

- Money bills can be introduced in the Parliament, only with the President's prior recommendation.
- No demand for a grant can be made except on his recommendation.
- The President causes to be laid before the Parliament the Annual Financial Statement i.e. the Union Budget.
- The President can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.
- The President constitutes a Finance Commission after every five years to recommend the distribution of revenues between the Centre and the States.

## 2.6.5. Diplomatic Powers

The President enjoys wide diplomatic powers over foreign or external affairs. For the purpose of maintaining ties with the other countries, he appoints diplomatic representatives like Ambassadors or High Commissioners to those countries. The diplomatic representatives of other foreign countries also present their credentials to him before taking up their assignments in this country. The President also represents India in international forums and affairs.

Also, international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to approval of the Parliament.

## 2.6.6. Military Powers

The President is the supreme commander of the defence forces of India. In that capacity, he appoints the Chiefs of Army, Navy and Air Force. He can declare war or conclude peace, subject to the approval of Parliament.

## 2.6.7. Judicial Powers

- The President appoints the Chief Justice and the Judges of Supreme Court and High Courts.
- He can seek advice from the Supreme Court on any question of law or fact (Article 143). But the advice given by the Supreme Court is not binding on the President.

## 2.6.8. Pardoning Powers

Article 72 mentions that:

- 1) *The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence*

- a) in all cases where the punishment or sentence is by a Court Martial;
  - b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
  - c) in all cases where the sentence is a sentence of death.
- 2) Nothing in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

Meaning of these terms can be understood as:

**Pardon:** It removes both the sentence and conviction and completely absolves the convict from all sentences, punishments and disqualifications.

**Reprieve:** It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

**Respite:** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, like physical disability of a convict or the pregnancy of a woman offender.

**Remission:** It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

**Commutation:** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

Note that the pardoning power of the President is independent of the judiciary – it is an executive power. The President while exercising this power doesn't sit as a Court of Appeal. The object of conferring this power to President is twofold:

- To keep the door open for correcting any judicial errors in the operation of the law
- To afford relief from a sentence, which the President regards as unduly harsh.

## Scope of Judicial Review

Maru Ram case, 1980

In Maru Ram case 1980, the Supreme Court declared that the power of the President under Article 72 is subject to judicial review. It maintained that the power cannot be exercised in an arbitrary manner.

Recent Judgment in Shatrughan Chauhan vs. Union of India (2014)

In this case, the Supreme Court has held that:

1. Inordinate delay can be a justified ground for commutation of death penalty into life imprisonment.
2. Psychiatric conditions developed during incarceration are grounds for clemency.
3. It ruled against the solitary confinement of death row prisoners.
4. At least 14 days prior notice to be given to family members prior to execution.
5. It is not a mere prerogative of the President and the decision is subject to judicial review.
6. It is a constitutional obligation of the President and Governors to dispose off mercy petitions of convicts.
7. Right to seek mercy is a constitutional right, which cannot be subject to whims and fancies of the executive.
8. Though no time limit can be prescribed, it is the duty of the executive to expedite the matter at every stage.

9. Article 21 is available till last breath, even after the mercy petition has been rejected. And the convict can still approach the courts for commutation on the grounds of supervening events.
10. Legal aid to be made available at all stages.
11. Rejection to be intimated at the earliest. It should be intimated to the nearest legal aid center apart from informing the convict.
12. The person has the right to seek judicial review. After the rejection of mercy petition, the judiciary has the power to even invalidate a President's decision, if there is evidence of biasness.

### Comparison with Pardoning Powers of the Governor

According to Article 161, the Governor of a State also possesses powers to grant pardons and suspend, remit or commute the sentence of any person convicted of an offence against a law relating to a matter to which the executive power of the State extends. It means that the governor has pardoning powers, in cases, where conviction is under a law of that State.

The scope of pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161. Their powers differ in the following two ways:

- The power of the President to grant pardon extends to cases where the punishment or sentence is by a Court Martial. But, Article 161 does not provide any such power to the Governor.
- The President can grant pardon in all cases where the sentence given is a sentence of death, but pardoning power of the Governor does not extend to death sentence cases.

The Tamil Nadu government has decided to release seven prisoners convicted in the **Rajiv Gandhi assassination case**. The Supreme Court had earlier commuted the death sentence of the convicts to life term. The Centre has also filed a writ in the case questioning the State government's decision. The Centre has made the contention that since the prisoners were convicted under a Central Act like TADA, the decision of the State government is not legally tenable.

### 2.6.9. Veto Power

The President of India is vested with the following three types of veto power.

#### Absolute Veto

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

- a) With respect to private members' bills (i.e. bills introduced by any Member of Parliament who is not a minister); and
- b) With respect to the government bills, when the Cabinet resigns (after the passage of the bills, but before the assent by the President) and the new Cabinet advises the President not to give his assent to such bills

In 1954, President Rajendra Prasad withheld his assent to the PEPSU Appropriation Bill. The bill was passed by the Parliament, when the President's Rule was in operation in the state of PEPSU. But, when the bill was presented to the President for his assent, the President's Rule was revoked.

Again in 1991, President R Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. The bill was passed by the Parliament (on the last day before dissolution of Lok Sabha) without obtaining the previous recommendation of the President.

## Suspensive Veto

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. This means that the Presidential veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required for Qualified Veto in U.S.A.).

The President does not possess this veto in the case of Money bills. The President can either give his assent to a money bill or withhold his assent to a money bill, but cannot return it for the reconsideration of the Parliament. Normally, the President gives his assent to the money bill, as it is introduced in the Parliament with his previous permission.

President A.P.J. Abdul Kalam, in 2006 returned the Office of Profit Bill for reconsideration of the Parliament. This was an exercise of the Suspensive Veto power.

## Pocket Veto

In this case, the President neither ratifies nor rejects or returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President to not take any action (either positive or negative) on the bill is known as the Pocket Veto. The President can exercise this veto power as the Constitution does not prescribe any time limit within which he has to take the decision with respect to a bill presented to him for his assent.

In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the 'pocket of the Indian President is bigger than that of the American President'.

In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restriction on the freedom of press.

It should be noted here that the President has no veto power in respect of a Constitutional Amendment Bill. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

## 2.6.10. Ordinance-Making Power

Article 123 of the Constitution empowers the President to promulgate ordinances when the Parliament is not in session and hence, it is not possible to enact laws in the Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

An ordinance may relate to any subject that the Parliament has the power to legislate on. Conversely, it has the same limitations as the Parliament to legislate, given the distribution of powers between the Union, State and Concurrent Lists. Thus, the following limitations exist with regard to the Ordinance making power of the executive:

- i. **Parliament is not in session:** The President can only promulgate an ordinance when either of the two Houses of Parliament is not in session.
- ii. **Immediate action is required:** The President can promulgate an ordinance only when he is satisfied that there are circumstances that require taking 'immediate action'. In Cooper case (1970), the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament.
- iii. **Parliamentary approval during Session:** Ordinances must be approved by Parliament

within six weeks of reassembling or they shall cease to operate. They will also cease to operate, in case, resolutions disapproving the Ordinance are passed by both the Houses.

iv. **Coextensive with the law-making powers of the Parliament:** The ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:

- a) An ordinance can be issued only on those subjects on which the Parliament can make laws.
- b) An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights.<sup>[11]-[SEP]</sup>

The President may withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the Council of Ministers headed by the Prime Minister.

An ordinance may have retrospective effect and may modify or repeal any act of Parliament, or even another ordinance. It may also amend or alter a tax law, but can never be used to amend the Constitution.

The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation by ordinance should also be placed before the House.

The ordinance-making power of the President of India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA and UK. This power has been given to the President to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session.

### **DC Wadhwa vs. State of Bihar, 1987**

It was argued in DC Wadhwa vs. State of Bihar (1987) that the legislative power of the executive to promulgate Ordinances is to be used in exceptional circumstances and not as a substitute for the law making power of the legislature.

Here, the court was examining a case where a State government (under the authority of the Governor) continued to **re-promulgate** ordinances, i.e. it repeatedly issued new ordinances to replace the old ones; instead of laying them before the State Legislature. A total of 259 Ordinances were re-promulgated, some of them for as long as 14 years.

The Supreme Court argued that if Ordinance making was made a usual practice, creating an 'Ordinance Raj', the courts could strike down re-promulgated Ordinances.

### **Scope of Judicial Review**

Judiciary can go for following tests in order to check the legality of Ordinances:

- Both houses are not in session
- It has been done in public interest
- They'll also test the reasonableness
- They can verify whether its arbitrary or vague

## **2.7. Constitutional Position of the President**

The Constitution of India has provided for a Parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the Council of Ministers, headed by the Prime Minister. In other words, the President has to exercise his powers and functions with the aid and advice of the Council of Ministers headed by the Prime Minister.

In estimating the constitutional position of the President of India, the relevant provisions are Article 53, 74, and 75.

- Art. 53 vests the executive power of the Union in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.
- Article 74 provides that there shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President who 'shall', in the exercise of his functions, act in accordance with such advice.
- Art 75 lays down that the Council of Ministers shall be collectively responsible to the House of People. This provision is the foundation of the Parliamentary system of government.

There was no doubt in minds of the framers of the Constitution that they were setting up a Parliamentary form of Government, modeled after the Great Britain. Dr. Ambedkar categorically stated in the Constituent Assembly, "the President is merely a nominal figure head" that "he has no power of administration at all" and that the President of India occupies the same position as the King of England. His place in the administration was that of a ceremonial device or a seal by which the decisions of the nation were to be made known.

Though the executive power is vested in the President; he is only a formal or constitutional head of the Executive. The real power is vested in the Council of Ministers (headed by Prime Minister) on whose aid and advice the President acts in the exercise of his functions. The Executive has the primary responsibility for the formulation of Governmental policy and its transmission into law. It is responsible for all its action to the legislature, whose confidence it must retain. The basis of this responsibility is embodied in Article 75(iii).

The President is generally bound by the advice of his ministers. He can do nothing contrary to their advice nor can he do anything without their advice.

The President's role as a figurehead is reflected in his indirect election. If he were to be elected by adult franchise, then it might have been anomalous not to give him any real powers and it was feared that he might emerge as a center of power in his own right. Since power was really to reside in the Ministry and the Legislature and not in the President, it was thought adequate to have him elected directly.

### **2.7.1. Forty-second Amendment of the Constitution, 1976**

The amendment removed all doubts about the position of the President under the Indian Constitution. Art. 74 as amended, categorically provided that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in exercise of his functions, act in accordance with such advice". Under this Amendment, the President could not play the role of even an adviser or a guide.

### **2.7.2. Forty-fourth Amendment of the Constitution, 1978**

A proviso was added in Art. 74 to the effect that "the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration". The result is that the President has to act on the advice of the Ministers, but he can ask them to reconsider their advice and if after reconsideration, the Ministers decided to act against the advice of the President they can do so and the President has no choice but to follow it.

### **2.7.3. Situational Discretion available to the President**

Although, as Article 74 provides, the President is bound to act according to the aid and advice of the Council of Ministers; it will, however, be wrong to suppose that the President is a complete non-entity or an absolutely ineffective symbol. It has already been seen that in exceptional and abnormal situations he may have a marginal discretion in some matters, for example:

- The President may choose to dissolve the Lok Sabha when the current government loses majority.
- He can dismiss the Council of Ministers, which has lost its majority.
- The President can appoint a Prime Minister in a situation, where no single party or leader commands majority support. This is very significant, especially at the time of a fragmented electoral verdict.

Student Notes:

In days of crisis, any of these matters may assume a great importance and his decision may have a profound impact on the country's destiny.

In addition, he is empowered to be informed about the country's affairs. Article 78 provides that it shall be the duty of the Prime Minister:

- a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council
- d) Like the British Sovereign, the role of the President is "to advise, encourage and warn" Ministers in respect of the recommendations which they make.

Under Article 111, the President has discretion with respect to ordinary bills. He can send the bill back for reconsideration along with his message, if any. However, once the bill is sent back to him after re-passage with or without amendments, he must give his assent.

After the 44<sup>th</sup> Amendment Act, the President can even send back for reconsideration the advice of Cabinet. However, he's bound to act on its advice tendered thereafter such reconsideration.

President K.R. Narayanan became the first President to use the powers of sending the advice back for reconsideration. The advice given to him was to impose President's Rule in U.P. against the Kalyan Singh government. Since then a kind of convention has developed that if a President sends an advice back to Cabinet for reconsideration, it is not sent back to the President.

Former President Venkatraman has explained the nature of discretionary power of the President under the Constitution. The President in the Indian context was like the 'emergency light', which automatically came on when the normal flow of power was broken and went out after normal working was restored.

## Conclusion

The influence of the President depends on his personality, and a man of character and ability can really exert a potent influence on the affairs of the government. The President can make his influence felt by his advice, help and persuasion by using his knowledge, experience and disinterestedness to arrive at sound decisions on matters affecting the well-being of people and not by his dictating any particular course of action to his ministers.

Ultimately, it is the Council of Ministers, which shall prevail and not the President. The President's role may at best be advisory; he may act as the guide, philosopher and friend to the Ministers, but cannot assume to himself the role of their master- a role, which is assigned to the Prime Minister. The intention of the makers of the Constitution was that the President should be a center from which a beneficent influence should radiate over the whole administration. It was clearly not their intention that he should be the focus of any power.

## 2.8. Impeachment of the President

An impeachment is a quasi-judicial procedure in Parliament. The President can be removed from his office by the process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges.

The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the resolution is so passed.

Since the Constitution provides the mode and ground for removing the President, he cannot be *removed* otherwise than by impeachment, in accordance with the terms of Arts. 56 and 61.

### 2.8.1. Explanation

Impeachment is so rare that the term can be misunderstood. A typical misconception is to confuse it with involuntary removal from office.

The word 'Impeachment' originates from the British convention, which means to remove a Government official without any official agreement and after the impeachment conviction has been provided to that official. In India, it is a quasi-judicial procedure and only the President can be impeached on the ground of violation of the Constitution. In this context, it is to be noted that:

- The Nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election.
- The Elected members of the Legislative Assemblies of States and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

So far, no President has been impeached in India.

## 2.9. List of Presidents of India

Name	Tenure
Dr Rajendra Prasad	January 26, 1950 - May 13, 1962
Dr Sarvepalli Radhakrishnan	May 13, 1962 - May 13, 1967
Dr Zakir Hussain	May 13, 1967 - May 03, 1969
Varahagiri Venkatagiri (Acting)	May 03, 1969 - July 20, 1969
Justice Mohammad Hidayatullah (Acting)	July 20, 1969 - August 24, 1969
Varahagiri Venkatagiri	August 24, 1969 - August 24, 1974
Fakhruddin Ali Ahmed	August 24, 1974 - February 11, 1977
B.D. Jatti (Acting)	February 11, 1977 - July 25, 1977
Neelam Sanjiva Reddy	July 25, 1977 - July 25, 1982
Giani Zail Singh	July 25, 1982 - July 25, 1987
R. Venkataraman	July 25, 1987 - July 25, 1992
Dr Shankar Dayal Sharma	July 25, 1992 - July 25, 1997
K.R. Narayanan	July 25, 1997 - July 25, 2002
Dr. A.P.J. Abdul Kalam	July 25, 2002 - July 25, 2007
Smt. Pratibha Devi Singh Patil	July 25, 2007 - July 25, 2012
Shri Pranab Mukherjee	July 25, 2012 - July 25, 2017
Shri Ram Nath Kovind	July 25, 2017 - Incumbent

Prelims questions

Student Notes:

**2018**

1. 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.

**Ans: (b)**

2. With reference to the election of the President of India, consider the following statements:
  1. The value of the vote of each MLA varies from State to State.
  2. The value of the vote of MPs of the Lok Sabha is more than the value of the vote of MPs of the Rajya Sabha.

Which of the statements given above is/are correct?

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

**Ans: (a)**

**2017**

3. 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 Council of Ministers in State
  3. Dissolution of the local bodies

Select the correct code:

  - (a) 1 and 2 only
  - (b) 1 and 3 only
  - (c) 2 and 3 only
  - (d) 1, 2 and 3

**Ans: (b)**

**2014**

4. Consider the following statements:
  1. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.
  2. All executive actions of the Government of India shall be expressed to be taken in the name of the Prime Minister.

Which of the following is correct?

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

**Ans: (a)**

**2012**

5. According to the Constitution of India, it is the duty of the President of India to cause to be laid before the Parliament which of the following?

1. The Recommendation of the Union Finance Commission.
2. The Report of the Public Accounts Committee.
3. The Report of the Comptroller and Auditor General.
4. The Report of the National Commission for Scheduled Castes.

Select the correct answer using the codes given below:

- (a) 1 only
- (b) 2 and 4 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

**Ans: (c)**

Student Notes:

**2010**

6. Who of the following shall cause every recommendation made by the Finance Commission to be laid before each House of Parliament?

- (a) The President of India
- (b) The Speaker of Lok Sabha
- (c) The Prime Minister of India
- (d) The Union Finance Minister

**Ans: (a)**

Article 281 {Recommendations of the Finance Commission}: The President shall cause every recommendations made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

**2009**

7. With reference to Union Government consider the following statements:

1. The Ministries/Departments of the Government of India created by the Prime Minister on the advice of the Cabinet Secretary.
2. Each of the Ministries is assigned to a Minister by the President of India on the advice of the Prime Minister.

Which of the statement given above is/are correct?

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

**Ans: (b)**

The Government of India consists of a number of ministries/departments for its administration, each Ministry assigned to a Minister who runs it with the assistance of a Secretary in charge of the particular Ministry. The Ministries are created and assigned by the President on the advice of the Prime Minister under Article 77 of the Constitution.

**2003**

8. Under which Article of the Indian Constitution did the President give his assent to the ordinance on electoral reforms when it was sent back to him by the Union Cabinet without making any changes (in the year 2002)?

- |                 |                 |
|-----------------|-----------------|
| (a) Article 121 | (b) Article 122 |
| (c) Article 123 | (d) Article 124 |

**Ans: (c)**

9. Under which Article of the Indian Constitution did the President make a reference to the Supreme Court to seek the Court's opinion on the Constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly elections (in the year 2002)?  
(a) Article 142  
(b) Article 143  
(c) Article 144  
(d) Article 145

Student Notes:

Ans: (b)

10. Consider the following statements:

In the electoral college for Presidential Election in India.

1. The value of the vote of an elected Member of Legislative Assembly equals State Population / Number of Elected MLAs of the State x 100.
2. The value of the vote of an elected Member of Parliament equals Total Value of the votes of all elected MLAs / Total Number of elected MPs.
3. There were more than 5000 members in the latest elections.

Which of these statements is/are correct?

- (a) 1 and 2
- (b) Only 2
- (c) 1 and 3
- (d) Only 3

Ans: (b)

### 3. Vice President

#### 3.1. Introduction

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modeled on the lines of the American Vice-President.

#### 3.2. Qualifications

To be eligible for election as Vice-President, a person should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Rajya Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

But, a sitting President or Vice-President of the Union, the governor of any state and a minister for the Union or any state is not deemed to hold any office of profit and hence qualified for being a candidate for Vice-President. MPs and MLAs are eligible for contesting the election of Vice-President but if such a person is elected as Vice-President then he is deemed to have vacated his seat in that House (no separate resignation is required) on the date he enters upon his office as Vice-President. Further, the nomination of a candidate for election of Vice-President must be proposed by 20 electors and seconded by 20 electors as well.

#### 3.3. Election

The Vice President, like the President, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this Electoral College is different from the electoral college for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament (in the case of President, only elected members).
2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

But, the manner of election is same in both the cases. Thus, the Vice-President's election, like that of the President's election, is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.

### 3.4. Term of Office

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. The Vice-President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms.

### 3.5. Vacancy in Office

A vacancy in the Vice-President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting Vice-President, an election to fill the vacancy must be held before the expiration of the term.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy. The newly elected Vice-President remains in office for a full term of five years from the date he assumes charge of his office.

### 3.6. Powers and Functions

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American Vice-President who also acts as the Chairman of the Senate – the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

### 3.7. Removal of Vice President

He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya Sabha passed by an effective majority and agreed to by the Lok Sabha. But, no such resolution can be moved

unless at least 14 days' advance notice has been given. Notably, no ground has been mentioned in the Constitution for his removal.

Student Notes:

### 3.8. Comparison with the USA Vice President

Though the office of Indian Vice-President is modelled on the lines of American Vice-President there is a big difference i.e. an American Vice-President becomes President in case of a vacancy in President's office and remains president for the remaining unexpired term of his predecessor while Indian Vice-President in case of a vacancy in President's office merely serves as an acting president until the newly elected president assume charge. Thus it is clear that the constitution has not assigned any significant function to the Vice-President and this office is mainly created to maintain the political continuity of Indian state.

#### Prelims Questions

2013

1. Consider the following statements:

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.
2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

Which of the statements given above is/are correct?

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

Ans: (b)

2008

2. Who among the following have held the office of the Vice-President of India?

1. Mohammad Hidayatullah
2. Fakhruddin Ali Ahmed
3. Neelam Sanjiva Reddy
4. Shankar Dayal Sharma

Select the correct answer using the code given below:

- (a) 1, 2, 3 and 4
- (b) 1 and 4 only
- (c) 2 and 3 only
- (d) 3 and 4 only

Ans: (b) Vice-Presidents of India:

Name	Tenure
Dr Sarvepalli Radhakrishnan	1952-1962
Dr Zakir Hussain	1962-1967
Varahagiri Venkata Giri	1967-1969
Gopal Swarup Pathak	1969-1974
B.D. Jatti	1974-1979
Justice Mohammad Hidayatullah	1979-1984
R. Venkataraman	1984-1987
Dr Shankar Dayal Sharma	1987-1992
K.R. Narayanan	1992-1997
Krishan Kant	1997-2002
Bhairon Singh Shekhawat	2002-2007
Mohammad Hamid Ansari	2007-2017
Muppavarapu Venkaiah Naidu	August 11, 2017 - Incumbent

Fakhruddin Ali Ahmed (May 13, 1905- February 11, 1977) was President of India from 1974 to 1977.

Student Notes:

Neelam Sanjiva Reddy (May 19, 1913- June 1, 1996) was the sixth President of India, serving from 1977 to 1982.

**2004**

3. The resolution for removing the Vice-President of India can be moved in the  
(a) Lok Sabha alone  
(b) Either House of Parliament  
(c) Joint Sitting of Parliament  
(d) Rajya Sabha alone

Ans: (d)

## 4. Prime Minister

In the scheme of parliamentary system of government provided by the Constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive). It means, the President is the head of the State while Prime Minister is the head of the government.

Conventionally some specific ministries/departments are not allocated to anyone in the cabinet but the Prime Minister himself. The Prime Minister is usually in-charge/head of:

- Appointments Committee of the Cabinet;
- Ministry of Personnel, Public Grievances and Pensions;
- Ministry of Planning;
- Department of Atomic Energy; and
- Department of Space

### 4.1. Appointment of the Prime Minister

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the President. However, this does not imply that the President is free to appoint any one as the Prime Minister.

In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

### 4.2. Term of the Prime Minister

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him. For example, VP Singh in 1990 and Deve Gowda in 1997 resigned after defeat in the Lok Sabha.

### 4.3. Powers and Functions of the Prime Minister

The powers and functions of Prime Minister can be studied under the following heads:

### 4.3.1. In Relation to the Council of Ministers

- The Prime Minister recommends persons who can be appointed as ministers by the President. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
- He can allocate and also change the portfolios among the ministers according to his will.
- If a difference of opinion arises between the Prime Minister and any of his subordinate ministers, he can ask the minister to resign or can advise the President to dismiss him.
- The Prime Minister presides over the meeting of the Council of Ministers and also influences the decision of the meeting.
- He guides, directs, controls and coordinates the activities of all the ministers.
- By resigning from office, the Prime Minister can bring about the collapse of the Council of Ministers.

### 4.3.2. In Relation to the President

- Prime Minister is the principal channel of communication between the President and the council of minister. He communicates to the President all decisions of the council of ministers relating to administration of the affairs of the Union and proposals for legislation.
- He furnishes such information relating to administration of the affairs of the Union and proposals for legislation as the President may call for and if the President so requires, Prime Minister submits for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- He advises the President regarding the appointment of important officials like Attorney General of India, Comptroller and Auditor General of India, Chairman and members of the UPSC, Election Commissioners, Chairman and members of the Finance Commission etc.

### 4.3.3. In Relation to Parliament

- The Prime Minister is the leader of the Lower House i.e. the Lok Sabha. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
- He can recommend dissolution of the Lok Sabha to President at any time.
- He announces government policies on the floor of the house.

### 4.3.4. Other Powers and Functions

- The P.M. is the chairman of the NITI Aayog, National Developmental Council, National Integration Council, Inter-State Council, and National Water Resources Council.
- He plays a significant role in shaping the foreign policy of the country.
- He is the chief spokesman of the Union government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
- He is the leader of the party in power.
- He is the political head of the (administrative) services.

## 4.4. Prime Minister as member of the Rajya Sabha

The Constitution does not prohibit the Prime Minister from being a member of the Rajya Sabha. However, the highest traditions of the parliamentary democracy demand that the Prime Minister be a member of the Lok Sabha, who is directly elected by the people; rather than be a member who has been elected indirectly.

There have also been arguments that the Constitution should be amended to stipulate categorically that the Prime Minister of the Union should be an elected member of the Lok Sabha. For instance, in UK the Prime Minister has to be necessarily a member of the House of Commons.

## 4.5. Prime Ministerial Form of Government

Student Notes:

The role of the Prime Minister in the parliamentary form of government is so significant and crucial that observers like to call it a 'Prime Ministerial government.'. Further, sometimes the Prime Minister can have a powerful national image, thereby, attracting huge votes and further alleviate his standing. It is then argued to have led to transformation of cabinet government into Prime Ministerial government.

In this form of government, the Prime Minister dominates the executive. This is usually the case when there is a single party government in power and the Prime Minister is the unquestionable leader of the party. In such a scenario, the decisions of the Prime Minister are usually approved by the Cabinet. However, they may not be collective decisions, in the true sense of the term. Such form of government may have following advantages and disadvantages:

Advantages	Disadvantages
Timely decisions	Decisions may be hasty and politically motivated
Govt. can act firmly on issues	Decisions often not arrived at, after due deliberation
Administration gets a clear direction	Extra constitutional authorities may come to exercise influence

In Germany, the powerful position of the Chancellor diminishes the role of the cabinet. The prime ministerial government in Germany is called the "Chancellor Democracy." The Chancellor answers to Parliament and the ministers answer to him/her. But the Indian Prime Minister is accountable to Parliament, to the people, and to his/her own party. Article 74(1) of our Constitution expressly states that the Prime Minister shall be "at the head" of the Council of Ministers and should aid and advise the President in the exercise of his functions

## 4.6. Impact of Coalition Politics on the office of PM

Generally, it is being witnessed that the authority of PM weakens when he heads a coalition government as witnessed in the UPA-2 government (2009-14) or NDA government of 1999-2004. This is because a coalition government is usually formed in case there is a fractured mandate.

Many a times, the members of the constituent parties start treating their leader as the PM, rather than the actual PM.

However, this phenomenon varies with the personality of the PM, nature of coalition politics, and the manner in which it is managed, which also plays an important role. The role of the PM, in such cases, becomes more of a manager of the coalition, rather than a leader of the party alone.

### CMs who became PMs:

1. Morarji Desai
2. Charan Singh
3. V.P.Singh
4. P.V. Narasimha Rao
5. H.D. Deve Gowda
6. Narendra Modi

### Prelims Questions

#### 2019

1. The Ninth Schedule was introduced in the Constitution of India during the prime ministership of
  - (a) Jawaharlal Nehru
  - (b) Lal Bahadur Shastri
  - (c) Indira Gandhi
  - (d) Morarji Desai

Ans: (a)

#### 2015

2. Consider the following statements :
  1. The Executive Power of the Union of India is vested in the Prime Minister.
  2. The Prime Minister is the ex Officio Chairman of the Civil Services Board.

Which of the statements given above is/are correct ?

Student Notes:

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

Ans: (d)

The Executive Power of the Union Vested in the President.

Cabinet Secretary is the ex-officio chairman of the Civil Services Board.

2012

3. The Prime Minister of India, at the time of his/her appointment:
- (a) Need not necessarily be a member of one of the Houses of the Parliament but must become a member of one of the Houses within six months
  - (b) Need not necessarily be a member of one of the Houses of the Parliament but must become a member of the Lok Sabha within six months
  - (c) Must be a member of one of the Houses of the Parliament
  - (d) Must be a member of the Lok Sabha

Ans: (a)

2009

4. In India, who is the Chairman of the National Water Resources Council?
- (a) Prime Minister
  - (b) Minister of Water Resources
  - (c) Minister of Environment and Forests
  - (d) Minister of Science and Technology

Ans: (a)

5. Under the administration of which one of the following is the Department of Atomic Energy?
- (a) Prime Minister's Office
  - (b) Cabinet Secretariat
  - (c) Ministry of Power
  - (d) Ministry of Science and Technology

Ans: (a)

2006

6. Who is the President of the Council of Scientific and Industrial Research?
- (a) President of India
  - (b) Vice-President of India
  - (c) Prime Minister of India
  - (d) Union Minister of Science and Technology

Ans: (c)

## 5. Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority in our politico-administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. **Article 74** deals with the status of the council of ministers while **Article 75** deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

## 5.1. Appointment and Tenure of the Council of Ministers

Student Notes:

### Article 74

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
- The advice tendered by Ministers to the President shall not be inquired into in any court.

### Article 75

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91<sup>st</sup> Amendment Act of 2003.
- A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91<sup>st</sup> Amendment Act of 2003.
- The Ministers shall hold office during the pleasure of the President.
- The Council of Ministers shall be collectively responsible to the House of the People.
- The President shall administer the oaths of office and secrecy to a minister.
- Parliament will decide the salary and allowances of the Ministers.

Ministers may be chosen from members of either House and a Minister who is a member of one House, has the right to speak in and to take part in the proceedings of the other House, though he has no right to vote in the House of which he is not member.

## 5.2. Composition of the Council of Ministers

Following are the four categories of Ministers in the Council of Ministers:

1. **Cabinet Ministers:** Cabinet Ministers are those Ministers who hold very important portfolios like Defence, Home, Finance and Foreign Affairs, etc. They are highest in status, emoluments, and powers. It is these Ministers who constitute the Cabinet, which has been described as a wheel within a wheel (Council of Ministers). Their number varies from time to time, but seldom exceeds twenty. Cabinet Ministers collectively formulate the policy of the Government and are entitled to attend all meetings of the Cabinet. Occasionally, senior leaders are included in the Cabinet as Ministers without portfolio.
2. **Ministers of State:** They are next in rank and can either be given independent charge of ministries/departments or can be attached to Cabinet Ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the Cabinet and attend Cabinet meetings only when specially invited and when affairs of their departments are to be considered.
3. **Deputy Ministers:** Deputy Minister, who are next in rank to Ministers of State do not hold independent charge of any department and perform such functions as the Minister-in-charge may delegate to them.
4. **Parliamentary Secretaries:** They have no independent powers or functions. They assist the Ministers to whom they are attached in the Parliamentary work. They are, in fact, probationers under training and may hope to rise to higher ranks if they do well.

### 5.3. Functions of the Council of Ministers

Student Notes:

- The main functions of the council of ministers are mainly to aid and advise the President in the exercise of his functions.
- Since the ministry is the highest organ of the Government of India, it determines all the policies relating to the country's administration. It also has the responsibility of formulating internal and foreign policies. Peace and prosperity of the country depends largely on the policy formulated by the Ministry.
- The ministers are not only the head of the executive departments, but are also important members of the majority party in the legislature or at least having majority support in the legislature.
- The Ministry also plays a key role in determining the economic activity of the state. Currency, banking, commerce, trade, insurance and formulation and implementation of other plans are regulated and controlled by the Ministry as well.

## 6. Cabinet

The cabinet works on the principle of political homogeneity, The Prime Minister and the members of the Council of Ministers belong to the same party except in rare cases. Collective responsibility obliges the ministers to hold the same views and to champion the same policy. Differences between ministers are ironed out in the closed door meetings of the cabinet. In public, they must give the impression of solid unity.

### 6.1. Functions of the Cabinet

1. **Policy Formulation:** The Cabinet is responsible for policy formulation, both with regard to national and international matters. All policy decisions are taken by consensus and are conveyed by the Prime Minister to the President.
2. **Legislative Powers:** All the Ministers are Members of Parliament and, thus, participate in legislation. Most of the Bills are introduced in the Parliament by the Ministers and are always passed by the Parliament because of the support they enjoy. The Bills to be introduced by the Ministers are considered by the Cabinet and then approved. The Cabinet may make such changes in the Bills as it thinks are necessary.
3. **Financial Powers:** The Cabinet is responsible for all expenses of the Government and the sources of revenue to finance the expenditure.
  - The annual budget prepared by the Finance Minister is controlled by the Cabinet. Here, it may be noted that the budget proposals are kept strictly secret and the Finance Minister takes the Cabinet into confidence only an hour before the introduction of the budget in Parliament. The Cabinet cannot make any changes in the budget. But in the light of discussion on the budget proposals in the Parliament, the Cabinet makes alterations. The alterations, thus made, are subsequently announced by the Finance Minister.
  - The Cabinet is responsible for approving the economic and fiscal policies and also for taking decisions on the reports submitted by the Finance Commission and the Comptroller and Auditor-General of India.
4. **Power of making Appointments:** Although the President enjoys vast powers of appointing high dignitaries of the State but in reality these appointments are made by the President on the recommendation of the Cabinet. The advice of the Cabinet is binding on the President and virtually all the functions of the President are performed by this body. However, the President may ask the Cabinet to reconsider its advice, but only once. The advice given after reconsideration is binding on the President (44th const. Amendment Act).
5. **Coordination for smooth functioning:** The Cabinet not only co-ordinates the work of various departments but also resolves the inter-departmental disputes. M.V. Pylee calls the

Cabinet “the formulator of national policies, the highest appointing authority, the arbiter of inter-departmental disputes and the supreme organ of co-ordination in Government”.

Student Notes:

## 6.2. Cabinet Committees

To relieve the Cabinet of some burden of work, Cabinet committees have been set up. The N. Gopalaswamy Ayangar's report on the Reorganization of the Machinery of Government (1949) recommended setting up of Standing Committees (permanent in nature) of Cabinet over defined fields, with appropriate strengthening of the secretariat and other organs of these committees. These were the instruments to 'organise coordination on a decentralised basis'.

The Cabinet Committees should cover between them all important areas of government activity. It is also essential that they meet regularly so that sustained attention is given to complex problems and the progress of implementing important policies and programmes is kept under constant review.

The number and names of the Cabinet committees do not remain unchanged, as Ad-hoc committees are constituted from time to time to deal with certain problems and are disbanded after the completion of task. But three or four such committees have existed under all Governments in power at the Centre, namely

- a) **Political Affairs Committee:** It is chaired by the Prime Minister. Its other members include the Home Minister, the Defence Minister, and the External Affairs Minister. The committee deals with all important matters relating to both internal developments and foreign relations.
- b) **Economic Affairs Committee:** Its members are the Prime Minister (Chairman), Finance Minister, Rural Development Minister, and Industry Minister. Its main function is to direct and co-ordinate Governmental activities in the economic field and generally to regulate the working of the national economy.
- c) **Committee on Parliamentary Affairs:** Its members include Information and Broadcasting Minister, Minister for Labour and Parliamentary Affairs, Law Minister, with the Home Minister as its chairman. The committee looks after the progress of Government business in Parliament to secure the smooth passage of legislation and determine the Government's attitude to non-official Bills and resolutions coming up before Parliament.
- d) **Appointments Committee:** The members of the Appointment Committee are the Prime Minister who is also its chairman, the Home Minister and the Minister concerned. It decides all higher-level appointments in the Central Secretariat, Public Enterprises, Banks, the three service chiefs etc. It also decides on the transfer of officers serving on Central deputation.

In 2019, the government set up two new Cabinet Committees:

1. **Cabinet Committee on Investment and Growth**
  - It will **identify key projects required to be implemented on a time-bound basis**, involving investments of Rs 1,000 crore or more, or any other critical projects, as may be specified by it, with regard to infrastructure and manufacturing.
  - It will **prescribe time limits for giving requisite approvals and clearances by the ministries** concerned in identified sectors. It will also monitor the progress of such projects.
2. **Cabinet Committee on Employment and Skill Development**
  - It is supposed to **provide direction to all policies, programmes, schemes and initiatives for skill development** aimed at increasing the employability of the workforce for effectively meeting the emerging requirements of the rapidly growing economy and mapping the benefits of demographic dividend.

- It is required to **enhance workforce participation**, foster employment growth and identification, and work towards removal of gaps between requirement and availability of skills in various sectors.
- The panel will set **targets for expeditious implementation of all skill development initiatives** by the ministries and to periodically review the progress in this regard.

### 6.3. Features of Cabinet Committees

1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.<sup>[1]</sup>
2. They are of two types—standing and ad hoc. The former are of a ~~[1]~~ permanent nature while the latter are of a temporary nature. The ad hoc ~~[1]~~ committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed<sup>[1]</sup>.
3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
4. Their membership varies from three to eight. They usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.<sup>[1]</sup>
5. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.<sup>[1]</sup>
6. They are mostly headed by the Prime Minister. Sometimes other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
7. They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.
8. They are an organisational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

### 6.4. Principles on which the Cabinet system of Government functions

#### 6.4.1. Principle of Collective Responsibility

The Parliamentary form of government is based on the principle of Collective Responsibility. Article 75(3) of the Constitution states that the Council of Ministers (CoM) is collectively responsible to the Lok Sabha, not to the Council of States (Rajya Sabha). It means that all the Ministers are collectively answerable to the Lok Sabha for the policies and decisions of the government, even though a decision taken may pertain to a single ministry.

The individual ministers may have differences among themselves on certain issues, but once a decision is taken by the Cabinet it becomes a joint decision of all the Ministers. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If a minister does not agree with the decision of the cabinet he has no choice, but to resign. Thus, the Council of Ministers works as a team. It swims or sinks together.

Thus, if the Lok Sabha passes a no-confidence motion against the Council of Ministers, all the ministers have to resign, including ministers from the Rajya Sabha. Alternatively, the CoM can advise the President to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections.

#### 6.4.2. Individual Responsibility of Ministers

Article 75 also contains the principle of individual responsibility. Article 75(2) states that the ministers hold office during the pleasure of the President, which means that the President can

remove a minister even at a time when the CoM enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister.

Student Notes:

#### 6.4.3. Role of the Prime Minister

The Prime minister is the keystone of the cabinet arch. He is central to the formation of the Council of Ministers, central to its life and death. If the Prime Minister resigns or dies the whole Council of Ministers goes out along with him. The Prime Minister is the “primus inter pares” (first among equals). It is he who summons and presides over meeting of the Cabinet. Moreover, he can remove a minister at any time by demanding a minister's resignation or having him dismissed by the President.

The Prime Minister acts as the connecting link between the President and the Cabinet. Article 78 of the Constitution lays down that it is duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers and to furnish such information relating to the administration of the affairs of the Union. The Prime Minister is also the main link between the Cabinet and Parliament.

#### Prelims Questions

**2017**

1. Out of the following statements, choose the one that brings out the principle underlying the Cabinet form of Government:
- An arrangement for minimizing the criticism against the Government whose responsibilities are complex and hard to carry out to the satisfaction of all.
  - A mechanism for speeding up the activities of the Government whose responsibilities are increasing day by day.
  - A mechanism of parliamentary democracy for ensuring collective responsibility of the Government to the people.
  - A device for strengthening the hands of the head of the Government whose hold over the people is in a state of decline.

Ans: (b)

**2013**

2. In the context of India, which of the following principles is/are, implied institutionally in the parliamentary government?
- Members of the Cabinet are Members of the Parliament.
  - Ministers hold the office till they enjoy confidence in the Parliament.
  - Cabinet is headed by the Head of the State.
- 1 and 2 only
  - 3 only
  - 2 and 3 only
  - 1, 2 and 3

Ans: (a)

3. Consider the following statements:

- The Council of Ministers in the Centre shall be collectively responsible to the Parliament.
- The Union Ministers shall hold the office during the pleasure of the President of India.
- The Prime Minister shall communicate to the President about the proposals for legislation.

Which of the statements given above is/are correct?

- 1 only
- 2 and 3 only

- (c) 1 and 3 only  
(d) 1, 2 and 3

Ans: (b)

4. With reference to Union Government, consider the following statements:

1. The Constitution of India provides that all Cabinet Ministries shall be compulsorily the sitting members of Lok Sabha only
2. The Union Cabinet Secretariat operates under the direction of the Ministry of Parliamentary Affairs.

Which of the statements given above is/are correct?

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

Ans: (d)

2007

5. **Assertion (A):** The Council of Ministers in the Union of India is collectively responsible both to the Lok Sabha and the Rajya Sabha.

**Reason (R):** The Members of both the Lok Sabha and the Rajya Sabha are eligible to be the Ministers of the Union Government.

Ans: (a) (A is incorrect, R is correct)

The Council of Ministers in the Union of India is collectively responsible to the lower house of the Parliament, i.e. Lok Sabha only.

## 7. Attorney General

Attorney General is the highest law officer in the country. He is appointed by the President. He must be a person who is qualified to be appointed a Judge of the Supreme Court. In other words, he must be a citizen of India and 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 the AG is not fixed. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the President. This means that he may be removed by the President at any time. He may also quit by submitting his resignation to the President. Conventionally, he resigns when the government (council of minister) resigns or is replaced, as he is appointed on its advice.

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the President may determine.

### 7.1. Duties of Attorney-General

As the chief law officer of the GoI, the duties of the Attorney-General include:

- a) To give advice to the government of India upon such legal matters, which are referred to him by the President.
- b) To perform such other duties of a legal character that are assigned to him by the President.
- c) To discharge the functions conferred on him by the Constitution or any other law.

Accordingly, the President has assigned the following duties to the Attorney-General:

- a) To appear on the behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- b) To represent the Government of India in any reference made by the President to Supreme Court under Art. 143 of the Constitution (power of President to consult Supreme Court)

Student Notes:

- c) To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

Student Notes:

## 7.2. Rights and Limitations

In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. He has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting or any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of Parliament. There are some limitations placed on AG as well, such as

- He should not advise or hold a brief against the Government of India.
- He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
- He should not defend accused persons in criminal prosecution without the permission of the Government of India.
- He should not accept appointment as a director in any company or corporation without the permission of the Government of India.

However, he does not fall in the category of government servant and he is not debarred from private legal practices. There are also present the offices of Solicitor General of India and Additional Solicitor General of India (extra constitutional) to assist the Attorney General of India in the fulfillment of his official responsibilities.

In 2017, the Delhi HC ruled that the office of Attorney General (AGI) **does not** come under the **ambit of RTI Act** as it is not a public authority under **section 2(h)** of the act.

**Section 2(h):** "Public authority" means any authority or body or institution of self-government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
  - (i) body owned, controlled or substantially financed;
  - (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

### Prelims Questions

**2013**

1. Consider the following statements:

Attorney General of India can

- 1. take part in the proceedings of the Lok Sabha
- 2. be a member of a committee of the Lok Sabha
- 3. speak in the Lok Sabha
- 4. vote in the Lok Sabha

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 4
- (c) 1, 2 and 3
- (d) 1 and 3 only

**Ans: (c)**

**DELHI**

**JAIPUR**

**PUNE**

**HYDERABAD**

**AHMEDABAD**

**LUCKNOW**

**CHANDIGARH**

## 8. UPSC Previous Years' Questions

Student Notes:

1. "The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss. (2019)
2. Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time specified for the President to accept/reject such petitions? Analyse. (2014)
3. The size of the cabinet should be as big as governmental work justifies and as big as the Prime Minister can manage as a team. How far is the efficacy of a government then inversely related to the size of the cabinet? Discuss. (2014)

## 9. Vision IAS Previous Years' Questions

1. ***While in theory, the Cabinet is dependent upon Parliament, in practice it is the master of Parliament. Comment.***

**Approach:**

- Briefly introduce Cabinet and Parliament
- Explain the theoretical relationship between Cabinet and Parliament
- Discuss the practical relationship between both.
- You can take the opposite view of the statement. (Here only above 2 relationships are taken up. You can argue in the opposite by taking this reverse view.)
- Conclude with your view.

**Answer:**

- India adopted parliamentary form of government, where Council of Ministers headed by Prime minister form the executive, who are drawn from the legislature that is Rajya Sabha and Lok Sabha. (don't go on technical differences between cabinet and council of ministers)
- Under the Parliamentary system of government, the Cabinet are dependent on Parliament in the following ways:
  - Art.75(3)- council of ministers are collectively responsible for Lok Sabha
  - Answerability- Both the houses exercise control over the executive through asking questions, discussing matters of urgent public importance, moving call-attention notices and adjournment motions
  - by appointing various committees such as public accounts committee, estimates committee, committee on public undertakings
  - Financial control- the executive cannot spend public revenue or levy taxes without the sanction of Parliament.
  - Legislative control- Most of the legislation are initiated by cabinet, but needs parliament approval for passing the bill
- But in practicality, powers of Parliament have been usurped by the cabinet. Increase in the power of cabinet makes Parliament subservient. Parliament is controlled by the body which it was intended to control, due to following reasons:
  - With a stable strength of governing party in parliament, the Cabinet, in reality, becomes the leader of Parliament.
  - The party system - top leaders, which are generally in cabinet, determine all decisions.
  - Anti defection law (issuing of whip)
  - Cabinet consists of senior leaders of party, which enjoys the majority in Parliament, have influence in party.

**2. Distinguish between ordinance making powers of President and Governor. Should the power to promulgate ordinance, which is a legacy of colonial rule, have any place in the constitution of a modern democratic India?**

Student Notes:

**Approach:**

- First, compare the powers of President and Governors
- Then justify its use also in the modern democratic framework

**Answer:**

- Just as the President of India is constitutionally mandated to issue Ordinances under Article 123, the Governor of a state can issue Ordinances under Article 213, when the state legislative assembly (or either of the two Houses in states with bicameral legislatures) is not in session. The powers of the President and the Governor are broadly comparable with respect to Ordinance making with in the respective domains of power lists – Union, State and Concurrent. However, the Governor cannot issue an Ordinance without instructions from the President in three cases where the assent of the President would have been required to pass a similar Bill. Specifically –
  - If a bill containing the same provisions which requires the previous sanction of the president.
  - If the Governor would have deemed it necessary to reserve the bill for the previous consideration of the president.
  - If an act contains same provisions which has been reserved for the consideration of the president.
- Ordinance making power is a legacy of British Raj in India. It was incorporated from the Government of India Act, 1935 (wherein the Governor General was granted similar powers). During the freedom movement, this power was vehemently opposed by the Congress. Nevertheless, this power was inserted in the Constitution.
- A vibrant democracy is not governed by ordinances. But there may be extraordinary circumstances requiring immediate legislative actions at a time when the parliament or state legislature may not be in session. However it must be considered an extraordinary power to be used in extraordinary circumstances. If used carefully and with democratic intent, use of ordinances need not be anti-democratic.

**3. "Prime Minister represents the executive government in a way that no single member of the Council of Ministers (CoM) or even the entire CoM can." Discuss.**

**Approach:**

Use your reasoning, backed by logical arguments and supported by facts, to make a case either for or against the given statement. The PM's role can be highlighted to support your viewpoint.

**Answer:**

The PM is the linchpin of the Govt. of India. He has an edge over CoM in executive govt. because of the following reasons:

1. He is the head of govt. and all major appointments – political and permanent- are made under his guidance.
2. He is the Leader of Cabinet and any member having difference with the PM can be dropped if he does not change his mind.

3. He is the link between President and CoM.
4. He is also leader of the Parliament and in a Parliamentary form of govt. this very fact infuses great powers in him.
5. Though MEA executes the foreign relation, but it is the PM who is Chief spokesperson in foreign relations.
6. He is, more often than not, the leader of his political party and all the other members of CoM follow his command.
7. Since he is the Chairman of the Planning Commission of India, the ministries headed by other members of CoM can be greatly influenced by him through the planning process.

Student Notes:

**4. *Empowered Group of Ministers lead to early and effective decision-making on particular issues. Critically analyse.***

**Approach:**

Explain briefly the objective behind constituting EGoMs. Then give arguments both in favour of and against setting up EGoMs. Finally, arrive at a suitable conclusion.

**Answer:**

The objective of the constitution of Empowered Group of Ministers was to facilitate and coordinate decision making for effective and timely actions on policy issues yet the proliferation and overlapping of EGoM's over a period of time hampered the whole process leading to inaction and paralysis.

While Group of Ministers (GoM), an adhoc body, is formed to give recommendations to the Council of Ministers on certain emergent issues and critical problem areas, the Empowered Group of Ministers went a step further to take decisions on the matter it is authorised for, and such decisions will have the force of the government's decision.

A proliferation of EGoM's lead to diffusion of accountability, along with curbing the powers of individual ministries to take decisions w.r.t their departments. . At one time, there were 52 GoMs and EGoMs during the UPA regime, most of which were headed by Mr. Pranab Mukherjee (now the President of India). In all, the UPA government instituted a total of 82 GoMs and 14 EGoMs during its 10-year rule. This process not only led to delay in decision-making on critical policy issues, but went against its own mandate of policy coordination.

However, their selective but effective use, with clear mandate and prescribed time limit, can be helpful in resolving the policy deadlock and improving the governance system. As observed by 2<sup>nd</sup> ARC, there is a need to ensure that existing issues, which requires inter-ministerial coordination be first placed before the Committee of Secretaries (CoS) and then presented to the Union Cabinet for resolution.

The dismantling of the GoMs and EGoMs by the incumbent government is expected to fast track governance, with Ministers and Officers being asked to take decisions directly on pending matters without referring to the cabinet, and if need arises, then with the help of Cabinet Secretariat of PMO's assistance.

5. ***"The ordinance-making power of the executive needs to be suitably restrained, to create a balance of power between the executive and the legislature and to check the misuse of the same". Do you agree? Justify your stand with examples. 2015-614***

Student Notes:

**Approach:**

Straight forward approach., mention the constitutional provisions about ordinance making followed by Supreme courts view on ordinance making, few recent examples and a way forward.

**Answer:**

An ordinance under Article 123 of the constitution is an instrument at the hands of executives and president can make law in a situation

- If neither House of Parliament is in session.
- Circumstances exist, which render it necessary to take immediate action.
- Every ordinance ceases to exist six weeks from the end of the next sitting of Parliament.

Article 213 gives the same power to the Governor of a State.

But under separation of power principle legislature's function is to make laws and executives to implement it. However due to –

- Dynamicity and complexity in governance.
- Practical and political compulsions.

Ordinance route has been resorted to more often than not. For example during emergency and even during normalcy say in Bihar more than 250 ordinances were repromulgated some as long as 14 years which supreme court commented as ordinance raj. It is said ordinance makeup along with administrative adjudications lead to new despotism.

So the ordinance making power needs to be suitably restrained. This need is also reflected in various Supreme Court judgements. Courts have uniformly held, in varying formulations

- That the power of the President and the Governors to issue ordinances is in the nature of an emergency power.
- It held that since promulgating an ordinance was a legislative action, the grounds on which it could be challenged were the same as those on which laws made by Parliament could be challenged.
- The motives of the legislature in passing a statute is beyond the scrutiny of courts
- Supreme court held that ordinance making is not beyond judicial review.(In A.K Roy vs. UOI 1980)
- Supreme Court also held that ordinance cannot be a substitute for the law making power of the legislature and court could strike down the repromulgated ordinances.

Despite these recently centre has promulgated many ordinances like food security, SEBI amendments, criminal law amendments, ordinance on land acquisition(amendment) act among others and out of these 3 of them has been repromulgated second time i.e., in violation of supreme court decisions. Further ordinances on corruption and right to service were dropped by the govt. themselves to save face in light of Supreme Court judgements and media activism.

In sum executive should exercise its power judiciously. Framers of our Constitution envisaged ordinance-making powers only for unforeseen, sudden situations and where the executive required additional legal sanction to address the situation. Thus to safeguard the sanctity of parliamentary democracy ordinance route must be suitably restrained only to meet emergent situation and then misuse shall be effectively checked via checks and balances.

Student Notes:

6. *It is the Parliamentary system, with its basis on constant accountability, accommodation and inclusion, which can best serve the needs of the country. Examine, keeping in mind the arguments that are periodically put forward for adopting the Presidential system in India.*

**Approach:**

- Context in which this system was adopted
- Benefits of Parliamentary System in India
- Comparison with Presidential System of Government

**Answer:**

India already had some experience of running the parliamentary system under the Acts of 1919 and 1935. This experience had shown that in the parliamentary system, the executive can be effectively controlled by the representatives of the people. Thus, accountability was given a greater emphasis than stability of Presidential system. It was because of the pluralistic nature of our society which demanded giving representation to diverse sections and regions and include majority of people into political stream.

It put an emphasis on institution building rather than a form in which the executive power was vested in a single individual.

Its inclusiveness and accommodativeness occurs at two levels: At the legislative level where the MPs are representative of diversity and at the level of CoM as well. Further, an issue based opposition is often heard and its views accommodated in governance.

There are arguments in favour of Presidential System:

**First**, it will make political parties to be more democratic and careful in selecting a candidate. They will have to choose their best candidate for a head-to-head contest.

**Second**, the voters will know their candidates intimately. This will increase accountability of the candidates.

**Third**, the president will be fully in charge of the executive. He will be able to attract the best and brightest to his cabinet, irrespective of their political affiliations.

**Fourthly**, our democratic institutions have matured and evolved and public is more conscious today, hence, we can switch to new system.

However, parliamentary form of government apart from being pluralistic, accommodative and inclusive offers following benefits:

**Smooth Functioning**- Close link between executive and legislature avoids conflict between the two organs of government.

**Open Administration**- The executive remains vigilant and follows propriety to secure its electoral prospects and confidence of Parliament.

**Financial Accountability:** Government has to seek financial grants by Parliament and the audit of its expenditure by CAG/PAC. In the light of its suitability to Indian context Swaran Singh Commission, NCRWC etc. have recommended its continuity.

Although, several lacunae in the system are visible, like declining representativeness, efficiency and ethos of MPs, corruption, instability owing to coalition politics, weakness of opposition etc. yet it could be said that the system needs a major overhaul but not a switch.

Student Notes:

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# STATE EXECUTIVE

Student Notes:

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## 1. Introduction

The State Executive is organized on the same pattern as the Union Executive, with the Governor at the apex, followed by the Chief Minister, the Council of Ministers and the Advocate General of the State. The State Executive is dealt with, in Articles 153 to 167, in Part VI of the Constitution.

## 2. Governor

The Governor is the chief executive of the State and his position is analogous to that of the President at the Centre. Despite being a nominal executive head (titular or constitutional head), the Governor has “a right to be consulted, to warn and encourage” and his role is overwhelmingly that of a “friend, philosopher and guide” to his Council of Ministers. Under this role, he also functions as a sentinel of the Constitution and a live link with the Union.

The Constitution, under Article 153, provides for a Governor for each state. However, the Article was amended by the Seventh Constitutional Amendment (1956), which came as a result of the State Reorganization Commission and currently, the same person may be appointed as Governor of two or more states.

### 2.1. Appointment

It is the President who appoints the Governor by warrant under his hand and seal and the Governor holds the office in accordance with the President’s pleasure. In a way, the Governor is a nominee of the Central Government. Also, while the Governor’s prescribed office term is five years, he may be removed at any time by the President.

The founding fathers envisaged the institution of Governor as a non-political office, acting as an organic link between the Centre and the State. But, this has not been followed in practice, and instead something similar to a spoils system has been followed. There have been arguments that the Governor’s office is used as a post retirement reward for politicians and retired bureaucrats.

The First Administrative Reforms Commission emphasized on healthy conventions. The Raja Mannar Committee, appointed by the Tamil Nadu government, suggested the following:

- The CM of the concerned state must be consulted before appointing a person as the Governor
- If the CM is against such an appointment, that person should not be appointed.

This was supported by the Sarkaria Commission and Punchhi Commission on Center-State Relations. However, this practice has hardly been followed.

#### 2.1.1. Why the Governor is appointed and not elected

In the Draft Constitution, the framers of the Constitution had decided upon an elected Governor for each of the States. This decision was in conformity with their idea of giving each State the maximum autonomy as Units of a Federation. However, within two years, the Constituent Assembly decided to abandon this idea in favor of an appointed Governor and this was provided for in the Constitution too. Following are the arguments cited in favor of this move:

1. In a Parliamentary system of Government a popularly elected Governor does not fit well. If the Governor is elected directly by the people, he becomes a direct representative of the people and may very well exercise his powers, not as the constitutional head of the State, but as its real head.
2. Such a position is very likely to create a rivalry between the Governor and the Council of Ministers, whose members are also directly elected by the people.

3. Instead of the Governor being elected directly by the people, if he is elected by the State Legislature, there seems to be not much chance of a rivalry between him and the Ministry. This is because the Ministry is responsible to the same legislature which has elected the Governor. Also, there will exist a grave danger of the Governor becoming a pawn in the hands of political parties that secure his election.
4. Either a directly or an indirectly elected Governor is unlikely to fit into a highly centralized system of government. For, the Governor in either case is a representative of the State who receives his authority from the people of the State. In case of a conflict between the State and the Union, such a Governor is not likely to act as a convenient instrument of the Union Government. On the other hand, the Governor may create difficulties in the path of the Union's authority extending in any form to the State's sphere. This is not in harmony with the idea of emergency powers, under which the Union becomes all-powerful and the federal system ceases to function.

Student Notes:

### **2.1.2. Conditions for Appointment of the Governor and his Office**

**Qualifications:** The Constitution lays down the following two qualifications for the appointment of a person as a Governor:

- He should be a citizen of India
- He should have completed the age of 35 years.

The Constitution also lays down the following conditions for Governor's office:

- The Governor cannot be a member of either House of the Parliament or any of the State Legislatures.
- If a Member of a Legislature is appointed as the Governor of any State/s, he shall immediately cease to be a Member upon such appointment.
- The Governor cannot hold any office of profit.
- The Parliament determines the emoluments and allowances payable to him and also his free official residence. These emoluments and allowances should not be diminished during his term of office.
- The Chief Justice of the concerned High Court administers the oath of office to the Governor of that State. In the absence of the Chief Justice of the High Court, the oath is administered by the senior-most available Judge of the concerned High Court.
- The Governor can be transferred from one State to another by the President. He can resign any time by addressing his resignation to the President. The Legislature of a State does not have any role in removing the Governor from his post.

In case, the same person is appointed as the Governor of two or more states, the President of India determines the emoluments and allowances payable to him, in a proportion, among the States concerned.

### **2.2. Removal**

Ordinarily, the term of office of Governor is 5 years, but he remains in office during the pleasure of the President. The term of a Governor's office can be terminated earlier by:

1. Dismissal by the President at whose 'pleasure' he holds the office [Article 156(1)]
2. Resignation [Article 156(2)]

The grounds on which a Governor may be removed are not specified in the Constitution. Hence, it is assumed that such powers shall be sparingly used by the President. It has been observed by the Punchhi Commission that the practice of treating Governors as "political footballs" must stop and the institution must be given a fixed term and safeguards to prevent politicization.

## 2.3. Powers and Functions of the Governor

Student Notes:

The Governor's powers and functions can be studied under the following heads:

1. Executive Powers
2. Legislative Powers
3. Financial Powers
4. Judicial Powers
5. Mercy (Pardoning) Powers
6. Emergency Powers

### 2.3.1. Executive Powers

- The executive power of the State is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (Art. 154).
- All executive actions of the government of a State are formally taken in the Governor's name. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
- He appoints the Chief Minister, the other subordinate ministers, the Advocate General of the State and they hold office during his pleasure.
- The Governor appoints the State Election Commissioner and his conditions of service and tenure of office. However, the SEC can be removed only in manner and on the grounds as a Judge of a High Court.
- He appoints the Chairman and members of the State Public Service Commission. However, they can be removed by the President of India and not by the Governor.
- He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the Chief Minister.
- He can make a recommendation to the President to impose constitutional emergency in the state under Article 356.
- He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

### 2.3.2. Legislative Powers

- The Governor of the State summons or prorogues the state legislature and he can dissolve the State Legislative Assembly.
- When both the offices of the Speaker and the Deputy Speaker fall vacant then the Governor appoints any member of the State's Legislative Assembly to preside over its proceedings.
- After a bill is passed in the state legislature, the Governor can give his assent to the bill, or withhold his assent. He can return the bill (if it is not a money bill) for reconsideration of the State Legislature. He can reserve the bill for the President's consideration.
- The Governor can reserve for the President's consideration any bill passed by the State Legislature, which endangers the position of the State High Court. Further, he can also reserve the bill if it is of the nature of ultra-virus, i.e., against the Constitution's provisions, if it is opposed to the Directive Principles of State Policy (DPSP), if it is against the larger interest of the country, if it is of grave national importance, and if the bill is of the nature of dealing with compulsory acquisition of property under article 31A of the Constitution.
- The Governor nominates one member to the State Legislative Assembly from the Anglo-Indian community; he nominates 1/6<sup>th</sup> of the members of the State Legislative Council from amongst the persons having special knowledge or practical experience in literature, art, science, cooperative movement and social service.
- He can promulgate ordinances when the State Legislature is not in session. These ordinances must be approved by the State Legislature within six weeks from its reassembly.

- He decides on the question of disqualification of the members of the State Legislature in consultation with the Election Commission.
- The Governor of the State lays reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor General relating to the accounts of the State, before the State Legislature.

Student Notes:

### **2.3.3. Financial Powers**

- The Governor of the state confirms that the state budget or the Annual Financial Statement is laid before the State Legislature.
- Money Bills can be introduced in the State Legislature only with the prior recommendation of the Governor.
- Demand for a grant can be made only on the Governor's recommendation.
- To meet any unforeseen expenditure, he can make advances out of the Contingency Fund of the State.
- To review the financial position of the Panchayats and the Municipalities, the Governor constitutes a Finance Commission in the state after every five years.

### **2.3.4. Judicial Powers**

- The Governor is consulted by the President, while appointing the Judges of the concerned State High Court.
- He makes appointments, postings and promotions of the district judges in consultation with the State High Courts.
- He appoints persons to the judicial service of the state (other than the District Judges) in consultation with the State High Court and the State Public Service Commission.

### **2.3.5. Mercy Powers**

The Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence, against any law relating to a matter to which the executive power of the state extends. However, the pardoning power of the Governor differs from that of the President in the manner that the President can pardon death sentence, whereas the Governor cannot pardon a death sentence. However, the Governor can suspend, remit or commute a death sentence if the death penalty is awarded in respect of a state law. The pardoning powers of the Governor and the President also differ in respect of the punishment or sentence by a court-martial where the President enjoys the power to pardon, reprieve, remit, suspend or commute whereas the Governor does not possess any power in this respect.

#### **Recent Development**

In 2016, Supreme Court struck down Tamil Nadu Government's decision to release seven killers of the former Prime Minister Rajiv Gandhi. The Constitutional Bench rejected Tamil Nadu's argument that the seven prisoners should not be robbed of their hope to be freed on remission.

#### **Grounds of the judgment**

Supreme Court said that the Centre, and not the State, will have the "primacy" in deciding whether remission should be granted to life-term convicts in the cases, which concerned the CBI or any Central agency as in the case of Rajiv Gandhi killers.

## **Significance of the Judgment**

- Court has barred State governments from invoking their statutory remission power for the premature release of those sentenced by a High Court or the Supreme Court to a specified term above 14 years without remission.
- Rejection of the theory that every convict should have a ray of hope to be freed on the grounds of remission
- The State government will now have to get the concurrence of the Centre in cases investigated by Central agencies before it can use its power of remission to release convicts
- Prisoners cannot be released on the whims and fancies of politicians
- Hardened, remorseless criminals cannot be released even after 14 years of imprisonment
- The judgment will also settle the law on the power of State governments to remit sentences, especially of prisoners condemned to death whose sentences have been commuted to life.

### **2.3.6. Emergency Powers**

The Governor has no emergency powers to meet the situation arising from external aggression or armed rebellion like the President. However, he has the power to make a report to the President whenever he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Hence, he may invite the President to assume to himself the functions of the Government of the State or any of them i.e. invite 'President's rule'.

### **2.3.7. Special Powers and Responsibilities of Governor**

Some of the Governors may have to discharge certain special responsibilities also, under the articles 371 to 371J. In this regard, the Governor, though has to consult the Council of Ministers led by the Chief Minister, acts finally on his individual judgment or discretion. These special cases are mentioned as follows:

- **Maharashtra**- Establishment of separate development boards for Vidarbha and Marathwada.
- **Gujarat**- Establishment of separate development boards for Saurashtra and Kutch.
- **Nagaland**- With respect to law and order in the State for so long as the internal disturbance in the Naga Hills Tuensang Area continues.
- **Assam**- With respect to the administration of the tribal areas.
- **Manipur**- With respect to the administration of the Hill areas in the state.
- **Sikkim**- For peace and for ensuring social and economic advancement of the different sections of the population.
- **Arunachal Pradesh**- Regarding the law and order in the state.
- **Karnataka**- Establishment of a separate development board for Hyderabad-Karnataka region.

Besides, Schedule VI of the Constitution that deals with the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram, also accords special powers and responsibilities to the Governor. He has the power to divide the areas inhabited by different scheduled tribes in an autonomous district into autonomous regions. The governors of these states may also reorganize boundaries of the tribal areas. They may choose to include or exclude any area, increase or decrease the boundaries and unite two or more autonomous districts into one. They can also alter or change the names of autonomous regions without separate legislation. Governors of states that fall under the Sixth Schedule specify the jurisdiction of high courts for each of these cases.

Student Notes:

### **2.3.8. Discretionary Functions of the Governor**

Student Notes:

- However, the Governor can act in his wisdom and discretion in certain cases. The Governor has constitutional discretion in following cases: The Governor can act in his discretion in the case of reservation of a Bill for the consideration of the President.
- He can give or withhold assent to Bills, return a Bill for reconsideration of the House concerned or both the Houses, reserving it for the consideration of the President.
- He advises the President on the issue of the failure of the constitutional machinery and recommends for the imposition of the President's rule in the state concerned.
- He can use his discretion while exercising the functions as the administrator of an adjoining Union Territory (in case of additional charge).
- He seeks information from the Chief Minister with regard to the administrative and legislative matters of the state.

The Governor, like the President, also enjoys situational/circumstantial discretion, i.e. the hidden discretion derived from the exigencies of a prevailing political situation in following cases:

- The Governor can appoint a new Chief Minister in a situation where no single party or leader commands majority support. He can dissolve the Assembly on the advice of a Chief Minister who has lost majority support.
- He can dismiss a Ministry where the Ministry refuses to resign even after losing majority support in the House or after being defeated on a non-confidence motion.

### **2.4. Constitutional Position of a Governor**

As in the Centre, the Constitution of India provides for a Parliamentary form of government in the States also. Similar to the President, the Governor at the State level exercises his powers and functions with the aid and advice of the Council of Ministers headed by the Chief Minister, except in matters in which he is required to act in his discretion. After the 42<sup>nd</sup> amendment, ministerial advice has been made binding on the President, but no such provision has been made with respect to the Governor. In other words, the Governor is a nominal executive; the real executive is the Council of Ministers, headed by the Chief Minister in a state.

Constitutionally, Governor is the head of State, but practically he becomes the man of Centre in the State.

Ideally, the institution of Governor is envisaged as an institution of "cooperative federalism" – the link between the Centre and State. He can bring a national perspective to the State level and concerns of the State to the Centre.

But in practice, it has become an institution of "bargaining federalism" – a mechanism available to the Centre to bargain with the States.

The Office of Governor worked well till 1967 during the era of single party dominance both in the Centre and the States. However, later this office has been repeatedly used for politically motivated ends. Some experts call this the most abused office of the Constitution of India.

### **2.5. Contemporary Relevance of the Office of Governor**

Though there have been suggestion for abolishing this office, but it continues to be relevant in our federal setup. It has been given a key role of maintaining Constitutional governance in the State. The dignity and independence of this Constitutional office warrants a fixed term and impeachment on the same lines as the President. The Governor brings a national level perspective to the state level actions and activities. The importance becomes even more prominent in cases of outbreak of natural disasters, breakout of communal riots etc. The Punchhi Commission has also emphasized the importance of the Office, especially in the context of internal security challenges.

## 2.6. Contemporary Issues

### 2.6.1. Role of Governor in a Hung Assembly

- In the context of government being formed by a non-majority party in Goa and Manipur, it has once again questioned the discretion of Governor in calling a person to form a government. Again this issue came to the fore after the recently concluded Karnataka assembly elections.
- Article 164(1) provides for the appointment of chief minister by the Governor. The Supreme Court clarified that there is no qualification mentioned in article 164(1) and reading it with collective responsibility in 164(2), the only condition chief ministerial candidate need to satisfy is that he/she should be commanding majority in the house.
- As for the appointment of Chief Minister, the Sarkaria Commission has recommended:
  - The party or combination of parties with widest support in the Legislative Assembly should be called upon to form the Government.
  - If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
  - In case no party or pre-poll coalition has a clear majority, the Governor should select the CM in the order of preference indicated below:
    - The group of parties which had pre-poll alliance commanding the largest number.
    - The largest single party staking a claim to form the government with the support of others.
    - A post-electoral coalition with all partners joining the government.
    - A post-electoral alliance with some parties joining the government and the remaining supporting from outside.
- M.M. Punchhi Commission elaborated that the Governor should follow "constitutional conventions" in a case of a hung Assembly.
- While SR Bommai case related to discretion of Governor does not apply to hung assembly but it laid emphasis on floor test in the house within 48 hours (although it can be extended to 15 days) so that legislature should decide the matter and Governor's discretion should merely be a triggering point.

The Governor must be true to the oath of office and must ensure that the person he/she invites to be Chief Minister will be able to form a responsible and reasonably lasting government in the State. Even Dr. B.R. Ambedkar in his speech described how a Governor should use his discretion not as "representative of a party" but as "the representative of the people as a whole of the State".

### 2.6.2. Appointment and removal of Governor by the Centre

The qualifications of Governor are not mentioned in constitution. Thus, ex-bureaucrats, retired CJI, active politicians etc. have been appointed as Governors. This leads to Governor being committed to Centre.

Thus, recommendations of the Punchhi Commission on Role of Governor should be considered:

- It has given a set of criteria for the qualification of Governor to be included in Article 157:
  - The Governor should, in the opinion of the President, be an eminent person;
  - The Governor must be a person from outside the concerned State;
  - The Governor should be a detached person and not too intimately connected with the local politics of the State. Accordingly, the Governor must not have participated in active politics at the Centre or State or local level for at least a couple of years before his appointment.
- The tenure of office of the Governor must be fixed, say for a period of 5 years.

- The phrase "during the pleasure of the President" may be deleted from Article 156 of the Constitution.
- In B.P. Singhal vs. Union of India case, SC observed that power to remove Governor cannot be exercised in an arbitrary, capricious or unreasonable manner. This power should only be exercised in rare and exceptional circumstances for valid and compelling reasons.
- A provision may be made for the impeachment of the Governor by the State Legislature on the same lines as the impeachment of the President by the Parliament.
- Governors should not be eligible for any further appointment or office of profit under the Union or State Governments except a second term as Governor, or election as Vice-President or President of India.
- Also, after quitting or laying down his office, the Governor shall not return to active partisan politics.

Student Notes:

### 2.6.3. Issues related to Dissolution of State Assemblies by the Governor

- Lack of Objective Criteria for untimely dissolution:** While Article 174 gives powers to the Governor to dissolve the assembly, but the Constitution is silent on as to when and under what circumstances can the House can be dissolved.
- Political reasons being cited for Dissolution:** Potential for political instability in the future and to prevent emerging alliances is often used as a reason to dissolve state assemblies.
- Missing Political Neutrality in Governor's Office:** The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day. For e.g. Bihar State Assembly was dissolved by the Governor in 2005 on apprehensions of "horse trading. Later the Supreme Court called the decision to be illegal and mala fide.

#### Suggestions:

- Sarkaria Commission:** The state assembly should not be dissolved unless the proclamation is approved by the parliament. Sparing use of article 356 of the constitution should be made. All possibilities of formation of an alternative government must be explored before imposing presidential rule in the state.
- M M Punchhi Commission:** The Governor should follow "constitutional conventions" in a case of a hung Assembly. It suggested a provision of 'Localized Emergency' by which the centre government can tackle issue at town/district level without dissolving the state legislative assembly

#### Supreme Court Judgements:

- S.R. Bommai Case (1994):** The court accorded primacy to a **floor test** as a check of majority. The court also said that the power under Article 356 is extraordinary and must be used wisely and not for political gain.
- Rameshwar Prasad Case (2006):** Bihar Governor's recommendation for dissolving the Assembly the previous year was held to be illegal and mala fide. A Governor cannot shut out **post-poll alliances** altogether as one of the ways in which a popular government may be formed. The court had also said **unsubstantiated claims of horse-trading** or corruption in efforts at government formation cannot be cited as reasons to dissolve the Assembly

## 3. Chief Minister

The Chief Minister of a State is the head of the government and is the real executive authority (de facto executive).

The position of the Chief Minister of a State resembles that of the Prime Minister at the Centre. Article 164 simply states that the Chief Minister shall be appointed by the Governor, but this does not mean that the Governor is free to appoint any one as Chief Minister. Generally, the leader of the majority party in the State Legislative Assembly is appointed by the Governor of

the concerned State as the Chief Minister of that state. The Chief Minister's oath is administered by the Governor. In case, no political party has a clear majority in the assembly then the Governor generally appoints the leader of party or coalition and asks him to seek a vote of confidence in the House within a month.

Student Notes:

### 3.1. Powers and Functions of the Chief Minister

The Powers and Functions of the Chief Minister can be studied under the following heads:

#### 3.1.1. In Relation to the Council of Ministers

As the head of the Council of Ministers, the Chief Minister enjoys the following powers:

- The Governor appoints only those persons as Ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- In case of difference of opinion the Chief Minister can advise the Governor to dismiss the concerned minister or he can ask the minister to resign from his post
- The Chief Minister presides over the meetings of the council of ministers and influences its decisions.
- The activities of all the ministers are guided, directed, controlled and coordinated by the Chief Minister.
- As the Chief Minister is the head of the council of ministers, his resignation or death automatically lead to the dissolution of the council of ministers. Thus he can bring about the collapse of the council of ministers by resigning from his office.

#### 3.1.2. In Relation to the Governor

The Chief Minister is the main channel of communication between the Governor and the Council of Ministers. It is the duty of the Chief Minister:

- To communicate to the Governor all decisions regarding the proposals for legislation and relating to the administration of the affairs of the state.
- To furnish the information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for.
- If the Governor so requires, to submit for the consideration of the Council of Ministers, any matter on which a decision has been taken by a Minister but which has not been considered by the Council.
  - He advises the Governor with regard to the appointment of important officials like the Advocate-General of the State, Chairman and Members of the State Public Service Commission, State Election Commissioner and the like.

#### 3.1.3. In Relation to State Legislature

Regarding the Governor's summoning and proroguing of the sessions of the State Legislature, the Chief Minister of the State advises the Governor.

- He can, at any time, recommend the Governor for the dissolution of the State Legislative Assembly.
- The Chief Minister of the State announces the government policies, on the floor of the house of the State Assembly.

In addition to the above mentioned powers and functions, the Chief Minister enjoys some other powers and functions also. They are mentioned below –

- He acts as a Vice-Chairman of the concerned Zonal Council by rotation, holding office for a period of one year at a time.

- The Chief Minister is a member of the Inter-State Council and the National Development Council, both headed by the Prime Minister. He is the chief spokesperson of the State government.
- He is the political head of the services; he is the leader of the party in power. As the leader of the State, he meets various sections of people and receives memoranda from them regarding all their problems, and so on.
- The Chief Minister acts as the crisis manager-in-chief at the political level during emergencies.

Student Notes:

Even though the Chief Minister plays a very important role in the state administration, the Governor's discretionary powers reduce to some extent the power, authority, influence, prestige and role of the Chief Minister in the State administration.

## 4. Council of Ministers

According to Article 163, the Governor has to act on the advice of a Council of Ministers, subject to his discretionary functions.

### 4.1. Appointment of Council of Ministers

The State Council of Ministers is headed by the Chief Minister. While the Chief Minister is appointed by the Governor, the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Council of Ministers is collectively responsible to the Legislative Assembly of the State and individually responsible to the Governor. The Ministers are publicly accountable for the acts or conduct in the performance of duties.

Any person may be appointed a Minister provided he has the confidence of the Legislative Assembly. However, he ceases to be a Minister if he does not remain a member of the State Legislature for a period of six consecutive months. The salaries and allowances of Ministers are governed by laws made by the legislature of the State.

### 4.2. Relationship between Governor and his Ministers

The relationship between the Governor and his Council of Ministers is analogous to the relationship between the President and his ministers. However, it is important to highlight that the President is not constitutionally empowered to exercise any function 'in his discretion'. While at the same time, it authorizes the Governor to exercise some functions 'on his discretion'.

Article 163(1) says

*There shall be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.*

Because of this discretionary jurisdiction, no amendment was made to Article 163(1) by the 42<sup>nd</sup> Constitutional Amendment Act. Therefore, in exercise of the functions which the Governor is empowered to act in his discretion, he will not be required to act according to the advice of the Council of Ministers or even to seek their advice. If any question arises whether any matter **is or is not** a matter wherein the Governor is required by the Constitution to act in his discretion, the decision of the Governor shall be final. Furthermore, the validity of anything done by the Governor shall not be called into question on the ground that he ought to or ought not to have acted in his discretion.

## 5. The Advocate-General

Article 64 of the Indian Constitution provides for an Advocate General for the State. The functions of the Advocate-General in respect of the State are similar to that of the Attorney General in relation to the Centre.

## 5.1. Appointment

The Advocate-General shall be appointed by the Governor of the State and holds office during the pleasure of the Governor.

## 5.2. Qualifications

Only a person qualified to be a Judge of a High Court can be appointed as the Advocate-General.

## 5.3. Remuneration

The Advocate-General of a State shall receive such remuneration as the Governor may determine.

Article 177 gives the Advocate-General the right to speak and take part in the proceedings of the Houses of Legislature of the State. However, he shall have no right to vote.

## 6. Previous Year UPSC Mains Questions

1. Is there any provision to impeach the Governor of a State? (25 words) (1999)
2. Explain the discretionary powers of the Governor of a State. (2003)
3. What were the two major considerations to have the Governor appointed and not elected? (2008).

## 7. Vision IAS GS Mains Test Series Questions

1. *What role has the constitution envisaged for the Governor with respect to administration of Scheduled and Tribal Areas? Critically evaluate the success of provisions of Fifth and Sixth schedules in achieving their objectives.*

### Approach:

- Give an account of the role of Governor in Scheduled Areas and Tribal Areas.
- Then establish the issues surrounding the success of the Fifth and Sixth schedules in achieving their objectives.

### Answer:

#### Powers of Governor with respect to Scheduled Areas

- The governor is empowered to direct that any particular act of Parliament or the state legislature does not apply to a scheduled area or apply with specified modifications and exceptions.
- He can also make regulations for the peace and good government of a scheduled area after consulting the Tribal Advisory Council. Such regulations may regulate or prohibit the transfer of land or money lending activities.

#### Powers of Governor with respect to Tribal Areas

- The tribal areas in the four states (Assam, Meghalaya, Tripura and Mizoram) are to be administered as autonomous districts/regions. The governor is empowered to organize and re-organize the autonomous districts/regions.
- Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor.
- The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions. In the case of Assam, this power lies with the Governor.
- The governor may also confer upon these councils the power to try certain suits and offences. Also, the laws made by the council shall have no effect unless assented by the governor.

## Evaluation of achievements

Student Notes:

The objective behind 5<sup>th</sup> and 6<sup>th</sup> schedules is granting certain autonomy to the tribal population within the framework of the constitution. This mandate towards devolution determines the protection of tribal customs, better economic development and ethnic security.

### Fifth Schedule

The Fifth Schedule applies in nine states. But, it has failed to create the desired impact because it has never been applied the way it should have been. PESA (Panchayat Extension to Scheduled Areas Act) was supposed to be the logical step in the 5<sup>th</sup> Scheduled areas. However, it was not properly implemented. Tribal communities have progressively been denied self-government and rights to their communities' natural resources that should have been provided under the legislation. Similarly, under FRA (Forest Rights Act), it is the state that decides whether a certain forest is denoted as Reserved Forest or Village forest. This classification controls the rights that local communities have on the forests.

### Sixth Schedule

The Sixth Schedule that embodies autonomy has its own shortcomings; breakdown of laws, elections not being contested and rather than empowerment there is exclusion that fails to provide much-needed protection to tribes in the absence of political will. Also, there are lack of courts at village and other levels in some District Councils and there is too much dependence on governments for financial grants, and allotments, etc.

Still, owing to greater autonomy, many tribal regions aspire to be governed by the 6<sup>th</sup> rather than the 5<sup>th</sup> Schedule. All the issues mentioned above have arisen out of the developmental deficit in the region and the poor implementation of the constitutional provisions. Hence, the need of the hour is to address the issues with a holistic approach rather than a piecemeal approach.

2. *Several constitutional experts have found the process of appointment and removal of governor to be against the very grain of democratic traditions and constitutional propriety. Do you think that this process warrants a fresh look in context of recent controversies surrounding the post?*

#### Approach:

Central theme of the question critical review of is process of appointment and removal of governor. Your answer should consist of these points:

- Briefly explain current practice of process of appointment and removal of governor.
- Cite recent trends which lead to the current discussion.
- Give suggestions for the betterment of this practice based on official judgement or committee reports.

#### Answer:

Our constitution states that Governor is to be appointed by the President of India on the advice of council of ministers according to Article 155. There is no procedure for impeachment of Governor, he shall hold office as per the pleasure of the President. But he can be removed by the President on the grounds of grave delinquency like bribery etc.

In our country, it has become a tradition that whenever there is change of guard at the centre, State governors are removed or appointed as per the convenience of the center.

Recently also it has led to many controversies when current government asked some state governors to resign immediately.

Student Notes:

The Chief Justice K. G. Balakrishnan, in 2010 emphasized that no Governor can be removed on basis of being "out of sync with policies and ideologies of Union Govt. at centre". This decision also states that governors can be removed, but there must be "compelling" reasons for doing so. This judgment also provided an exception that the government can initiate the process of removal of the Governor by first building a case file citing reasons for the removal of the Governor. Principle of natural justice must be followed, Governor must be given a chance to explain his position.

The Sarkaria Commission on Centre-State relations suggested :

- that a Governor should be someone eminent in some walk of life,
- one "not too intimately connected with the local politics of the State," and
- should not be one "who has taken too great a part in politics generally, and particularly in the recent past." It suggested that a politician from the ruling party at the Centre should not be appointed Governor of a State run by another party.

If only these norms are followed in practice, the need to ease out inconvenient Governors will not arise.

Puncchi Commission also emphasised for including specific procedure for appointment/removal of governor in the constitution itself.

So, it is right time to change the current practice of appointment and removal of Governors according to the SC decision and Sarkaria Commission recommendations.

**3. *Concerns regarding the wide formulation and indiscreet application of discretionary powers of the Governor need closer attention. Discuss.***

**Approach:**

- Give a brief description of the discretionary powers of the governor as mentioned in the Indian Constitution.
- Highlight the issues and challenges posed by these powers with respect to India's federal polity. Cite relevant case laws and reports.
- Conclude with suggestions.

**Answer:**

The governor has a great role in promoting cooperative federalism as he acts as a vital link between the centre and the state government. In this capacity he has certain discretionary powers as given in Article 163(1) and Article 163(2), according to which the governor will have the final say if any question arises about any matter falling into his discretionary powers. Thus, it seems to provide the governor with wide ranging powers.

Not just wide formulation but indiscreet application of these powers has also raised various concerns such as:

- Article 200 and 201: The Governor has the power to withhold the assent to a bill along with reserving the bill for the consideration of the president. States allege that this provision has often been misused by the governor who acts on behest of the union government.
- Article 356: To recommend the imposition of constitutional emergency in a state. For political gains, this power has been abused by central governments more than 120 times till date.

- Article 164: Appointment of chief minister. In case of a hung assembly, the governor's discretion to invite a party to form government has often been questioned, the most recent examples being Goa and Manipur elections.

Student Notes:

Governor is charged with the duty to preserve, protect and defend the Constitution; however, governors often perform their functions as 'agents of the centre'.

To limit the discretion of governor, the Supreme Court in the case of S.R. Bommai v. Union of India, held that such exercise of control of the Union executive over the State executive is opposed to the basic scheme of the Indian Constitution.

**Sarkaria Commission Report** also stated that, 'Even the limited area of choice of action should not be arbitrary. It must be a choice debated by reason, activated by good faith and tempered by caution.'

It should be a right of the citizen to seek remedy through a Court of Law if the Governor fails to defend the Constitution. In this context, the Supreme Court through cases such as Shamsher Singh v. State of Punjab, have set aside the absolute immunity that may be claimed by an office of the Governor.

**4. *Highlight the ordinance-making powers of the Governor. Also enumerate the range of steps open to him when a Bill is presented after its passage by the state legislature.***

**Approach:**

- Briefly, write about the constitutional provisions and, power and functions of Governor.
- Enumerate the steps open to the Governor when a Bill is presented after its passage.
- Conclude answer by suggesting measures to further streamline the process.

**Answer:**

Article 153 of Indian Constitution provides for the Office of Governor who acts as the executive head of the state and his position is analogous to the President at the Centre.

The Governor enjoys wide ranging powers related to executives, legislature and judiciary. One of the most important legislative power the Governor holds is his Ordinance making power. Under Article 213, the governor may legislate by Ordinance, provided the following two conditions are satisfied:

- When the Legislative Assembly of the State is not in Session or where there are two Houses in the Legislature, when both Houses are not in Session.
- Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action.

An Ordinance promulgated under Article 213 shall have the same force and effect as an Act of the Legislature of the State and can be withdrawn at any time by the Governor.

A bill requires assent of the Governor to become an act. When a bill, after passage, is presented before Governor, he/she has the following options under Article 200:

- May give assent** to the bill and the bill becomes an act, or
- Absolute Veto** - May withhold assent to the bill, then the bill ends and does not become an act, or
- Suspensive Veto** - May return the bill, if it is not a money bill, for reconsideration of the legislature. If the bill is passed again with or without amendments and presented to the governor for assent, the governor must give assent to the bill.

- **May reserve the bill** for the consideration of President. Then he will not have any further role in the enactment of the bill.

Student Notes:

Under Article 201, the President may give assent, withhold assent, and return the bill for reconsideration. In certain cases, like bill affecting the position of the High Court or opposing DPSP's etc., reservation of bill is mandatory.

**5. *There is a point of view that the office of Governor has outlived its relevance and needs to be abolished. Critically examine in the current context.***

**Approach:**

- Introduce by mentioning the reason for constituting the office of governor.
- Mention the controversies and reasons for abolishing the office.
- Highlight the significance of the office.
- Conclude by mentioning some reform measures.

**Answer:**

The roots of the office of Governor to act as a link between the centre and states are well established in the Government of India Act, 1935. It was continued even after independence so as to ward off any threats of secession by ensuring a strong centre.

Constitutionally, the powers of the office of governor include the following:

- Executive: Related to administration, appointment and removals
- Legislative: Related to law making i.e. assent to the bills
- Discretionary:
  - Invitation to form government when no party gets a clear majority
  - Reservation of bills for consideration by the President.
  - Submitting reports to the President regarding affairs of the state.

However, there have been numerous controversies including the misuse of powers of the Governor. This has led to calls for abolishing the office altogether as:

- The office has become home to retired politicians who favour the interests of the central government over the state government and fail to act in a neutral manner.
- There are several instances of misuse of discretionary power by the Governors to meddle with elected governments like the misuse of Article 356 to impose President's rule in the state.
- The appointment of the Governor is made unilaterally by the central government without consulting the state government. The appointment process is therefore considered undemocratic.
- The circumstances have changed since independence and the fissiparous tendencies have been effectively curbed which calls for review of the need for an office of Governor.
- The functions performed by the Governor are largely ceremonial but the expenditure of maintaining the office acts as a burden on the exchequer.

However, there have been many instances where people manning this Constitutional post rose above partisan politics, and performed their role with dignity and without fear or favour. The misuse of powers should not serve as a justification for abolishing the office. There can be various reform measures such as appointing "eminent persons" from other walks of life rather than career politicians and limiting the discretionary powers of the governor by enforcing recommendations of **Sarkaria and Punnchi commission**. Also issues arising out of partisanship /discretion have been dealt by SC and some committees which provide avenues for reforms:

- In the Nabam Rebia judgment (2016), the Supreme Court ruled that the exercise of Governor's discretion under Article 163 (council of ministers to aid and advise the Governor) is limited and his choice of action should not be arbitrary or fanciful.
- The Rajamannar Committee recommended the deletion of Article 356; Sarkaria, Punnchi and Justice V.Chelliah Commission recommended its use in very rare cases.
- Also, the Governors report recommending the imposition of President's rule may be analysed by the Supreme Court for malafide intention as noted in S.R. Bommai v. Union of India.

Student Notes:

The office of governor continue to remain significant as it ensures the continuance of governance in the State in times of constitutional crisis; his role is often that of a neutral arbiter in disputes settled informally within the various strata of government, and as the conscience keeper of the community. It is still a crucial link of effective communication between the Centre and the States/UT.

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# MINISTRIES AND DEPARTMENTS OF THE GOVERNMENT

Student Notes:

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## 1. Existing Organizational Structure

Article 77 of the Indian Constitution specifies the power of the President in terms of the conduct of business of the Government of India. It vests the following powers in the President:

- All executive action of the Government of India shall be expressed to be taken in the name of the President
- Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President
- The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business

Exercising powers vested by virtue of Article 77, the President has made the “The Government of India (Allocation of Business) Rules”. The Rules stipulate that the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First schedule to these rules. The Allocation of Business Rules, thus, forms the basis of the structure of Government of India by specifying the Departments among whom the functional division of work of Government of India has been done.

The Allocation of Business Rules comprises an exhaustive listing of the subjects and activities of various Departments of Government of India. It also enlists the attached and subordinate offices and other organizations, including Public Sector Undertakings. This detailed listing has the advantage of clearly demarcating the turf of individual departments so that there is no ambiguity with regard to their responsibilities. The allocation of Business has been kept up to date by a series of amendments and has stood the test of time.

## 2. Structure within the Departments

- a. A department is responsible for formulation of policies of the government in relation to business allocated to it and also for the execution and review of those policies.
- b. For the efficient disposal of business allotted to it, a department is divided into wings, divisions, branches and sections.
- c. A department is normally headed by a Secretary to the Government of India, who acts as the administrative head of the department and principal adviser of the Minister on all matters of policy and administration within the department.
- d. **Wing:** The work in a department is normally divided into wings with a Special Secretary/Additional Secretary/Joint Secretary in charge of each wing. Such a functionary is normally vested with the maximum measure of independent functioning and responsibility in respect of the business falling within his wing subject, to the overall responsibility of the Secretary for the administration of the department as a whole.
- e. **Division:** A wing normally comprises a number of divisions each functioning under the charge of an officer of the level of Director/Joint Director/Deputy Secretary.
- f. **Branches:** A division may have several branches each under the charge of an Under Secretary or equivalent officer.
- g. **Section:** A section is generally the lowest organizational unit in a department with a well-defined area of work. It normally consists of assistants and clerks supervised by a Section Officer. Initial handling of cases (including noting and drafting) is generally done by, assistants and clerks who are also known as the dealing hands.
- h. **Desk Officer System:** While the above represents the commonly adopted pattern of organization of a department, there are certain variations, the most notable among them being the desk officer system. In this system the work of a department at the lowest level is

organised into distinct functional desks each manned by two desk functionaries of appropriate ranks e.g. Under Secretary or Section Officer.

- Each desk functionary handles the cases himself and is provided adequate stenographic and clerical assistance.

Under the Government of India, Rules of Business, 1961, there are presently 51 Ministries, 56 Departments and 2 Independent Departments. Out of these 51 Ministries, only 20 have one or more departments attached to them.

Student Notes:

<b>Ministry</b>	<b>Department Associated</b>
<b>Ministry of Agriculture and Farmers Welfare</b>	<ul style="list-style-type: none"> <li>• Department of Agricultural Research and Education (DARE)</li> <li>• Department of Agriculture, Cooperation and Farmers Welfare</li> </ul>
<b>Ministry of AYUSH</b>	
<b>Ministry of Chemicals and Fertilizers</b>	<ul style="list-style-type: none"> <li>• Department of Chemicals and Petrochemicals</li> <li>• Department of Fertilizers</li> <li>• Department of Pharmaceuticals</li> </ul>
<b>Ministry of Civil Aviation</b>	
<b>Ministry of Coal</b>	
<b>Ministry of Commerce and Industry</b>	<ul style="list-style-type: none"> <li>• Department for Promotion of Industry and Internal Trade</li> <li>• Department of Commerce</li> </ul>
<b>Ministry of Communications</b>	<ul style="list-style-type: none"> <li>• Department of Posts</li> <li>• Department of Telecommunications (DOT)</li> </ul>
<b>Ministry of Consumer Affairs, Food and Public Distribution</b>	<ul style="list-style-type: none"> <li>• Department of Consumer Affairs</li> <li>• Department of Food and Public Distribution</li> </ul>
<b>Ministry of Corporate Affairs</b>	
<b>Ministry of Culture</b>	
<b>Ministry of Defence</b>	<ul style="list-style-type: none"> <li>• Department of Defence</li> <li>• Department of Defence Production</li> <li>• Department of Defence Research &amp; Development</li> <li>• Department of Ex-Servicemen Welfare</li> </ul>
<b>Ministry of Development of North Eastern Region</b>	
<b>Ministry of Earth Sciences</b>	<ul style="list-style-type: none"> <li>• India Meteorological Department (IMD)</li> </ul>
<b>Ministry of Education</b>	<ul style="list-style-type: none"> <li>• Department of Higher Education</li> <li>• Department of School Education and Literacy</li> </ul>
<b>Ministry of Electronics and Information Technology</b>	
<b>Ministry of Environment, Forest and Climate Change</b>	
<b>Ministry of External Affairs</b>	
<b>Ministry of Finance</b>	<ul style="list-style-type: none"> <li>• Department of Economic Affairs</li> <li>• Department of Expenditure</li> <li>• Department of Financial Services</li> <li>• Department of Investment and Public Asset Management</li> <li>• Department of Revenue</li> </ul>
<b>Ministry of Fisheries, Animal Husbandry and Dairying</b>	<ul style="list-style-type: none"> <li>• Department of Animal Husbandry and Dairying</li> <li>• Department of Fisheries</li> </ul>
<b>Ministry of Food Processing Industries</b>	

<b>Ministry of Health and Family Welfare</b>	<ul style="list-style-type: none"> <li>• Department of Health and Family Welfare</li> <li>• Department of Health Research, Ministry of Health &amp; Family Welfare</li> </ul>
<b>Ministry of Heavy Industries and Public Enterprises</b>	<ul style="list-style-type: none"> <li>• Department of Heavy Industry</li> <li>• Department of Public Enterprises</li> </ul>
<b>Ministry of Home Affairs</b>	<ul style="list-style-type: none"> <li>• Department of Border Management</li> <li>• Department of Home</li> <li>• Department of Internal Security</li> <li>• Department of Jammu &amp; Kashmir (J &amp; K) Affairs</li> <li>• Department of Official Language</li> <li>• Department of States</li> </ul>
<b>Ministry of Housing and Urban Affairs</b>	
<b>Ministry of Information and Broadcasting</b>	
<b>Ministry of Jal Shakti</b>	<ul style="list-style-type: none"> <li>• Department of Drinking Water and Sanitation</li> <li>• Department of Water Resources, River Development and Ganga Rejuvenation</li> </ul>
<b>Ministry of Labour and Employment</b>	
<b>Ministry of Law and Justice</b>	<ul style="list-style-type: none"> <li>• Department of Justice</li> <li>• Department of Legal Affairs</li> <li>• Legislative Department</li> </ul>
<b>Ministry of Micro, Small and Medium Enterprises</b>	
<b>Ministry of Mines</b>	
<b>Ministry of Minority Affairs</b>	
<b>Ministry of New and Renewable Energy</b>	
<b>Ministry of Panchayati Raj</b>	
<b>Ministry of Parliamentary Affairs</b>	
<b>Ministry of Personnel, Public Grievances and Pensions</b>	<ul style="list-style-type: none"> <li>• Department of Administrative Reforms and Public Grievances (DARPG)</li> <li>• Department of Pension &amp; Pensioner's Welfare</li> <li>• Department of Personnel and Training</li> </ul>
<b>Ministry of Petroleum and Natural Gas</b>	
<b>Ministry of Power</b>	
<b>Ministry of Railways</b>	
<b>Ministry of Road Transport and Highways</b>	
<b>Ministry of Rural Development</b>	<ul style="list-style-type: none"> <li>• Department of Land Resources (DLR)</li> <li>• Department of Rural Development (DRD)</li> </ul>
<b>Ministry of Science and Technology</b>	<ul style="list-style-type: none"> <li>• Department of Biotechnology (DBT), Government of India</li> <li>• Department of Science and Technology (DST)</li> <li>• Department of Scientific and Industrial Research (DSIR)</li> </ul>
<b>Ministry of Shipping</b>	
<b>Ministry of Skill Development and Entrepreneurship</b>	

Student Notes:

<b>Ministry of Social Justice and Empowerment</b>	<ul style="list-style-type: none"> <li>• Department of Empowerment of Persons with Disabilities</li> <li>• Department of Social Justice and Empowerment</li> </ul>
<b>Ministry of Statistics and Programme Implementation</b>	
<b>Ministry of Steel</b>	
<b>Ministry of Textiles</b>	
<b>Ministry of Tourism</b>	
<b>Ministry of Tribal Affairs</b>	
<b>Ministry of Women and Child Development</b>	
<b>Ministry of Youth Affairs and Sports</b>	<ul style="list-style-type: none"> <li>• Department of Sports</li> <li>• Department of Youth Affairs</li> </ul>
<b>Independent Departments</b>	
1. Department of Atomic Energy 2. Department of Space	

Student Notes:

### 3. Attached or Subordinate Offices

Each Department may have one or more attached or subordinate offices. For instance, Department of Pharmaceuticals under the Ministry of Chemicals and Fertilizers has National Pharmaceutical Pricing Authority (NPPA) as an attached office. The role of these offices is:

- Attached offices are generally responsible for providing executive direction required in the implementation of the policies laid down by the department to which they are attached. They also serve as repository of technical information and advise the department on technical aspects of question dealt with by them.
- Subordinate offices generally function as field establishments or as agencies responsible for the detailed execution of the policies of government. They function under the direction of an attached office, or where the volume of executive direction involved is not considerable, directly under a department.

### 4. Sample Case

#### 4.1. Ministry of Home Affairs

The Ministry of Home Affairs (MHA) has multifarious responsibilities, important among them being internal security, management of para-military forces, border management, Centre-State relations, administration of Union Territories, disaster management, etc. Though in terms of Entries 1 and 2 of List II – ‘State List’ – in the Seventh Schedule to the Constitution of India, ‘public order’ and ‘police’ are the responsibilities of States, Article 355 of the Constitution enjoins 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 the Constitution.

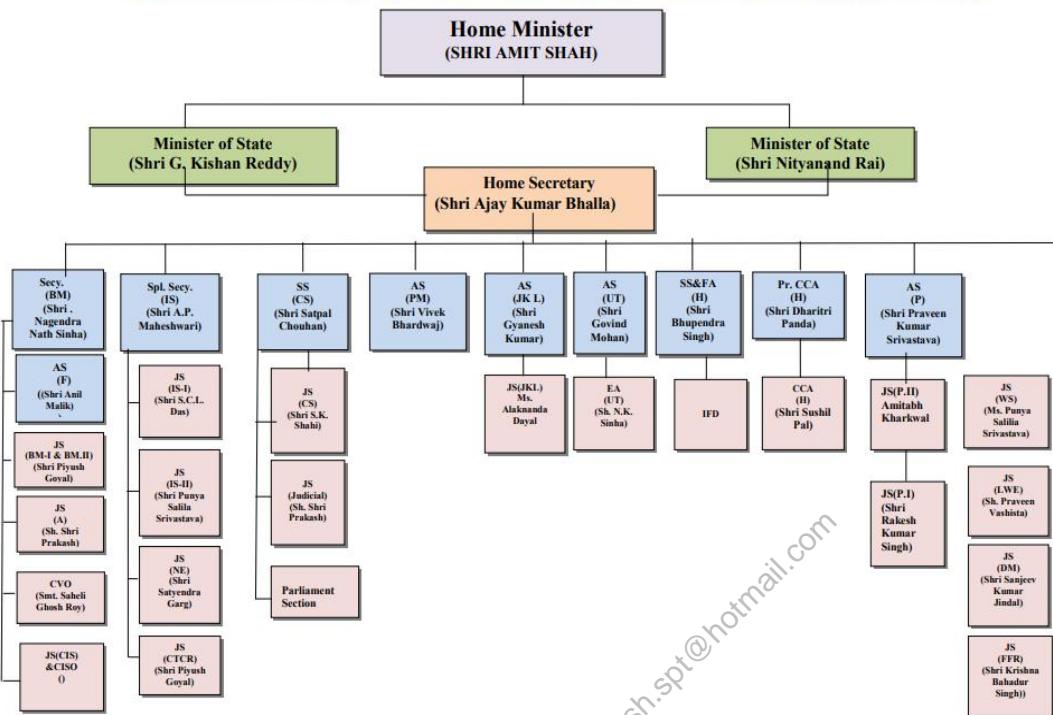
Under the Government of India (Allocation of Business) Rules, 1961, the Ministry of Home Affairs has the following constituent Departments:

- a. **Department of Internal Security**, dealing with the Indian Police Service, Central Police Forces, internal security and law & order, insurgency, terrorism, naxalism, activities of inimical foreign agencies, rehabilitation, grant of visa and other immigration matters, security clearances, etc.;
- b. **Department of States**, dealing with Centre-State relations, Inter-State relations, administration of Union Territories, Freedom Fighters’ pension, Human rights, Prison Reforms, Police Reforms, etc.;

- c. **Department of Home**, dealing with the notification of assumption of office by the President and Vice-President, notification of appointment/resignation of the Prime Minister, Ministers, Governors, nomination to Rajya Sabha/Lok Sabha, Census of population, registration of births and deaths, etc.;
- d. **Department of Jammu and Kashmir (J&K) Affairs**, dealing with the constitutional provisions in respect of the State of Jammu and Kashmir and all other matters relating to the State, excluding those with which the Ministry of External Affairs is concerned;
- e. **Department of Border Management**, dealing with management of international borders, including coastal borders, strengthening of border guarding and creation of related infrastructure, border areas development, etc.; and
- f. **Department of Official Language**, dealing with the implementation of the provisions of the Constitution relating to official languages and the provisions of the Official Languages Act, 1963.

Student Notes:

#### ORGANIZATIONAL CHART OF MINISTRY OF HOME AFFAIRS (AS ON 13.11.2019)



## 5. Empowered Group of Ministers

Empowered Group of Ministers (EGoM) is a Group of Ministers (GoM) of the Union Government who, after being appointed by the Cabinet, a Cabinet Committee or the Prime Minister for investigating and reporting on such matters as may be specified, are also authorized (empowered) by the appointing authority to take decisions in such matters after investigation.

It is distinct from a Group of Ministers (GoM) in the sense that a GoM only investigates and reports to the Cabinet, which takes the decision. On the other hand, an EGoM additionally takes decisions on matters it is authorised for, and such decisions have the force of the Government decision.

### 5.1. Appointment of EGoM

Both EGoM as well as the GoM get appointed under the Government of India's Transaction of Business Rules 1961, which provides that 'Ad hoc Committees of Ministers including Group of

Ministers may be appointed by the Cabinet, the Standing Committees of the Cabinet or by the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified, and, if so authorised by the Cabinet, Standing Committees of the Cabinet or the Prime Minister, for taking decisions on such matters.'

Rule 6(6) of the Government of India's Transaction of Business Rules 1961 additionally provides that 'any decision taken by a Standing or Ad hoc Committee may be reviewed by the Cabinet'. Therefore decisions in a matter taken by EGoM remain subject to review by the Cabinet at the latter's discretion.

## 5.2. Latest Status of GoM / EGoM

As part of empowering the Ministries and Departments, the Prime Minister on 31 May 2014 decided to abolish all the existing nine Empowered Group of Ministers (EGoMs) and twenty-one Groups of Ministers (GoMs). The rationale behind this move is to expedite the process of decision making and bring in greater accountability in the system.

The issues pending before the EGoMs and GoMs will be processed by respective Ministries /Departments to take appropriate decisions at the level of Ministries and Departments itself. Wherever the Ministries face any difficulties, the Cabinet Secretariat and the Prime Minister's Office will facilitate the decision making process.

## 6. Alternative Mechanisms

'Alternative Mechanisms' are instruments usually appointed by the Cabinet, a Cabinet Committee or the Prime Minister for deliberating over or investigating and reporting on such matters as may be specified by the appointing authority. For instance in 2017, the government set up an alternative mechanism to fast-track consolidation among public sector banks to create strong lenders. Similarly, there are alternative mechanisms to oversee mergers of state-owned banks, planned privatisation in state-owned companies, minority stake sales etc.

### 6.1. Similarity with EGoMs

Usually, it is a group of ministers empowered with taking certain decisions on the behalf of the Cabinet, on such matters as have been assigned to them by the appointing authority. The decisions taken by such 'Alternative Mechanisms' have the force of a government decision. Prior to the practice of establishing 'Alternative Mechanisms', the government appointed Empowered Group of Ministers and Group of Ministers under the Government of India's Transaction of Business Rules 1961.

### 6.2. Rationale behind setting up Alternative Mechanisms

The rationale behind setting up 'Alternative Mechanisms' include:

1. Improved Coordination: To bring synergies and ensure timely clearances on matters of critical importance from different departments and Ministries.
2. Faster Decision Making: This would expedite the process of decision making specially for strategic issues, since prior to this each ministry had to approach the cabinet at each stage for clearances.
3. Reduced workload: To take away some of the workload from the Union Cabinet, and select cabinet committees.
4. Due Diligence: By following due diligence at each step and necessary safeguards are in place to ensure that probing agencies do not interrupt the process later.
5. Lower Litigation: To reduce litigation and pendency of cases with the judiciary, by following due process at each step.
6. Stable Policy Environment: Due diligence, smooth decision making processes and reduced rates of litigation would ensure policy stability & consistency benefitting the overall investment environment in the country.

Accelerated and effective decision-making is a critical element for the government to address key priorities quickly and effectively. This makes 'alternative mechanisms' imperative since these enhance existing decision frameworks and associated governance structures. However, the composition of these alternative mechanisms and their number must be conducive to the end objectives.

## 7. Strengths and Weaknesses of the Existing Structure

The existing structure of the Government of India has evolved over a long period. It has certain inherent strengths, which have helped it stand the test of time.

However, there are weaknesses also which render the system slow, cumbersome and unresponsive.

### 7.1. Strengths

- Time Tested System:** adherence to rules and established norms: The Government of India has evolved an elaborate structure, rules and procedures for carrying out its functions which have contributed to nation building and the creation of an inclusive state. These have ensured stability both during crises as well as normal times. It has also experimented with several innovative structures in form of empowered commissions, statutory boards, autonomous societies and institutions, especially in the fields related to research, science and technology.
- Stability:** The structure of Government staffed by the permanent civil servants has provided continuity and stability during the transfer of power from one elected government to the other. This has contributed to the maturing of our democracy.
- Commitment to the Constitution – political neutrality:** The well laid down rules and procedures of government have upheld the neutrality of the civil services and prevented politicisation of government programmes and services. This has helped in the evolution of institutions based on the principles enshrined in the constitution.
- Link between policy making and its implementation:** The framework of the Government of India has facilitated a staffing pattern which promotes a link between policy making and implementation. This has also helped the structure of both the Government of India and the states and promoted the concept of cooperative federalism.
- A national outlook amongst the public functionaries: Public servants working in Government of India as well as its attached and subordinate offices have developed a national outlook transcending parochial boundaries. This has contributed to strengthening national integration.

### 7.2. Weaknesses

- Undue emphasis on routine functions:** The Ministries are burdened by the large volumes of routine work and are thus unable to focus on policy analysis and policy making. This leads to national priorities not receiving due attention. There is an excessive tendency of centralization even in case of routine jobs, which can easily be outsourced or delegated to other levels of Government.
- Proliferation of Ministries/Departments:** weak integration and coordination: The creation of a large number of Ministries and Departments sometimes due to the compulsion of coalition politics has led to illogical division of work and lack of an integrated approach and silo mentality even on closely related subjects.
- An extended hierarchy with too many levels:** Government of India has an extended vertical structure which leads to examination of issues at many levels frequently causing delays in decision making on the one hand and lack of accountability on the other.
- Risk avoidance:** A fall-out of a multi-layered structure has been the tendency towards reverse delegation and avoidance of risk in decision making. This structure puts an

- increased emphasis on consultations through movement of files as a substitute for taking decisions. This leads to multiplication of work, delays and inefficiency.
- e. **Absence of team work:** The present rigid hierachal structure effectively rules out team work so necessary in the present context where an inter-disciplinary approach often is the need of the hour to respond effectively to emerging challenges.
  - f. **Fragmentation of functions:** At the operational level also, there has been a general trend to divide and subdivide functions making delivery of services inefficient and time-consuming.
  - g. Except in the case of a few committees and boards, there has been considerable weakening of the autonomy conceived at the time of their formation.

## 8. Recommendations at Various Levels of Government Machinery

### 8.1. Core Principles of Reforming the Structure of Government

The Second Administrative Reforms Commission enunciates following principles, which must act central to the idea of reforms in the structure of the Government:

- a) The union Government should primarily focus on the following core areas:
  - i. Defence, International Relations, National security, Justice and rule of law
  - ii. Human development through access to good quality education and healthcare to every citizen
  - iii. Infrastructure and sustainable natural resource development
  - iv. Social security and social justice
  - v. Macro-economic management and national economic planning
  - vi. National policies in respect of other sectors
    - a. The principle of subsidiarity should be followed to decentralize functions to state and local Governments.
- b) **Subjects which are closely inter-related should be dealt with together:** While restructuring Government into Ministries and Departments, a golden mean between the need for functional specialization and the adoption of an integrated approach should be adopted. This would involve an in-depth analysis of all the government functions followed by their grouping into certain key categories to be linked to a Ministry.
- c) **Separation of policy-making functions from execution:** The Ministries should give greater emphasis to the policy-making functions while delegating the implementation functions to the operational units or independent organizations/agencies. This is all the more necessary because policy-making today is a specialized function, which requires a broader perspective, conceptual understanding of the domain and proper appreciation of the external environment. Implementation of the policies, on the other hand require in-depth knowledge of the subject and managerial skills.
- d) **Coordinated implementation:** Coordination is essential in implementation as in policy making. The proliferation of vertical departments makes this an impossible task except in cases where empowered commissions, statutory bodies and autonomous societies have been created. There is considerable scope for more of such inter-disciplinary bodies in important sectors.
- e) **Flatter structures:** reducing the number of levels and encouraging team work: The structure of an organization including those in government should be tailor-made to suit the specific objectives it is supposed to achieve. The conventional approach in the Government of India has been to adopt uniform vertical hierarchies (as prescribed in the Manual for Office Procedure). There is a need to shift to flatter organizations with greater emphasis on teamwork.
- f) **Well defined accountability:** The present multi-layered organizational structure with fragmented decision-making leads to a culture of alibis for non-performance. The tendency to have large number of on-file consultations, often unnecessary, lead to diffused

accountability. A clearer demarcation of organizational responsibilities would also help in developing a performance management system for individual functionaries.

Student Notes:

- g) **Appropriate delegation:** Lack of delegation leads to delays, inefficiency and demoralization of the subordinate staff. The principle of subsidiarity should be followed to locate authority closer to the citizens.
- h) **Criticality of operational units:** Government organizations have tended to become top-heavy coupled with fragmentation and lack of authority, manpower and resources at the operational levels that have a direct bearing on citizens' lives. Rationalization of Government staff pattern is necessary, commensurate with the requirements of the citizens.

## 9. Prelims Questions

**2016**

1. Consider the following statements:
1. The Chief Secretary in a State is appointed by the Governor of that State.
  2. The Chief Secretary in a State has a fixed tenure.
- Which of the statements given above is/are correct?
- (a) 1 only
  - (b) 2 only
  - (c) Both 1 and 2
  - (d) Neither 1 nor 2

Ans: (a)

**2015**

2. The Fair and Remunerative Price of Sugarcane is approved by the
- (a) Cabinet Committee on Economic Affairs
  - (b) Commission for Agricultural Costs and Prices
  - (c) Directorate of Marketing and Inspection, Ministry of Agriculture
  - (d) Agricultural Produce Marketing Committee
- Ans: (a)
3. Which of the following brings out the 'Consumer Price Index Number for the Industrial Workers'?
- (a) The Reserve Bank of India
  - (b) The Department of Economic Affairs
  - (c) The Labour Bureau
  - (d) The department of Personnel and Training

Ans: (c)

**2014**

4. Which of the following is / are the function/functions of the Cabinet Secretariat?
1. Preparation of agenda for Cabinet Meetings
  2. Secretarial assistance to Cabinet Committees
  3. Allocation of financial resources to the Ministries
- Select the correct answer using the code given below.
- (a) 1 only
  - (b) 2 and 3 only
  - (c) 1 and 2 only
  - (d) 1, 2 and 3

Ans: (c)

**2008**

5. Department of Border Management is a Department of which one of the following Union Ministries?
- Ministry of Defence
  - Ministry of Home Affairs
  - Ministry of Shipping, Road Transport and Highways
  - Ministry of Environment and Forests

**Ans: (b)**

The Ministry of Home Affairs consists of the following departments:

- Department of Internal Security
- Department of States
- Department of Official Language
- Department of Home
- Department of Jammu and Kashmir Affairs
- Department of Border Management

**2005**

6. Under which one of the Ministries of the Government of India does the Food and Nutrition Board Work?
- Ministry of Agriculture
  - Ministry of Health and Family Welfare
  - Ministry of Human Resource Development
  - Ministry of Rural Development

**Ans: (c)**

Under the Ministry of Human Resource Development does the Food and Nutrition Board Work.

**2004**

7. Which of the following pairs is correctly matched?

Departments Ministry of the Government of India

1. Department of Child Development : Ministry of Health and Family Welfare
2. Department of Official Language : Ministry of Human Resource Development
3. Department of Drinking Water Supply : Ministry of Water Resources

Select the correct answer using the codes given below:

- 1
- 2
- 3
- None

**Ans: (d)**

Department of Child Development: Ministry of Social Justice and Empowerment.

Department of Official Language: Ministry of Home.

Department of Drinking Water Supply: Ministry of Rural Development.

**2002**

8. The Consultative Committee of Members of Parliament for Railway Zones is constituted by the
- President of India
  - Ministry of Railways
  - Ministry of Parliamentary Affairs
  - Ministry of Transport

**Ans: (c)**

The Ministry of Parliamentary Affairs constitutes Consultative Committees of M.P.s attached to various ministries and arranges meetings thereof.

**Student Notes:**

## 10. Previous Year Vision IAS GS Mains Questions

Student Notes:

1. *The Cabinet Secretariat has to play a creative, functional, informative and coordinative role in the Cabinet's functioning. Elaborate.*

### Approach:

Answer should not just list the functions of cabinet secretariat but also correlate them with the keywords (creative, functional, etc) mentioned in the statement.

### Answer:

- Cabinet Secretariat is a very important institution in the structure of central administration. It is responsible for secretarial assistance to the cabinet, its committees and ad hoc Group of Ministers, and for maintenance of record of their decisions and proceedings. Prime Minister is the political head while Cabinet Secretary is the administrative head of the Cabinet Secretariat.
- Cabinet Secretariat functions are creative in the sense that it prepares agenda for the cabinet meetings. Its primary responsibility is to provide such information and material as necessary for deliberations of the cabinet, Cabinet Committees, Group of Ministers and Committee of Secretaries.
- Cabinet Secretariat has to facilitate smooth transaction of business in ministries/departments by ensuring adherence to 'transaction of business' and 'allocation of business' rules. Its role is functional as it has to monitor the implementation of the decisions of the Cabinet.
- An important function of the Cabinet Secretariat is to ensure that the President, the Vice-President and Ministers are kept informed of the major activities of all ministries and departments by means of monthly summary of their activities. So it plays a major informative role in the functioning of the central government.
- Cabinet Secretariat also assists in the decision-making of the government by ensuring inter-ministerial co-ordination. It helps in ironing out differences among ministries and evolving consensus through the standing/ad hoc committees of secretaries. So it plays a major coordinative role as well.
- By preparing the agenda for cabinet meetings, taking minutes, circulating decisions and following them up to see that action has been taken, the Cabinet Secretariat is playing a very important role.

2. *"A periodic cleaning-up of the statute books helps prevent conflicts and ambiguities creeping into the legal system." Discuss the statement in light of the initiative taken by the government to repeal old laws.*

### Approach:

Question needs to be answered in three different parts. Start with the advantages of the unambiguous and efficient legal system. Throw light on the present Indian system and its consequences. Explain the initiatives by entities like Law commission along with detailed discussion on the sectors listed for repealing the laws. Conclude with the recent government efforts in this regard.

### Answer:

Rule of law is the defining principle of a well-functioning modern democratic polity. The essence of good governance is to upgrade the statute books as per demands of market, state and society; for rule of law to operate, statute books must be free from ambiguities, repetitions and redundancies. In India cumbersome statute books are often misused and result in pernicious rent seeking legal system.

- Sensing the need to revamp the legal system, government announced its intentions to repeal obsolete laws. It observed that these laws should be repealed on account of three reasons—they are redundant having outlived their purpose, have been superseded by more current laws, or pose a material impediment to growth, development, governance and freedom.
- Subsequent to government announcement, the 20<sup>th</sup> law commission initiated project titled the **Legal Enactments Simplification and Streamlining (LESS)** aimed at preparing various reports on the laws, rules, regulations which need to be repealed or amended.

Law commission observed that-

- There are over 300 **colonial-era enactments** in force in India. Many of these are redundant, not implemented, and sometimes even misused. The subject matter of these Acts is now governed by laws enacted post-Independence, which are much more in tune with contemporary realities.
- Many British era levies are now replaced by new taxes this often leads to double taxation without any substantial increase in revenue. E.g. the Ganges Tolls Act, 1867.
- Currently, there are 44 **labour related statutes** enacted by the central government dealing with wages, social security, welfare, occupational safety and health, and industrial relations. The obvious cost of India's labour laws is corruption, since, 'it is impossible to comply with 100% of the laws without violating 10% of them.'
- There are laws dealing with speech and expression like sedition law. These laws define offences in widely worded terms, perpetrate confusion and ambiguity, and often used as a tool of harassment. They are left to the arbitrary interpretation of public authorities, and are often misused.

Government taking serious note of the issues raised by the 20<sup>th</sup> Law commission has introduced a bill in parliament to repeal 36 laws. It is planning to repeal 287 different laws related with labour market and the financial system. However, government needs to be cautious in its approach. It should not be done like outright downsizing of laws but rightsizing giving due consideration to needs of effective legal framework.

**3. *Proliferation of Ministries and Departments in the government not only leads to weak coordination and integration but also fragmentation of functions. Comment in the context of India.***

**Approach:**

- Start with reason of proliferation of ministries and departments in India, advantage and disadvantage of proliferation
- Explain the proliferation with example and address both the aspects of argument
- Conclude answer by suggesting solution

**Answer:**

There has been proliferation of the Ministries and Departments in Government to achieve welfare objectives of the Constitution. It has the advantage of specialization, focus and resource channelization but it also has the disadvantages of lack of coordination and inability to adopt an integrated approach to national priorities and problems.

For example, different aspects of transport are dealt by different Ministries. Ministry of Civil Aviation deals with civil aviation; while Ministry of Railways with rail transport; Ministry of Shipping, Road Transport and Highways deals with maritime shipping,

highways and motor vehicles and the Ministry of Urban Development deals with urban transport systems. Thus, it has been fragmented into multiple disciplines making the necessary integrated national approach to this important sector difficult. For example, the proposed scheme of integrated travelling card across different modes of transport is still in infancy.

Similarly initiatives like 'Housing for All' often require approvals from Ministries of Defence, Environment and Forests & Climate Change, Civil Aviation etc. Streamlining approvals for construction projects in urban areas is being pushed so as to enable time bound and hassle free clearances for projects.

From the above examples it is clear that there is a need to strike a balance between requirements of functional specialization and need for a holistic approach. In order to evolve an integrated approach, it would be desirable to categorize the functions of Government into a reasonable number of groups. In India, Departmental Standing Committees of Parliament is a good example of integration of inter-connected subject matters. **Privatization and disinvestments** of loss making public sector enterprises is also useful in restricting the number of ministries and departments in post liberation period. This will enable government of the day to streamline ministries and departments and retaining only those which have direct relevance for core governance functions.

But the size of the Council of Ministers reflects the needs of representative democracy for a large and diverse country like India. It would also be unrealistic to expect curtailment in the size of the Council of Ministers in a multiparty democracy.

Instead, a more pragmatic approach would be to retain the existing size of the Council of Ministers but increase the level of coordination by providing for a senior Cabinet Minister to head each of the 20-25 closely related Departments. And Individual departments could be headed by the Minister of State. For this arrangement to work, adequate delegation and division of work among the concerned Ministers would have to be worked out.

The office of cabinet secretary should be used with greater efficiency. The committee of secretaries is a good platform providing ample scope to bring inter-ministerial coordination.

It would lead to enhanced coordination and adequate Ministerial representation in a large and diverse country, without causing a proliferation. The era of coalition politics, which at times necessitated ministerial proliferation to please allies is behind us at least for some time now and this is the opportune moment to kick in this reform.

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# UNION LEGISLATURE

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# 1. Structure of Parliament

Student Notes:

The Parliament of India consists of three parts:

- i. The President of India
- ii. Upper House or the Council of States or '*Rajya Sabha*' (Second Chamber or House of Elders)
- iii. Lower House or the House of the People or '*Lok Sabha*' (First Chamber or Popular House)

## 1.1. President as a part of Parliament

The Indian Constitution has followed the British pattern, rather than the American one. The British Parliament consists of House of Lords (Upper House), House of Commons (Lower House) and the Crown (King or Queen). The President of India, like the English Crown, is not a member of either House of Parliament. However, he is an integral part of the Parliament and performs the following functions:

- i. A bill passed by both Houses of Parliament cannot become a law without the President's assent
- ii. He/she summons and prorogues both the House, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session etc.

The Parliamentary system of government emphasizes the interdependence between the Legislature and the Executive. Thus, India has a President-in-Parliament system. On the other hand, America follows the Presidential system, wherein emphasis is more on separation of powers and less on interdependence between the Executive and the Legislature.

## 1.2. Rajya Sabha: Composition

The Rajya Sabha shall be composed of not more than 250 members. Of these, 12 are nominated by the President. The remainder 238 shall be the representatives of the states and the union territories elected by the method of indirect election. The seats in the Rajya Sabha are allocated to the various states and union territories, roughly in proportion to their population; each state is, however, represented by at least one member. The total number of seats in the Rajya Sabha at present is 245, including 12 members nominated by the President.

- **Nomination**

The 12 nominated members shall be chosen by the President from amongst persons having 'special knowledge or practical experience in literature, science, art, and social service'. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha, without going through the process of election.

- **Representation of States**

238 seats in the Rajya Sabha are allocated to the various states and union territories, roughly in proportion to their population. The representatives of each state shall be elected by elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of single transferable vote.

- **Representation of Union Territories (UTs)**

The representatives of UTs shall be chosen in such manner as Parliament may prescribe. Under this power, the Parliament has prescribed that the representatives of UTs to the Council of States shall be indirectly elected by members of an electoral college for that Territory, in accordance with the system of proportional representation by means of single transferable vote. Before the reorganisation of J&K, only 2 UTs, namely, Delhi and Pondicherry had representation in Council of States. The population of others was too small to have any representation.

**NOTE** – According to the Jammu and Kashmir Reorganisation Act, 2019 - On and from the appointed day, four sitting members of the Council of States representing the existing State of Jammu and Kashmir shall be deemed to have been elected to fill the seats allotted to the Union territory of Jammu and Kashmir.

Student Notes:

The Rajya Sabha thus reflects a federal character by representing the Units of the federation. The distribution of seats in the Rajya Sabha to the states is provided in the IVth Schedule. However, it does not follow the American principle of equality of state representation in the Second Chamber. In India, the number of representatives of States to the Rajya Sabha varies from 1 (Nagaland) to 31 (Uttar Pradesh). In USA, each state has a representation of 2 in the Senate. Various committees/commissions, including “Punchhi Commission on center-state relations”, have recommended for providing equal representation to all the states, as in the US senate.

States/UTs	No. of Seats
Andhra Pradesh	11
Arunachal Pradesh	1
Assam	7
Bihar	16
Chhattisgarh	5
Goa	1
Gujarat	11
Haryana	5
Himachal Pradesh	3
Jammu and Kashmir (see NOTE above)	4
Jharkhand	6
Karnataka	12
Kerala	9
Madhya Pradesh	11
Maharashtra	19
Manipur	1
Meghalaya	1
Mizoram	1
Nagaland	1
National Capital Territory of Delhi	3
Odisha	10
Puducherry	1
Punjab	7
Rajasthan	10
Sikkim	1
Tamil Nadu	18
Telangana	7
Tripura	1
Uttarakhand	3
Uttar Pradesh	31
West Bengal	16

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## 1.3. Lok Sabha: Composition

Student Notes:

The maximum strength of Lok Sabha is fixed at 552 by the Constitution. A maximum of 530 members are representatives of states. UTs are to be represented by a maximum of 20 members and the President can nominate 2 members from the Anglo-Indian community, if the community is not adequately represented in the Lok Sabha.

### i. Representation of States

The people directly elect the representatives of states from the territorial constituencies in the states on the basis of principle of universal adult franchise. Every Indian citizen above 18 years of age, who is not otherwise disqualified, is entitled to vote in such an election.

### ii. Representation of UTs

The members from the UTs are to be chosen in a manner as the Parliament may by law provide. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the representatives of UTs are also chosen by direct election.

### iii. Nominated Members

The President can nominate 2 members from the Anglo-Indian community if he/she is of the opinion that the Anglo-Indian community is not adequately represented in the Lok Sabha.

### Prelims questions

2003

1. Which one of the following statements is correct?
  - (a) Only the Rajya Sabha and not the Lok Sabha can have nominated members.
  - (b) There is a constitutional provision for nominating two members belonging to the Anglo-Indian community to the Rajya Sabha.
  - (c) There is no constitutional bar for a nominated member to be appointed as a Union minister.
  - (d) A nominated member can vote both in the Presidential and Vice-Presidential elections.

Ans: (c)

## 2. System of Elections

### 2.1. Lok Sabha

#### • Territorial Constituencies

The territory of India is divided into suitable territorial constituencies for the purpose of holding direct elections to Lok Sabha. The Constitution has provided for uniformity of representation in two respects:

- a. **Between the different states:** Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is, so far as practicable, the same for all states. (This provision does not apply to a state having a population of less than 6 million).
- b. **Between the different constituencies in the same state:** Each state is divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the state.

**NOTE –** According to the Jammu and Kashmir Reorganisation Act, 2019 - On and from the appointed day, there shall be allocated five seats to the successor Union territory of Jammu and Kashmir and one seat to Union territory of Ladakh, in the House of the People.

- **Readjustment after each Census**

Student Notes:

After every Census, a readjustment is to be made in allocation of seats in the Lok Sabha to the States and division of each State into territorial constituencies. The parliament is empowered to determine the authority and manner in which it is to be made.

Under **Article 82 of the Constitution**, the Parliament may by law enact a Delimitation Act after every census. After the Act comes into force, the Central Government constitutes a Delimitation Commission. This Delimitation Commission demarcates the boundaries of the Parliamentary Constituencies as per provisions of the Delimitation Act.

The number of seats allocated to each state was frozen by the 42nd Amendment Act of 1976 till the year 2000 at the 1971 level. The 84th Amendment Act, 2001, extended this period up to 2026.

The 87<sup>th</sup> Amendment Act, 2003 allowed the rationalization of territorial constituencies on the basis of census of 2001.

The orders of Delimitation Commission have the force of law and cannot be called in question before any court. These orders come into force on a date to be specified by the President of India on this behalf. The copies of its orders are laid before the House of People and the State Legislative Assembly concerned, but no modifications are permissible in them. So far, Delimitation Commissions have been constituted 4 times - in 1952, 1963, 1973 and in 2002.

- **Reservation of seats for SCs and STs**

Seats are reserved for SCs and STs in the Lok Sabha on the basis of population ratios of these groups in each state. Thus, the ratio of Lok Sabha seats reserved in a state for SCs or STs to the total number of seats allotted to that state in Lok Sabha is the same as the ratio of SCs or STs population in the concerned state to total population of that particular state. Currently 84 seats are reserved for SCs and 47 seats for STs in the Lok Sabha.

## 2.2. Rajya Sabha

The members of Rajya Sabha are elected indirectly by the elected members of the Legislative Assembly of each state (or an electoral college in case of UTs) by the means of Proportional Representation by single transferable vote. This was done in order to give some representation to minority parties and communities. According to the Supreme Court, Rajya Sabha is not a federal chamber at par with the US Senate. Members do not vote on state lines but on party lines.

- The Rajya Sabha polls have a system of **open ballot**, but it is a limited form of openness. As a measure to check rampant cross-voting, the system of each party MLA showing his or her marked ballots to the party's authorised agent, before they are put into the ballot box, has been introduced. The independent candidates are barred from showing their ballots to anyone.
- The None of the Above (**NOTA**) option doesn't apply to the Rajya Sabha polls.
- The Supreme Court has ruled that **not voting for the party candidate will not attract disqualification under the anti-defection law**. As voters, MLAs retain their freedom to vote for a candidate of their choice. However, the Court observed that since the party would know who voted against its own candidate, it is free to take disciplinary action against the legislator concern
- **Domicile** in a state is not a necessary qualification for a person to be elected as a Member of Rajya Sabha from a particular state.
- According to the Supreme Court, **a member can vote in a Rajya Sabha election even before taking oath as legislator**. It said that voting at the Rajya Sabha polls, being a non-legislative activity, can be performed without taking oath. A person becomes a member as soon as the

list of elected members is notified by the ECI. Further, a member can also propose a candidate before taking oath.

Student Notes:

### Why proportional representation was not adopted for Lok Sabha?

- I. Difficult for the voters to understand the system due to its **complicated nature and low literacy rate** in the country.
- II. Proportional Representation system is ill suited to Parliamentary system of government, since it causes the fragmentation of Legislature into small groups. Consequently, the Parliament would be divided into small groups, which might withdraw support to the government if something, which displeased them, happened. Thus, it might lead to an **unstable government**.

## 3. Conduct of Business

### 3.1. Duration of the Houses

- The Rajya Sabha is a permanent body, not subject to dissolution. The Parliament via. the Representation of People Act, 1951 has provided that the term of office of a member of Rajya Sabha shall be six years. 1/3<sup>rd</sup> of its members (as nearly as possible) retire on expiration of every second year, in accordance with provisions made by the Parliament. Thus, there is an election of 1/3<sup>rd</sup> of the membership of the Rajya Sabha at the beginning of every third year.
  - The order of retirement of the members is governed by the Council of States (Term of Office of Members) Order, 1952, made by the President in exercise of powers conferred upon him by the Representation of People Act, 1951. In the first batch, it was decided by lottery as to who should retire.
- The normal life of Lok Sabha is 5 years, but the President may dissolve it earlier. Further, the normal term of the Lok Sabha may be extended during the period of national emergency by a law made by the 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 proclamation of Emergency ceases to operate.

### 3.2. Sessions of Parliament

a. **Summoning:** The President summons each House of the Parliament from time to time. But the maximum gap between two sessions of Parliament cannot be more than six months. There are usually three sessions in a year namely:

- i. **The Budget Session**
- ii. **The Monsoon Session**
- iii. **The Winter Session**

A ‘session’ of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in case of Lok Sabha). During a session, the House meets every day to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is termed ‘recess’.

The sitting of a House may be terminated by dissolution, prorogation or adjournment.

b. **Adjournment:** Within a session, there are a number of meetings. Each daily meeting consists of two sittings: a morning sitting (11 AM to 1 PM) and a post lunch sitting (2 PM to 6 PM). An adjournment suspends the work in a sitting for a specified time – hours, days or weeks.

**Adjournment Sine Die** means terminating a sitting of Parliament for an indefinite period. The power of adjournment as well as adjournment sine die lies with the presiding officer of the House.

c. **Prorogation:** Prorogation (done by the President) terminates the session of the House. Though in England prorogation wipes all business pending at the date of prorogation, in India, all bills pending in Parliament are expressly saved by Art. 107(3). The only effect of a prorogation is that pending notices, motions and resolutions relapse.

d. **Dissolution:**

- i. As stated earlier, only the Lok Sabha is subject to dissolution. It ends the very life of the existing House. The dissolution of Lok Sabha may take place in two ways:
  - a. Automatic dissolution on the expiry of its tenure of five years or the terms as extended during a national emergency.
  - b. By an exercise of the President's power under Art. 85(2)
- ii. The President on the advice of Council of Ministers exercises the powers of dissolution and prorogation. Whereas, the power to adjourn daily sittings of Lok Sabha and Rajya Sabha belong to the Speaker and Chairman respectively.
- iii. Dissolution ends the very life of the Lok Sabha so that all matters (Bills, Motions, Resolutions, Notices, Petitions etc.) pending before the House lapse with dissolution. If those matters have to be pursued, they must be re-introduced in the next House after fresh elections. However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:
  - A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha)
  - A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
  - A bill, which is not passed by the two houses due to disagreement and if the President has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
  - A bill pending in the Rajya Sabha not passed by the Lok Sabha does not lapse.
  - A bill passed by both Houses but pending assent of the President does not lapse.
  - A bill passed by both Houses but returned by the President for reconsideration does not lapse

**Lame Duck Session:** It refers to the last session of the existing Lok Sabha after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are known as lame ducks.

**Quorum:** It is the minimum number of members required to be present in the House before it can transact any business. It is  $1/10^{\text{th}}$  of the total number of members in each House (including the Presiding Officer). Thus, a minimum of 55 members in the Lok Sabha and 25 members in the Rajya Sabha must be present if any business is to be conducted.

**Prelims questions:**

**2016**

1. Which of the following statements is/are correct?
  1. A bill pending in the Lok Sabha lapses on its prorogation.
  2. A bill pending in the Rajya Sabha, which has not been passed by the Lok Sabha, shall not lapse on dissolution of the Lok Sabha.

Select the correct answer using the code given below:

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

**Ans:** (b)

Student Notes:

## 4. Membership of Parliament

Student Notes:

### 4.1. Qualifications

In order to be chosen as a Member of Parliament, a person:

- a. must be a citizen of India;
- b. must not be less than 30 years of age in the case of Rajya Sabha and not less than 25 years of age in the case of Lok Sabha; and
- c. must make and subscribe before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Additional qualifications may be prescribed by Parliament by law. Consequently, the Parliament has laid down the following additional qualifications in the Representation of People Act, 1951:

- a. He must be registered as an elector for a parliamentary constituency.
- b. He must be a member of a scheduled caste or a scheduled tribe in any State or Union Territory, if he wants to contest a seat reserved for them.

### 4.2. Disqualifications

#### • Constitutional and Legislative Provisions

A person is disqualified for being elected as a Member of Parliament by the constitution (Art. 102) if:

- a. 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. He is of unsound mind and stands so declared by a competent court;
- c. He is an undischarged insolvent;
- d. 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. He is so disqualified under any law made by Parliament.

**Representation of the Peoples Act, 1951** provides for further grounds for disqualification for Membership of Parliament:

#### 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 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

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 8(4)\***: It makes exception for sitting MPs and MLAs. Unlike ordinary candidates, they will not be disqualified with immediate effect. They will be disqualified only after 3 months from the date of conviction. If they appeal against the decision within 3 months, they will not be disqualified till the court disposes the appeal.

**\*Lily Thomas Case:** The Supreme Court held **Section 8(4)** as being **ultra vires of the constitution**. The Court held that section 8(4) is 'beyond the powers conferred on Parliament by the Constitution'.

Under Article 102(1), a person shall be disqualified from being chosen as, and for being, a member of either House of Parliament, if he is so disqualified by or under any law made by Parliament. Article 191 makes a similar provision with regard to membership

of the State Legislative Assemblies or councils. As these Articles make no distinction between being “chosen as” and “for being” a member, the court had no difficulty in concluding that Parliament had no power to make a law to undo these express provisions of the Constitution.

The court, however, clarified that a person—whether a member or a non-member—will not suffer disqualification if he obtains a stay of his or her conviction, and not just sentence.

5. **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**.
6. **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.
7. **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.
8. **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**.
9. **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.

- **Disqualification on the ground of Defection**

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:

- An **elected member of Parliament, who has been elected as a candidate set up by a political party and a nominated member of Parliament 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**.
- An **independent member** of Parliament will also be disqualified if **she/he joins any political party after her/his election**.
- A nominated member of Parliament 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.

- 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.**
- 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 to the office of the **Deputy Chairman** of the Council of States to **sever her/his connections with her/his political party without incurring disqualification.**
- The question as to whether a **member of a House of Parliament** 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.**

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.

#### **4.2.1. 91st Amendment Act**

It was brought to implement the recommendations of the committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the report of Law Commission of India in its report on “Reform of Electoral Laws” (1999) and the National Commission to Review the Working of the Constitution (NCRWC) all of which had recommended outlawing split. It provides that:

- Split (1/3<sup>rd</sup> of the members defect from the party) is not an exception to the anti-defection law.
- Council of Ministers should not be more than 15% of the strength of the lower house. Art.75 and 164 have been amended to this effect. However, in case of smaller states like Sikkim, Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of 12 Ministers is proposed.

#### **Advantages of Anti-Defection Law**

- It brings political stability.
- It helps in checking corruption.
- It promotes party discipline.
- It restricts the breach of trust with voters.

#### **Criticisms of Anti-Defection Law**

- It reduces freedom of speech and expression of MPs.
- It subjects the party to party whip and reduces MP's accountability to the public.
- The law still has many loopholes and has not been able to completely curb defections, as seen in Karnataka and MP state assemblies in recent years.

#### **Suggestions for Reforms**

- According to Dinesh Goswami Committee, the issues related to defection must be decided by the President or Governor as per the advice of the Election Commission.
- Dissent within the party shouldn't be equated with defection.
- In Bangladesh, such matter is referred to a neutral body by the Speaker.
- In Singapore, final decision lies with the Parliament as a whole.
- Finally, it is not simply a matter of law as humans can always circumvent legal provisions. It's a matter of ethics, which must be upheld by all the MPs in unison.

## 4.3 Vacant of Seats by Members

Student Notes:

A Member of Parliament shall vacate his seat in the following cases:

a. **Dual Membership:**

- a) A person cannot become member of both Lok Sabha and Rajya Sabha at one time. If a person is elected to both the Houses, he needs to intimate within 10 in which House he desires to serve. If he fails to make such intimation, his Rajya Sabha membership will end.
- b) If a sitting Lok Sabha member becomes Rajya Sabha member or vice versa, his seat in the first House will become vacant.
- c) If a person has contested elections on two seats in a House and is elected on both, he needs to choose one. If he fails to do so, both the seats will become vacant.
- d) Similarly, if a person is elected to the Parliament and a State Legislature then he must resign his seat in the State Legislature within 14 days; otherwise his seat in the Parliament shall fall vacant.

b. **Disqualification:** If a person incurs any of the disqualifications mentioned in Art. 102, RPA, 1951 (Constitutional and Legislative provisions) or the disqualifications on the ground of defection (10<sup>th</sup> Schedule). [Kindly refer to Section 4.2]

c. **Resignation:** A member may resign his seat by writing to the Chairman or the Speaker (as the case may be). The seat falls vacant upon the acceptance of resignation. However, the Speaker/Chairman may not accept the resignation if he is satisfied that it is not voluntary or genuine.

d. **Absence without permission:** The house may declare a seat vacant if the member in question is absent from all meetings of the House for a period of 60 days without the permission of the House. In computing the period of 60 days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

## 4.4. Salaries and Allowances

Members of Parliament are entitled to receive such salaries and allowances as may be determined by Parliament. Though there is no provision of pension in the Constitution, the Parliament has provided pension to the members. The salaries and allowances of the Speaker/Dy. Speaker of Lok Sabha and Chairman/Dy. Chairman of Rajya Sabha are also determined by the Parliament. They are charged on the Consolidated Fund of India and are not subject to annual vote of the Parliament.

**Prelims questions:**

**2017**

1. For election to the Lok Sabha, a nomination paper can be filed by

- (a) Anyone residing in India.
- (b) A resident of the constituency from which the election is to be contested.
- (c) Any citizen of India whose name appears in the electoral roll of a constituency.
- (d) Any citizen of India.

**Ans: (c)**

**2002**

2. The term of the Lok Sabha

- (a) Cannot be extended under any circumstances
- (b) Can be extended by six months at a time
- (c) Can be extended by one year at time during the proclamation of emergency
- (d) Can be extended for two years at a time during the proclamation of emergency

**Ans: (c)**

## 5. Presiding Officers of the Parliament

Student Notes:

### 5.1. The Speaker of Lok Sabha

The office of the Speaker occupies a pivotal position in our parliamentary democracy. It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House.

Even though the Speaker speaks rarely in the House, when he does, he speaks for the House as a whole. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy.

In India, through the Constitution of the land, through the Rules of Procedure and Conduct of Business in Lok Sabha and through the practices and conventions, adequate powers are vested in the office of the Speaker to help him in the smooth conduct of the parliamentary proceedings and for protecting the independence and impartiality of the office.

- **Election**

In the Lok Sabha, the lower House of the Indian Parliament, both Presiding Officers—the Speaker and the Deputy Speaker- are elected from among its members by a simple majority and removed by an effective majority (majority of all the then members of the House). As such, no specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that Speaker should be a member of the House.

One of the first acts of a newly constituted House is to elect the Speaker. The Speaker pro-tem presides over the sitting in which the Speaker is elected, if it is a newly constituted House. If the election falls later in the life of a Lok Sabha, the Deputy Speaker presides. Usually, a member belonging to the ruling party is elected the Speaker. A healthy convention, however, has evolved over the years whereby the ruling party nominates its candidate after informal consultations with the Leaders of other Parties and Groups in the House. This convention ensures that once elected, the Speaker enjoys the respect of all sections of the House. There are also instances when members not belonging to the ruling party or coalition were elected to the office of the Speaker.

**The speaker has to vacate his office in case of following instances:**

- a. If he ceases to be a member of the Lok Sabha.
- b. If he resigns by writing to the Deputy Speaker.
- c. If he is removed by a resolution passed by a majority of all members of the Lok Sabha. When such a resolution is under consideration, he cannot preside at the sitting though he may be present. However, he can speak and take part in the proceedings and vote in the first instance (though not in case of equality of votes)

Whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly elected Lok Sabha meets.

- **Role and Functions**

- a. The basic function of the Speaker is to **preside over the house and conduct the meetings of the House in orderly manner**. No member can speak in the House without his permission. He may ask a member to finish his speech and in case the member does not obey he may order that the speech should not be recorded.
- b. All the **bills, reports, motions and resolutions are introduced with Speaker's permission**. He puts the motion or bill to vote.
- c. He does not participate in the voting but when there is a tie (equal number of votes on both sides) he can use his **casting vote**.
- d. His **decisions in all parliamentary matters are final**. He also rules on points of order raised by the members and his decision is final.

- e. He is the **custodian of rights and privileges of the members**.
- f. He **adjourns the House** or suspends a meeting in the absence of a quorum.
- g. He **disqualifies a member** of his/her membership in case of defection under the provisions of the 10<sup>th</sup> schedule. The decision of the Speaker is subject to judicial review.
- h. He also **accepts the resignation of members** and decides about the genuineness of the resignation.
- i. In case of **joint sitting** of Lok Sabha and Rajya Sabha, the Speaker presides over the meeting.
- j. When a Money Bill is transmitted from the Lower House to the Upper House, the Speaker **shall endorse on the Bill his certificate that it is a Money Bill**. The decision of the Speaker as to whether a Bill is a Money Bill is final.
- k. He acts as the **ex-officio chairman of the Indian Parliamentary group of the Inter-Parliamentary Union**. He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country.
- l. He **appoints the chairman of all the parliamentary committees** of the Lok Sabha and supervises their functioning
- m. He is the **chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee**.

## 5.2. Speaker Pro Tem

The speaker of the last Lok Sabha vacates his office immediately before the first meeting of newly elected Lok Sabha. Therefore, the President usually appoints the senior-most member of the Lok Sabha as the Speaker *Pro Tem*. The President administers the oath to him. The Speaker *Pro Tem* has all the powers of the Speaker. He presides over the first sitting of the newly elected Lok Sabha. He also enables the House to elect the new Speaker. When the new Speaker is elected by the House, the office of the Speaker *Pro Tem* ceases to exist. Thus, it is a temporary office existing only for a few days.

## 5.3. Deputy Speaker

While the office of Speaker is vacant or the Speaker is absent from a sitting of the House, the Deputy Speaker presides except when a resolution for his own removal is under consideration. While presiding he assumes all the powers of the Speaker.

Whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

## 5.4. Chairman & Deputy Chairman of Rajya Sabha

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He presides over the meetings of Rajya Sabha. In his absence the Deputy Chairman, who is elected by its members from amongst themselves, presides over the meeting of the House. The Deputy Chairman can be removed by a majority of all the then members (effective majority) of Rajya Sabha. But the Chairman (Vice-President) can only be removed from his office by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha. In both cases, the office holder needs to be given 14 days' notice.

He presides over the Rajya Sabha as long as he does not officiate as the President of India during a vacancy in that office. In such an instance, the Deputy Chairman performs the duties of Chairman of Rajya Sabha.

The functions of the Chairman of Rajya Sabha are similar to those of the Speaker of Lok Sabha except that the Speaker has certain special powers according to the constitution (e.g. certifying a Bill as Money Bill, presiding over a joint sitting of the two Houses etc.)

2017

1. Consider the following statements:

1. In the election for Lok Sabha or State Assembly, the winning candidate must get at least 50 percent of the votes polled, to be declared elected.
2. According to the provisions laid down in the Constitution of India, in Lok Sabha, the Speaker's post goes to the majority party and the Deputy Speaker's to the Opposition.

Which of the statements given above is/are correct?

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

Ans: (d)

2013

2. Consider the following statements:

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.
2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

Which of the statements given above is/are correct?

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

Ans: (b)

2004

3. Consider the following statements:

1. The Speaker of Lok Sabha has the power to adjourn the House sine die but, on prorogation, it is only the President who can summon the House.
2. Unless sooner dissolved or there is an extension of the term, there is an automatic dissolution of the Lok Sabha by efflux of time, at the end of the period of five years, even if no formal order of dissolution is issued by the President.
3. The Speaker of Lok Sabha continues in office even after the dissolution of the House and until 'immediately before the first meeting of the House'.

Which of the statements given above are correct?

- (a) 1 and 2
- (b) 2 and 3
- (c) 1 and 3
- (d) 1, 2 and 3

Ans: (d)

2000

4. Which one of the following statements about a Money Bill is not correct?

- (a) A Money Bill can be tabled in either House of Parliament
- (b) The Speaker of Lok Sabha is the final authority to decide whether a Bill is a Money Bill or not
- (c) The Rajya Sabha must return a Money Bill passed by the Lok Sabha and send it for consideration within 14 days
- (d) The President cannot return a Money Bill to the Lok Sabha for reconsideration.

Ans: (a)

5. The Speaker can ask a member of the House to stop speaking and let another member speak. This phenomenon is known as:
- Decorum
  - Crossing the floor
  - Interpolation
  - Yielding the floor

**Ans:** (d)

Decorum = Parliamentary etiquette.

Crossing the floor = Changing the party.

Interpolation = Seeking clarification through ruling.

Yielding the floor = Respecting Speaker's order.

Student Notes:

## 6. Leaders in Parliament

### 6.1. Leader of the House

Under the Rules of Lok Sabha, "Leader of the House" means the Prime Minister, if he is a member of the House, or a Minister who is a member of the House and is nominated by the Prime Minister to function as the Leader of the House. Similarly, Leader of the House in the Rajya Sabha is a Minister and a member of Rajya Sabha and is nominated by the Prime Minister to function as such. The same functionary in USA is known as the 'Majority Leader'.

### 6.2. Leader of the Opposition

The leader of the largest Opposition party having not less than 1/10<sup>th</sup> seats of the total strength of the House is recognized as the leader of Opposition in that House. His main function is to provide constructive criticism of the policies of the government and to provide an alternative government. The leader of Opposition in the Lok Sabha and Rajya Sabha were awarded statutory recognition in 1977. They are also entitled to salary and allowances equivalent to that of a Cabinet Minister. The same functionary in the USA is known as the 'Minority Leader'.

**Leader of Opposition controversy:** A party needs 10 per cent of the strength of the House (55 in the Lok Sabha) to stake claim, and the largest Opposition, the Congress, with 44 seats (2014 Lok Sabha elections) was way short of that number. Although UPA had 60 members, this was of no relevance in appointing Leader of the Opposition. Hence, the Speaker Sumitra Mahajan has refused to recognize leader of Congress party as Leader of Opposition.

The Congress demanded an amendment to the relevant laws to allow the single-largest party in the Opposition to send its legislative party leader to attend meetings of key appointment panels. Amendment was made with regard to the appointment of the CVC and also the CBI director but the Lokpal Act was not modified to bring the single-largest Opposition party on board if it did not secure 10 per cent seats in the Lok Sabha.

In 2019 Lok Sabha elections, Congress won 52 seats with UPA at 91, so the current 17th Lok Sabha doesn't have a Leader of Opposition as well.

#### Arguments in favour of compulsorily appointing Leader of Opposition

The 10% rule came about as part of a decision by the very first Speaker, G.V. Mavalankar. This point was later incorporated in Direction 121 (1) of the Directions by the Speaker, Lok Sabha, and The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (facilities) Act of 1998. Many political experts have pointed out that it has become redundant after the enactment of the Tenth Schedule of the Constitution under which even a one-member party is recognised as a legislature party. Thus, the decision on appointment of the Leader of Opposition remains a prerogative of the Speaker.

The issue again came to the fore when the Supreme Court asked the Centre to submit details on steps it has taken towards appointing a Lokpal, which has been delayed for five years.

Government had told the court that the Lokpal could not be appointed as there was no Leader of Opposition in the selection panel and a change in law that would allow the Congress - as largest opposition group - to be a member has yet to be approved in parliament.

Student Notes:

SC told the government that the Lokpal should be set up without delay and the lack of a Leader of Opposition should not hold up the process. The ruling meant that the government can select a Lokpal without taking the Congress, the main opposition group, on board.

### Arguments against

Because, the post of Leader of the Opposition can go only to the leader of a political party and not to the leader of an alliance, whether formed before the election or after, it would be "highly irregular" to give the post to the leader of any party in the current Lok Sabha as no party meets the minimum requirement of seats. Besides, public funds are involved as the Leader of the Opposition enjoys the rank of a Cabinet Minister with all attendant perks and benefits.

### Way Forward

Failing to appoint a Leader of Opposition could have a negative effect on Indian democracy. The absence of a countervailing opinion in appointing the Lokpal would allow the government completely free rein.

Courts cannot inquire into proceedings of Parliament, but recognising the Leader of Opposition is not a proceeding of the House within the meaning of Article 122. Hence, in the interest of the democracy and legislature's control over government, SC can ask Speaker to appoint a leader of opposition even if his/her party fails to capture 10% seats.

## 6.3. Whip

The concept of the whip was inherited from colonial British rule. Every major political party appoints a whip, who is responsible for the party's discipline and behaviour on the floor of the house. Usually, he directs the party members to stick to the party's stand on certain issues and directs them to vote as per the direction of senior party members. Disciplinary action can be taken against the members in case of violation of direction of the whip. However, there are some cases such as Indian presidential election where no whip can be issued directing Member of Parliament or Member of Legislative Assembly on whom to vote. This office is based on conventions of parliamentary government and is mentioned neither in the Constitution nor in the Rules of the House or in a parliamentary statute.

### Prelims questions:

#### 2018

1. Consider the following statements:

1. In the first Lok Sabha, the single largest party in the opposition was the Swatantra Party.
2. In the Lok Sabha, a "Leader of the Opposition" was recognised for the first time in 1969.
3. In the Lok Sabha, if a party does not have a minimum of 75 members, its leader cannot be recognised as the Leader of the Opposition.

Which of the statements given above is/are correct?

- (a) 1 and 3 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Ans: (b)

## 7. Devices of Parliamentary Proceedings

Student Notes:

### 7.1. Question Hour

Question Hour is the first hour of a parliamentary sitting devoted to questions that Members of Parliament raise about any aspect of administration and government activity. It is mentioned in the Rules of Procedure of the House. The concerned Minister is obliged to answer to the Parliament, either orally or in writing, depending on the type of question raised. Questions are one of the ways Parliament can hold the executive accountable. The questions are of three kinds:

- a. A **Starred Question** (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow. Only 20 questions can be listed for oral answer on a day.
- b. An **Unstarred Question** requires a written answer and hence, supplementary questions cannot follow. Only 230 questions can be listed for written answer on a day.
- c. A **short notice question** is one which relates to a matter of urgent public importance and is asked by giving a notice of less than 10 days. It is answered orally.

#### Notices of Questions

A member gives notice in writing addressed to the Secretary-General, Lok Sabha/Rajya Sabha, intimating his intention to ask a question. Besides the text of the question, the notice states clearly:

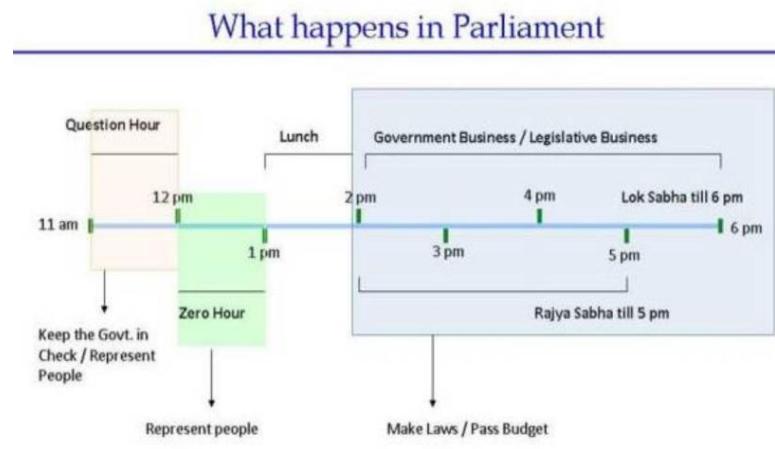
- the **official designation of the Minister** to whom the question is addressed.
- the **date** on which the question is desired to be placed on the list of questions for answer.
- the **order of preference**, if any, for its being placed on the list of questions when a member tables more than one notice of questions for the same day.

The **normal period of notice of a question** is not more than twenty-one and not less than ten clear days. A short notice question can be asked with a notice shorter than ten days, but the member has to state briefly the reasons for asking the question at short notice.

### 7.2. Zero Hour

The time immediately following the Question Hour has come to be known as "Zero Hour". It starts at around 12 noon (hence the name) and members can, with notice to the Speaker prior to the start of the daily session, raise issues of urgent public importance during this time. It is an Indian innovation (not mentioned in the Rules of Procedure) and has been in existence since 1962.

- In Lok Sabha, only 20 matters are allowed to be raised during the Zero Hour.
- In Rajya Sabha, total number of requests is not allowed to exceed seven on a single day.
- A member is allowed to make only one Zero Hour request during a week.
- It is not mandatory to have a Zero Hour every day during the session.



### 7.3. Motions

Student Notes:

Discussion on any matter can take place only when a motion is made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by ministers or private members. The motions are of three principal categories:

- a. **Substantive Motion:** It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.
- b. **Substitute Motion:** It is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.
- c. **Subsidiary Motion:** It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub-categories:
  - i. **Ancillary Motion:** It is used as the regular way of proceeding with various kinds of business.
  - ii. **Superseding Motion:** It is moved in the course of debate on another issue and seeks to supersede that issue.
  - iii. **Amendment:** It seeks to modify or substitute only a part of the original motion

#### Closure Motion

It is a motion moved by a member to cut short the debate on a matter before the House. If the House approves it, debate is stopped and the matter is put to vote. There are four kinds of closure motions:

- i. **Simple Closure:** It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'.
- ii. **Closure by Compartments:** In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
- iii. **Kangaroo Closure:** Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
- iv. **Guillotine Closure:** It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over)

#### Privilege Motion

It is concerned with the breach of parliamentary privileges by a Minister. It is moved by a member when he feels that a minister has committed breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts.

#### Calling Attention Motion

It is introduced by a member to call the attention of a Minister to a matter of urgent public importance and to seek an authoritative statement from him on that matter.

Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure

#### Adjournment Motion

Adjournment Motion is the procedure for adjournment of the business of the house for the purpose of discussing a matter of urgent public importance, and needs the support of 50 members to be admitted. The Adjournment Motion, if admitted, leads to setting aside of the normal business of the House for discussing the matter mentioned in the Motion. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions.

- It should raise a matter which is definite, factual, urgent and of public importance;
- It should not cover more than one matter;
- It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
- It should not raise a question of privilege;
- It should not revive discussion on a matter that has been discussed in the same session;
- It should not deal with any matter that is under adjudication by the court; and
- It should not raise any question that can be raised on a distinct motion.

The purpose of an Adjournment Motion is to take the Government to task for a recent act of omission or commission having serious consequences. Its adoption is regarded as a sort of censure of the Government. Thus, Rajya Sabha is not permitted to make use of this device.

#### No-Confidence Motion

In India, a Motion of No Confidence can be introduced *only* in the Lok Sabha. The motion is allowed for discussion when a minimum of 50 members of the Lok Sabha support the motion. If the motion carries, the Lok Sabha debates and votes on the motion. If majority of the members of the Lok Sabha vote in favour of the motion, the motion is passed and the Government is bound to vacate the office in accordance with Article 75 of the Constitution, which says that the council of ministers shall be collectively responsible to the Lok Sabha.

#### Censure Motion

This motion can be moved only in the Lok Sabha by the Opposition of the House. It can be moved against the Council of Ministers or an individual Minister or a group of Ministers for their failure to act or for certain policies and actions and may express regret, indignation or surprise of the House at the failure of the Minister or Ministers.

The Motion should be specific and self-explanatory so as to record the reasons for the censure, precisely and briefly (No-Confidence motion does not need to state such reasons). If the Censure Motion is passed, the Council of Ministers need not resign from office but is bound to seek the confidence of the Lok Sabha as early as possible.

#### Motion of Thanks

The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year.

This address of the president, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'. At the end of the discussion, the motion is put to vote. This motion must be passed in the House. Otherwise, it amounts to the defeat of the government.

## 7.4. Resolutions

A resolution is one of the procedural devices to raise a discussion in the House on a matter of general public interest. Subject to the provisions of the rules, a member or a Minister may move a resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same by leave of the House. Resolutions are classified into three categories:

- i. **Private Member's Resolution:** It is moved by a private member and is discussed only on alternate Fridays and in the afternoon sitting.

Student Notes:

- ii. **Government Resolution:** It is moved by a minister and can be taken up any day from Monday to Thursday.
- iii. **Statutory Resolution:** It can be moved by a private member or a minister. It is so called as it is always tabled in pursuance of a provision in the constitution or an act of the Parliament.

Student Notes:

#### 7.4.1. Differences between Motions and Resolutions

- i. While all resolutions are substantive motions, a motion need not necessarily be substantive.
- ii. All motions are not necessarily put to vote of the House, whereas all resolutions are required to be voted upon.

### 7.5. Point of Order

A Point of Order relates to the interpretation or enforcement of the Rules of Procedure or such articles of the Constitution that regulate the business of the House. It should raise a question that is within the cognizance of the presiding officer. A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a Point of Order.

**Prelims questions:**

**2017**

1. The Parliament of India exercises control over the functions of the Council of Ministers through
    1. Adjournment motion
    2. Question hour
    3. Supplementary questions
- Select the correct answer using the code given below:
- (a) 1 only
  - (b) 2 and 3 only
  - (c) 1 and 3 only
  - (d) 1, 2 and 3

**Ans: (d)**

**2014**

2. Consider the following statements regarding a No-Confidence Motion in India:
  1. There is no mention of a No-Confidence Motion in the Constitution of India.
  2. A Motion of No-Confidence can be introduced in the Lok Sabha only.

Which of the statements given above is / are correct?

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

**Ans: (c)**

## 8. Legislative Procedure in Parliament

The Bills introduced in the Parliament can be classified into four categories:

- i) **Ordinary Bills** which are concerned with any matter other than financial subjects
- ii) **Money Bills**, which are concerned with financial matters.
- iii) **Financial Bills** which are concerned with financial matters (but are different from Money Bills)
- iv) **Constitution Amendment Bills**, which are concerned with the amendment of various provisions of the constitution.

## 8.1. Ordinary Bills

Student Notes:

The different stages in the legislative procedure in Parliament relating to Ordinary Bills are as follows:

- i) **First Reading/Introduction:** Article 107(1) suggests that an ordinary bill can be introduced in either House of Parliament i.e. Lok Sabha or Rajya Sabha. However, it is required to be passed by both the houses before it is sent for the assent of the President. It can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill. It is to be noted that any member other than a minister, however, who wants to introduce the bill has to give notice of such intention and ask for the leave of the house. If a bill has been published in the official gazette before its introduction, no motion for leave of the house is necessary for its introduction.

If leave of the house is granted, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion on it. Thereafter, the question is put to the vote of the House.

- ii) **Publication in Gazette:** After a Bill has been introduced, it is published in the Official Gazette as soon as possible. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.
- iii) **Second Reading/Consideration Stage:** The Second Reading is the most detailed of all stages for this is where the bill is minutely examined. It can be thought of as consisting of two stages.

a. **First Stage:** The first stage consists of general discussion on the Bill as a whole. The principle underlying the Bill is discussed and not the details. Hereafter, it is upon the House to refer the Bill to a Select Committee of the House or a joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straightaway take it into consideration.

- In case of Select committee, members are chosen from amongst the members of the house where the bill originated while in case of a Joint Committee, members are selected from both houses. The Chairman of the joint committee is chosen by the presiding officer of the House where the bill originated.
- If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Members of the Committee can move amendments to the various clauses. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure.
- After the Bill has thus been considered and adopted by the committee, the Lok Sabha secretariat prepares a report for presentation to the House, which then considers the Bill again as reported by the Committee.
- If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move the motion for consideration of the Bill before it goes through the Committee stage as stated earlier.
- After the report of the Select Committee is presented to the house, the minister may make any of the motions—that the bill be taken for consideration as reported

- by the committee or be referred to the same or a different committee or circulated/re-circulated for seeking further opinion.
- b. **Second Stage:** After the motion that the bill be taken into consideration is adopted, it gets into the second stage. This stage consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause that have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amendments become part of the Bill if they are accepted by a majority of members present and voting.
  - iv) **Third Reading** Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to its details other than those that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage. In passing an ordinary Bill, a simple majority of members present and voting is necessary.
  - v) **Bill in the other House:** After the Bill is passed by one House, it is sent to the other House to seek their concurrence. Here also it goes through the stages described above except the introduction stage. The other House can take either of the following courses:
    - a. It may reject the Bill altogether. In such a case provisions of Art 108(1) (a) as to a joint sitting may be applied by the President.
    - b. It may pass the Bill as it is or with amendments. If passed as it is, the bill goes to the President for his assent. However, in case of amendments, the Bill will be returned to the originating House. If the House which originated the Bill accepts the Bill as amended by the other House, it will be presented to the President for his assent (Art. 111). If however the originating House does not agree to the amendments made by the other House and the bill is sent again to the latter for its concurrence. If the latter house continues to insist on its amendments, there is a deadlock.
    - c. The latter house may take no action on the Bill i.e. keep it lying on its Table. In such a case if more than 6 months elapse from the date of receipt of the Bill, a deadlock is deemed to have taken place. While calculating such period of six months, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.
    - d. To resolve the deadlock, the President may summon a joint sitting to deliberate and vote on the bill, unless it has lapsed because of the dissolution of the Lok Sabha. The Joint Sitting is presided over by the Speaker of the Lok Sabha. At the joint sitting, the decision is taken by the majority of the total number of members of both houses present and voting.
  - vi) **President's Assent:** When a Bill has been passed by both Houses of Parliament either singly or at a joint sitting as provided in Art. 108, the Bill is presented to the President for his assent. If the President withholds his assent, there is an end to the Bill. If he gives his assent, the Bill becomes an Act from the date of his assent. Instead of either refusing assent or giving assent, the President may return the Bill for reconsideration of the Houses with a message requesting them to reconsider it. If, however, the Houses pass the Bill again with or without amendments and the Bill is presented to the President for his assent after such reconsideration, the President shall have no power to withhold his assent from the Bill.

## 8.2. Money Bills

Under article 110(1) of the Constitution, a Bill is deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:

- a) The imposition, abolition, remission, alteration or regulation of any tax.

- b) The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India.
- c) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund.
- d) The appropriation of moneys out of the Consolidated Fund of India; The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure.
- e) The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- f) Any matter incidental to any of the matters specified in sub-clauses (a) to (f).

Student Notes:

A Bill is not deemed to be Money Bill by reason only that it provides for:

- i) The imposition of fines or other pecuniary penalties.
- ii) The demand or payment of fees for licenses or fees for services rendered.
- iii) The imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

A Money Bill can be introduced in the Lok Sabha only. It can only be introduced on the prior recommendation of the President. The Rajya Sabha cannot make any amendments to it or reject it, but can give its recommendations. Rajya Sabha has to return the Bill to the Lok Sabha in 14 days with or without recommendation. The Lok Sabha may or may not accept oots recommendations. If after 14 days, the bill is not returned to the Lok Sabha, it is deemed to have been passed both the houses at the expiration of 14 days. Hence, the power of the Rajya Sabha wrt Money Bills is not co-equal with the Lok Sabha as is the case with ordinary bills. It is merely consultative. There is no chance of any disagreement between the two houses in regard to Money Bills. President cannot return a Money Bill for reconsideration. Furthermore, the defeat of its motion to pass a money bill in the Lok Sabha leads to the resignation of the government.

Furthermore, Constitution Amendment Bills cannot be treated as Money Bill, even if all its provisions attract article 110(1). This is because such amendments are governed by article 368 which over-rides the provisions regarding Money Bills.

#### **Certification of Money Bills**

- i) The Constitution of India under Article 110(4) requires that every money bill has to be certified so by the Speaker of the Lok Sabha before its transmission to the Rajya Sabha. Hence, if any question arises whether a Bill is a Money Bill or not, the decision of Speaker is final. The Speaker is under no obligation to consult any one in coming to a decision or in giving his certificate that a Bill is a Money Bill.
- ii) The Speaker's certificate on a Money Bill once given is final and cannot be challenged.
- iii) A Money Bill cannot be referred to a Joint Committee of the Houses.

#### **Categories of Money Bills**

1. **Finance Bill:** Finance Bill is a secret bill introduced in Lok Sabha every year immediately after the presentation of the General Budget to give effect to the financial proposals of the Government of India for the following financial year. Finance Bills are treated as Money Bills since they substantially deal with amendments to various tax laws and other incidental matters.
2. **Appropriation Bill:** An Appropriation Bill is introduced in Lok Sabha immediately after adoption of the relevant demands for grants. Such Bills are categorised as Money Bills as they seek to authorise appropriation from the Consolidated Fund of India, of all moneys

required to meet the grants made by the House and the expenditure charged on the Consolidated Fund of India.

Student Notes:

### 8.3. Financial Bills

Commonly, any bill that relates to revenue or expenditure can be thought of as a Financial Bill. However, the term Financial Bill has been used in a technical sense in the Indian Constitution which makes it important to be understood clearly in relation to a money bill.

Only those Financial Bills can be money bills which bear the certificate of the Speaker of the Lok Sabha to that effect. Financial bills that do not receive the certificate of the Speaker can be of two types, as have been dealt with under Article 117 of the Indian Constitution:

1. **First Class [Financial Bills under Article 117 (1)]:** Bills that contain any of the matters specified in Article 110 but does not contain solely those matters.
2. **Second Class [Financial Bills under Article 117(3)]:** Any ordinary bill that contains provisions involving expenditure from the Consolidated Fund of India.

#### Comparison between Money Bills and Financial Bills

- i) While a Money Bill deals solely with matters specified in article 110(1) (a) to (g) of the Constitution or incidental matters, a Financial Bill does not exclusively deal with all or any of the matters specified in the said article that is to say it contains some other provisions also.
- ii) Financial Bills of the first class, like Money Bills, can be **introduced** only in Lok Sabha on the recommendation of the President. However, other restrictions in regard to Money Bills do not apply to this category of Bills. Financial Bill under article 117(1) of the Constitution can be referred to a Joint Committee of the Houses.
- iii) Financial Bills of the second class i.e. those under article 117 (3) of the Constitution can be introduced in either House of Parliament like any other ordinary Bill. However, recommendation of the President is essential for **consideration** of these Bills by either House and unless such recommendation is received, neither House can pass the Bill. However, the Bill may be introduced without President's recommendation, but in such a case its consideration cannot take place.

### 8.4. Constitution (Amendment) Bills

Article 368 of the Indian Constitution lays the procedure for the amendment of the Constitution. The Constitution does not provide for a separate Constituent Body to amend the constitution. This power has been vested in the Parliament itself. An amendment of the Constitution may be initiated in either House of the Parliament. This bill can be presented both by the Government or a Private Member. However, in case such a bill is brought by a Private Member, it has to be examined and recommended for introduction in the House by the Committee on Private Members' Bills and Resolutions.

In context of the procedure involving their amendment, there are three categories of articles in the Constitution:

- Articles amendable by a Simple Majority
- Articles that require special majority
- Articles that require Special Majority as well as ratification by legislatures of not less than half of the States of the Indian Union.

a. **Amendment by Simple Majority:** A bill that seeks to amend the following provisions of the Constitution require only simple majority and shall not be deemed to be a Constitution (Amendment) Bill under Article 368:

1. admission or establishment of new states, formation of new states and alteration of areas, boundaries or names of existing ones (Articles 2,3 & 4)

2. creation or abrogation of Legislative Councils in a State (article 169)
3. administration and control of Scheduled areas and Scheduled tribes (para 7 of the Fifth Schedule)
4. administration of Tribal areas in the states of Assam, Meghalaya and Mizoram (para 21 of the Sixth Schedule)

Student Notes:

A bill providing for the formation of new states and alteration of areas, boundaries or names of existing ones, can be introduced in either House of the Parliament only on the recommendation of the President. Before making such recommendation, the President shall refer the bill to the concerned states for their views within such period as specified by him. However, the President is not bound by the views of the states.

For the Parliament to pass a law providing for the creation or abolition of a Legislative Council in a State, the legislative assembly of the State has to pass a resolution to that effect by a majority of not less than two thirds of the members of the assembly present and voting. The Parliament however may approve or disapprove of such resolution or may not take any action on it.

**b. Amendment by Special Majority:** A bill that seeks to amend any part of the Constitution has to be passed by a special majority i.e. a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting. In the strictest sense, the special majority is required for voting at the third reading stage of the bill. However, exercising abundant caution, the requirement of special majority has been provided for all effective stages of the Bill in the Rules of the Houses.

**c. Amendment by Special Majority and ratification by states:** A bill seeking to amend the following provisions of the Constitution has to be passed by a special majority of both houses of the Parliament and has also to be ratified by the legislatures of not less than half of the states by passing resolutions to that effect, before it is presented to the President for assent:

1. the election of the President (Article 54 & 55),
2. the extent of the executive power of the Union and the States (Art 73 & 162),
3. the Supreme Court and the High Courts (Article 341, Chapter IV of Part V and Chapter V of Part VI of the Constitution),
4. representation of states in the Parliament, or
5. the procedure for amendment of the Constitution itself (Article 368)

There is no time limit prescribed by the Constitution within which the States must signify their ratification of a Constitution (Amendment) Bill.

## 9. Financial Legislation by the Parliament

### 9.1. Annual Financial Statement/Budget

As per Article 112 of the Constitution, at the beginning of each financial year, the President of India causes to be laid before both the Houses of the Parliament, a statement of the estimated receipts and expenditure of the Government of India for that year. This is known as the 'annual financial statement' or commonly known as the Budget for that financial year.

The Budget not only provides estimates but also presents an opportunity to the Government to review and explain its financial and economic policy and programmes to the Parliament. It is a money bill. The estimated expenditure shows separately in the Annual Financial Statement as:

1. Expenditure charged upon the Consolidated Fund of India
2. Expenditure to be made from the Consolidated Fund of India

The presentation of the Annual Financial Statement is followed by a general discussion in both the Houses of the Parliament. At this stage no motion is moved nor is the Budget put to vote. The role of the Rajya Sabha does not extend beyond this general discussion.

After this General discussion is over, estimates are then submitted in the form of demand for grants on particular heads and each particular head is then voted on in the House of People. While the estimates related to the expenditure charged upon the Consolidated Fund of India cannot be put to vote of the Parliament, each house can discuss any of these estimates. These include:

- Emoluments and allowances of President and expenditure of his/her office.
- Salary and allowance of Chairman, Vice Chairman of Upper house and Speaker, Deputy Speaker of Lower house.
- Salary, Allowances, Pensions of Judges of SC
- Pensions of judges of HC
- Salary, Allowances, Pensions of CAG.
- Salary, Allowances, Pensions of UPSC chairperson and its members
- Administrative expenses of the office of CAG, UPSC, and SC
- Debt charges for which Government of India is liable
- Sums required for enforcement of any judgment, decree etc.
- Other expenditure defined by an Act of Parliament to be charged on consolidated fund of India.

On the other hand, the estimates of the expenditure, other than those which are charged, are placed before the Lok Sabha in the form of 'demand for grants' to be voted on.

### **9.1.1. Cut Motions**

Cut motions are part of the budgetary process which seeks to reduce the amounts for grants. They can be moved in the Lok Sabha only. Cut Motions can be divided into three categories:

1. **Disapproval of Policy Cut:** That the amount of the demand be reduced to Re.1/- representing disapproval of the policy underlying the demand. A member giving notice of such a motion shall indicate in precise terms the particulars of the policy which he proposes to discuss. The discussion should be confined to the specific point or points mentioned in the notice and it shall be open to members to advocate an alternative policy.
2. **Economy Cut:** The objective of the motion is to reduce the amount of die expenditure and the form of the motion is "The amount of the demand be reduced by Rupee... (a specified amount)". Such specified amount may be either a lump sum reduction in the demand or omission or reduction of an item in the demand.
3. **Token Cut:** The objective of the motion is to ventilate a specific grievance within the sphere of responsibility of the Government of India and its form is "The amount of the demand be reduced by Rupee 100" .

### **9.1.2. Appropriation Bill**

As soon as the demand for grants have been voted by the House of People, a bill to provide for the appropriation out of the Consolidated Fund of India is introduced. This bill is called the Appropriation Bill. No money can be withdrawn from the Consolidated Fund of India except under an Appropriation Act.

This Bill provides for appropriation of money related to:

1. The grants so made by the House of the People; and
2. The expenditure charged on the Consolidated Fund of India

### **9.1.3. Finance Bill**

Similarly, the taxing proposals of the budget are provided for in another bill called the Annual Finance Bill. The Finance Bill is taken up for consideration and passing after the Appropriation Bill is passed. However, certain provisions in the Bill relating to levy and collection of fresh duties or variations in the existing duties come into effect immediately on the expiry of the day

on which the Bill is introduced by virtue of a declaration under the Provisional Collection of Taxes Act.

Student Notes:

Each of these bills are then passed as a Money Bill and no amendment relating to varying the amount or altering its destination or varying the amount charged on the Consolidated Fund of India can be proposed. The Parliament has to pass the Finance Bill within 75 days of its introduction.

#### **9.1.4. Vote on Account**

As the whole process of Budget beginning with its presentation and ending with discussion and voting of demands for grants and passing of Appropriation Bill and Finance Bill generally goes beyond the current financial year, a provision has been made in the Constitution empowering the Lok Sabha to make any grant in advance through a vote on account to enable the Government to carry on until the voting of demands for grants and the passing of the Appropriation Bill and Finance Bill.

Normally, the vote on account is taken for two months for a sum equivalent to one sixth of the estimated expenditure for the entire year under various demands for grants. During an election year, the vote on account may be taken for a longer period say, 3 to 4 months if it is anticipated that the main demands and the Appropriation Bill will take longer than two months to be passed by the House.

As a convention vote on account is treated as a formal matter and passed by Lok Sabha without discussion.

Vote on account is passed by Lok Sabha after the general discussion on the Budget (General and Railway) is over and before the discussion on demands for grants is taken up.

#### **9.1.5. Interim Budget**

An outgoing government is required to present an interim budget if its tenure is about to come to an end due to impending General Elections. In such situations, the task of presenting a full Budget is left for the next government. A full Budget approves government spending for the full financial year. So for any reason, if the government of the day is not able to present in the Parliament a full budget before the end of the financial year, it requires Parliament's sanction for expenditures till the time a full Budget is presented.

An Interim Budget gives the complete financial statement very similar to a full Budget, albeit for a period lesser than year. It is not the same as a 'Vote on Account'. While a 'Vote on Account' deals only with the expenditure side of the government's budget, an Interim Budget is a complete set of accounts, including both expenditure and receipts.

While the law does not debar the Union government from introducing tax changes, successive governments have avoided making any major changes in income tax laws during an Interim Budget.

### **9.2. Accounts of Government of India**

The accounts of Government are maintained in three parts: -

- Consolidated Funds of India
- Contingency Funds of India
- Public Account

#### **9.2.1. Consolidated Fund of India**

All the revenues received by the Government by way of taxes and non-tax revenues are credited to the Consolidated Fund constituted under Article 266(1) of the Constitution of India. The inflow to this fund is by way of taxes like Income Tax, Central Excise, Customs and also non-

tax revenues, which arise to the government in connection with the conduct of its business. Loans raised by issue of treasury bills are also received in this fund. The government meets all its expenditure including loan repayments from this fund. No amount can be withdrawn from the fund without the authorization from the Parliament.

### **9.2.2. Public Account**

The Public Account is constituted under Article 266 (2) of the Constitution. All other public moneys (other than those covered under Consolidated Fund of India) received by or on behalf of the Government of India are credited to the public account of India.

The transactions under Debt, Deposits and Advances in this part are those in respect of which Government incurs a liability to repay the money received or has a claim to recover the amounts paid. The receipts under Public Account do not constitute normal receipts of Government. Parliamentary authorization for payments from the Public Account is therefore not required. This fund can be operated by executive action only.

### **9.2.3. Contingency Fund of India**

The Contingency Fund of India is set up in the nature of an imprest account under Article 267 (1) of the Constitution of India. The corpus of this fund is Rs. 500 crores. Advances from the fund are made for the purposes of meeting unforeseen expenditure by the President of India. The amount is resumed to the Fund to the full extent as soon as Parliament authorizes additional expenditure. The Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs holds the fund on behalf of the President of India.

## **9.3. Charged Expenditure**

In order to preserve the independence of certain institutions, the constitution provides that some expenses are supposed to be charged on the consolidated funds of India. It means that though parliament is empowered to discuss these expenses, they do not constitute the votable part of the budget. Hence parliament doesn't exercise direct financial control over these institutions.

## **10. Procedure for removing deadlock between the two Houses**

A deadlock is deemed to have taken place if:

- (i) The Bill is rejected by the other House.
- (ii) If the two Houses fail to agree upon the provisions of the Bill as introduced or upon the amendments that may have been proposed by either House.
- (iii) If more than six months have elapsed from the date of receipt of the Bill by the other House without the Bill being passed by it.

Such a situation does not arise in case of Money Bills, since the Lok Sabha has the final power of passing it. In case of a disagreement over a Money Bill, the Lok Sabha has the plenary power to override the wishes of the Rajya Sabha.

In case of a Constitution Amendment Bill, there is no provision of a joint sitting and it must be passed in both Houses separately.

With respect to all other Bills (including 'Financial Bills'), the machinery provided by the Constitution for resolving a deadlock is a joint sitting of the two Houses (Art. 108)

### **10.1. Joint Sitting**

The President may notify to the Houses his intention to summon them for a joint sitting in case of a deadlock. Such a notification cannot be made by the President if the Bill has already lapsed due to the dissolution of the Lok Sabha. However, once the President has notified his intention

to hold a joint sitting, the subsequent dissolution of Lok Sabha cannot stand in the way of the joint sitting being held.

Student Notes:

The Speaker of Lok Sabha presides over a joint sitting of two Houses and the Deputy Speaker in his absence. If the Deputy Speaker is also absent, the Deputy Chairman of Rajya Sabha presides. If he is also absent, such other person as may be determined by the members present at the joint sitting, presides over the meeting. It is clear that the Chairman of Rajya Sabha does not preside over a joint sitting as he is not a member of either House of Parliament.

The quorum to constitute a joint sitting is  $1/10^{\text{th}}$  of the total number of members of the two Houses. The joint sitting is governed by Rules of Procedure of Lok Sabha and not of Rajya Sabha. Normally, due to larger membership, the Lok Sabha succeeds in getting its demands fulfilled.

There are restrictions on amendments to the Bill, which may be proposed at the joint sitting:

- i) If, after its passage in one House, the Bill has been rejected or has not been returned by the other House, only such amendments may be proposed at the joint sitting, which are made necessary by the delay in the passage of the Bill.
- ii) Other amendments as are relevant to the matters pertaining to which the Houses have disagreed, may be proposed at the joint sitting.

Since 1950, the provision of a joint sitting has been invoked only four times for the following bills:

- i) Dowry Prohibition Bill, 1960
- ii) Banking Service Commission (Repeal) Bill, 1977
- iii) Prevention of Terrorism Bill, 2002
- iv) Women's Reservation Bill (2008)

#### Prelims questions

**2013**

1. What will follow if a Money Bill is substantially amended by the Rajya Sabha?
- (a) The Lok Sabha may still proceed with the Bill, accepting or not accepting the recommendations of the Rajya Sabha
  - (b) The Lok Sabha cannot consider the Bill further
  - (c) The Lok Sabha may send the Bill to the Rajya Sabha for reconsideration
  - (d) The President may call a joint sitting for passing the Bill

Ans: (a)

**2012**

2. A deadlock between the Lok Sabha and the Rajya Sabha calls for a joint sitting of the Parliament during the passage of-
1. Ordinary Legislation
  2. Money Bill
  3. Constitution Amendment Bill

Select the correct answer using the codes given below:

- |                  |                  |
|------------------|------------------|
| (a) 1 only       | (b) 2 and 3 only |
| (c) 1 and 3 only | (d) 1, 2 and 3   |

Ans: (c)

3. In the Parliament of India, the purpose of an adjournment motion is
- (a) to allow a discussion on a definite matter of urgent public importance.
  - (b) to let opposition members collect information from the ministers.
  - (c) to allow a reduction of specific amount in demand for grant.
  - (d) to postpone the proceedings to check the inappropriate or violent behaviour on the part of some members.

Ans: (a)

**2011**

Student Notes:

4. What is the difference between “vote-on-account” and “interim budget”?
1. The provision of a “vote-on-account” is used by a regular Government, while an “interim budget” is a provision used by a caretaker Government.
  2. A “vote-on-account” only deals with the expenditure in Government’s budget, while an “interims budget” includes both expenditure and receipts.

Which of the statements given above is/are correct?

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

**Ans:** (c)

5. When the annual Union Budget is not passed by the Lok Sabha,

- (a) The Budget is modified and presented again  
 (b) The Budget is referred to the Rajya Sabha for suggestions  
 (c) The Union Finance Minister is asked to resign  
 (d) The Prime Minister submits the resignation of Council of Ministers

**Ans:** (d)

6. All revenues received by the Union Government by way of taxes and other receipts for the conduct of Government business are credited to the

- (a) Contingency Fund of India                          (b) Public Account  
 (c) Consolidated Fund of India                        (d) Deposits and Advances Fund

**Ans:** (c)

7. The authorization for the withdrawal of funds from the Consolidated Fund of India must come from-

- (a) The President of India                                (b) The Parliament of India  
 (c) The Prime Minister of India                         (d) The Union Finance Minister

**Ans:** (c)

**2004**

8. With reference to Indian Parliament, which one of the following is not correct?

- (a) The Appropriation Bill must be passed by both the Houses of Parliament before it can be enacted into law  
 (b) No money shall be withdrawn from the Consolidated Fund of India except under the appropriation made by the Appropriation Act  
 (c) Finance Bill is required for proposing new taxes but no another Bill/Act is required for making changes in the rates of taxes which are already under operation  
 (d) No Money Bill can be introduced except on the recommendation of the President

**Ans:** (c)

9. Which one of the following statements is not correct?

- (a) In Lok Sabha, a non-confidence motion has to set out the grounds on which it is based  
 (b) In the case of a no-confidence motion in Lok Sabha, no conditions of admissibility have been laid down in the Rules  
 (c) A motion of no-confidence once admitted, has to be taken up within ten days of the leave being granted  
 (d) Rajya Sabha is not empowered to entertain a motion of no-confidence.

**Ans:** (a)

10. With reference to Indian Public Finance, consider the following statements:

1. Disbursements from Public Accounts of India are subject to the Vote of Parliament.
2. The Indian Constitution provides for the establishment of a Consolidated Fund, a Public Account and a Contingency Fund for each State.

3. Appropriation and disbursements under the Railway Budget are subject to the same form of parliamentary control as other appropriation and disbursements.

Student Notes:

Which of the statements given above are correct?

- (a) 1 and 2   (b) 2 and 3  
(c) 1 and 3   (d) 1, 2 and 3

Ans: (b)

**2003**

11. Consider the following statements:

1. The joint sitting of the two houses of the Parliament in India is sanctioned under Article 108 of the Constitution.  
2. The first joint sitting of Lok Sabha and Rajya Sabha was held in the year 1961.  
3. The second joint sitting of the two Houses of Indian Parliament was held to pass the Banking Service Commission (Repeal) Bill.

Which of these statements is correct?

- (a) 1 and 2   (b) 2 and 3  
(c) 1 and 3   (d) 1, 2 and 3

Ans: (d)

All the options given in the Question are correct.

1. Article 108 – Joint sitting of both Houses in certain cases.  
2. The First Joint sitting was held on 6 May, 1961, in which Dowry Prohibition Bill, 1960 was passed.  
3. The Second Joint sitting was held to pass the Banking Service Commission (Repeal) Bill, 1977, on 16 May, 1978.

**2002**

12. Which one of the following Bills must be passed by each House of the Indian Parliament separately, by special majority?

- (a) Ordinary Bill                                     (b) Money Bill  
(c) Finance Bill   (d) Constitution Amendment Bill

Ans: D

## 11. Rajya Sabha

### 11.1. Historical Evolution and rationale behind creation of the Second Chamber

The nomenclature ‘Council of States’ also known as Rajya Sabha, was announced on 23<sup>rd</sup> August, 1954. The origin of the second Chamber can be traced to the Montague-Chelmsford Report of 1918. The Government of India Act, 1919 provided for the creation of a ‘Council of State’ as a second chamber of the then legislature with a restricted franchise which actually came into existence in 1921. The Governor General was the ex-officio President of the then Council of State. The Government of India Act, 1935, hardly made any changes in its composition.

In independent India, the Central Legislature which was known as Constituent Assembly (Legislative) and later Provisional Parliament was unicameral till the first elections were held in 1952. It was decided to have a bicameral legislature for independent India primarily because a federal system was considered to be most feasible form of Government for such a vast and diverse country. It was considered that a single directly elected House would be inadequate to meet the challenges facing free India. Therefore, a second chamber known as the ‘Council of States’ was created. It was thought of as another Chamber, with smaller membership than the Lok Sabha. It was meant to be the federal chamber i.e., a House elected by the elected members of Assemblies of the States and Union Territories with a legislature alongside some nominated members.

## 11.2. Role of Rajya Sabha

Student Notes:

- i) **Revising Chamber:** Rajya Sabha has a special role to play as a revising Chamber. Though there have not been many revisions, yet there is always a possibility of revision as a result of second sober thought. In our parliamentary system, Rajya Sabha has the authority to discuss and reasonably delay legislation. As a Second Chamber, it has the mandate to secure a second sober look at hasty legislation.
- ii) **Federal Chamber:** Another significant role of the Rajya Sabha was guided by the need for giving representation to the states in the federal legislature. Rajya Sabha is a federal Chamber where the representatives of each state are elected by the elected members of the Legislative Assembly of the state. As a federal Chamber, it has been assigned some special powers, impacting federal interests. The Rajya Sabha being the representative forum of the States endeavors to remain ever concerned and sensitive to the aspirations of the states. In the process, it strengthens the country's federal fabric and promotes national integration.
- iii) **Deliberative Chamber:** The prime role of the Rajya Sabha as a deliberative Chamber has been reinforced by the provision of nomination to the Rajya Sabha of 12 Members noted for their contribution to literature, science, art and social service. The high traditions of debates and discussions in the House have guided the Members of Rajya Sabha not only to hold informed debates on public issues but also to endeavor to make proceedings relevant to public welfare.
- iv) **Chamber of Continuity:** Rajya Sabha is a permanent Chamber, not subject to dissolution and one-third of its Members retire every second year. The hallmark of the Rajya Sabha is the principle of continuity as a perpetual House and as a continuous institution in the parliamentary framework. A scheme of having a Chamber of legislative continuity was needed in a parliamentary system to meet the legislative and constitutional contingency at a time when the popularly elected House may be under dissolution or in the process of reconstitution after election. A Bill which is pending in the Rajya Sabha and has not been passed by the Lok Sabha, will not lapse on the dissolution of the Lok Sabha. Thus, the continuity of the Rajya Sabha ensures a significant measure of legislative continuity.
- v) **Chamber not concerned with Government formation:** The Government of the day is collectively responsible to the House of People, the directly elected House. Rajya Sabha being an indirectly elected House has no role in the making or unmaking of the Government. Since the Governments are not formed, nor do they fall on the basis of the numerical strength of the Rajya Sabha, this Chamber is relatively free from the compulsions of competitive party politics. While it is often argued that since Rajya Sabha cannot bring down a Government, its role is limited in a political perspective. Nevertheless, the Rajya Sabha has played a significant role in contributing to the national discourse in full measure.
- vi) **Effective Smaller Chamber:** Rajya Sabha is comparatively a smaller Chamber than the Lok Sabha given its maximum strength is lesser than the Lok Sabha. Being a smaller House, it affords opportunities for close camaraderie and greater consensus-building among the Members. Spirit of accommodation and adjustment among the Members, across party lines, contribute to the effectiveness of this House. It also helps in better time management of the House, besides discussions on wide ranging issues.
- vii) **Chamber Securing Executive Accountability:** Rajya Sabha, as a constituent part of Parliament, has been securing executive accountability through its various committees. At present, there are 24 Department-related Parliamentary Standing Committees in the Parliament, out of which eight are functioning under the direction and control of the Chairman, Rajya Sabha. The constructive criticism and considered recommendations made by such Committees have been found to be useful by the Ministries and Departments concerned to tone up their functioning and to formulate realistic budgets, plans and

programs for the welfare of the people. These Committees have considered some of the important legislations and presented reports thereon to both Houses of Parliament.

Student Notes:

- viii) **Chamber of Ventilating Public Grievances:** Rajya Sabha reflects the problems faced by different states. Its Members, being the representatives of states, articulate the concerns of respective states and their people. Through procedural devices such as Questions, Calling Attention, Special Mentions, Short Duration Discussion, Half-an-Hour Discussion, Motions, Resolutions, etc., it has raised issues of public importance, focused attention on matters affecting policies of the Government and provided a forum for ventilation of public grievances. Through these devices, it has managed not only to elicit information but also put pressure on the Government to reorient its policies for serving larger public interests.

## 11.3. Comparison of Lok Sabha with Rajya Sabha

### 11.3.1. Equal Powers in relation to Lok Sabha

There are some important matters in respect of which the Constitution has placed both Houses of Parliament on an equal footing as may be seen from the following list:

- a) Equal right with the Lok Sabha in the election and impeachment of the President (Arts. 54 and 61).
- b) Equal right with the Lok Sabha in the election and removal of the Vice-President (Art. 66). However Rajya Sabha alone can initiate the removal of the Vice-President. He is removed by a resolution passed by the Rajya Sabha by a special majority and agreed to by the Lok Sabha by a simple majority
- c) Equal right with the Lok Sabha to make law defining parliamentary privileges and also to punish for contempt (Art. 105).
- d) Equal right with the Lok Sabha to approve the Proclamation of Emergency (issued under Art. 352), Proclamations regarding failure of the Constitutional machinery in States (issued under Art. 356) and even a sole right in certain circumstances.
- e) Enlargement of the jurisdiction of the Supreme Court and the UPSC.
- f) Approval of ordinances issued by the President.
- g) Equal right with the Lok Sabha to receive reports and papers from various statutory authorities, namely:
  - a. Annual Financial Statement [Art. 112(1)];
  - b. Audit Reports from the Comptroller and Auditor General of India [Art. 151(1)];
  - c. Reports of the Union Public Service Commission. [Art. 323(1)];
  - d. Reports of the Special Officer for the Scheduled Castes and Scheduled Tribes [Art. 338(2)];
  - e. Report of the Commission to investigate the conditions of the Backward Classes [Art. 340(3)];
  - f. Report of the Special Officer for Linguistic Minorities [Art. 350 B(2)].

### 11.3.2. Unequal status with Lok Sabha

In comparison with certain matters where Rajya Sabha enjoys coequal powers with Lok Sabha, there are matters where it does not enjoy the same status as the lower house. For instance:

- a) A Money Bill can be introduced only in the Lok Sabha and not in Rajya Sabha.
- b) Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days with or without recommendations.
- c) The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both cases, the Money Bill is deemed to have been passed by the two Houses.
- d) A Financial Bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both have equal powers.
- e) The final power to decide whether a particular Bill is a Money Bill is vested in the Speaker of the Lok Sabha.

- f) The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
- g) The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both Houses is less than that of opposition parties.
- h) Rajya Sabha can only discuss the budget but cannot vote on the demands for grants.
- i) A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha
- j) The Rajya Sabha cannot remove the Council of Ministers by passing a no-confidence motion. This is because the Council of Ministers is collectively responsible only to the Lok Sabha.

### 11.3.3. Special Powers of Rajya Sabha

Apart from the coordinate powers it enjoys with the Lok Sabha, the Constitution vests some special powers in the Rajya Sabha to exercise its federal mandate as it represents States and Union territories in Parliament. Such special powers lend credence to its status as an Upper House vis-à-vis the Lok Sabha.

- a) **Legislation on State matters:** As a federal chamber, it can initiate Central intervention in the State Legislative field. Article 249 of the Constitution provides that the Rajya Sabha may pass resolution, by a majority of not less than two-thirds of the Members present and voting, to the effect that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List. If such a resolution is adopted, Parliament will be authorized, to make laws on the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further.
- b) **Creation of All India Services:** Another exclusive power of the Rajya Sabha is contained in Article 312 of the Constitution wherein if the Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it's necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament will have the power to create by law such services.
- c) **Approval of Proclamation:** Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under articles 352, 356 and 360.

#### Prelims questions

##### 2012

1. Which of the following special powers have been conferred on the Rajya Sabha by the Constitution of India?
  - (a) To change the existing territory of a State and to change the name of a State.
  - (b) To pass a resolution empowering the Parliament to make laws in the State List and to create one or more All India Services.
  - (c) To amend the election procedure of the President and to determine the pension of the President after his/her retirement
  - (d) To determine the functions of the Election Commission and determine the number of Election Commissioner

Ans: (b)

## 12. Parliamentary Committees

Student Notes:

The Parliament cannot give close attention to all the legislative and other matters before it. This is owing to the varied, complex and voluminous nature of the work. Hence, part of its work is transacted in Committees of the House, known as Parliamentary Committees. Parliamentary Committee means a Committee which

- i) Is appointed or elected by the House or nominated by the Speaker/Chairman
- ii) Works under the direction of Speaker/Chairman
- iii) Presents its report to the House or to the Speaker/Chairman
- iv) Has a secretariat provided by the Lok Sabha/Rajya Sabha Secretariat

Both Houses of Parliament have a similar committee structure, with a few exceptions. The appointment, terms of office, functions and procedure of conducting business are regulated as per rules made by the two Houses under Article 118(1) of the Constitution.

By their nature, Parliamentary Committees are of two kinds:

- **Standing Committees:** Standing Committees are permanent and regular committees, which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business. The work of these Committees is of continuous nature. Among the Standing Committees, the three Financial Committees i.e. Committees on Estimates, Public Accounts and Public Undertakings keep a tight eye over Government expenditure and performance. While members of the Rajya Sabha are associated with Committees on Public Accounts and Public Undertakings, the members of the Committee on Estimates are drawn entirely from the Lok Sabha. Besides the three Financial Committees, there are 24 Department Related Standing Committees (DRSCs).
- **Ad hoc Committees:** These are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. Ad hoc committees can be further divided into two categories:
  - Committees which are constituted from time to time, by either of the two Houses on a motion adopted in that behalf or by Speaker/Chairman to inquire into and report on specific subjects. E.g., Committees on the Conduct of certain Members during President's Address, Committee on Members of Parliament Local Area Development Scheme etc.
  - Select or Joint Committees on Bills which are appointed to consider and report on a particular Bill. These Committees are distinguishable from the other ad hoc committees to the extent that they are concerned with Bills and the procedure to be followed by them as laid down in the Rules of Procedure and Directions by the Speaker/Chairman. Joint Parliamentary Committees are set up by a motion passed in one House and agreed to by the other House.

### 12.1. Important Parliamentary Committees

#### 12.1.1. Public Accounts Committee

This Committee consists of 15 members elected by the Lok Sabha and 7 members of the Rajya Sabha are associated with it. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The main duty of the Committee is to ascertain whether the money granted by Parliament has been spent by the Government "within the scope of the Demand". The Appropriation and Finance Accounts of the Government of India and the Audit Reports presented by the Comptroller and Auditor General mainly form the basis for the examination of the Committee. Cases involving losses, nugatory expenditure and financial irregularities come in for severe criticism by the Committee. The Committee is not concerned with questions of policy. It is concerned only with the execution of the policy laid down by Parliament and its results.

## **12.1.2. Estimates Committee**

Student Notes:

This Committee consists of 30 members who are elected by the Lok Sabha every year from amongst its members. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The main function of the Committee on Estimates is to report what economies, improvements in organization, efficiency, or administrative reform, consistent with the policy underlying the estimates may be effected and to suggest alternative policies in order to bring about efficiency and economy in administration. From time to time the Committee selects such of the estimates pertaining to a Ministry or a group of Ministries or the statutory and other Government bodies as may seem fit to the Committee. It examines whether the money is well laid out within the limits of the policy implied in the estimates and suggests the form in which the estimates shall be presented to Parliament. The Committee also examines matters of special interests which may arise or come to light in the course of its work or which are specifically referred to it by the House or the Speaker.

## **12.1.3. Committee on Public Undertakings**

The Committee on Public Undertakings consists of 15 members elected by the Lok Sabha and 7 members of Rajya Sabha are associated with it. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The functions of the Committee on Public Undertakings are:

1. To examine the reports and accounts of Public Undertakings.
2. To examine the reports, if any, of the Comptroller and Auditor General on the Public Undertakings.
3. To examine in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.
4. Such other functions vested in the Committee on Public Accounts and the Committee on Estimates in relation to the Public Undertakings as are not covered by clauses (1), (2) and (3) above and as may be allotted to the Committee by the Speaker from time to time. The Committee does not, however, examine matters of major Government policy and matters of day-to-day administration of the Undertakings.

## **12.1.4. Business Advisory Committee**

It regulates the program and timetable of the House. It allocates time for the transaction of legislative and other business brought before the House by the government. It recommends the time that should be allocated for the discussion of the stage or stages of such Government Bills and other business as the Chairman in consultation with the Leader of the House may direct for being referred to the Committee. The Committee may also indicate in the proposed time-table the different hours at which the various stages of the Bill or other business are to be completed. All proposals for late sittings of the House, dispensing with the Question Hour or lunch hour, extension of sittings of the House beyond the normal hours of adjournment and fixing additional sittings/cancellation of sittings are placed before the Committee for its recommendation. The Lok Sabha committee consists of 15 members including the Speaker as its chairman. In the Rajya Sabha, it has 11 members with the Chairman as its ex-officio chairman.

## **12.1.5. Departmentally Related Standing Committees**

A full-fledged system of 17 Department Related Standing Committees came into being in April 1993. In 2004, the number of DRSC's was raised to 24. These Committees cover under their jurisdiction all the Ministries/Departments of the Government of India. These Committees are as under:

1. Committee on Chemicals and Fertilizers
2. Committee on Coal and Steel

3. Committee on Health and Family Welfare
4. Committee on Information Technology
5. Committee on Personnel, Public Grievances, Law and Justice
6. Committee on Social Justice and Empowerment
7. Committee on Commerce
8. Committee on Home Affairs
9. Committee on Human Resource Development
10. Committee on Industry
11. Committee on Science & Technology, Environment & Forests
12. Committee on Transport, Culture and Tourism
13. Committee on Agriculture
14. Committee on Defence
15. Committee on Energy
16. Committee on External Affairs
17. Committee on Finance
18. Committee on Food, Civil Supplies and Public Distribution
19. Committee on Labor
20. Committee on Petroleum & Natural Gas
21. Committee on Railways
22. Committee on Rural Development
23. Committee on Urban Development
24. Committee on Water Resources

Student Notes:

**Constitution:** Till 13th Lok Sabha, each of these Standing Committees used to consist of 45 members-30 nominated by the Speaker from amongst the members of Lok Sabha and 15 members nominated by the Chairman from amongst the members of Rajya Sabha. But with restructuring of DRSCs in July, 2004 each DRSC now consists of 31 members-21 from Lok Sabha and 10 from Rajya Sabha. A Minister is not eligible to be nominated to these Committees.

**Term of Office:** The term of members of these Committees is one year.

**Functions:** With reference to the Ministries/Departments under their purview, the functions of these committees are:

- i) Consideration of Demands for Grants.
- ii) Examination of Bills referred to by the Chairman, Rajya Sabha or the Speaker, Lok Sabha as the case may be.
- iii) Consideration of Annual Reports.
- iv) Consideration of national basic long-term policy documents presented to the House and referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be.

These Committees do not consider matters of day-to-day administration of the concerned Ministries/Departments. With the emphasis of their functioning to concentrate on long-term plans, policies and the philosophies guiding the working of the Executive, these Committees are in a very privileged position to provide necessary direction, guidance and inputs for broad policy formulations and in achievement of the long-term national perspective by the Executive.

#### **Importance of Parliamentary Committees**

- The main purpose behind setting up these committees is to ensure the accountability of Government to Parliament through more detailed consideration of measures in these Committees.
- These Committees have had an important impact on the general toning up of debates and efficiency of functioning of Parliamentary system.

- They offer an opportunity to the members of the House to have glimpse into the working of Governments and understand the practical problems and constraints.
- Committees help with this by providing a forum where Members can engage with domain experts and government officials during the course of their study. For example, the Committee on Health and Family Welfare studied the Surrogacy (Regulation) Bill, 2016 which prohibits commercial surrogacy, but allows altruistic surrogacy. This helps them gain expertise and specialisation about the subjects dealt with by the Committees, which in turn is bound to result in elevating the standard of debate on the floor of the House.
- Committees also provide a forum for building consensus across political parties. The proceedings of the House during sessions are televised, and MPs are likely to stick to their party positions on most matters. Committees have closed door meetings, which allows them to freely question and discuss issues and arrive at a consensus.
- Parliamentary committees investigate issues and bills proposed so that the Parliament can be well informed before making a decision of national importance.
- It increases the ability of Parliament to scrutinize government policies and make it accountable
- The committees can make recommendations and amendments to the bill. These are not binding on the Parliament.
- In the past, we have seen that scrutiny by committees has helped resolve significant issues in Bills. For instance, the Prevention of Corruption Amendment Bill which has been pending in the Rajya Sabha since 2013. The Bill has been examined by two parliamentary committees and has gone through a number of iterations. This has resulted in significant issues in the Bill getting addressed.

Student Notes:

### **Concerns related to their functioning**

While Committees have substantially impacted Parliament's efficacy in discharging its roles, there is still scope for strengthening the Committee system. The rules do not require all Bills to be examined by a Committee. This leads to some Bills being passed without the advantage of a Committee scrutinising its technical details. Recently, there has been a declining trend in the percentage of Bills being referred to a Committee. In the 16<sup>th</sup> Lok Sabha, DRSCs examined 41 Bills, 331 Demands for Grants, 197 issues, and published 503 Action Taken Reports. In the 15<sup>th</sup> Lok Sabha, 71% of the Bills introduced were referred to Committees for examination, as compared to 27% in the 16<sup>th</sup> Lok Sabha. So far in the 17<sup>th</sup> Lok Sabha no Bill has been referred to a Committee yet. This raises concern over the diminishing importance of parliamentary committees and whether proper deliberations are taking place before the passage of various bills.

### **Prelims questions**

#### **2007**

1. Consider the following statements:

1. The Chairman of the Committee on Public Accounts is appointed by the Speaker of the Lok Sabha.
2. The Committee on Public Accounts comprises Members of Lok Sabha, Members of Rajya Sabha and a few eminent persons of industry and trade.

Which of the statements given above is/are correct?

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

**Ans: (a)**

#### **2013**

2. Consider the following statements-

The Parliamentary Committee on Public Accounts.

1. Consists of not more than 25 Members of the Lok Sabha.

2. Scrutinizes appropriation and finance accounts of the Government.
  3. Examines the report of the Comptroller and Auditor General of India.
- Which of the statements given above is/are correct?
- (a) 1 only
  - (b) 2 and 3 only
  - (c) 3 only
  - (d) 1, 2 and 3

**Ans:** (d)

Student Notes:

## 13. Parliamentary Privileges

Parliamentary privileges are the rights and immunities provided by the Constitution to both Houses collectively and their members individually, without which they cannot discharge their functions. Both the Houses of Parliament as well as of State Legislature have similar privileges under the Constitution. These privileges protect the freedom of speech of legislators and insulate them against litigation over matters that occur in these houses. Without these privileges the house can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in discharge of their duties.

Arts. 105 and 194 of our Constitution deal only with two matters, namely, freedom of speech and right of publication.

After the 44<sup>th</sup> Amendment of 1978, the position with regards to privileges relating to other matters is as follows:

- i) The privileges of MPs were to be same as those of members of the House of Commons (as they existed at the commencement of the Constitution), until out Parliament itself takes up legislation relating to privileges.
- ii) Since no such legislation is made by the Parliament, the privileges are same as in House of Commons subject to such exceptions, which are necessary due to difference in constitutional setup. Reference to House of Commons was omitted in 1978.

In an earlier case, the Supreme Court held that if there was any conflict between the existing privileges of Parliament and the Fundamental rights of a citizen, the former shall prevail. For instance, if the House of a Legislature expunges a portion of its debates from its proceedings, or otherwise prohibits its publication, anybody who publishes such prohibited debate will be guilty of contempt of Parliament and punishable by the House and Fundamental Right of freedom of expression [Art. 19(1)(a)] will be no defence. However, in a later case, **the Supreme Court has held that though the existing privileges would not be fettered by Art 19(1)(a), they must be read subject to Arts. 20-22 and 32.**

Furthermore, it stated that immunity or protection against criminal prosecution to the members is available only in regard to their official activities and not for acts done in their personal capacity.

Parliamentary privileges can be classified into two broad categories:

### 13.1. Individual Privileges

These are the privileges enjoyed by the members individually. These are as follows:

- a. **Freedom from arrest:** The members cannot be arrested during a session of Parliament or a meeting of a committee and 40 days before the beginning and 40 days after the end of a session. This immunity is however confined to arrest in civil cases and does not extend to arrest in a criminal case or under the law of Preventive Detention.
- b. **Freedom of Attendance as Witness:** In accordance with the English practice, a member cannot be summoned without the leave of the House to give evidence as a witness while the Parliament is in the session.
- c. **Freedom of Speech:** A Member of Parliament cannot be made liable in any court of law in respect of anything said in Parliament or any committee thereof. This freedom is however

subject to the rules framed by the House under its powers to regulate its internal procedure. Further the Constitution also imposes another restriction, namely, that no discussion shall take place in the Parliament with respect to conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties (except when a motion for removal of the Judge is under consideration).

## 13.2. Collective Privileges

The collective privileges of the House are:

- a. The right to publish debates and proceedings and the right to restrain publication by others. The 44<sup>th</sup> Amendment Act, 1978 restored the freedom of press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in case of a secret sitting.
- b. The right to exclude others from its proceedings. Under the Rules of Procedure, the Speaker and the Chairman have the right to order the withdrawal of strangers from any part of the House.
- c. The right to regulate the internal affairs of the House and to decide matters arising within its walls. What is said or done within the walls of the Parliament cannot be inquired into in a Court of Law
- d. The right to punish members and outsiders for breach of its privileges.
- e. No person can be arrested, and no legal process served within the precincts of the House without the permission of the presiding officer.

## 13.3. Breach of Privilege and Contempt of the House

When any of the privileges either of the members individually or of the House in its collective capacity are disregarded or attacked by any individual or authority, the offence is called a 'breach of privilege'.

Among other things, any action 'casting reflections' on MPs, parliament or its committees; could be considered breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.

Contempt of the House may be defined generally as "any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officers of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results."

While all breaches of privilege constitute contempt of the House, a person may be guilty of a contempt of the House even though he does not violate any of the privilege of the House, e.g. when he disobeys an order to attend a committee or publishes reflections on the character or conduct of a member in his capacity as a member.

There have been several such cases. In 1967, two people were held to be in contempt of Rajya Sabha, for having thrown leaflets from the visitors' gallery.

In 1983, one person was held in breach for shouting slogans and throwing chappals from the visitors' gallery.

**Committee on Privileges:** This is a standing committee constituted in each house of the Parliament/state legislature. This Committee consists of 15 members in Lok Sabha (LS) and 10 members in Rajya Sabha (RS) to be nominated by the Speaker in LS and Chairman in RS, respectively.

Its function is to examine every question involving breach of privilege of the House or of the members of any Committee thereof referred to it by the House or by the Speaker. It determines with reference to the facts of each case whether a breach of privilege is involved and makes suitable recommendations in its report.

## 13.4. Punishment in case of breach of privilege or contempt of the House

Student Notes:

The house can ensure attendance of the offending person. The punishment may take the form of *admonition, reprimand or imprisonment*. For instance, in 2008, an editor of an Urdu weekly referred to the deputy chairman of Rajya Sabha as a “coward” attributing motives to a decision taken by him. The privileges committee held the editor guilty of breach of privilege.

## 14. Sovereignty of Parliament

The doctrine of sovereignty of Parliament is associated with the British Parliament. **Parliamentary sovereignty** (also called **parliamentary supremacy** or **legislative supremacy**) is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute sovereignty, and is supreme over all other government institutions, including executive or judicial bodies. There are no ‘legal’ restrictions on the authority and jurisdiction of British Parliament. The Indian Parliament, on the other hand cannot be regarded as a sovereign body in the similar sense as there are ‘legal’ restrictions on its authority and jurisdiction. The factors that limit the sovereignty of Indian Parliament are:

- i) **Written Nature of the Constitution:** The Constitution is the fundamental law of the land in our country. The parliament has to operate within the prescribed limits of the Constitution.
- ii) **Federal System of Government:** India has a federal system of government with a constitutional division of powers between the Union and the States. Both have to operate within the spheres allotted to them. Hence, the law-making authority of the Parliament gets confined to the subjects enumerated in the Union List and Concurrent List and does not extend to the subjects enumerated in the State List (except in certain exceptional circumstances).
- iii) **System of Judicial Review:** The adoption of an independent judiciary and the system of judicial review has also restricted the supremacy of the Parliament. Both the Supreme Court and the High Courts can declare the laws enacted by Parliament as void and *ultra vires*, if they contravene any provision of the Constitution.
- iv) **Fundamental Rights:** The authority of Parliament is also restricted by the incorporation of a code of justiciable Fundamental Rights under Part III of the Constitution. Article 13 prohibits the State from making a law that either takes away totally or abrogates in part a fundamental right. Hence, a parliamentary law that contravenes the fundamental rights shall be void.

## 15. Functions, Role and Issues concerning Parliament

Our constitution has adopted a Parliamentary System of Government. Under such a system there is a curious mixture of the legislative and executive organs of the state. While discussing the functions of Parliament this aspect should always be borne in mind. To begin with the Parliament provides the Council of Ministers to run the administration of the State and holds it responsible. The membership, of the Council of Ministers is drawn from the two chambers of the Parliament.

### 15.1. Functions and Roles of the Parliament

- i) **Controlling the Executive:** A very significant function of Parliament is to exercise its control on the Council of Ministers by way of holding it responsible for its acts of omissions and commissions. Article 75(3) expressly states that the Council of Minister remains in office, so long as it enjoys the confidence of the Lok Sabha. The Parliament exercises the control by asking question to the ministers through its members, by raising adjournment motions, cut motions, censure motions or debates. More importantly the Lok Sabha can pass a vote of no confidence against the Council of Ministers, which compels it to resign collectively.

- Thus the parliament holds the ministers responsible individually and collectively. This critical function of the Parliament ensures a responsive and responsible government.
- ii) **Law Making:** Law making is the primary function of any legislature. The Parliament of India makes law on all matter included in the Union list and concurrent list (of course the state legislatures share with the parliament the power to make law from the concurrent list with its prior permission.) However under certain special circumstances the Parliament can make law for the states also. The special circumstances are
- Promulgation of Emergency.
  - A resolution passed by Rajya Sabha with special majority asking to make law for the states in the national interest, which can remain valid for one year.
  - A resolution by two or three states urging upon the Parliament to make law for them on certain items of the State list.
  - If there is any international treaty or agreement is to be executed.
  - When President's Rule is in operation in a State. An ordinary bill is initiated in either House of Parliament.
- iii) **Controlling the Finance:** The Parliament, particularly, the Lok Sabha exercises substantial functions in the domain of finance. The legislature of any responsible system of Government has to ensure that public funds are raised and spent with its consent and control. The Constitution of India has armed the union Parliament more particularly the Lok Sabha to exercise greater control over the National finance:
- The executive or the Government of the nation has no authority to spend any money on its own without the approval of the Parliament.
  - Every financial year, the budget prepared by the Finance Minister is presented in the Lok Sabha for its approval.
  - Any proposal for levying new taxes or any proposal for expenditure needs the sanction of the Parliament.
  - There are also two very important Committee of the Parliament known as Public Accounts Committee and the Estimates Committee, and Comptroller and Auditor General, a Constitutional authority appointed by the President who examines the legality of expenditure and places a report for discussion in the Parliament.
- However it may be noted that Lok Sabha enjoys the exclusive power to control the national finances. The Rajya Sabha has no role to play in such a field.
- iv) **Deliberations:** As an organ of information the Parliament has a formidable role to play. All the important administrative policies are discussed on the floors of the Parliament. So the Cabinets not only gets the advice of the Parliament and learns about its lapses, but the nation as a whole is enlightened about serious matters of public importance. This undoubtedly contributes to the growth of political consciousness on the part of the people.
- v) **Constituent Functions:** Parliament is the only body, under the constitution, to initiate any proposal for amendment of the constitution. A proposal for amendment can be initiated in either House of Parliament. The bulk of such proposals are approved finally when passed by both the chambers with special majority of two-thirds of its members. However some provisions require the approval of at least half of the states after they are passed by the Parliament with required majority.
- vi) **Electoral Functions:** The Parliament has some electoral functions to perform. It takes part in the election of the President and the Vice-President of India. It also elects various members to its committees, and the presiding officers and Deputy presiding officers.
- vii) **Judicial Functions:** The judicial functions of the Parliament are no less significant. It has the power to impeach the President, the Vice-President, the judges of the Supreme Court and the High Court, the Chairman and members of the Public Service Commissions' of the Union and the States as well, the Comptroller and Auditor General. It can also punish its members and officials for its contempt. This power is not subject to review of the court.

## 15.2. Issues concerning Indian Parliament

Student Notes:

- **Reduction in the number of sittings:** The 16<sup>th</sup> Lok Sabha worked for a total number of 1,615 hours, 20% more than the 15<sup>th</sup> Lok Sabha. However, this is 40% lower than the average of all full term Lok Sabhas (2,689 hours). Furthermore, there has been a general decline in the number of sitting days. The 16<sup>th</sup> Lok Sabha sat for 331 days in comparison with an average of 468 days for previous full term Lok Sabhas.
- **Discipline and decorum:** There have been increased instances of interruptions and disruptions leading sometimes even to adjournment of the proceedings of the House. This, not only, results in the wastage of time of the House but also affects adversely the very purpose of Parliament. The 16<sup>th</sup> Lok Sabha lost 16% of its scheduled time to disruptions, while in the same period, the Rajya Sabha lost 36% of its scheduled time.
- **Declining quality of parliamentary debates:** Parliamentary debates, which once focussed on national and critical issues, are now more about local problems, viewed from a parochial angle.
- **Low representation of women:** Although, women's representation has steadily increased in the Lok Sabha, only 5% of the House in the first-ever election to 14% in the 17<sup>th</sup> Lok Sabha, this is still inadequate when compared to democracies like U.S. that has 32% and Bangladesh with 21% women members. Of the 543 constituencies in 2019, about half (48.4%) have never voted a woman MP since 1962.
- **Inadequate Discussion:** Bills are being passed with no/minimum discussion and by voice vote amidst pandemonium in the House. In the 16<sup>th</sup> Lok Sabha, 32% of the Bills were discussed for more than three hours vis-a-vis previous two Lok Sabhas (22% and 14% in the 15<sup>th</sup> and 14<sup>th</sup> Lok Sabha respectively). It must be highlighted that the bills passed within 30 minutes have decreased significantly from 26% in the 15<sup>th</sup> Lok Sabha to 6% in the 16<sup>th</sup> Lok Sabha.
- **Reduced Scrutiny by Parliamentary Committees:** Although more Bills have been discussed for longer, this Lok Sabha has referred a significantly lower proportion of Bills to Committees for scrutiny. In the 16<sup>th</sup> Lok Sabha, 25% of the Bills introduced were referred to Committees, much lower than 71% and 60% in the 15<sup>th</sup> and 14<sup>th</sup> Lok Sabha respectively.
- **Legislation through Ordinances:** The Constitution confers upon the President the power to promulgate an Ordinance at a time when both Houses of the Parliament are not in Session and on being satisfied that circumstances exist rendering it necessary for him to take immediate action. However, there has been an over issuance of frequent and large number of Ordinances even when there exist no urgency or exceptional circumstances.
- **Codifying Parliamentary Privileges:** Parliamentary privileges have not been codified leading to uncertainty and anxiety over their misuse.

## 15.3. Implications of poor functioning of Parliament

- **Lack of accountability of the government:** If the parliament doesn't function properly, it can not hold the government accountable for its actions.
- **Low productivity:** Disruptions and reduced number of sittings lead to lesser workforce productivity of both Houses. For instance, productivity for Lok Sabha in the 2016 winter session was 14%, while that of the Rajya Sabha was 20%.
- **Cost to the Public Exchequer:** Certain legislations when delayed lead to high cost to public exchequer and also bear a huge cost to society. E.g. It is estimated that the delay in passing the GST Bill cost the nation 4% of GDP.
- **Legislative Vacuum:** Delay in policy making creates a legislative gap which is then filled with other bodies in a direct assault on the doctrine of Separation of Powers.
- **Declining faith in democratic process:** Parliament as an institution becomes less relevant for national policy making.

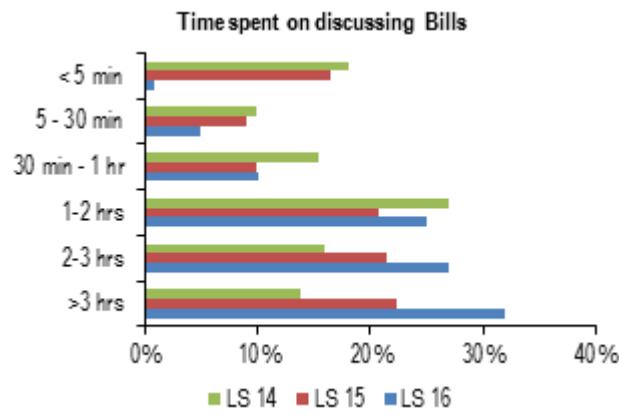
## 15.4. Suggested Parliamentary Reforms

Student Notes:

1. **Nodal Standing Committee on Economy:** The National Commission to Review the Working of the Constitution (NCRWC) has recommended establishing a Nodal Standing Committee on Economy to oversee major issues of fiscal, monetary, financial, and industrial and trade policies in an integrated manner. It suggested that internal groups of the Committee would evaluate performance against physical targets and draft reports, which would together be presented as an annual report to Parliament, by the Committee.
2. **Building a better image of Parliament:** It is necessary to establish a new rapport between the people and the Parliament. Parliament must have access to public opinion and public must have access to Parliament. If corruption is suspected inside the portals of legislatures, the press and the public must be free to question it and expose it without being threatened under the law of parliamentary privileges.
3. **Improving the quality of Members:** It is the primary duty of every Parliamentarian to maintain and project a good image of Parliament by his conduct both inside and outside the House. Every member must be imbued with a sense of purpose and responsibility. Members of important parliamentary committees need to lay down a strict code of conduct for themselves.
4. **Reducing expenditure:** There is a need to drastically slash parliamentary spending under various heads. Strictest self-control is necessary because parliamentary budget, by convention, is not questioned or debated. A strict limit needs to be placed on the number of Ministers and equivalent posts both at the Union level and in the States.
5. **Improving information supply:** Members of the Parliament must remain up to date with the latest information in regard to developments in all areas of parliamentary concern. The Parliament must build its own independent national information reservoir with a network of feeding and retrieval points. Some of the modern tools and techniques like briefing by experts, audio-visual aids, practice oriented studies etc can be used.
6. **Planning Legislation and improving its Quality:** Legislation in the Indian Parliament has often been criticized for hasty drafting and for being rushed through Parliament in an ad hoc and haphazard manner. There is need for a dynamic approach to legislative engineering and systematic programming of laws. This can be done by streamlining the functions of the Parliamentary and Legal Affairs Committee, making greater use of the Law Commission etc.
7. **Setting up a Constitution Committee:** While executive power of the Union is co-extensive with its legislative power, the constituent power under the Constitution belongs exclusively to Parliament. The responsibility of Parliament therefore becomes much greater in the case of Constitution (Amendment) Bills. The proposed involvement of Parliament and scrutiny can be achieved through a novel device in form of a Constitution Committee of Parliament.
8. **Departmental Committees and Improving Accountability:** These Committees strengthen the Government by providing valuable insights into its own working, providing sharper and more effective surveillance tools and restoring the balance between Parliament's legislative and deliberative functions and its role as a representational body. They also save valuable parliamentary time to the advantage both of Parliament and the Government. However, if the Subject/Ministry based Standing Committees have to have a real meaning and fulfill the purposes for which they were conceived and not to become merely part of a spoils system and distribution of perks and benefits.
9. **Codifying Parliamentary Privileges:** These privileges should not be allowed to be used in such a manner as to nullify themselves and become rights against the people. The specific parliamentary privileges which may be deemed to be in conformity with contemporary thinking and absolutely necessary for the free and independent functioning of the institution of Parliament should be clearly defined, delimited and simplified.

**2012**

1. Which of the following are the methods of Parliamentary control over public finance in India?
1. Placing Annual Financial Statement before the Parliament.
  2. Withdrawal of moneys from Consolidated Fund of India only after passing the Appropriation Bill.
  3. Provisions of supplementary grants and vote-on-account.
  4. A periodic or at least a mid-year review of programme macroeconomic forecasts and expenditure by a Parliamentary Budget Office.
  5. Introducing Finance Bill in the Parliament.



Select the correct answer using the codes given below:

- (a) 1, 2, 3 and 5 only  
 (b) 1, 2 and 4 only  
 (c) 3, 4 and 5 only  
 (d) 1, 2, 3, 4 and 5

**Ans: (a)**

**2001**

2. In what way does the Indian Parliament exercise control over the administration?
- (a) Through Parliamentary Committees
  - (b) Through Consultative Committees of various ministries
  - (c) By making the administration send periodic reports
  - (d) By compelling the executive to issue writs

**Ans: (a)**

## 16. Performance of the 16<sup>th</sup> Lok Sabha

The 16<sup>th</sup> Lok Sabha held its sessions between June 2014 to February 2019. During the 16<sup>th</sup> Lok Sabha, 133 Bills were passed and 45 Ordinances were promulgated. Some of the major issues discussed in Parliament were the agrarian crisis in the country, inflation, and various natural calamities.

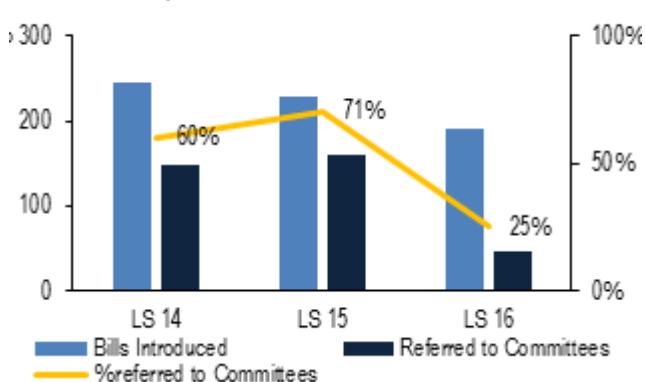
### Total Hours of Work Done by the 16<sup>th</sup> Lok Sabha

- The 16<sup>th</sup> Lok Sabha worked for a total number of 1,615 hours, 20% more than the 15<sup>th</sup> Lok Sabha. However, this is 40% lower than the average of all full term Lok Sabhas (2,689 hours).
- There has been a general decline in the number of sitting days. The 16<sup>th</sup> Lok Sabha sat for 331 days. On average, full term Lok Sabhas sat for 468 days.
- This Lok Sabha lost 16% of its scheduled time to disruptions, better than the 15<sup>th</sup> Lok Sabha (37%), but worse than the 14<sup>th</sup> Lok Sabha (13%).
- Rajya Sabha lost 36% of its scheduled time. In the 15<sup>th</sup> and 14<sup>th</sup> Lok Sabhas, it lost 32% and 14% of its scheduled time, respectively.

## Legislative Business of the 16<sup>th</sup> Lok Sabha

- Compared to the first Lok Sabha, later ones have spent less proportion of time on legislative business. This 16<sup>th</sup> Lok Sabha spent 32% of its time on legislative business, higher than the average of other Lok Sabhas (25%).
- The 16<sup>th</sup> Lok Sabha spent 13% of its time on question hour, 10% on short duration discussions, and 0.7% on calling attention motions.
- In the 16<sup>th</sup> Lok Sabha, a no-confidence motion was moved against the government and discussed in the Monsoon Session of 2018. This was the 27th time a no-confidence motion was discussed since the first Lok Sabha. It was discussed for 11 hours 46 minutes and was negated thereafter.
- The motion of thanks was amended twice by Rajya Sabha in 2015 and 2016. 16<sup>th</sup> Lok Sabha spent 4.5% of its time, and Rajya Sabha spent 6% of its time debating the President's Address.

### Proportion of Bills referred to Committees



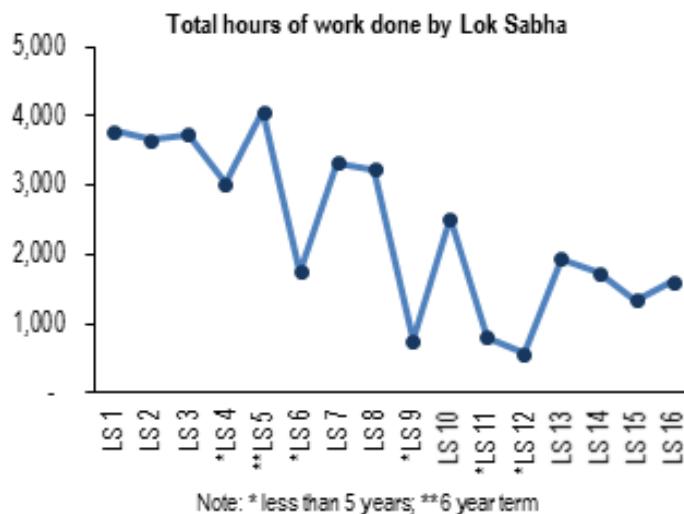
Student Notes:

## Parliamentary Committee Scrutiny

- In the 16<sup>th</sup> Lok Sabha, 133 Bills were passed, 15% higher than the previous Lok Sabha.
- 32% of the Bills were discussed for more than three hours in Lok Sabha. This is higher than the previous two Lok Sabhas (22% and 14% in the 15<sup>th</sup> and 14<sup>th</sup> Lok Sabha respectively). Bills passed within 30 minutes have decreased significantly from 26% in the 15<sup>th</sup> Lok Sabha to 6% in the 16<sup>th</sup> Lok Sabha.
- Although more Bills have been discussed for longer, this Lok Sabha has referred a significantly lower proportion of Bills to Committees for scrutiny. Due to time constraints, it is not possible for each MP to discuss and scrutinise all Bills in the House. Committees allow for detailed scrutiny of legislation, provide a forum for feedback from various stakeholders, and act as a consensus building platform across political parties.
- In the 16<sup>th</sup> Lok Sabha, 25% of the Bills introduced were referred to Committees, much lower than 71% and 60% in the 15<sup>th</sup> and 14<sup>th</sup> Lok Sabha respectively.

## Union Budget Discussion

- 17% of the budget was discussed in the 16<sup>th</sup> Lok Sabha, higher than the previous two Lok Sabhas.
- In budget session 2018-19, 100% of demands were passed without discussion. This also happened in 2004-05 and 2013-14 during the 14<sup>th</sup> and 15<sup>th</sup> Lok Sabha respectively.



## 17. UPSC Previous Years' Questions

Student Notes:

1. Individual Parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcomes. Discuss. (2019)
2. "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. (2017)
3. The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-defection law which was legislated but with a different intention? (2013)
4. Bring out the powers and responsibilities attached to the office of the Speaker of the Lok Sabha. (2010)
5. What are the grounds of disqualification of a Member of Parliament from either House? Quote relevant provisions in your answer. (2010)
6. The 'Powers, Privileges and Immunities of Parliament and its members' as envisaged in Article 105 of the Constitution leave room for a large number of un-enumerated privileges'. How can this problem be addressed? (2014)
7. Discuss the role of Public Accounts Committee in establishing accountability of the government to the people. (2017)
8. The Indian Constitution has provisions for holding joint session of the two Houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reason thereof. (2017)
9. Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee. (2018)
10. Individual Parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcomes. Discuss. (2019)

## 18. Vision IAS Previous Years' Questions

1. *The practice of passing of bills without the scrutiny by the parliamentary standing committees undermines their significance and sets a wrong precedent. Discuss.*

### Approach:

- Define parliamentary standing committees and mention the instances/data of passing of bills without the scrutiny by the parliamentary standing committees recently.
- Explain the implications of passing of bills without the scrutiny by the parliamentary standing committees.
- Conclude accordingly.

### Answer:

Parliamentary standing committees are permanent committees appointed or elected by the House or nominated by the Speaker/Chairman. They present their report to the Houses; thereby assist the working of the Parliament in its various activities. Some of them are Public Accounts Committee, Estimates Committee, Committee on Public Sector Undertakings, Departmental Standing Committees etc.

Despite their significance, only 25% of the bills introduced were referred to the Committees in the 16th Lok Sabha, as compared to 71% and 60% in the 15th and 14th Lok Sabha respectively. In the first session of the 17th Lok Sabha, 14 bills were passed and none were scrutinised by any Parliamentary Committee. Important bills like the RTI amendment Bill 2019, UAPA bill 2019 etc. were passed without their scrutiny and critical analysis by the Standing Committees.

### **Implications of passing bills without going through the Parliamentary Committees:**

Student Notes:

- It restricts the ability of the Parliament to scrutinize government policies and make the government less accountable due to lack of an informed debate.
- In the absence of scrutiny by the Standing Committees, **legislations passed may not become holistic and farsighted**. Further, such laws may require frequent amendments, which delay the process and defeat the purpose.
- It diminishes the role of the Opposition whose members are part of the Parliamentary Committees.
- It complements other actions such as frequent use of guillotine, ordinances, which try to evade scrutiny of the Legislature.
- It reduces engagement with relevant stakeholders as the Committees act as links between the Parliament and the people on the one hand, and the administration and the Parliament on the other.
- It bypasses the non-partisan functioning of the Committees whose meetings are held behind closed doors and members are not bound by party whips, which allow them to have meaningful exchange of views.
- It dithers financial prudence as the Committees ensure economy and efficiency in public expenditure because the ministries/ departments are more careful while formulating their demands.

It sets a wrong precedent as it is against the constitutional mandate of Legislative oversight over the Executive. It is imperative to adopt the recommendations of the National Commission to Review the Working of the Constitution, 2002 of referring all bills to the Committees, longer tenure for its members and strengthening the Committees with adequate research support.

## **2. How is structure and electoral process of Rajya Sabha different from Lok Sabha? Do you think Rajya Sabha has been able to perform its envisaged role in recent times?**

### **Approach:**

- Introduce in brief about Rajya Sabha and Lok Sabha.
- Differentiate between the structure and electoral process of Rajya Sabha and Lok Sabha.
- Discuss with the help of appropriate examples, whether Rajya Sabha has been able to provide the necessary checks and balances in recent times or not.
- Conclude on the basis of the above points.

### **Answer:**

The Indian Parliament comprises of the President and two Houses i.e. the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Though both the Houses together form the supreme legislative body in India, they present some structural and electoral differences, such as:

#### **Structural differences:**

	LOK SABHA (LS)	RAJYA SABHA (RS)
<b>STRENGTH</b>	<ul style="list-style-type: none"> <li>As per Article 81, maximum strength of LS can be 552. Out of this, 530 have to be elected from the States, 20 from UTs and 2 are to be nominated by the President from the Anglo-</li> </ul>	<ul style="list-style-type: none"> <li>As per Article 80, maximum strength of RS can be of 250. Out of which, 238 members are to be elected from the States and UTs and 12 are nominated by the President.</li> </ul>

	<p>Indian community.</p> <ul style="list-style-type: none"> <li><b>Present Strength:</b> 545, out of which 530 are representatives of States, and 13 from UTs, while 2 Anglo-Indians are nominated.</li> </ul>	<ul style="list-style-type: none"> <li><b>Present Strength:</b> 245, out of which 233 are representatives of States and UTs of Delhi and Puducherry, while 12 are nominated.</li> </ul>
<b>PRESIDING OFFICERS</b>	The Speaker of the LS is elected from amongst its members.	The Vice President of India is the ex-officio Chairman of the RS.
<b>TENURE</b>	<ul style="list-style-type: none"> <li>The normal life of the LS is <b>five years only</b>.</li> <li>It <b>can be dissolved</b> by the President even before completion of its term.</li> </ul>	<ul style="list-style-type: none"> <li>It is a continuing chamber where <b>one third of the members retire</b> every second year.</li> <li>It is a <b>permanent body</b> and is not subject to dissolution.</li> </ul>

Student Notes:

#### Electoral differences:

	<b>LOK SABHA</b>	<b>RAJYA SABHA</b>
<b>MODE OF ELECTION</b>	Members are <b>directly elected</b> by the people from territorial constituencies.	Members are <b>indirectly elected</b> by the elected members of the state legislative assemblies.
<b>ELECTION PRINCIPLE</b>	Universal Adult Franchise and First Past The Post system ( <b>FPTP</b> ).	Proportional Representation ( <b>PR</b> ) by means of a single transferable vote.
<b>QUALIFICATION</b>	The candidate must not be less than <b>25 years of age</b>	The candidate must not be less than <b>30 years of age</b> .
<b>RESERVATION OF SEATS</b>	Article 334 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in LS.	There is <b>no reservation</b> for SCs and STs in RS.
<b>REPRESENTATION OF UTs</b>	All UTs get representation as per their population.	Only UTs with Legislative Assemblies get representation. Therefore, only Delhi and Puducherry send their representatives to RS.

#### Assessment of the effectiveness of the Rajya Sabha in recent times:

- Several **important bills** such as Rights of Transgender Persons Bill, 2014 and Jammu and Kashmir Reorganisation Bill, 2019 originated in the RS and later became Acts.
- In the absence of strong opposition in the Lok Sabha since 2014 elections, the RS has played an important role in keeping a **check over arbitrary or hurriedly passage of the bills** by the LS e.g. the Citizenship (Amendment) Bill 2014.

- As a **House for sobriety and second thought**, the RS has served an important role in preserving the federal structure and protection of the interests of the states. For instance: during the passage of the GST Bill.
- Since Rajya Sabha **has limited power over money bill**, important bills such as the Aadhar Bill, 2016 was introduced in the Parliament as a money bill. Similarly, it does not have power to discuss Budget or pass a no confidence motion.
- Some bills like that of Prevention of Terrorism Bill, 2002 was defeated in RS, but was passed in a **joint session** as the RS lacks adequate numbers in a joint session.
- Being a council of states, it is envisaged to uphold the interests of the states, but due to **coalition politics**, the interests of parties take precedence over the interests of the States.
- Rajya Sabha has also been used as a **back door entry for defeated candidates** in general elections. Besides, low attendance of members also affects the effectiveness of the House.

It may seem that RS has less powers vis-à-vis the LS. However, the role of the RS is still important. It is not only a House for second thought but is also a representative of the states' interests. While playing the role of a watchdog, the RS must assert itself as a House of correction to improve the legislations passed by the LS.

**3. The crucial position accorded to the Speaker in Indian legislatures, makes it imperative to protect them from undue political pressures and incentives. Examine.**

**Approach:**

- Introduce by highlighting the position of the Speaker in Indian Legislature.
- Discuss the instances in our polity where the Speaker of the Assembly has precipitated a political crisis by seemingly political decisions.
- Discuss the provisions and measures that can help to protect the Speaker from undue political pressures and incentives.
- Conclude on the basis of above points.

**Answer:**

The office of the Speaker occupies a pivotal position in our parliamentary democracy. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy. The crucial position of speaker can be understood from the following points:

- The Speaker of the Lok Sabha conducts the business in house; and decides whether a bill is a money bill or not.
- They maintain discipline and decorum in the house and can punish a member for their unruly behaviour by suspending them.
- They also permit the moving of various kinds of motions and resolutions such as a motion of no confidence, motion of adjournment, motion of censure and calling attention notice as per the rules.
- The power to disqualify an MP or MLA under anti-defection law lies with the presiding officer of houses and assemblies.

In view of these, there are many safeguards in the Constitution such as security of tenure, salaries charged on Consolidated Fund of India, discussing their conduct only on substantive motion etc. to protect the office of Speaker from undue political pressure.

Though the Constitution envisages the Speaker as a neutral position but there have been numerous instances in our polity where the action of Speaker has raised concerns.

For example:

Student Notes:

- Sixteen MLAs from the ruling party in the Arunachal Pradesh Assembly and nine MLAs in Uttarakhand Assembly were disqualified by the Speaker, in 2016 despite not officially leaving the party or defying its directives, etc.
- Controversies regarding declaration of Aadhar Bill, 2016 as money bill by the speaker.

Thus, more steps are required in addition to the existing safeguards. For instance:

- Power to decide upon the question of disqualification can be entrusted to Election Commission of India.
- After getting elected as Speaker, he/she must resign from the party membership as practiced in matured democracies like UK. Also, his constituency should go uncontested in the next general election.
- Democratic conventions must be evolved through political consensus in order to ensure non-partisan actions by speaker.

**4. *What are the grounds for disqualification of members of legislatures under the Tenth Schedule of Indian Constitution? Analyse the merits and demerits of having such provisions in a parliamentary democracy like India.***

**Approach:**

- In the introduction, briefly, describe and write about the 10<sup>th</sup> schedule.
- Mention the ground for disqualification provided under the Tenth Schedule of Indian Constitution.
- Enumerate the merits and demerits of Anti-Defection Law and give arguments for and against these provisions.
- Suggest the way forward in the conclusion.

**Answer:**

The Tenth Schedule, which is popularly known as the Anti-defection Law, was added to the Constitution through the 52<sup>nd</sup> Constitutional Amendment Act, 1985. The law provides the following grounds for disqualification:

- Member of Parliament or State Legislature belonging to a political party is deemed to have defected if:
  - He either voluntarily resigns or gives up the membership of his political party, or
  - He disobeys the directives of the party leadership on a vote or abstains from voting without taking prior permission within 15 days from such voting or abstention.
- An independent candidate joins the party after the election.
- A nominated member joins a party six months after becoming an MP/MLA.

Over a period of time, the Anti-defection Law has been exposed to different situations, which have highlighted both its merits and demerits.

**Merits**

- It seeks to protect and provide stability in the government by disqualifying defecting legislators.
- It promotes discipline in the party and ensures that members elected with party support, and on the basis of party manifestoes, remain loyal to the party policies.

- Defection amounts to breach of trust of people, and the Anti-defection Law safeguards this trust.

Student Notes:

#### **Demerits**

- The Act reduces the accountability of the government to the Parliament and the people by preventing members of the House from changing the party.
- It restrains the basic freedom of speech and expression of the parliamentarians and reduces them from thinking lawmakers to mere numbers required for passing a Bill.
- The decision of presiding officer (PO) as final has also been problematic in the past. However, in the Kihoto Hollohan vs. Zachillhu case, the Supreme Court held that the decision of PO is subject to judicial review.

Thus, the need of the hour is to strengthen the Law by creating mechanisms for greater inner-party democracy, limiting the usage of whips and referring the anti-defection cases to president/governor. Also, we need to create a disincentive for political parties from accepting defecting legislators in their fold.

5. ***Vast powers have been vested in the office of the Speaker to strengthen the democratic institutions of the parliamentary system, and not to stifle dissent or protest in the House. Comment in the context of India.***

#### **Approach:**

- Briefly give an overview of the office of speaker
- Powers and privileges of speaker that strengthens parliamentary system
- Some contentions with respect to the office along with examples
- Suggestions and way ahead

#### **Answer:**

The Speaker of Lok Sabha or State Legislative Assembly is elected from amongst its members. He is guardian of powers and privileges of the members, the House as a whole and its committees.

- Maintains order and decorum in the House for conducting its business and regulating its proceedings. Maintaining impartiality of the office, he ensures that ample time is given to Parliament as a whole and opposition in particular to ensure accountability.
- Adjourns the House and suspends the meeting in absence of quorum.
- Decides whether a bill is money bill or not and his decision on this is final.
- Decides on the question of disqualification of a member arising on the ground of defection (although not outside the purview of Judicial review –Kihoto Hollohan Case 1992).
- Appoints the chairman of all Parliamentary Committees of Lok Sabha and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

However in recent times, the office of Speaker has been criticised for not being as impartial or effective as had been envisaged:

- Speaker of Uttarakhand Assembly decided on a case of defection while a notice of resolution for his own removal from the office is pending. Supreme Court had to intervene and observed that Speaker should refrain in such cases.

- Supreme Court has accepted a plea with respect to the Speaker's approval of Aadhaar Bill, 2016 as a Money Bill. It is argued that declaring a bill which includes larger concerns like that of privacy, data protection etc. should also involve Rajya Sabha to have a meaningful debate.
- Parliamentary logjam has been a consistent scene on the floor of parliament whereby Speaker have been unable to facilitate a smooth functioning and accused of bias.

Student Notes:

Our constitutional maker envisaged integrity and impartiality from the office. But it has been progressively eclipsed by political interests and made subservient to needs of ruling party. Judicial review is also used in exceptional circumstances. We need a permanent institutional solution. UK's model of appointing a committee of two senior legislators to assist the speaker over question of money bill is a case to consider. In UK, a parliamentary convention has developed, where an MP elected as Speaker, resigns from respective party. This lends credence to his impartiality.

Both, government and opposition need to cooperate so that parliament can function smoothly and speaker is not put into difficult situations too often. Also, Speaker needs to keep in mind the democratic ethos while presiding over esteemed office and his actions must appear to be objective and neutral as "Justice should not only be done, it must also be seen to be done".

#### **6. Elaborate the process of legislation in the Indian Parliament for an ordinary bill. How is a money bill different from an ordinary bill?**

**Approach:**

- Explain the process of passage of an ordinary bill.
- Then discuss the difference between money bill and ordinary bill.

**Answer:**

The primary function of legislatures is to make laws for its people. In Indian Parliament, a definite procedure is followed in the process of making law. For Ordinary bill, the process of legislation involves the following five stages:

**1. First Reading:** The ordinary bill can be introduced in either house by a minister/other member. Upon grant of leave by house, the member reads the title and objectives, but no discussion happens on this bill at this stage. Following this, bill is published in gazette.

**2. Second Reading:** At this stage, the detailed scrutiny of bill happens and the bill takes the full shape. It has 3 sub stages:

- Stage of general discussion
- Committee stage
- Consideration stage

Clause by clause scrutiny of the bill is carried out, clauses voted upon and amendments moved.

**3. Third Reading:** No amendments are allowed anymore and either bill is completely accepted or rejected. If majority accepts, it is passed and transmitted to second house.

**4. In Second house:** Bill goes through all 3 stages and may be:

- passed
- passed with amendments
- rejected

- no action up to 6 months
5. **Provision of joint sitting:** In case of deadlock between the house over passing of bill emerges, the President can summon a joint sitting of Lok Sabha and Rajya Sabha. The members of both houses vote jointly and the bill passes by simple majority.
6. **Assent of President:** After the bill is passed from both the houses, it is presented to the office of President for assent. The President can exercise any of the following options:
- Assent
  - Withhold assent
  - Return bill for reconsideration

If assent is given, it becomes an act and is placed on statute book.

#### Differences b/w ordinary and money bill:

	<b>Ordinary Bill</b>	<b>Money Bill</b>
1.	Can be introduced in either Lok Sabha or Rajya Sabha	Can only be introduced in Lok Sabha
2.	Can be introduced by either minister or member	Introduction only by minister
3.	Can be introduced w/o President's recommendation	Can be introduced only with President's recommendation
4.	Can be amended/rejected by RS	Rajya Sabha can only return the bill
5.	RS can only detain bill for 6 months	RS can detain bill for max 14 days
6.	Does not require certification of speaker when transmitted to RS	Requires Speaker's certification
7.	Sent for President's assent if passed by both houses. In case of deadlock, joint sitting can be summoned	Can be sent for president's assent even if approved only by LS. No provision for joint sitting
8.	Its defeat in LS may lead to resignation of government	Defeat in LS leads to resignation of govt.
9.	Can be rejected, approved or returned for reconsideration by President	Can be rejected or approved but cannot be returned by President

7. **Privileges should be defined and delimited for the free and independent functioning of the legislatures. In this context, discuss whether there is a need to re-examine the balance between fundamental rights and parliamentary privileges in India.**

#### Approach:

- Define Parliamentary privileges in brief.
- Discuss the pros and cons of delimiting and defining privileges to balance them with Fundamental Rights.
- Give a suitable conclusion.

#### Answer:

Parliamentary privilege refers to rights and immunities enjoyed by Parliament as an institution and MPs in their individual capacity, without which they cannot discharge their functions as entrusted upon them by the Constitution.

According to Article 105, the powers, privileges and immunities of Parliament and MPs are to be defined by the Parliament. No law has so far been enacted in this respect. In

the absence of any such law, it continues to be governed by British Parliamentary conventions.

Student Notes:

Parliamentary privileges can be used as a tool against critics – the civil society and the media. This endangers the fundamental right to speech and expression of these institutions and the public. It can be corroborated from a recent incident in Karnataka, where journalists were sent to jail for breach of privileges.

There exists compelling reasons to clearly define and delimit parliamentary privileges to balance it with Fundamental Rights, because of the following reasons:

- To remove their vagueness, uncertainty and inscrutability.
- These Privileges may be misused to hide misdeeds like corruption and may have far-reaching implications for a clean public life. For example, in 1998, a constitutional bench of Supreme Court in P.V. Narasimha Rao vs. CBI held that bribe takers who had taken bribes and voted against the no-confidence motion were immune from prosecution; but the bribe givers have no such immunity.
- It raises the issue of conflict of interest as it allows parliamentarians to become judges in their own cause and thus violates the principle of fair trial.

#### **However there are some concerns:**

- The codification of privileges would make the privileges subject to fundamental rights and hence, to judicial scrutiny and evolution of new privileges would become difficult.
- The codification at the present moment would leave no space for future adjustment when a new situation may arrive.
- Legislators also argue that codification of privileges may harm the sovereignty of the Parliament.

#### **Way Forward**

The privileges should no more be allowed to remain uncertain and vague; privilege must be invoked in rare circumstances to prevent real obstruction in legislative functioning and not in a way that sets law makers above ordinary comment and criticism. Parliament has a duty to look carefully before making any law, so that it doesn't harm other's rights and uphold the Constitution ethos in true spirit.

8. ***The Departmentally-Related Standing Committees have been referred to as mini-parliaments in India. Highlight their relevance in a democratic polity and discuss, with examples, how they improve the overall effectiveness of the Parliament.***

#### **Approach:**

- Start your answer with brief introduction about Departmentally-Related Standing Committees.
- Write about their relevance and contribution in democratic process.
- Conclude your answer with few shortcomings and suggestions to improve their efficiency.

#### **Answer:**

A full-fledged system of 24 Departmentally Related Standing Committees (DRSC) covers under their jurisdiction all the Ministries/ Departments of the Government of India. It is a path-breaking endeavour of the Parliamentary surveillance over administration.

**Relevance in a democratic polity:**

- Parliament as a whole can't go into details of each bill or grant due to its huge size and paucity of time. This is facilitated by DRSCs. They perform legislative role consisting of parliamentarians. Hence, called mini-parliaments.
- Imparts legitimacy to Indian democracy as the functionaries of committee are elected representatives.
- Effective in obtaining public feedback and building political consensus on contentious issues.
- Has important functions like -Consideration of Demands for Grants; Examination of Bills referred to by the Chairman, Rajya Sabha or the Speaker, Lok Sabha; Consideration of Annual Reports; Consideration of national basic long term policy documents presented to the House and referred to it.

**Improving overall effectiveness:**

- Function throughout the year and in a way so as to compensate for Parliamentary time crunch. It makes parliamentary control over executive much more detailed, close, continuous, in-depth and comprehensive.
- Usually invites experts while scrutinising Bills.
- Devoid of any political positioning/populist opinion.
- Mandatory scrutiny of bills by committees ensures better planning of legislative business. For example, DRSC on Commerce provided useful insights for 'ease of doing business'.
- Each DRSC focuses on a set of ministries and, therefore, helps its members build sector knowledge.

However, DRSCs don't have dedicated subject-wise research support. Also, there are issues relating to the transparency (Committees meet behind closed doors and only the final report is published). Important Constitution Amendment bill to enable the GST was passed by Lok Sabha without reference to the DRSC.

It is important to further strengthen the ability of DRSCs to undertake detailed scrutiny of legislative issues. Reforms would inter-alia include mandatory examination of all Bills, creating research teams, and improving the transparency of input/evidence/submissions to the DRSCs.

- 9. *The Rajya Sabha is merely a secondary house rather than a second house in the Indian Parliamentary system. Critically analyze the statement. Also, compare and contrast the position of the Rajya Sabha vis-à-vis the State legislative councils.***

**Approach:**

- State the reasons why the Rajya Sabha has been deemed as a secondary house in the Indian Parliamentary system.
- List the importance of the Rajya Sabha.
- Compare and contrast the position of the Rajya Sabha and the State Legislative Councils.

**Answer:**

The Indian Constitution provides for a bicameral legislature comprising of the Rajya Sabha (RS), representing Indian states with indirectly elected members and the Lok Sabha (LS) representing Indian people with directly elected members.

The RS has been deemed as a secondary house because:

- It is considered to be a delaying house, which prolongs the bill passing procedure.
- It has an unequal status vis-a-vis LS regarding introduction of money and financial bills and it cannot pass a no-confidence motion.
- It is criticized for being a haven for crony capitalists, party fundraisers, etc. who are more interested in their party agenda than their representative states. Further, domicile requirement has been removed post the verdict in Kuldip Nayyar case (2006).
- RS elections are notorious for alleged poaching by political parties.
- In joint sittings, the will of LS supersedes the apprehensions of RS due to the former's numerical strength.

Student Notes:

However, there are a number of areas in which it enjoys equal powers to that of LS and some in which it enjoys greater powers than LS, making it an important Parliamentary institution.

- It maintains the federal equilibrium as it protects the interests of the states.
- Bills passed hastily in Lok Sabha are intensely scrutinized in the RS.
- It provides for representation of eminent society members via nomination who otherwise may not participate in elections.
- It has equal powers with the LS regarding ordinary bills, constitutional amendment bills and approval of ordinances.
- It has two exclusive powers - to authorize the Parliament to make law on a State list subject (Article 249) and to authorize the Parliament to create new All-India services (Article 312).

#### **Position of the RS vis-à-vis State Legislative Councils (SLCs):**

- RS and SLCs are upper houses in the Parliament and State Legislatures respectively. However, RS is a permanent entity while SLCs are optional entities that can be abolished.
- The RS consists of state representatives and maintains federal equilibrium. The issue of federal significance does not arise in the case of the SLCs.
- SLCs act as dilatory chambers as they can only delay an ordinary bill for maximum four months. The RS has equal power with the LS regarding ordinary bills. Both RS and SLC can delay money bill by 14 days.
- The RS enjoys special power under Articles 299 and 312 that is not available to the SLCs.

**10. *It has been argued that over the years there has been a steady decline in the efficacy of Parliament as an institution of accountability. Analyse and also suggest appropriate measures to address the relevant concerns.***

#### **Approach:**

- Give arguments in support of decline in the efficacy of Parliament.
- Discuss the possible reasons of impaired parliamentary functioning.
- Suggest ways to improve the efficiency of the parliament.
- Conclude with relevance of debate, deliberation and dialogue in a democracy.

#### **Answer:**

The Parliament in India was envisaged as a representative institution playing a key role in social and political unity. Being an elected body, it also has a key position in the structure of governance in India with functions ranging from law making and oversight

of the executive to scrutiny of the budget. However, in recent times there has been a lament about the decline of this body in light of the following factors:

- 50% decrease in average Parliamentary sittings between 1960 (120 days/year) to present (65-70 days/year).
- Loss of productive time and resources due to frequent disruptions.
- Frequent use of ordinances to bypass parliamentary scrutiny.
- Reduced deliberations and time spent on bills and budget.

Student Notes:

#### **Reasons for decline in parliamentary efficacy**

- **Anti-defection law and party-whips:** It disincentivizes active participation of individual MPs as they have to heed to party lines to avoid disqualification.
- **Executive/Government control:** The Government control over the summoning of each house and the legislative business to be deliberated, hinders the envisaged parliamentary control over the executive.
- **Decline in effectiveness of parliamentary committees:** MPs are unable to pay attention to committees as their constituencies make a huge demand on their time. Also, no mechanism exists for regular assessment of performance of committees.
- **Erosion of political ethics and professionalism** because of commercialization and criminalization of politics, and loss of individual integrity.
- **Lack of research staff:** It hinders the ability of legislators to deep-dive into important issues and constructive deliberations in the house.
- **Live telecasts and media attention:** This encourages MPs to take grandstands on issues to grab undue public attention.

#### **Following measures are required to restore the credibility of the Parliament:**

- **Fix minimum number of sittings:** 120 for Lok Sabha, and 100 for Rajya Sabha as was recommended by National Commission to Review the Working of the Constitution.
- **Advanced annual calendar** of the sittings of the house, which is drawn by the Parliament itself, and not at the sole discretion of the executive.
- **Adopt system of shadow cabinet** where opposition MPs can assume portfolios, and hence scrutinize and track the progress in detail.
- **Electoral reforms** to check criminalization, use of money power, and curb the menace of fake news.
- **Responsible opposition**, which invests in constructive debates, and minimal disruptions to promote responsible legislation.
- **Providing a role for the Election commission** in deciding issues such as defection.
- **Strengthening** of committee system.
- Encouraging greater say of the electorate by considering measures such as right to recall.

Parliament as the highest legislative office of India owes its accountability to the ultimate sovereign – the people of India. Constructive debates, deliberations, disputes and dialogue are the soul of Indian democracy, and the parliament needs to be the flag-bearer.

11. *Parliamentary committees increase the efficiency and expertise of Parliament. In this context, examine the role played by public accounts committee and suggest measures to further strengthen it.*

Student Notes:

**Approach:**

- Bring out the role of Parliamentary committees in increasing the efficiency and expertise of Parliament.
- Examine the role played by Public Accounts Committee and suggest measures to further strengthen it further.

**Answer:**

A significant feature of Indian legislative process is the appointment of Parliamentary committees for various legislative purposes. Parliamentary committees play a vital role in increasing the efficiency and expertise of parliament in the following manner:

- **In-depth study of the issue under consideration:** Since the Parliament has very limited time at its disposal, committees are able to give more attention and time to a particular issue.
- **Performing important functions** like studying the demands for grants made by various ministries, looking into expenditure incurred by various departments, investigating cases of corruption etc.
- **Effective Supervision:** Departmentally related standing committees supervise the work of various departments, their budget, their expenditure and bills.
- **Reducing the burden on the Parliament:** Joint Parliamentary Committees (JPCs) can be set up for the purpose of discussing a particular bill or for the purpose of investigating financial irregularities etc.
- **Ironing out ideological and party differences-** Committees provide a forum to build consensus across party lines, help develop expertise in subjects and enable consultation with independent experts and stakeholders, thus streamlining the decision making process.

**Role played by Parliamentary Accounts Committee (PAC)**

- PAC maintains parliamentary oversight over finances of the government. Its main mandate is to examine the audit reports submitted by the Comptroller and Auditor General (CAG) of India.
- PAC brings to the notice instances of unauthorized expenditures or expenditures beyond sanctioned limits. Functions extend “beyond the formality of expenditure to its wisdom, faithfulness and economy”.
- It also examines cases related to under-assessments, tax-evasion, non-levy of duties, misclassifications etc., identifies the loopholes in the taxation laws and makes recommendations in order to check leakage of revenue.

However, currently the Committee faces challenges such as lack of adequate strength, lack of technical expertise, no investigative powers and it cannot act suo-motu until the CAG audit reports are presented to it,

Following measures will strengthen it further and aid it in effectively checking the wrongdoings on the part of Executive-

- Stipulate a time limit within which CAG audit reports should be presented to the Parliament.
- Time limit should be fixed for government departments to submit Action Taken Report.
- PAC should have suo-motu powers of investigations.

- Sufficient technical assistance should be provided to them through Lok Sabha or Rajya Sabha Secretariats.
- Testimony of witnesses should be made public either by telecasting it or allowing the Press or by making the transcript of testimony public.
- Minutes of meeting of the PAC should be made public.

Student Notes:

- 12. List the parliamentary mechanisms available for the scrutiny of regulators. Also, discuss major steps through which parliamentary oversight of regulators can be strengthened.**

**Approach:**

- Give a brief introduction about and the need for scrutiny of regulators.
- Enlist some of the parliamentary mechanisms available for the scrutiny of regulators.
- Suggest as to how parliamentary oversight of regulators can be strengthened.

**Answer:**

Legislative oversight of regulators is considered necessary for ensuring regulatory independence, preventing arbitrary action by the government officials and as well as implementation of regulations consistent with government policies. In India, parliamentary scrutiny of the regulators takes place through the following means:

- **Question Hour:** Every regulator falls within the administrative domain of a government department. During question hour, MPs can ask questions to scrutinize the functioning of ministries and the regulators related to their departments.
- **Discussions:** Parliament may take up the role of regulators for debate under different Rules of Procedure of Parliament (such as half-hour discussions and discussions under Rule 193 in the Lok Sabha).
- **Department related Standing Committees:** There are 24 Department Related Standing Committees that comprise members from both Houses of Parliament. These committees are Ministry specific, and may review the working of regulators falling within their respective departments.
- **Finance Committees:** The Committee on Estimates reviews budgetary estimates of regulators. The annual audit reports on the accounts of the regulators are tabled before Parliament and reviewed by the Public Accounts Committee (PAC). The PAC may require the regulator's officers to depose before the Committee.
- **Ad-hoc Committees:** Parliament may establish ad-hoc committees which may examine the working of regulators.

At the same time, following major steps should be taken up for strengthening the parliamentary oversight of regulators:

- The 2nd administrative reforms committee (ARC) recommends that once in five years, a body of reputed experts should be constituted to **propose guidelines for the evaluation** of the regulator for the next five years based on which principles can be finalized to hold the regulator accountable.
- 2<sup>nd</sup> ARC also recommends that **annual reports** submitted by the regulators to Parliament should include the **progress on pre-agreed evaluation parameters** and should be discussed in the parliamentary committee.
- Annual report and the committee's discussions with the regulator should be made **widely accessible to the public**.
- **Expert support should be provided to MPs** as effective scrutiny depends on their skill and resources.

- Committees should conduct **periodic review of regulators** as ad-hoc scrutiny of the regulator is not adequate for effective oversight.

Student Notes:

- 13. *Parliamentary scrutiny over public finance is an important aspect of governmental accountability. In this context, discuss the role, importance and challenges in establishing a Parliamentary Budget Office (PBO) for effective oversight of budgetary process.***

**Approach:**

- Briefly discuss the role of parliament in scrutiny over public finance and its effectiveness.
- Mention the role and significance of a Parliamentary Budget Office (PBO) in effective oversight of budgetary process.
- Discuss the challenges to be faced in establishing a PBO.

**Answer:**

In a parliamentary democracy, legislature plays a crucial role in scrutiny of public finance. MPs, through debates, discussions and voting on motions, hold the government accountable for the money that it spends from the public exchequer. Constitutional bodies like CAG and parliamentary committees like the PAC maintain a close oversight on manner of government spending.

However, due to lack of resources such as time, detailed information and expertise on financial/economic matters with individual members, it becomes difficult to hold the government accountable to higher standards. As such, many times it has been felt that spending by the government has been inefficient and ineffective, if not profligate or politically expedient. In this light, a need has been felt for an independent and impartial body that provides technical and objective analysis of Budgets and public finance to the House and its committees.

**Role:**

Specifically, the functions of PBOs can be different in different countries. Generally, the following features are found:

- Independent and objective economic forecasts;
- Baseline estimate survey;
- Analyzing the executive's Budget proposals and their costs-benefits; and
- Providing medium- to long-term analysis.

Costing is a standard practice for many PBOs. Budgets generally start with an economic forecast. A PBO can present either its own independent forecast or it can validate the government's, providing an objective analysis on the official forecast. A PBO is very different from research wings or Finance Committees or Public Accounts Committee (PAC). It is comprised of independent and specialized staff such as Budget analysts, economists, public finance experts.

Also, it must be non-partisan, independent and mandated to serve all parliamentarians including treasury bench and opposition.

**Significance:**

PBOs provide legislators with high-quality analysis that is independent of the executive. They specialize in objective and policy neutral analysis on the full budget cycle, the broad fiscal challenges facing the government, budgetary trade-offs and the financial implications of legislative proposals. Such research can raise the quality of debate and

scrutiny in Parliament as well as enhance fiscal discipline. Most importantly, it strengthens the role of Parliament in financial oversight.

Student Notes:

#### **Challenges:**

The key challenges faced by any country that establishes a PBO are threefold—Guaranteeing independence and viability of the office in the long-run, ability to carry out truly independent analysis and demonstrating impact. However, political will and public support would help overcome these challenges.

Going forward, it will be important to understand that a PBO can only provide independent research; it cannot prevent executives from taking bad fiscal decisions.

14. ***Parliamentary privileges are not always used for the aims they were intended to serve. In this context, discuss the need for codification of these privileges in light of recent developments.***

#### **Approach:**

- Define Parliamentary Privileges.
- Discuss the rationale behind parliamentary privileges.
- Highlight the misuse of parliamentary privileges.
- Discuss the case for codification of the same & conclude.

#### **Answer:**

Parliamentary privilege is the sum of certain rights, immunities and exemptions enjoyed by each House collectively, and by the members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.

Articles 105 and 194 clearly lay down that the power, privileges and immunities of the legislature shall be as may from time to time be defined by the legislature, and until so defined, shall be those of the House of Commons.

Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.

Legislative privileges are provided so that legislatures can discharge their duties without fear and favor and without external interference. These sections protect the freedom of speech of parliamentarians and legislators; insulate them against litigation over matters that occur in these houses.

However, these sections have been prone to misuse. For e.g. In 2003, the Tamil Nadu assembly Speaker directed the arrest of five journalists for publishing articles critical of the AIADMK government. In 2017, the Karnataka assembly Speaker ordered the imprisonment of two journalists for a year based on recommendations in two separate reports of its privilege committees.

Thus, there is a felt need for codification of these parliamentary privileges because of following reasons:

- **Too wide powers:** Our legislators have the power to be the sole judges to decide what their privileges are, what constitutes their breach, and what punishment is to

- be awarded in case of breach. It is too wide a power, which clearly impinges on constitutionalism, i.e. the idea of limited powers.
- **Increased misuse:** There have been increasing instances of the misuse of the privileges by legislatures in India. Though constitution makers have left the space for the codification of the privileges, there have been no such steps taken by the parliament thereafter. This has left vagueness and ambiguity in the privileges, making them prone to misuse.
  - **Lack of counterparts in other democracies:** The U.S. House of Representatives has been working smoothly without any penal powers for well over two centuries. Australia too codified privileges in 1987. In fact, the British House has itself broken from the past. Acts and utterances defamatory of Parliament or its members are no more treated as privilege questions.

Further codification would enhance accountability of legislatures as once the privileges are embodied in the legislature enactment, it would be open to judicial scrutiny and would be tested on the touchstone of its consistency with constitutionalism. Also, the argument that codification of privileges will harm the sovereignty of Parliament does not stand as by sovereignty, we mean 'popular sovereignty' and not 'parliamentary sovereignty'.

The constitution review commission headed by Justice M.N. Venkatachaliah had also recommended that privileges should be defined and delimited for the free and independent functioning of the legislatures. Holding freedom of speech subject to legislative privileges is not in tune with modern notions of human rights. The balance between fundamental rights and parliamentary privilege must be re-examined.

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# STATE LEGISLATURE

Student Notes:

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# 1. State Legislature

Student Notes:

## 1.1. Constitutional Status

- India is a federal state, with a parliamentary form of government comprised of legislatures at the Union and State levels.
- Articles 168 to 212 in Part VI of the Constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

## 1.2. Organization

- Based on the number of houses, a state legislature can either be Unicameral or Bicameral. Bicameral legislature means that the legislature has two Houses – an upper and a lower apart from the governor. The legislative council (Vidhan Parishad) is the Upper House while the legislative assembly (Vidhan Sabha) is the Lower House.
- Montagu – Chelmsford Reforms introduced Bicameralism in India at the centre. Later, Govt. of India Act 1935 extended it to 6 out of 11 provinces namely Bengal, Bombay, Madras, Bihar, Assam and the United Provinces.
- The Constitution has given the States the option of establishing either a unicameral or bicameral legislature. At present only six States have a bicameral legislature – Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana and Uttar Pradesh.

### 1.2.1. Creation and abolition of Second Chambers in States

- This involves a simple procedure, which does not involve amendment of the constitution. Under the Article 169 of the Indian Constitution, the legislative assembly of the concerned state can pass a resolution with special majority (that is, a majority of the total membership of the Assembly not being less than two-thirds of the members actually present and voting). Accordingly, Parliament may by law provide for the creation or abolition of the Legislative Council of the State.
- In January 2020, Andhra Pradesh Legislative Assembly passed the resolution for abolition of the Legislative Council. This resolution is yet to be cleared by the Parliament of India to finally abolish the council.

## 1.3. Composition of Two Houses

	Legislative Assembly	Legislative Council
Permissible No. of Members	From 60 to 500 (depending on population) <u>Exceptions:</u> Goa, Arunachal Pradesh and Sikkim- 30 (min) Mizoram (40), Nagaland (46)	40- $\frac{1}{3}$ rd of the total strength of Legislative Assembly
Election of members	Election by people on the basis of universal adult franchise	$\frac{1}{3}$ rd are elected by the members of local bodies in the state, like municipalities, district boards, etc. $\frac{1}{3}$ rd are elected by the members of the Legislative Assembly of the state from among the members who are not the members of the Assembly. $\frac{1}{12}$ th are elected by graduates of three years standing and residing within the state. $\frac{1}{12}$ th are elected by teachers of three years standing in the state, not lower in standard than secondary school.
Governor's Nominations	1 member of Anglo Indian Community	$\frac{1}{6}$ th of the total strength

<b>Duration</b>	Normal term- 5 years However, governor can dissolve the assembly at any time. Can be extended one year at a time during emergency by a law of Parliament.	LC is a continuing chamber (like Rajya Sabha), not subject to dissolution. 1/3 <sup>rd</sup> of members retire every second year. Hence, the tenure of a member is six years	Student Notes:
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## 1.4. Membership of State Legislature

### 1.4.1. Qualifications

The Constitution lays down the following qualifications for a person to be chosen as a member of the State Legislature:

- He must be a citizen of India.
- He must make and subscribe to an oath or affirmation before the person authorized by the Election Commission for this purpose. In his oath or affirmation, he swears
  - To bear true faith and allegiance to the Constitution of India
  - To uphold the sovereignty and integrity of India
- He should not be less than 25 years of age in case of the Legislative Assembly and not less than 30 years of age in case of the Legislative Council.
- He must possess other qualification prescribed by the Parliament.

The Parliament has laid down following additional qualifications in the Representation of People Act (1951):

- To be elected to the Legislative Council, a person must be an elector for an assembly constituency in the concerned state and to be qualified for a Governor's nomination, he must be a resident in the concerned state.
- To be elected to the Legislative Assembly, a person must be an elector for an assembly constituency in the concerned state.
- A person must be an SC or ST if wants to contest a seat reserved for SCs or STs respectively.

### 1.4.2. Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

- a) if he holds any office of profit under the Union or state government.
- b) if he is of unsound mind and stands so declared by a 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
- e) if he is so disqualified under any law made by Parliament.

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. (**Please refer to Union Legislature notes**)

#### Disqualification on the grounds of Defection

The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule.

The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor). In 1992, the Supreme Court ruled that the decision of Chairman/Speaker in this regard is subject to judicial review

### 1.4.3. Vacation of Seats

Student Notes:

In the following cases, a member of the state legislature vacates his seat:

- **Double Membership:** A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.
- **Disqualification:** If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- **Resignation:** A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.
- **Absence:** A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- **Other Cases:** A member has to vacate his seat in the either House of state legislature,
  - if his election is declared void by the court,
  - if he is expelled by the House,
  - if he is elected to the office of president or office of vice-president, and
  - If he is appointed to the office of governor of a state.

## 1.5. Presiding Officers of State Legislature

### 1.5.1. Speaker of the Assembly

The Assembly elects the Speaker from amongst its members. Usually, the Speaker remains in office during the life of the Assembly. However, he vacates his office earlier in the following cases:

- If he ceases to be a member of the Assembly.
- If he resigns by writing to the Deputy Speaker.
- If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can only be moved after giving 14 days advance notice.

The powers of the Speaker of Legislative Assembly are similar to those of the Lok Sabha.

### 1.5.2. Deputy Speaker of Assembly

The Deputy Speaker is also directly elected by the Assembly from amongst its members. He is elected after the election of Speaker has taken place. Usually, he remains in office during the life of the Assembly. However, he vacates his office earlier in the following cases:

- If he ceases to be a member of the Assembly.
- If he resigns by writing to the Speaker.
- If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can only be moved after giving 14 days advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of the assembly. In both cases, he has all the powers of the Speaker.

The Speaker also nominates from amongst the members a panel of Chairpersons. Any one of them can preside over the Assembly in the absence of the Speaker and the Deputy Speaker. He has same powers as that of the Speaker while presiding.

### 1.5.3. Chairman of Council

The Legislative Council elects the Chairman from amongst its members. He vacates his office in the following cases:

- If he ceases to be a member of the Council.
- If he resigns by writing to the Deputy Chairman.

- If he is removed by a resolution passed by a majority of all the then members of the Council. Such a resolution can only be moved after giving 14 days advance notice.

Student Notes:

The powers of the Chairman are similar to those of the Speaker **except that the Speaker decides whether a Bill is a Money Bill or not**. As in case of Speaker, the salaries and allowances are fixed by state legislature and are charged on the Consolidated Fund of the State and not subject to annual vote.

#### **1.5.4. Deputy Chairman of Council**

The Legislative Council elects the Chairman from amongst its members. He vacates his office in the following cases:

- If he ceases to be a member of the Council.
- If he resigns by writing to the Chairman.
- If he is removed by a resolution passed by a majority of all the then members of the Council. Such a resolution can only be moved after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He also acts as the Chairman when the latter is absent from the sitting of the assembly. In both cases, he has all the powers of the Chairman.

The Chairman also nominates from amongst the members a panel of Vice-Chairpersons. Any one of them can preside over the Council in the absence of the Chairman and the Deputy Chairman. He has same powers as that of the Chairman while presiding.

### **1.6. Conduct of Business**

#### **1.6.1. Duration**

##### **1. Duration of Legislative Assembly**

The duration of Legislative Assembly is five years but:

- a. The Governor may dissolve it sooner than five years.
- b. The term of five years may be extended in case of a proclamation of Emergency by the President. In such a case, the Union Parliament has the power to extend the life of Legislative Assembly up to a period not exceeding six months after the proclamation ceases to have effect. However, such an extension shall not exceed one year at a time.

##### **2. Duration of Legislative Council**

The Legislative Council is not subject to dissolution. But  $\frac{1}{3}$ rd of its members retire on the expiry of every second year. Thus it is a permanent body like the Rajya Sabha

#### **1.6.2. Sessions of State Legislature**

The sessions of State Legislature are similar to those of the Union Legislature. For details regarding Summoning, Adjournment, Adjournment *Sine Die*, Prorogation, Dissolution refer to Union Legislature notes.

### **1.7. Legislative Procedure in State Legislature**

The legislative procedure in a State Legislature having two chambers is broadly similar to that in Parliament except for certain differences. These differences are described below.

#### **Comparison of Legislative Procedure in Parliament and a Bicameral State Legislature**

##### **1. With regards to Money Bills**

The position is same in case of Money Bills. The Legislative Council has no power except to make recommendations to the Assembly for amendments or to withhold the Bill for a period of 14 days. However, the will of the assembly prevails and the Assembly is not bound to accept any recommendations of the Council. Thus there cannot be any deadlock between the two Houses with regards to a Money Bill.

## 2. With regards to Bills other than Money Bills

With regards to other Bills also, the Council can only delay a bill for a maximum period of 3 months. If the Council disagrees to such a Bill, it must go through a second journey from the Assembly to the Council. However, in the second journey, the Council has no power to withhold the Bill for more than a month. Thus the Legislative Council of a state is not a revising chamber like Rajya Sabha but only an advisory or dilatory chamber.

## 3. Provisions for resolving a deadlock between the two Houses

Unlike the Parliament, there is no provision of a joint sitting to resolve a deadlock between the two Houses of the State Legislature. In such a scenario, the views of the Assembly shall prevail and the Council can only delay the passage of the Bill by a maximum of 4 months.

### Comparison of Legislative Procedure in Parliament and State Legislature in case of ordinary bills:

	Parliament	State Legislature
1	It can be introduced in either House of Parliament.	It can be introduced in either House of State Legislature.
2	It can be introduced either by a minister or a private member.	It can be introduced either by a minister or a private member.
3	It passes through first reading, second reading and third reading in the originating House.	It passes through first reading, second reading and third reading in the originating House.
4	It is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.	It is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.
5	A deadlock between the two Houses takes place when the second House, after receiving a bill passed by the first House, rejects the bill or proposes amendments that are not acceptable to the first House or does not pass the bill within 6 months.	A deadlock between the two Houses takes place when the Legislative Council, after receiving the bill passed by the Legislative Assembly, rejects the bill or proposes amendments that are not acceptable to the Legislative Assembly or does not pass the bill within 3 months.
6	The Constitution provides for a mechanism to resolve the deadlock between the two Houses.	The Constitution does not provide for the mechanism of joint sitting of two Houses of the State Legislature to resolve a deadlock between the over the passage of the bill.
7	The Lok Sabha cannot override the Rajya Sabha by passing the Bill for the second time and vice versa.	The Legislative Assembly can override the Legislative Council by passing the Bill for second time (Legislative Council does not have such privilege). When a bill is passed by the assembly for the second time and transmitted to the Legislative Council and it rejects the bill again (or proposes amendments that are not acceptable to the assembly or does not pass the bill within one month) then the bill is deemed to have been passed by both Houses.
8	The mechanism of joint sitting in case of a deadlock is available irrespective of the House where the House in which the Bill originates.	The mechanism of passing the bill for the second time to resolve a deadlock applies to a bill originating in the Legislative Assembly only. When a bill, which has originated in the Council and sent to the assembly, and is rejected by the latter, the bill ends and becomes dead.

Student Notes:

## Comparison of Legislative Procedure in Parliament and State Legislature in case of Money bills

Student Notes:

	Parliament	State Legislature
1	It can be introduced only in the Lok Sabha and not in the Rajya Sabha.	It can be introduced only in the Legislative Assembly.
2	It can be introduced only by a minister and not by a private member.	It can be introduced only by a minister and not by a private member.
3	It can be introduced only on the prior recommendation of the President.	It can be introduced only on the recommendation of the Governor.
4	It cannot be rejected or amended by the Rajya Sabha. It should be returned to the Lok Sabha within 14 days, either with or without amendments.	It cannot be amended or rejected by the Legislative Council. It has to be returned to the Legislative Assembly within 14 days with or without amendments.
5	The Lok Sabha can either accept or reject all or any of Rajya Sabha's recommendations.	The Legislative Assembly can either accept or reject all or any of the Legislative Council's recommendations.
6	If the Lok Sabha accepts any recommendation, then the bill is deemed to have been passed in the modified form.	If the Legislative Assembly accepts any recommendation, then the bill is deemed to have been passed in the modified form.
7	If the Lok Sabha does not accept any recommendation, then the bill is deemed to have been passed in the original form.	If the Legislative Assembly does not accept any recommendation, the bill is then deemed to have been passed by both Houses in the original form.
8	If the Rajya Sabha does not return the bill within 14 days then the bill is deemed to have been passed in the original form.	If the Legislative Council does not return the bill within 14 days then the bill is deemed to have been passed in the original form.
9	There is no provision of a joint sitting in case of a deadlock between the two Houses in case of a Money Bill.	There is no provision of a joint sitting in case of a deadlock between the two Houses.
10	The money bill passed by Parliament is presented to the President. He may either give his assent or withhold his assent but cannot return it for reconsideration.	When a money bill is presented to the Governor, he may give his assent, withhold his assent or reserve the bill for Presidential assent but cannot return the bill to the state legislature for reconsideration.  The President can give his assent or withhold assent but cannot return the bill for reconsideration.

### 1.8. Governor's Power of Veto

When a bill is presented before the Governor (after its passage by both Houses of the Legislature), the Governor may take any of the following steps:

1. He may give his assent to the bill. In this case, it will become a law at once.
2. He may withhold his assent to the bill. In this case, the bill fails to become a law.
3. In case of a bill other than a money bill, he may return the bill with a message.
4. He may reserve the bill for the consideration of the President. The reservation is compulsory in case the law in question would diminish the powers of the High Court under

the Constitution. In case of a money bill so reserved, the President may give his assent or withhold his assent.

But in case of a bill other than a money bill, he also has the option to direct the Governor to return the bill to the legislature for reconsideration. In this case, the Legislature must reconsider the bill within six months and if passed again, the bill has to be presented to the President again. But it shall not be obligatory upon the President to give his assent. (Art. 201)

It is clear that a bill, which is reserved for the consideration of the President, shall have no legal effect until the President declares his assent to it. Further, the Constitution imposes no time limit on him to assent (or withhold his assent) to the bill. Consequently, the President can keep a bill of State Legislature pending at his hands for an indefinite period of time.

In addition, when a bill is reserved for President's consideration, he can refer it to the Supreme Court under Art. 143 for its advisory opinion where any doubts as to its constitutionality arise. This is done in order to decide whether to assent to a bill or to withhold assent.

### 1.8.1. Comparison of Veto Powers of Governor and President

President	Governor
May assent to the Bill passed by both Houses of the Parliament.	May assent to the Bill passed by the State Legislature.
May declare that he withholds his assent, in which case the Union Bill fails to become a law.	May declare that he withholds his assent, in which case the Bill fails to become a law.
In case of a Bill other than a Money Bill, he may return it for reconsideration by the Parliament. If the Bill is passed again by the Parliament, with or without amendments, the President has to declare his assent to it.	In case of a Bill other than a Money Bill, he may return it for reconsideration by the State Legislature. If the Bill is passed again by the Legislature, with or without amendments, the Governor has to declare his assent to it.
-Nil-	Instead of either assenting or withholding his assent, the Governor may reserve the Bill for President's consideration
In case of a State Bill reserved for President's consideration, he can take the following steps:	Once the Governor reserves a Bill for the President's consideration, the subsequent enactment of the Bill is in the hands of the President and the Governor plays no part in its career.
1. In case of a Money Bill: He may either declare that he assents to it or withholds his assent to it. 2. Any other Bill: He may (a) declare that he assents to it or withholds his assent to it, or (b) return the Bill to the State Legislature for reconsideration. The state legislature must reconsider the Bill within 6 months. If it is passed again (with or without amendments), it must be presented to the President again directly. But the President is not bound to give his assent, even though the State Legislature has passed the Bill twice.	

Student Notes:

### 1.8.2. Legislative Assembly vs. Legislative Council of a State

It is clear that the position of the Legislative Council vis-à-vis the Legislative Assembly is much weaker than the position of the Rajya Sabha vis-à-vis the Lok Sabha. The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regards to the control over the Government. On the other hand the Legislative Council is subordinate to the Legislative Assembly in the following respects:

- A money bill can be introduced only in assembly and not in council. The council cannot amend or reject the money bill. It should return the bill in 14 days, either with or without recommendations.
- With regards to ordinary Bill also, the Council is subordinate to the Assembly. It can at most cause a delay of 4 months (in two journeys) in the passage of the Bill originating in the Assembly. In case of a disagreement, the will of the Assembly has its way.
- On the other hand, in case of a Bill originating in the Legislative Council, the Assembly has the power of rejecting and putting an end to the Bill forthwith.
- The very existence of Legislative Council depends upon the will of the Legislative Assembly. The latter has the power to pass a resolution for the abolition of the second Chamber by an act of Parliament.
- The Council of Ministers is responsible only to the Legislative Assembly.
- The members of council do not participate in the election of the President of India and representatives of the state in Rajya Sabha.
- The council has no effective say in the constitutional amendment bill. (Interestingly the constitution does not say anything regarding the role of legislative council.)

**The Constitution prescribes lesser importance to Legislative Council of a State compared to the Rajya Sabha because:**

- The Rajya Sabha represents the federal character of the Constitution, so it should have a better status than merely being a dilatory body. Hence, the Constitution provides for a joint sitting in case of a disagreement between the Lok Sabha and Rajya Sabha.
- However the Lok Sabha will ultimately have an upper hand due to its numerical majority. In case of State Legislature, the Constitution of India adopts the English system.
- According to the English system, the Upper House must eventually give way to the Lower House, which represents the will of the people. Under this system, the Upper House has no power to obstruct the Lower House other than to effect some delay. This has been adopted in our Constitution since the question of federal importance of Upper House does not arise in case of State Legislatures.
- The Legislative Council is heterogeneously constituted. It represents different interests of differently elected members and also includes some nominated members. On the other hand, the Rajya Sabha is homogeneously constituted. It represents only the States and most of the members are elected (only 12 out of 250 are nominated).

### 1.8.3. Utility of Second Chamber in States

- It checks **hasty, defective, careless and ill-considered legislation** made by the Assembly by using its dilatory power.
- Due to indirect elections and nomination of persons having special knowledge, the Legislative Council commands better resources to vet and scrutinize legislations. It also gives representation to the people who cannot directly face elections (via nominations).
- 2<sup>nd</sup> ARC suggested that Legislative Council must work as representatives of the Panchayati Raj Institutions and the Constitution may be suitable amended to give the required powers to the council to work for strengthening the local governance.

### 1.9. Criticism of Second Chamber in States

- **Plays Superfluous and obstructive Role:** If a majority of the members in the upper house belong to the same party, which holds majority in the lower house, the upper house will become a mere ditto chamber. If on the other hand, two different parties are holding sway in the two Houses, the upper house will delay the bills for four months unnecessarily.
- **Not an effective check:** Powers of the Legislative Councils are limited to the extent that they can hardly impose any effective check on the Assemblies.

- **Stronghold of vested interests:** It serves as stronghold of vested interests, who are not expected to support progressive legislation. Instead they may block such legislation initiated by popularly elected Legislative Assembly.
- **Backdoor entry of defeated members:** It is utilized to accommodate discredited party-men who may not be able to return to Assemblies through popular votes. The nominated quota placed in the hands of Governor may be used for enabling these defeated leaders to seek nomination to the Council and even their elevation to the Chief Minister ship.
- **Costly institution:** It is a big drain on the State's exchequer. In the Punjab Vidhan Sabha, the Vidhan Parishad was described as a superfluous luxury. In West Bengal also one of the main reasons for its abolition was stated as unnecessary burden on the State exchequer.
- **Utility doubtful:** Critics point out that the very fact that some of the States, such as Punjab, Bihar and West Bengal decided to wind up bicameral legislatures goes to prove that second chambers have doubtful utility. The provision for their abolition in the Constitution itself further confirms that even the Constituent Assembly was doubtful about the utility of these chambers.
- **Heterogeneity:** A blend of direct election, indirect election and nomination makes the Council a hotchpotch of representation. A chamber so heterogeneously constituted, neither serves the purpose of a revisory chamber nor acts as an effective brake against hasty legislation.

## 1.10. Privileges of State Legislature

The privileges of the Union Parliament and State Legislatures are identical according to the constitutional provisions (Arts. 105 and 194). It may be noted that the Constitution has extended the privileges of State Legislature to those persons who are entitled to speak and take part in the proceedings of the state legislature or any of its committees. These include advocate-general of state and state ministers. The following propositions may be noted from the decisions of the Supreme Court:

- Each House of the State Legislature has the power to punish for breach of its privileges or for contempt.
- Each House is the sole judge of the question whether its privileges have been infringed. The courts have no jurisdiction to interfere with the decision of the House on this point.
- However, the Court can interfere if the Legislature or its duly authorized officer is seeking to assert a privilege not known to the law of the Parliament, or if the notice issued or the action taken was without jurisdiction.
- No House of the Legislature had the power to create for itself any new privilege not known to the law. The Courts possess the power to determine whether the House in fact possesses a particular privilege.
- It is also competent for the High Court to entertain a petition for habeas corpus under Art. 226 (or the Supreme Court under Art. 32) challenging the legality of sentence imposed by a Legislature for contempt. This can be done on the ground that it has violated a fundamental right of the petitioner. The Court can release the prisoner on bail, pending disposal of that petition.
- Once a privilege is held to exist, it is for the House to judge the occasion and manner of exercise. The Court cannot interfere with an *erroneous* decision by the House or its Speaker in respect of breach of its privilege.

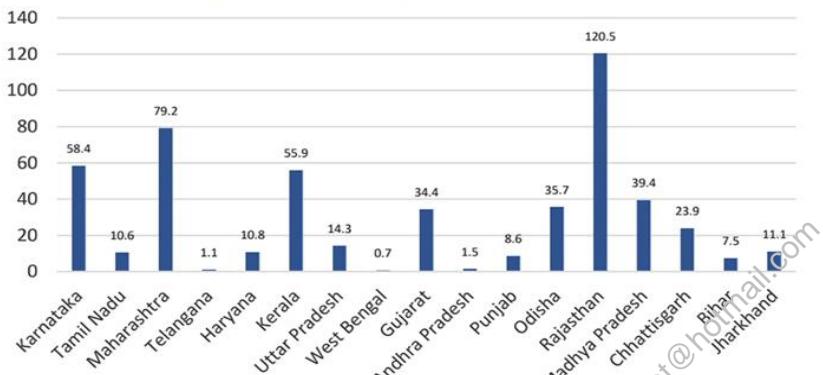
## 2. Emerging Issues

### 2.1. Functioning of state legislatures in India

An analysis of NITI Aayog's Innovation Index Report 2019 and other reports by PRS earmarks following issues in the functioning of state legislatures in India:

- Dominance of undemocratic processes:** In most states, Chief Ministers solely run the state without making many ministers portfolios clear to the public. Assembly debates seldom take place and Bills are passed without adequate discussion. This gives illusion of efficiency but it overlooks democratic process.
- Inability to hold executive accountable:** Asking questions (starred or unstarred) to the government is an effective way to keep a check on the executive. But the report suggest that there exists a disparity in the number of question asked in the major states. Total starred questions vary between **11,200 in Rajasthan** to **65 in West Bengal** in the last two years. However, **only 21 per cent of starred questions** admitted in the 14th Rajasthan Assembly were answered on the floor of the House.
- Lack of discussion and deliberations:** Transparency and public accessibility to the procedure followed in the house has not automatically resulted in improved legislative performance. A case in point is Karnataka – a state which is ranked highest in the innovation report. Between 2017 to 2020, on an average each MLA asked 58 questions and a video repository of all assembly proceedings, including Question Hour, is available online. But a report by PRS suggest that 92 per cent of Bills in the state's assembly were passed within a week of their introduction.
- Lack of participation by the members:** In Chhattisgarh assembly, only 78 MLAs have asked questions in its 4th assembly between 2014 and 2018 and a meagre 5 per cent of time was spent on legislation. Despite this, the House managed to pass 104 Bills and 94 per cent of these were passed within a week of introduction.

Average number of questions per member



- Issues raised by the members:** A deeper analysis shows that MLAs concern themselves to the micro-civic problems like waste management, sewage treatment, construction of roads and supply of basic utilities. However, 73<sup>rd</sup> Amendment Act empowered local bodies to take care of these issues. But the fear of voter dissatisfaction forces MLAs to focus on these issues instead of legislative deliberations and holding the government accountable through policy-relevant questions.

## 2.2 Role of governor in dissolution of the state legislature

### Issue

- In the recent past, legislatures of various states have been dissolved by their respective governors on some feeble grounds like 'extensive horse trading' or the possibility that a government formed by parties with "opposing political ideologies" would not be stable.

### Constitutional Provisions related to dissolution

- Article 172** - Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years.
- Article 174 (2) (b)** - states that the Governor may, from time to time, dissolve the Legislative Assembly.

- **Article 356** : In case of failure of constitutional machinery in State the President, on receipt of report from the Governor of the State or otherwise,
  - may assume to himself the functions of the Government of the State
  - declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament

Student Notes:

#### Issues related to the dissolution powers of the governors:

- **Lack of Objective Criteria for untimely dissolution:** While Article 174 gives powers to the governor to dissolve the assembly, but the Constitution is silent on as to when and under what circumstances can the House can be dissolved.
- **Politically motivated:** Potential for political instability in the future being cited as a reason in J&K to prevent emerging alliances is undemocratic in nature. Describing an alliance as opportunistic is fine as far as it is political opinion but it cannot be the basis for constitutional action.
- **Lack of political neutrality:** The post has been reduced to becoming a retirement package for politicians for being political faithful to the government of the day. Consequently, the office has been used by various governments at the centre as a political tool to destabilise elected state governments. Bihar State Assembly was dissolved by the governor in 2005 on apprehensions of "horse trading". Later the Supreme Court called the decision to be illegal and mala fide.

#### Way forward

##### According to Sarkaria Commission:

- The state assembly should not be dissolved unless the proclamation is approved by the parliament.
- Sparing use of article 356 of the constitution should be made.
- All possibilities of formation of an alternative government must be explored before imposing presidential rule in the state.

##### MM Punchhi Commission also recommended that:

- The governor should follow "constitutional conventions" in a case of a hung Assembly.
- It suggested a provision of 'Localized Emergency' by which the central government can tackle issue at town/district level without dissolving the state legislative assembly.

Also the Supreme Court in the **Bommai Judgement of 1994** accorded primacy to a floor test as a check of majority. The court also said that the power under Article 356 is extraordinary and must be used wisely and not for political gain. The verdict concluded that the power of the President to dismiss a State government is not absolute. The verdict said the President should exercise the power only after his proclamation (imposing his/her rule) is approved by both Houses of Parliament. Till then, the Court said, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly. Later in the Rameshwar Prasad Case (2006), the court observed that Governor cannot shut out post-poll alliances altogether as one of the ways in which a popular government may be formed.

### 3. UPSC Mains Previous Year UPSC Questions

1. How any by which authority can a State Legislative Council be abolished?
2. Should the Speaker of a Legislative Assembly appear before the courts on summons? Justify your viewpoint
3. What is a bicameral legislature? Mention the states that have a bicameral legislature in our country.
4. On what grounds the Legislative Councils are justified? How is it created or abolished in a State?

## 4. Previous Year Vision IAS GS Mains Questions

Student Notes:

1. **"Legislative Councils in India are not only second, but also secondary chambers of state legislatures. In terms of their composition and powers, they have become obsolete and must be scrapped." Examine.**

**Approach:**

- The question demands explanation as to how and why the legislative councils are – second and secondary chamber. This requires explanation of their powers vis-à-vis legislative assemblies. At least three aspects must be covered – with respect to ordinary bills, money bills/budget and that their very existence depends on the will of the assembly
- Their composition and manner of appointment should also be described briefly
- Then the answer must reflect on their utility in the modern context
- Finally it should suggest reforms (such as recommendation of second ARC) that can make it more effective institution

**Answer:**

### Part 1

The powers accorded to the legislative councils by the constitution makes it clear that they are supposed to be subordinate bodies vis-à-vis assemblies. Because:

- A money bill can only be introduced in assembly. The council can't amend or reject the bill on being sent to it. It can only recommend changes and return the bill within 14 days. Even then, the assembly is not bound to accept.
- With respect to budget also, it can only discuss but can't vote on demands for grants
- The final powers of passing an ordinary bill also lie with assembly. The council can at the maximum delay the passage by four months – three in the first instance and one month in the second instance. In other words, council is not even a revising body like Rajya Sabha. It is only a dilatory chamber or advisory body.
- When an ordinary bill that originates in the council and is sent to assembly is rejected, it becomes a dead bill.
- The very existence of council depends on the will of assembly. Council can be established or abolished by the parliament on the recommendations of the assembly.

### Part 2

- Apart from their insignificant powers, the composition and manner of selection is also not in tune with times. For instance 1/12th each are selected among the graduates and 1/6th are nominated by the governor. This enables unpopular, defeated, ambitious politicians or their favorites to become part of state legislature or even executive through it.

### Part 3

Despite the above criticisms, the councils have following utility:

- It checks hasty, defective, careless and ill-considered legislations made by assembly by making provision for revision and thought.
- It facilitates representation of different sections of society such as eminent professionals and experts who can't win in direct elections

Therefore instead of abolishing them altogether, reforming them to make effective institution can be considered a better approach. The recommendations of Second ARC that each state should have LCs which should be populated by members elected by local bodies (Panchayats and Municipalities) gains significance in this regard.

2. “Unlike the Union Parliament, there is no provision for resolving any deadlock between the two houses of the state legislature because no deadlock can possibly arise”. Elaborate. Provide a comparative assessment of procedure regarding Ordinary Bills and Money Bills in Parliament and state legislatures. 215-618

Student Notes:

**Approach:**

- Introduce by highlighting bicameralism at centre and states.
- Elaborate the supremacy of Legislative assemblies over legislative councils
- The last part should flow from the preceding discussion and specify the legislative mechanism with respect to bicameral legislature at Union and state level.

**Answer:**

The Constitution established a bicameral legislature at the Union. However, in the case of states the provision of the second chamber is a matter of expediency dependent on a resolution of the Legislative Assembly pursuant to article 169 of the constitution. Thus, in the case of states the Second Chamber or Legislative Council can be established as well as abolished on the recommendation of the Legislative Assembly.

Evidently, on a comparative scale the position of Legislative Councils is much weaker than the Rajya Sabha. While Disagreement between the two Houses of Parliament is to be resolved by joint sitting, there is no such provision for resolving differences between the two Houses of State Legislature, as ultimately the will of the Assembly prevails.

This can be demonstrated by citing the legislative procedure in a bicameral State Legislature, which is broadly similar to that in the Parliament, barring a few differences:

- As regards the Money Bill, the position is the same as the Union Parliament. The Legislative Council has no power save to recommend amendments to the Assembly or withhold the bill for a period of 14 days from the date of the receipt of the bill. Eventually the will of the Assembly prevails and it is not bound to accept any recommendation. Thus there cannot be a deadlock at all on the matter of money bill.
- In the matter of Ordinary bills i.e. bills other than Money Bills, the Only power of the Council is to interpose some delay in the passage of the Bill for a period of 3 months according to the article 197(1b).
- In case of disagreement a bill can only go back to the Assembly but ultimately the view of the Assembly shall prevail. It has to be noted that upon the second consideration of a bill by the Assembly the Council cannot withhold the Bill for more than a month pursuant to Article 197(2b). It can be argued, thus, that the Second Chamber in states, unlike the Rajya Sabha, is not revising but merely an advisory or dilatory Chamber.

The power differential between the Second Chamber in the Union Parliament and its counterpart in State legislature can be attributed to the fact that the Rajya Sabha as upper house represents the federal character of the Constitution, hence it has a better status than merely a dilatory body that the legislative councils are.

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# SUPREME COURT

Student Notes:

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Student Notes:

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# 1. Introduction

## 1.1. Evolution of Indian Judicial System

The history of the present judicial system may be traced back to the **18th century**, when the British started to establish their control in India. The promulgation of **Regulating Act of 1773** established the **Supreme Court at Calcutta** as a Court of Record, with full power & authority. It was established to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions in Bengal, Bihar and Orissa. Further, two Supreme Courts were established at **Madras** and **Bombay** in 1800 and 1823 respectively.

In 1861, the **Indian High Courts Act** was enacted, and steps were taken to establish High Courts at Calcutta, Madras and Bombay. The Supreme Courts established earlier were abolished. These High Courts remained the highest courts in both civil and criminal jurisdictions.

Finally, in 1935, the **Federal Court of India** was established under the **Government of India Act 1935**. After Independence, the **Supreme Court of India** was inaugurated on **January 28, 1950** succeeding the Federal Court of India.

## 1.2. Conceptual basis of Indian Judicial System

The Indian Constitution is founded upon the **doctrine of separation of powers**. As per this doctrine there are three organs viz., Legislature, Judiciary and Executive and all these three organs should discharge their functions independently, none should encroach one upon another. The Judiciary has the task to act as a watchdog and to check whether the executive and the legislature are functioning within their limits under the constitution and not interfering in each other's functioning. Thus, there are **checks and balances** in Indian model of separation of powers.

The present Indian Law is largely derived from **English common law** which was first introduced by the British when they ruled India. Various Acts and Ordinances which were introduced by the British are still in effect today.

### 1.2.1. Procedure established by Law vs. Due process of Law

The doctrine of '**Procedure established by Law**' originated in England. It literally means "**according to usages and practices as laid down by the statute**". Under this doctrine, the court examines a law from the view of the legislative competence and whether the prescribed procedure has been followed by the legislature while passing the law.

If an action of the executive is challenged before a court of law seeking protection from it then the court will subject the action of executive to following test:

- Whether there exists a law that authorizes the executive to take such an action; and
- Whether the legislature was competent to pass such a law; and
- Whether the legislature followed the established procedure while enacting the law.

If the above tests are satisfied the court will uphold the executive action. The court will **not go behind the fair and just nature and reasonableness of the law** and cannot declare the law as unconstitutional however arbitrary or oppressive the law may be unless the law was passed without procedural formalities. Thus, the doctrine relies more on the good sense of legislature and the strength of the public opinion in the country. Therefore, this doctrine confers **limited powers on the judiciary**, which can extend protection for individual only against arbitrary actions of the executive and **not against arbitrary actions of the legislature**.

On the other hand, doctrine of '**Due process of law**', which originated in USA confers wider power in hands of judiciary. According to this, if an executive action is challenged before a court of law, then apart from putting the action of the executive to above three tests, the court will **also examine the law from the broader angle of inherent goodness of the law by applying the**

**principles of natural justice.** Due process of law means that the law passed by the legislature shall also have to be **fair, just and reasonable** and not fanciful, oppressive and arbitrary. The US Supreme court, while following due process of law, can declare laws violative of rights of citizen not only on **substantive grounds** of being unlawful but also on **procedural grounds** of being unreasonable. Thus, it extends protection to an individual against the arbitrary action of **both the executive and the legislature.**

The India Constitution, under Article 21 provides **only for procedure established by law.** However, the Supreme Court in Maneka Gandhi vs. GOI, 1978 case interpreted the constitution to include the doctrine of **due process of law** under it by incorporating the principles of natural justice under Article 21.

### **1.2.2. Principle of Natural justice**

There are three rules that govern the principle of natural justice

- a) No man should be punished without being heard.
- b) No man shall be judge of his own case.
- c) An authority shall at bona-fide (in good faith) without any bias.

The object of principles of natural justice is to **exclude the chances of arbitrariness and assures a certain degree of fairness** in the process of decision making. It demands that actions must be supported by reasons. They aim to humanize the decision-making process. They are based upon human rationality and are universal in nature.

The Supreme Court has ruled that the Principles of Natural Justice are binding on all authorities, including individuals and judiciary itself. Though, they are not incorporated explicitly in our Constitution, but still they are an inherent feature of it. In Maneka Gandhi vs. GOI, 1978 case the Supreme Court held that principles of natural justice are inherently found under Article 21(right to life) of the Constitution and the legislature is bound by the 'due process of law'. In the Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly, 1986 case the Supreme Court held that the rules of natural justice are implicit to the right of equality under Article 14. They are one of the principles over which the constitution has been founded. They are so pervasive in the Constitution that they can be regarded as a part of basic structure of the Constitution.

## **2. Organisation of Judicial system**

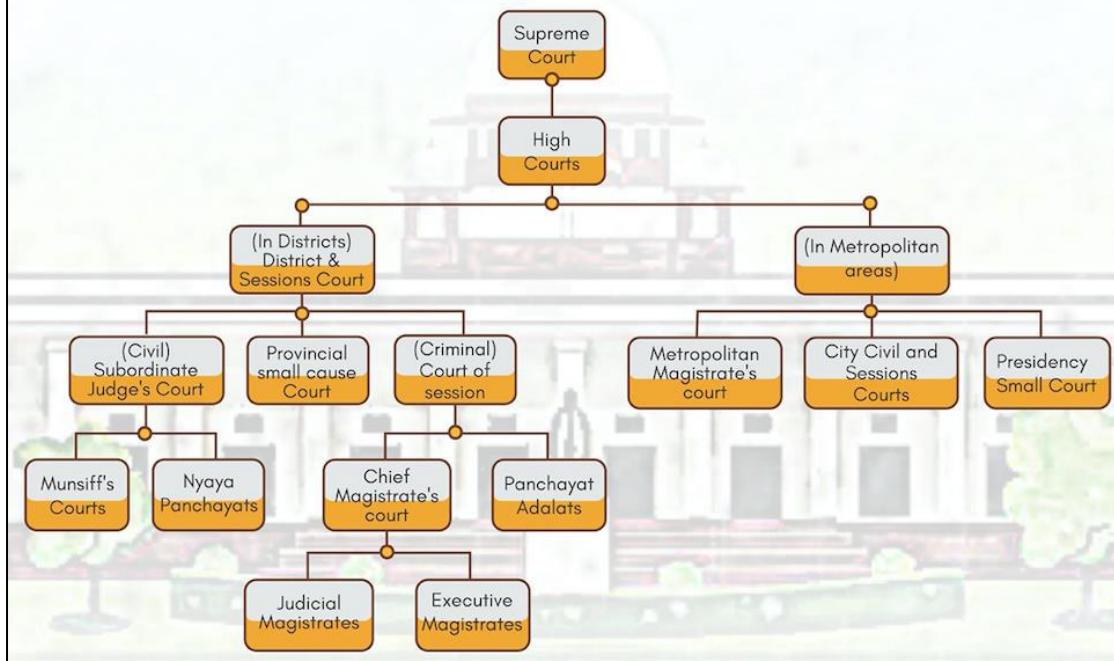
### **2.1. General Structure of Judicial System**

Indian Constitution has established an **integrated judicial system** with Supreme Court at the top, followed by high courts and subordinate courts. This unified judicial system enforces both central laws as well as state laws. This integrated judicial system of India has been adopted from the **Government of India Act, 1935.**

**Articles 124 to 147** of the Indian Constitution deal with organization, independence, jurisdiction, powers, procedures etc. of the Supreme Court. Parliament has the power to make laws regulating constitution, organization, jurisdiction, and powers of the Supreme Court.

Student Notes:

# GENERAL STRUCTURE OF INDIAN JUDICIAL SYSTEM



The architecture of subordinate judiciary varies across states and are broadly classified as shown in the above figure. At the lowest stage, two branches of justice-civil and criminal are bifurcated. The Panchayat courts are functioning in civil and criminal areas under various regional names like Nyaya Panchayat, Panchayat Adalat, Gram Kutchery etc.

## 2.2. Seat of Supreme Court

The Constitution of India declares **Delhi as the seat of the Supreme Court**. But, it also authorises the **Chief justice of India** to appoint other place or places as seat of the Supreme Court, but only with the **approval of the President**. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

### 2.2.1. Demand of Regional Bench of Supreme Court

Over the period of time, various expert committees have observed the need of regional benches of Supreme Court. The **Standing Committees of Parliament** recommended in 2004, 2005, and 2006 that Benches of the court be set up elsewhere. In 2008, the Committee suggested that at least one Bench be set up on a trial basis in Chennai.

The **Law commission** had recommended the division of the Supreme Court into 1) **Constitutional court** and 2) **National court of appeal**. It recommended that a Constitution Bench be set up in Delhi to deal with constitutional and allied issues, and four regional Benches in Delhi (north), Chennai/Hyderabad (south), Kolkata (east) and Mumbai (west) to deal with all appellate work arising out of the orders/judgments of the High Courts.

Recently, the Vice President of India has suggested setting up of **four Regional Benches** of the Supreme Court.

#### Need for Regional Benches

- **Constitutional obligation:** Article 39-A directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other

disabilities. Thus, it is essential to ensure that the additional transaction cost of litigation for people of north-eastern states or southern states should be minimal.

Student Notes:

- **High pendency of cases:** More than 65,000 cases are pending in the Supreme Court, and disposal of appeals takes many years.
- **Litigation as a measure of well-being:** An empirical study on litigation in India, finds that there is direct correlation between civil case filing and economic prosperity (more prosperous states have higher civil litigation rates). However, in recent years civil case backlog has discouraged civil case filings which may impact India's future economic growth. Thus, setting up regional bench is a step-in right direction.
- **Higher accessibility-** The accessibility to SC due to its seat in Delhi is less, especially to the poor and those living in far-off places like north-east.

#### Issues associated with setting up of regional benches

- **Dilute the authority of Supreme Court:** Setting up of regional benches may dilute superiority of the Supreme Court's decisions.
  - However, critics argue that many High Courts in this country have different Benches for meting out justice without 'justice' being 'diluted'. For example, the Bombay High Court has four Benches, in Mumbai, Aurangabad, Nagpur and Panaji (Goa).
  - Also, with the decentralisation being both functional and structural in nature, with only the bench in Delhi dealing with constitutional matters, such concerns may be put to rest.
- **Affect integrated judiciary system:** The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. The setting up of regional court may dilute this unitary character. In 2010, the Full Court, comprising 27 judges and headed by Chief Justice of India had rejected law commission recommendation for regional Benches citing this reason.
  - However, it has been argued that High Court having different branches has not diluted the integrated judiciary system.

With the rising arrears of cases and practical difficulties being faced by poor litigants, it is about time that the idea of setting up regional benches be explored seriously. Setting up regional benches of the Supreme Court dealing with appeals and a constitutional bench in Delhi is the best way forward.

#### 2.2.2. National Court of Appeal (NCA)

The **National Court Appeal** with regional benches in Chennai, Mumbai and Kolkata will be meant to act as final court of justice in dealing with appeals from the decisions of the High Courts and tribunals within their region in civil, criminal, labour and revenue matters.

The **Supreme Court**, as early as in 1986, had recommended establishment of National Court of Appeal. In **V. Vasanth Kumar case, 2016** the Supreme Court referred the matter to a Constitutional Bench for decision on the National Court of Appeal.

Currently, the Supreme Court is **overburdened** with work, much of which comprises appeals from lower courts. Due to this, it is not able to fulfill its primary duty of deciding upon constitutional matters and acting as the final interpreter of the Constitution.

In such a scenario, a much-relieved Supreme Court of India situated in Delhi **would only hear matters of constitutional law and public law**. This is significant as, the number of decisions by Constitutional benches has drastically come down; from about 15% of total decided cases in 1950s to a worryingly paltry 0.12% in last decade.

However, this would fundamentally change the character of Supreme Court, its constitution and also its aura as the Apex court. It would require amending **Article 130** which might not stand the test of basic structure.

## Way Forward

National Court of Appeal is a drastic measure, a last resort with lot of practical problems. Till then other measures need to be taken to address the issue - like reducing appellate burden (rationalization of Special Leave Petitions, subordinate judiciary reforms, improving judicial strength, quality, infra etc). For proximity issue benches of SC like that of HC can be set up in 4 important cities.

**Article 145(3)** mandates that minimum 5-judge bench should sit to decide a matter involving 'substantial question of constitutional law'. Clearly, this mandate is not being followed. For e.g. the Naz Foundation case involving the question of decriminalization of homosexuality, Shreya Singhal case dealing with the illegality of section 66A of IT Act were all decided by 2-judge benches.

Student Notes:

## 2.3. Comparison with American Supreme Court

There is a fundamental difference in Indian and American judicial system, as India has a unified judicial system while American judicial system is segregated on federal principle. Still, there are striking similarities due to the democratic setup of polity. These can be seen as-

	Indian Supreme Court	American Supreme Court
Original Jurisdiction	It is <b>confined to federal cases</b> .	It covers not only federal cases but also cases relating to naval forces, maritime activities, ambassadors, etc.
Appellate Jurisdiction	It covers constitutional, civil and criminal cases.	It is confined to <b>constitutional cases only</b> .
Advisory Jurisdiction	It has advisory jurisdiction.	It has no advisory jurisdiction.
Judicial Review	It defends rights of the citizen according to the ' <b>procedure established by law</b> '. Thus, its scope of judicial review is <b>limited</b> .	It defends rights of the citizen according to the ' <b>due process of law</b> '. Thus, its scope of judicial review is <b>wide</b> .
Change in Jurisdiction	Its jurisdiction and powers <b>can be enlarged</b> by Parliament.	Its jurisdiction and powers are limited to that conferred by the Constitution.
Control over subordinate courts	It has power of judicial superintendence and control over state high courts due to integrated judicial system.	It has no such power due to double (or separated) judicial system.

Apart from these, the Supreme Court of India has extraordinary power of **special leave** to entertain appeals without any limitation upon its discretion, from a decision not only of court but also of any tribunal within territory of India. American Supreme Court doesn't possess such power.

## 3. Judges of Supreme Court

### 3.1. Appointment of Judges

#### 3.1.1. Eligibility

A person shall not be qualified for appointment as a Judge of the Supreme Court unless:

1. He is a citizen of India; and
2. He should satisfy one of the following-
  - a) He has been **judge of a High Court** (or of two or more such Courts in succession) for at least five years, or
  - b) He has been an **Advocate of a High Court** (or of two or more such Courts in succession) for at least ten years, or
  - c) The person is a **distinguished jurist** in the opinion of President.

It may be noted that the Constitution **has not prescribed a minimum age** for appointment as a judge of the Supreme Court, nor any fixed period of office. Further, a Judge of a High Court or a retired Judge of the Supreme Court or High Court may be appointed as an ad-hoc Judge of the Supreme Court.

### **3.1.2. Procedure of Appointment**

#### **Background**

The Constitution of India under **Article 124** states that

- **Chief Justice of India (CJI)**- is appointed by the President after **consulting** such judges of the Supreme Court and High Courts as the President deems necessary.
- **Judges other than CJI**- are appointed by the President after **consulting** with the Chief Justice of India and other SC and HC judges as he considers necessary.

Initially, the Executive had a primacy and role of Judiciary was **more advisory**, as the word **consultation** was not binding on the President. Subsequently, the Supreme Court has given **different interpretation** of the word '**consultation**' in the **three Judges cases**. As a result of this, the word '**consultation**' has more or less acquired the meaning of '**concurrence**'.

#### **3.1.2.1. Collegium System**

The Supreme Court created the Collegium system where a **committee of the Chief Justice of India, four senior judges of the Supreme Court** take decisions related to appointments and transfer of judges in the Supreme Court.

The appointment of Chief Justice of India is done in accordance with the *Second Judges case* (1993), in which the SC ruled that the senior-most judge should alone be appointed to the office of CJI.

#### **Three Judge Cases**

- **First Judges Case**, 1981 or **S P Gupta Case**: The Supreme Court ruled that the recommendation made by the CJI to the President can be refused for "**cogent reasons**", thereby giving greater say to executive.
- **Second Judges Case**, 1993: It is also known as **Supreme Court Advocates-on Record Association vs Union of India**. CJI only need to consult two senior-most judges over judicial appointments and transfers. However, on objection raised by executive on appointment, Collegium may or may not change their recommendation, which is binding on executive.
- **Third Judges Case**, 1998: On the Presidential Reference, the SC gave its judgement. CJIs should consult with four senior-most Supreme Court judges to form his opinion on judicial appointments and transfers.

#### **Issues with Collegium System of Appointment**

- **View of Constituent Assembly**: It had rejected the proposal to vest the Chief Justice with veto power over appointments.
- **Violation of constitutional Provision**: According to 214th Law commission of India Collegium is a clear violation of Article 74 of the Constitution of India which demand President to act on the aid and advice of the Council of Ministers.
- **Undemocratic**: Collegium system is non-transparent and closed in nature as there exists no system of checks and balances which is essential to a democracy.
- **Disturbing Balance of Power** by the Second Judges case as provided by the constitution between executive and judiciary.
- **Uncle Judges Syndrome**: Law Commission in its 230th report said that nepotism, corruption and personal patronage is prevalent in the functioning of the collegium system
- **Merit vs Seniority**: There have been numerous cases where people with better qualifications and better track records have been sidelined to make way for someone incompetent due to seniority rule.

## COMPARISON BETWEEN DIFFERENT COUNTRIES

### HOW THE SELECTION PROCESS WORKS IN VARIOUS JURISDICTIONS

The mechanism for judicial appointments differ from country to country. A look

				
<b>WHO APPOINTS</b>				
				
<b>PERSONS INVOLVED IN MAKING THE DECISION</b>				
Since 1993, a collegium, consisting of the CJL and other senior SC judges, <b>has made recommendation for persons to be appointed as SC and HC judges, to the President</b>	It consists of the SC President, his deputy, and one member each appointed by the JACs of England, Scotland and Northern Ireland. <b>The JACs comprise lay persons, members of Judiciary and the Bar</b>	Justices are nominated by the President and confirmed by the U.S Senate. <b>Senate Judiciary Committee holds hearings</b> and votes on whether nominations should go to the full Senate	<b>It is unique as the country has an election process to appoint judges.</b> Half the members of the Federal Constitutional Court are elected by the executive and half by the legislature.	The South African Judicial Services Commission <b>recommends the list of candidates to be appointed</b> as Supreme Court judges. All other judges are appointed on its advice

### 3.1.2.2. National Judicial Appointment Commission (NJAC)

- The government had established **National Judicial Appointment Commission** by way of 99th Constitutional Amendment.
- It was proposed constitutional body to replace the Collegium system of appointing judges.
  - It was envisaged as an independent commission to appoint and transfer judges of High Court and appoint judges of Supreme Court of India.
  - It was composed of three senior judges, two eminent outsiders and the Law Minister.
- However, before it was notified, it was challenged in Supreme Court as an attempt by government to interfere with the independence of the judiciary.

# NATIONAL JUDICIAL APPOINTMENTS COMMISSION

## National Judicial Services

Setting up of National Judicial Service Commission recommended by Law Commission in its 121st report

## 98th Constitutional Amendment

98th Constitutional Amendment Bill, 2003 proposed the idea of Commission comprising of two senior most judges, the law minister and the CJI. Bill lapsed

## JAC Bill

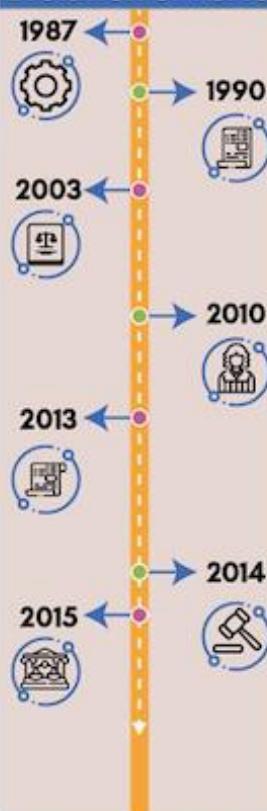
16th session of Lok Sabha passes the JAC Bill while Rajya Sabha did not clear it

## NJAC Act

NJAC Act was notified on April 13. Collegium System replaced by NJAC.

**Supreme Court strikes down NJAC Act on October 16.**

## Evolution of NJAC



## 67th Constitutional Amendment

67th Constitutional Amendment Bill, 1990 proposed the creation of National Judicial Commission. Bill lapsed due to dissolution of Lok Sabha in 1991

## Jurists

Eminent jurists Shri MN Venkatachaliah, (late) Shri Justice JS Verma and (late) Shri Justice VR Krishna Iyer with the initiative of FDR proposed judicial reforms which included JAC

## NJAC Bill

NJAC Bill introduced in Lok Sabha. NJAC Bill and 121st Constitutional Amendment bill passed by both the houses

## Key features of NJAC

- A six-member panel for appointment of judges to the Supreme Court & high courts
- CJI will head the panel which will have 2 SC judges, 2 eminent persons and law minister
- Constitutional amendment status to stop easy change in current legislation by future govt
- Eminent persons will be selected by CJI, PM & Oppn leader/leader of largest Oppn party in Lok Sabha
- One of eminent persons will be nominated from persons belonging to SC/STs, OBCs, minorities or women
- Term of eminent persons will not exceed 3 yrs, will not be re-nominated
- If two members of panel do not agree, appointment will not happen. President can return recommendation for reconsideration once

## Supreme Court's verdict

- The Court struck down the amendment and concluded that NJAC did "not provide an adequate representation, to the judicial component".
- The new provision in Constitution are insufficient to preserve the primacy of the judiciary in the matter of selection and appointment of Judges"
- It was held that the amendment impinged upon the principles of "independence of the judiciary", as well as, the "separation of powers".

## Primacy of the judiciary is required as

- Government is major litigant: Since the government is a major litigant, giving it an edge in appointments would amount to fixing the courts.
- Independence of Judiciary: It has been regarded as basic structure of constitution and NJAC was termed as violating the independence of judiciary
- To enable Separation of Powers between executive and judiciary as directed by Constitution of India.

After quashing the proposed National Judicial Appointments Commission, Supreme Court's Constitution Bench had **asked the Centre to consult the CJI for drafting the new memorandum for appointments of judges to the higher judiciary**. Acting on the above a Group of Ministers (GoM) headed by External Affairs Minister had finalized the new Memorandum of Procedure (MoP) for appointment of Judges

### 3.1.2.3. Memorandum of Procedure (MOP):

The government drafted a **Memorandum of Procedure** in 2016 to set a fresh set of guidelines for making appointments to the higher judiciary. However, there is **lack of agreement** between government and judiciary as of now.

*The procedure of appointment judges by promotion under the MOP has been depicted in the infographic.*

#### Significance of MOP

- It seeks to introduce performance appraisal as a standard for appointing chief justices of high courts and Supreme Court judges.
  - It proposes that for appointment of judges in the Supreme Court, the "prime criteria" should be "seniority as chief justice/ judge of the high court".
  - The MoP states that up to three judges in the Supreme Court need to be appointed from among the eminent members of the Bar and distinguished jurists with proven track record in their respective fields.
  - The Union Law Minister should seek the recommendation of the incumbent CJI for appointment of his successor at least one month prior to his retirement.
  - A notice for vacancies of judges should be put up on the website of the high courts at the beginning of the year for appointments.
  - **National security and public interest** have been included as the new ground of objection to appoint a candidate as a judge. If the government has objections on the ground of national security and public interest, it will convey the same to the collegium. The collegium will then take a final call.
- 
- Important Features of Draft Memorandum of Procedure (MoP), 2016**
- ① Include "merit and integrity" as "prime criteria" for appointment of judges to the higher judiciary.
  - ② **Performance Appraisal** for promotion as chief justice of a high court: by evaluation of judgments delivered by a high court judge during the last five years and initiatives undertaken for improvement of judicial administration.
  - ③ Setting up a **permanent secretariat** in Supreme Court for maintaining records of high court judges, scheduling meetings of the Collegium, receiving recommendations as well as complaints in matters related to appointments.

### 3.1.2.4. SC Collegium Proceedings in Public Domain:

Student Notes:

#### Background

Supreme Court collegium decided that it would **upload its decisions on the appointment and transfer of judges** of the Supreme court and High Courts on the Supreme Court's website. These details would be available as **collegium resolutions**. This means every time the collegium forwards the names of candidates to the government for appointment as judges, it would automatically place the names and the reasons for the recommendation before the public.

#### Rationale behind the decision

- **Moral Obligation-** The Judiciary fulfilled its moral obligation especially after it struck down NJAC.
- **Right to Information:** The proactive disclosure by the judiciary is a welcome step in spirit of Right to Information act, 2005.
- **Openness in procedure:** It not only means openness in the functioning of the executive arms of the state but also in judicial apparatus including judicial appointments and transfers.
  - This is expected to counter allegations that the collegium has, under political pressure, cleared the names of individuals who turned out to be inefficient and sometimes corrupt.
- **Right to know:** The step strengthens democratic processes and fundamental right of freedom of speech as the right to know is an inherent part of it. The secretive collegium system was violating that till now.

#### Criticism

- **Limited Transparency:** The decisions should be made public on the websites ideally, at the stage when the High Court makes the recommendation not after when the process is complete when nothing can be done.
- **Lack of clear criteria:** Eligibility criteria to judge the performance and suitability must be formulated objectively and must be made public. The reasons for appointment or non-appointment can be only understood well only in the context of that criteria.
- **Personal and Professional Reputation:** Rejection of candidatures on the ground of "unsuitability" may dent their professional and personal reputations as they are either serving judicial officers or eminent lawyers.

#### What should be done in future?

- **Power Balance:** Law Commission, in its 2008 and 2009 reports, suggested that Parliament should pass a law restoring the primacy of the CJI, while ensuring that the executive played a role in making judicial appointments.
- **System to ensure judicial primacy but not judicial exclusivity:** The new system should ensure independence, accommodate the federal concept of diversity, demonstrate professional competence and integrity. The trend across liberal, constitutional democracies is towards such a commission which preserves judiciary's primacy while also divorcing its membership from the executive.
- **Criteria for Appointment:** Eligibility criteria to judge the performance and suitability must be formulated objectively and must be made public. The reasons for appointment or non-appointment can be only understood well in the context of such a criterion. Recently Supreme Court Collegium has decided to put all its recommendations in Public Domain indicating the reasons.
- **Early Finalisation of Memorandum of Procedure (MoP):** SC in Justice Karnan case underlined the need to revisit the process of selection and appointment of judges to the constitutional court.

### **3.1.3. Other Judges of Supreme Court**

Student Notes:

#### **3.1.3.1. Acting Chief Justice of India (Article 126)**

In case the office of the Chief Justice is vacant or the CJI is temporarily absent or is unable to perform his duties, the President can appoint a judge of the Supreme Court as an acting Chief Justice of India.

#### **3.1.3.2. Ad hoc Judges (Article 127)**

In case of a lack of quorum of the permanent judges to hold or continue any session of the Supreme court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period, provided the judge so appointed should be qualified for appointment as a judge of the Supreme court and this can be done only after consulting with the Chief justice of the concerned High Court with the prior consent of the President. It is the duty of the judge so appointed to attend the sitting of the Supreme Court, in priority to other duties of his office and while so attending he enjoys all the jurisdiction, powers and privileges of a judge of the Supreme Court.

#### **3.1.3.3. Retired Judges (Article 128)**

The Chief Justice of India can request a retired judge of the Supreme Court or High Court to act as a judge of the Supreme Court for a temporary period. The President's previous consent is necessary. Such a person will enjoy all the jurisdiction, powers and privileges of a Supreme Court Judge. But he will not otherwise be deemed to be a judge of the Supreme Court.

### **3.1.4. Number of Judges for Supreme Court**

Originally, under Article 124 of the Indian Constitution the strength of Supreme Court was fixed at **eight** (one chief justice and seven other judges).

- **Article 124 (1)** provides the power to the Parliament to increase the number of judges if it deems necessary.
- The Parliament through **the Supreme Court (Number of Judges) Act, 1956** increased strength of Supreme Court to ten. The Act was last amended in 2009 to increase the judges' strength from **25** to **31**.
- Recently, Parliament has passed the legislation to increase the sanctioned strength of the Supreme Court from **31** to **34** including the Chief Justice of India.

## **3.2. Oath of Judge**

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation **before the President, or some person appointed by him for this purpose**.

In his oath, a judge of the Supreme Court swears:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India;
- to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
- to uphold the Constitution and the laws.

## **3.3. Salary and Allowances**

**Article 125** of the Indian Constitution leaves it to the **Indian Parliament** to determine the salary, other allowances, leave of absence, pension, etc. of the Supreme Court judges. However, the Parliament **cannot alter any of these privileges and rights to the judge's disadvantage** after his appointment. Salaries, allowances and pensions of the judges of Supreme Court are charged on the Consolidated Fund of India and are non-votable by the Parliament.

### 3.4. Tenure

Once appointed, a Judge of the Supreme Court may cease to be so on happening of any one of the following contingencies (other than death)

- On attaining the age of **65 years**.
- On resigning by addressing his resignation to the President.
- On being removed by the President by the procedure prescribed in Article 124(4) (impeachment) of the Constitution of India on ground of proved misbehaviour or incapacity.

### 3.5. Removal of Judges

#### Background

The Constitution of India under **Article 124(4)** states that a Judge of Supreme Court can be removed only by the President on ground of '**proved misbehaviour**' or '**incapacity**' only after a motion to this effect is passed by both the Houses of Parliament by special majority.

The Constitution also requires that misbehaviour or incapacity shall be proved by an impartial Tribunal whose composition is decided under Judges Enquiry Act 1968.

#### Issues in removal

- **Lack of Enforcement:** The Act has only been invoked three times since 1950.
  - Interestingly, no judge of the SC or HC has been impeached so far. The few cases taken up by the Parliament were Justice V. Ramaswami (1991-93), Justice Soumitra Sen, Justice P.D. Dinakaran.
  - Recently, Chief Justice of India has written to Prime Minister to initiate a motion for removal of a judge of Allahabad High Court.
- **Lack of Clarity-** The law does not define what misbehaviour is and hence ultimately fails to recognize the wide range of misbehaviour.
- **Lack of Transparency:** The proceedings are wrapped in secrecy and the judge continues to hold the post.
  - Both the Constitution and the Judges (Inquiry) Act of 1968 are silent on whether a judge facing impeachment motion should recuse from judicial and administrative work till he is cleared of the charges against him.
  - The Judge under investigation is not prohibited from discharging his duties in court of law.
- **Cumbersome Process:** Impeachment process is tedious and lengthy, judges have virtually no accountability.
- **It also involves political considerations:** Only Parliament can take cognizance of a case of a tainted judge. No space is given to a common man. For example, the Congress abstained

#### IMPEACHMENT PROCEEDINGS

A removal motion signed by 100 members (in case of Lok Sabha) or 50 members (in case of Rajya Sabha) is to be given to the Speaker/Chairman.

If the motion is admitted, then a three member committee (consisting of a supreme court judge, a chief justice of high court and a distinguished jurist) to investigate into the charges is constituted.

If the committee finds the judge to be guilty of the charges (misbehaviour or incapacity), the House in which the motion was introduced, can take consideration of the motion.

**Special majority:** Majority of total membership of the House & Majority of not less than two thirds members present and voting.

Once, the House in which removal motion was introduced passes it with special majority, goes to the second House which also has to pass it with a special majority.

After the motion is passed, an address is presented to the President for removal of the judge. The President then passes an order removing the judge.

from voting on the resolution when the motion for removal of Justice V. Ramaswami was moved in 1993 resulting in failure of the process.

- **Judiciary removing itself:** Contempt of court ruling may amount to removing him as a judge, thus, amounting to judicially-ordered impeachment.

Student Notes:

#### Can chairman reject impeachment motion?

- **Section 3 of Judges (Inquiry) Act, 1968**, says the presiding officer may admit or refuse to admit the motion after holding consultations with such persons as he thinks fit, and considering the material before him.
- Earlier also impeachment motions having been shot down. For e.g.: motion moved against Supreme Court judge J.C. Shah was rejected by the then Lok Sabha Speaker, G.S. Dhillon, in 1970.
- The job of the Chairman is not just procedural to see the required no of signatures but to also see whether there is a *prima facie* case, whether the notice for motion is based on substantial grounds, before admitting or rejecting.
- Even mere admission of an impeachment motion can cause incalculable damage to reputation in this perception-driven world. Thus, motion needs to be admitted very carefully.

#### What should be done in future?

- Bringing a **new Judicial standards and accountability bill** along the lines of Judicial Standards and Accountability Bill 2010 (which lapsed) to establish a set of legally enforceable standards to uphold the dignity of superior judiciary and establish a new architecture to process the public complaints leveled against the judges.
  - The **Judges (Inquiry) Bill, 2006** also proposed establishment of a National Judicial Council (NJC) to conduct inquiries into allegations of incapacity or misbehaviour by High Court and Supreme Court judges.
- **Appointment-** the collegium should take adequate safeguards so that only judges of high caliber and impeccable integrity are appointed to the higher courts. This requires infusion of greater transparency in the selection of judges.
- **Greater Internal regulation:** There were several instances where the Judge behaved inappropriately, disciplinary actions should have been taken promptly at very first instance of such misconduct. For this, a **National Judicial Oversight Committee** should be created by parliament which shall develop its own procedures to scrutinizing the complaints and investigation. The composition of such committee should not affect judicial independence.

## 4. Procedure of Supreme Court

The Supreme Court can make rules regulating the general practice and procedure to be followed by court, which are **only subject to laws made by Parliament and the Constitution**.

- The **constitutional cases** or references made by the President under **Article 143** (advisory jurisdiction of Supreme Court) are decided by a bench consisting of atleast five judges (constitutional bench). All other cases are usually decided by a bench consisting of not less than three judges.
- The judgements are delivered by the **open court**.
- All judgements are by **majority vote** but if differing, then judges can give dissenting judgements or opinions.
- The law declared by the Supreme Court is **binding on all courts** within the territory of India.
- All authorities, civil & judicial, in the territory of India, are required to act in aid of the Supreme Court
- The Chief Justice of India has an exclusive power in the matter of appointment of officers and servants of the Court and administrative expenses of Supreme Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the Court is charged upon the consolidated fund of India.

## 5. Independence of Supreme Court

Independence of Supreme court judge is secured in a number of ways. Some of them are as follows:

- The Judges of Supreme Court are appointed by the President **in consultation with the collegiums** headed by the Chief Justice of Supreme Court.
- By laying down that Judges of Supreme Court **shall not be removed except by an order of President** after an address by the Parliament (supported by majority of the membership of the house and not less than two thirds of the members present and voting) is presented to him. (Art.124(4))
- The salaries, allowances, privileges, leave and pension of judges of Supreme Court are determined from time to time by Parliament. They **cannot be varied to the disadvantage** of the judges.
- The salaries, allowances and pensions of the staff are **charged on the Consolidated Fund of India** and thus are non-votable by the Parliament. (Art. 146)
- The conduct of judges in the discharge of their duties cannot be discussed in Parliament or in a state legislature except when an impeachment motion is under consideration.
- The Retired Judges are **prohibited from pleading or acting in any court or before any authority** within the territory of India. This removes the chances of any biased decision for any future favour.
- The Supreme Court **can punish anyone for its contempt**. Its actions, thus, cannot be criticized or opposed by anybody. It ensures authority, Dignity and Honour of Supreme Court.
- The Chief Justice of India **can appoint officers and staff of Supreme Court** without any interference from the executive.
- The parliament **cannot curtail the jurisdiction and powers of the Supreme Court**; however, the parliament can extend its power and jurisdiction.
- The Constitution directs the state to separate judiciary from executive in the public services (Art 50). For its implementation, judicial powers of executives are taken away after enactment of Cr.P.C).

## 6. Jurisdiction of Supreme Court

The Supreme Court has original, writ, appellate and advisory jurisdiction - **Articles 32, Articles 131-144**. It is not only a Federal Court but also the final court of Appeal, final interpreter of Constitution and guarantor of Fundamental Rights of Citizens. Further, it has advisory and supervisory powers.

### 6.1. Original jurisdiction

The court has **exclusive** original jurisdiction over under **Article 131**:

1. Dispute between the Government of India and one or more States
2. Dispute between the Government of India and any State or States on one side and one or more States on the other.
3. Between two or more States, if the dispute involves any question on which the existence or extent of a legal right depends.

This means no other court can entertain such a dispute. A dispute to qualify under Article 131, it has to necessarily be between states and the Centre and must **involve a question of law or fact on which the existence of a legal right of the state or the Centre depends**.

- In the **State of Karnataka v Union of India, Case, 1978** Justice P N Bhagwati had said that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but only that the dispute involves a legal question.

- It cannot be used to settle political differences between state and central governments headed by different parties.

Student Notes:

**Election Disputes-** The Supreme Court decides the disputes regarding the election of the President and the Vice-president. In this regard, it has the original, exclusive and final authority.

This jurisdiction of the Supreme Court does not extend to the following:

- Inter-State Water disputes;
- matters referred to the Finance Commission;
- adjustment of expenses between the Centre and the States;
- ordinary dispute of commercial nature;
- dispute arising out of pre-Constitution treaty or agreement;
- any treaty or agreement, which specifically provides that the said jurisdiction does not extend to the dispute.

#### Recent Development

Recently Kerala and Chhattisgarh have filed a suit in the Supreme court challenging the constitutional validity of various central laws such as **Citizenship Amendment Act 2019** (Kerala) and the **National Investigation Agency Act 2008** (Chhattisgarh), under Article 131 of the Indian Constitution.

**Why the states have challenged the Centre under article 131?**

- **Kerala:**
  - Kerala has filed a suit to challenge the Citizenship (Amendment) Act, 2019, stating that it is violative of Articles 14 (equality before the law), 21 (protection of life and personal liberty) and 25 (freedom of religion) as well as against the secular fabric of the nation.
  - It also challenges the Passport (Entry to India) Amendment Rules 2015, and Foreigners (Amendment) Order 2015, which had regularised the stay of non-Muslim migrants from Pakistan, Bangladesh and Afghanistan, who had entered India before December 31, 2014, on the condition that they had fled religious persecution from their home countries.
- **Chhattisgarh**
  - It has sought a declaration that the NIA Act, 2008, is unconstitutional on the ground that it is "beyond the legislative competence of Parliament".
  - As 'Police' is a subject reserved for the States, having a central police agency, which has overriding powers over the State police, with no provision for consent from the State government for its operations, is against the division of legislative powers between the Centre and the States.
  - And thus NIA, is against the federal spirit of the Constitution.

#### Significance of Article 131

- **India's quasi-federal constitutional structure:** Inter-governmental disputes are not uncommon; therefore, the framers of the Constitution expected such differences, and added the exclusive original jurisdiction of the Supreme Court for their resolution.
- **Resolve disputes between states:** Unlike individuals, State governments cannot complain of fundamental rights being violated or cannot move to the courts under article 32 (Remedies for enforcement of rights). Therefore, the Constitution provides that whenever a State feels that its legal rights are under threat or have been violated, it can take the "dispute" to the Supreme Court.
  - States have filed such cases under Article 131 against neighbouring States in respect of river water sharing and boundary disputes.

#### Way forward

Supreme Court should constitute a larger bench to decide the question whether the suits challenging central laws are maintainable under article 131 or not. In that case, if the suits are declared maintainable, the same bench may also adjudicate the disputes.

## 6.2. Writ jurisdiction

The Supreme Court has writ jurisdiction (concurrent with high courts, not exclusive) in regard to enforcement of Fundamental Rights. The Supreme Court is empowered to issue directions or

orders or writs, including writs in the nature of ***Habeas corpus, mandamus, prohibition, quo warranto and certiorari***, whichever may be appropriate for the enforcement of fundamental rights conferred by the Constitution (**Article 32**).

In this regard, the Supreme Court has **original jurisdiction** in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. (The difference in the Writ jurisdiction of Supreme Court and High Court is explained later).

**Parliament by law can confer on the Supreme Court**, power to issue directions or orders or writs for other purposes (than enforcement of fundamental rights) as well. (**Article 139**)

### 6.3. Appellate jurisdiction

The Supreme Court replaced the **British Privy Council** as the highest Court of Appeal after independence. The Appellate jurisdiction can be classified under the following four heads:

1. **Constitutional Matters:** The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court in a case that involves substantial questions of law that requires the interpretation of the Constitution - **Articles 132**
2. **Civil Matters:** Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies that the case involves a substantial question of law of general importance, and in High Court's opinion, it needs to be decided by the Supreme Court (**Article 133**).
3. **Criminal Matters:** In criminal cases, an appeal lies to the Supreme Court if the High Court (**Article 134**)
  - a) Has reversed an order of acquittal of an accused on appeal and sentenced him to death (Parliament may by law expand the situation, where certificate is not required, to imprisonment for life or for 10 years)
  - b) Has taken before itself any case for trial from any subordinate Court and has convicted the accused and sentenced him to death (Parliament may by law expand the situation, where certificate is not required, to imprisonment for life or for 10 years).
  - c) Certifies that the case is a fit one for appeal to the Supreme Court
4. Parliament is authorized to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court. (**Article 134(2)**)
5. **Appeal by Special Leave:** The Supreme Court can also grant special leave to appeal from a judgement or order of any non-military Indian court or tribunal- **Article 136(1)**. Such leave for appeal will be discretionary power of Supreme Court and may be related to any matter. The scope of this provision is very wide and it vests the Supreme Court with plenary jurisdiction to hear appeals. On the exercise of this power, SC itself held that "being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations".

### 6.4. Advisory jurisdiction

The Supreme Court has special advisory jurisdiction in matters, which may specifically be referred to it by the President of India – (**Article 143**). These matters fall in two categories

- a. On any question of law or fact of public importance, which has arisen or which is likely to arise.
- b. On any dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

In the first case, the Supreme Court may advice or may refuse to tender its advice, while in the second case the Supreme Court must tender its opinion to the president. However, in both the cases opinion of the Supreme Court is not binding upon the President. He may or may not follow the opinion of Supreme Court.

Student Notes:

There are provisions for reference or appeal to this Court under article **317(1)** (for removal of a member of Public Service Commission) of the Constitution and several other Acts of Parliament as well.

Student Notes:

## 6.5. Supreme Court as a court of record (Article 129)

It has two powers as a Court of Record:

- a) The judgments, proceedings and acts of the Supreme Court are recorded as memory and testimony. These records are recognized as legal precedents and references. These records can be admitted as evidences and cannot be questioned when produced before any court.
- b) It has power to punish for contempt of court, either with simple imprisonment for a term upto six months or with fine up to 2000 or with both. It can punish for contempt not only of itself but also of high courts, subordinate courts and tribunals in the entire country. There can be civil or criminal contempt. Civil contempt means willful disobedience to any judgment, order, writ or other process of court or willful breach of undertaking given to the court. Criminal contempt means the publication of any matter or doing any act, which scandalizes or lowers the authority of a court; prejudices or interferes with due course of judicial proceeding; obstructs or interferes the administration of justice in any manner.

## 6.6. Review of judgements or orders (Revisory jurisdiction)

The Supreme Court has power to review any judgment pronounced or order made by it. (**Article 137**). While this article doesn't limit the grounds for review of the judgment however, grounds for exercising this power can be restricted by Parliamentary legislation or Rules made by the Supreme Court itself under **Article 145**.

The petition filed to review its judgement is called '**Review Petition**' while second review petition is called '**Curative Petition**'. It is filed when a party thinks that justice was not done to it or the Court has failed to take certain facts into consideration while deciding the case. E.g. the landmark case of **Rupa Ashok Hurra vs Ashok Hurra 2002** and the recent example of Delhi Gang Rape Case were taken up under this jurisdiction.

## 6.7. Power of Judicial review

The Supreme Court can declare legislative enactments of the Centre and states and any executive orders as null and void if they violate the Constitution (ultra-vires in nature). Judicial review serves the purpose of upholding supremacy of constitution, maintaining federal equilibrium, and to protect the fundamental rights of citizens. The Supreme Court used this power (**Judicial activism**) in various cases like *Golaknath case (1967)*, *The Bank Nationalization case (1970)*, *The Kesavananda Bharati case (1973)*, *the Minerva Mills case(1980)*, etc.

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the following three grounds:

- i. It infringes the fundamental rights (Part III);
- ii. It is outside the competence of the authority, which has framed it; and
- iii. It is repugnant to the constitutional provision.

Interestingly, though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several articles explicitly confers the power of judicial review on the Supreme Court.

To understand the process and basis of judicial review we need to know the details of the two doctrines, namely 'Procedure established by Law' and 'Due process of Law', which are discussed earlier.

Some other important doctrines, which are used in case of judicial review are:

Student Notes:

#### Doctrine of Severability

**Article 13(1) and (2)** use the words to the extent of inconsistency or contravention, while stating that a law violating a fundamental right shall be void. The words 'to the extent' restrict the effect of inconsistency or contravention. These words have made it clear that only that part of law would become void which is repugnant, subject to the doctrine of **Severability**. The doctrine of **Severability** is that if the offending provision of an Act, which is contrary to a fundamental right or is unconstitutional, is severable from rest of the act, only the offending provision would be declared null and void and not the whole act.

#### Doctrine of Progressive Interpretation

This means that the Constitution cannot be interpreted in the **same way as an ordinary statute**. Rather, it must be read within the context of society to ensure that it adapts and reflects changes. If constitutional interpretation adheres to the framer's intent and remains rooted in the past, the Constitution would not be reflective of the society and eventually fall into disuse. The Supreme Court follows the doctrine of progressive interpretation and that is quite evident in the case of Art. 21; interpretation of Article 21, the Right to Life, has been changing consistently according to the society

## 6.8. Other Powers of Supreme Court

- **Highest Court of Law-** It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution. Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court. E.g. The SC convicted a high court Judge, **Justice CS Karnan of Calcutta High Court**. The judge had earlier sentenced Chief Justice of India and six other judges of the Supreme Court to five years in jail under the SC/ST act.
- **Control over subordinate courts-** It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court. It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.
- **Self-correcting agency-** It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. For example, in the Kesavananda Bharati case (1973), the Supreme Court departed from its previous judgement in the Golak Nath case (1967).
- **Enquiry of Conduct-** It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.
- **Contempt of Court-** It can issue notice and punish anyone including Judges of the High Court for its contempt or contempt of any subordinate courts.
- **Complete Justice-** It may pass such decree or make such order as is necessary for doing **complete justice** in any cause or matter pending before it.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

## 7. Supreme Court Advocates

Every advocate is not allowed to practice law in the Supreme court. Only the following three categories of advocates are entitled to do so-

## 7.1. Senior Advocates

The Supreme Court of India or any High Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction.

- A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India.
- He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

## 7.2. Advocates-on-Record

Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

## 7.3. Other Advocates

These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

# 8. Issues faced in the India Judicial System

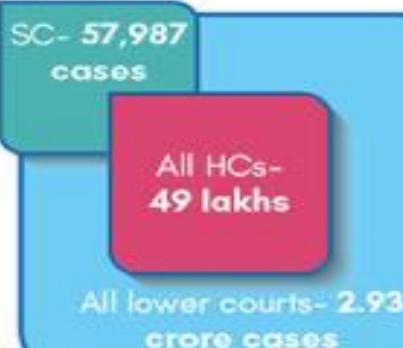
## 8.1. Judicial Pendency and Delay

### Background

Recently the Delhi High Court has released the report on its pilot project titled "Zero Pendency Courts" which has highlighted that pendency of cases in the courts is the biggest challenge that Indian Judiciary is facing today.

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# THE STATE OF PENDENCY OF CASES



At all three levels, courts are unable to keep up with new cases, and they dispose of fewer cases than are filed



- Between 2006 and 2018 (up to April), there has been an 8.6% rise in the pendency of cases across all courts.
- Pendency before Supreme Court increased by 36%, High Courts by 17%, and subordinate courts by 7%.
- The disposal rate has stayed between 55% to 59% in the Supreme Court, at 28% in the High Courts, and at 40% in the subordinate courts.
- Five states which account for the highest pendency are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 lakh), West Bengal (17.59 lakh), Bihar (16.58 lakh) and Gujarat (16.45 lakh).
- A Law Commission report in 2009 had quoted that it would require 464 years to clear the arrears with the present strength of judges.

**Source-** As per the National Judicial Data Grid (NJDG), 2018

## Reasons for Judicial Pendency

- **Shortage of judges** - India has only 17 judges per million population and nearly 5000 posts in subordinate courts are vacant. In contrast, US has 151 and China has 170 judges for a million population.
  - The Law Commission in 1987 had proposed 50 judges per million population.

- Around 5,580 or 25% of posts are lying empty in the sub-ordinate courts..
- **Impasses over appointments of judges:** Memorandum of Procedures for appointment of judges remains work in progress while vacancies in various High Courts have reached nearly 50% of their sanctioned strength.
- **Huge workload:** Judges in high courts hear between 20 and 150 cases every day, or an average of 70 hearings daily. The average time that the judges have for each hearing could be as little as 2 minutes.
- **Government the biggest litigant:** 46% of all litigation across courts were cases or appeals filed by state or central governments.
- **Increasing admission of SLP-** The **Special Leave Petition** cases in the Supreme Court, currently comprises to 40% of the court's pendency. Which eventually leads to reduced time for the cases related to constitutional issues.
- **Frequent adjournments-** The laid down procedure of allowing a maximum of three adjournments per case is not followed in over 50 per cent of the matters being heard by courts, leading to rising pendency of cases.
- **Judges Vacation-** SC works on average for 188 days a year, while apex court rules specify minimum of 225 days of work. Recently, at least 15 judges of the Supreme Court decided that they will be sitting in the forthcoming summer vacation to deal with three cases of Constitutional importance.
- **Low budgetary allocation leading to poor infrastructure-** India spends only about 0.09% of its GDP to maintain the judicial infrastructure. Infrastructure status of lower courts of the country is miserably grim due to which they fail to deliver quality judgements.
  - A 2016 report published by the Supreme Court showed that existing infrastructure could accommodate only 15,540 judicial officers against the all-India sanctioned strength of 20,558.
- **Lack of court management systems-** Courts have created dedicated posts for court managers to help improve court operations, optimize case movement and judicial time. However only few courts have filled up such posts so far.
- **Not utilizing the court managers potential:** Courts have created dedicated posts for court managers to help improve court operations, optimize case movement and judicial time. But more often their duties are restricted to organizing court events and running errands.
- **Inefficient investigation-** Police lacks training for scientific collection of evidences and also police and prison official often fail to fulfil their duty leading to long delays in trial.
- **Increasing legal literacy-** With people becoming more aware of their rights and the obligations of the State towards them, they approach the courts more frequently in case of any violation.

### Impacts of Judicial Pendency

- **Denial of 'timely justice' amounts to denial of 'justice' itself-** Timely disposal of cases is essential to maintain rule of law and provide access to justice. Speedy trial is a part of right to life and liberty guaranteed under Article 21 of the Constitution.
- **Erodes social infrastructure-** a weak judiciary has a negative effect on social development, which leads to lower per capita income; higher poverty rates; poorer public infrastructure; and, higher crime rates.
- **Overcrowding of the prisons,** already infrastructure deficient, in some cases beyond 150% of the capacity, results in "violation of human rights".
- **Affects the economy of the country** as it was estimated that judicial delays cost India around 1.5% of its Gross Domestic Product annually.
  - As per the Economic Survey 2017-18 pendency hampers dispute resolution, contract enforcement, discourage investments, stall projects, hamper tax collection and escalate legal costs which leads to Increasing cost of doing business.
- **Violation of Fundamental Right:** Supreme Court has said that **Article 21** of the Constitution

- entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.
- **Quality of judgement suffers:** It is not uncommon to see over 100 matters listed before a judge in a day leading to very less time on analyzing every facts of the case.

### Steps taken

- **Legal Information Management & Briefing System (LIMBS)-** It is a web-based portal developed by Ministry of Law & Justice for monitoring and handling of various court cases of Government Departments and Ministries.
- **Time bound hearing-** The Supreme Court issued guidelines for fixed time-bound hearing and disposing of criminal cases.

### Measures which can be taken

- **Improving infrastructure for quality justice-** The Parliamentary Standing Committee which presented its report on Infrastructure Development and Strengthening of Subordinate Courts, suggested:
  - States should provide suitable land for construction of court buildings etc. It should undertake vertical construction in light of shortage of land.
  - Timeline set out for computerisation of all the courts, as a necessary step towards setting up of e-courts.
- **Addressing the Issue of Vacancies-** Ensure the appointments of the judges be done in an efficient way by arriving at an optimal judge strength to handle the cases pending in the system. The 120th Law Commission of India report for the first time, suggested a judge strength fixation formula.
  - Supreme Court and High Courts should appoint efficient and experienced judges as Ad-hoc judges in accordance with the Constitution.
  - All India Judicial Service, which would benefit the subordinate judiciary by increasing quality of judges and help reduce the pendency.
- **Annual targets and action plans** must be fixed for the judicial officers to dispose of old cases where accused is in custody for over two years.
- **Setting standards of judicial recruitment examinations** to improve the quality of district judges.
- Implement the **concept of evening courts** where the services of the retired judges may be taken along with the law graduates to train the young incumbents as well as reduce the pendency.
- **230th Law Commission in its report “reform in Judiciary”** in 2009 recommended
  - There must be full utilization of the court working hours and Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.
  - Cases of **similar nature should be clubbed** with the help of technology and used to dispose other such cases on a priority basis;
  - Judges must deliver judgments within a reasonable time both in civil and criminal matters.
  - Vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour
  - Lawyers must curtail prolix and repetitive arguments and length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.
  - Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.
- **Strict regulation of adjournments** and imposition of exemplary costs for seeking it on flimsy grounds especially at the trial stage and not permitting dilution of time frames specified in Civil Procedure Code.

- **Better Court Management System & Reliable Data Collection:** For this categorization of cases on the basis of urgency and priority along with bunching of cases should be done.
- **Use of Information technology (IT) solutions-** The use of technology for tracking and monitoring cases and in providing relevant information to make justice litigant friendly. A greater impetus should be given to
  - Process reengineering- Involves redesigning of core business processes to achieve dramatic improvements in productivity and quality by incorporating the use of technology in court rules. It will include:
  - Electronic filing of cases: e-Courts are a welcome step in this direction, as they give case status and case history of all the pending cases across High courts and Subordinate courts bringing ease of access to information.
  - Revamping of National Judicial Data Grid by introducing a new type of search known as elastic search, which is closer to the artificial intelligence.
- **Alternate dispute resolution (ADR)-**
  - As stated in the Conference on National Initiative to Reduce Pendency and Delay in Judicial System- Legal Services Authorities should undertake pre-litigation mediation so that the inflow of cases into courts can be regulated.
  - The Lok Adalat should be organized regularly for settling civil and family matters.
  - Gram Nyayalayas, as an effective way to manage small claim disputes from rural areas which will help in decreasing the workload of the judicial institution.
  - Village Legal Care & Support Centre can also be established by the High Courts to work at grass root level to make the State litigation friendly.
- **Police Reforms:** The police administration need to be provided with more resources - financial and human both for its effective functioning and improvement of investigation system.

### Way Forward

Economic Survey 2017-18 called for **coordinated action between government and judiciary** to reduce pendency of commercial litigation for improving ease of doing business (EODB) and boost economic activities.

The fundamental requirement of a good judicial administration is accessibility, affordability and speedy justice, which will not be realized until and unless the justice delivery system is made within the reach of the individual in a time bound manner and within a reasonable cost. Therefore, continuous formative assessment is the key to strengthen and reinforce the justice delivery system in India.

## 8.2. Demand for Larger Benches

Setting up of 9-judge bench to hear case of right to privacy has once again renewed the debate on setting up of larger constitutional benches to deal with important cases.

### Rationale behind demand for larger benches:

- **Article 145(3) of constitution:** states that any “substantial question of law” relating to the interpretation of the Constitution must be heard by benches of at least five judges.
- More judges mean that there will be **more points of view**, greater reflection and more thorough analysis in vital cases. It will also add to **legitimacy**, thus, minimizing coming up of same issue frequently. For example, the issue of privacy itself has been debated in eight or more instances.
- It is more **difficult to overturn** a five-judge bench than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law.
- Stability would also set the **doctrine of precedent** because as of now both High Courts and lower courts are left confused as to which of the various pronouncements they are meant to follow.

## 8.3. Judicial Transparency

Student Notes:

### 8.3.1. Installation of CCTV cameras

Supreme Court has ordered installation of **CCTV cameras** in **courtrooms** and its **premises**, without audio recording, in at least in **two districts** of all states and union territories within three months. Such a move came after several rounds of deliberations happened between **Union Executive** and **Supreme Court India** to record court proceedings.

However, SC made it clear that footage of the CCTV cameras **will not be available** under **Right to Information Act** and anybody who want the video footage of court proceedings have to get permission of **concerned High Court**.

### 8.3.2. Live Streaming of Supreme Court Proceedings

#### Background

- Supreme Court (SC) approves live-streaming of court proceedings and directed the centre to frame rules for this.
- The SC agreed that live-streaming of court proceedings would serve as an instrument for greater accountability and formed part of the Code of Criminal Procedure, 1973.
- The SC held that the right to justice under **Article 21** of the Constitution would be meaningful only if the public gets access to the proceedings and to witness proceedings live.

#### Arguments in favour

- **Concept of open courts:** Indian legal system is built on the concept of open courts, which means that the proceedings are open to all members of the public.
- **To promote transparency:** Live-streaming has been allowed for both Lok Sabha and Rajya Sabha proceedings since 2004.
- **Lack of physical Infrastructure:** On any given day, only a handful of people can be physically present and are allowed in the courtroom.
- **Digitization:** While the courts are opting for digitisation, with online records of all cases, filing FIRs online etc. there is a need to make live streaming of the proceedings also.
- **Public Interest Issues:** Matters which have a bearing on important public interest issues such as entry of women to the Sabarimala temple, or the scope of the right to the choice of one's food should be available for all to watch which helps to build the right perception.
- **The right to information,** access to justice and need to educate common people on how the judiciary functions are all strong reasons in favour of allowing live-streaming.

#### Arguments against

- **The unwanted public gaze** caused by live-streaming will tend to make judges subject to popular public opinion and accountable to the general public.
- The role of the judiciary cannot be equated with the roles of the legislature and the executive. The broadcasting of parliamentary proceedings may be good for ensuring accountability, this is not the case with the courts.
- The individuality of judges is more likely to become a subject of public debate through live streaming, creating problems of its own. The focus should be on the judgment delivered.
- There is a **greater likelihood of lawyers aspiring to publicise themselves** tend to address not only the judges but also the public watching them which will hamper their objectivity.
- Instead of live-streaming, audio and video recordings of court proceedings would **reform the administration of justice**. These can be used at the time of review or appeal of a case.

#### Way forward

- Only a specified category of cases or cases of constitutional and national importance being argued for final hearing before the Constitution Bench be live streamed as a pilot project.

- The discretion of the Court to grant or refuse to grant such permission should be, inter alia, guided by the following considerations:
  - Unanimous consent of the parties involved and the sensitivity of the subject matter.
  - Any other reason considered necessary or appropriate in the larger interest of administration of justice, including as to whether such broadcast will affect the dignity of the court itself or interfere with/prejudice the rights of the parties to a fair trial.
- Provide for transcribing facilities and archive the audio-visual record of the proceedings to litigants and other interested persons who are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances.

Student Notes:

## 8.4. Judicial Accountability

### Background

Recently, there was an allegation of sexual harassment against the Chief Justice of India (CJI) made by a former Supreme Court employee, which has yet again triggered a debate between judicial independence and judicial accountability.

Earlier, four senior judges of SC conducted a press conference over their differences with CJI, a first in the history of the country. Also, a sitting judge of Madras High Court Justice CS Karnan remained in controversy for his behaviour. This issue has thrown light on various issues & problems in Judiciary.

Indian Democracy runs on the principle of ‘rule of law’, which implies that ‘no one is above the law’. The Constitution of India gives the role of its guardian and protector to the Judiciary of India. The Judiciary is the watchdog, which preserves and enforces the fundamental and legal rights against any arbitrary violations. However, there have been many areas and instances, where the actions of judiciary itself have been questioned on being contrary to this and hence the issue of accountability of the judiciary has sprung up.

### Meaning of Accountability

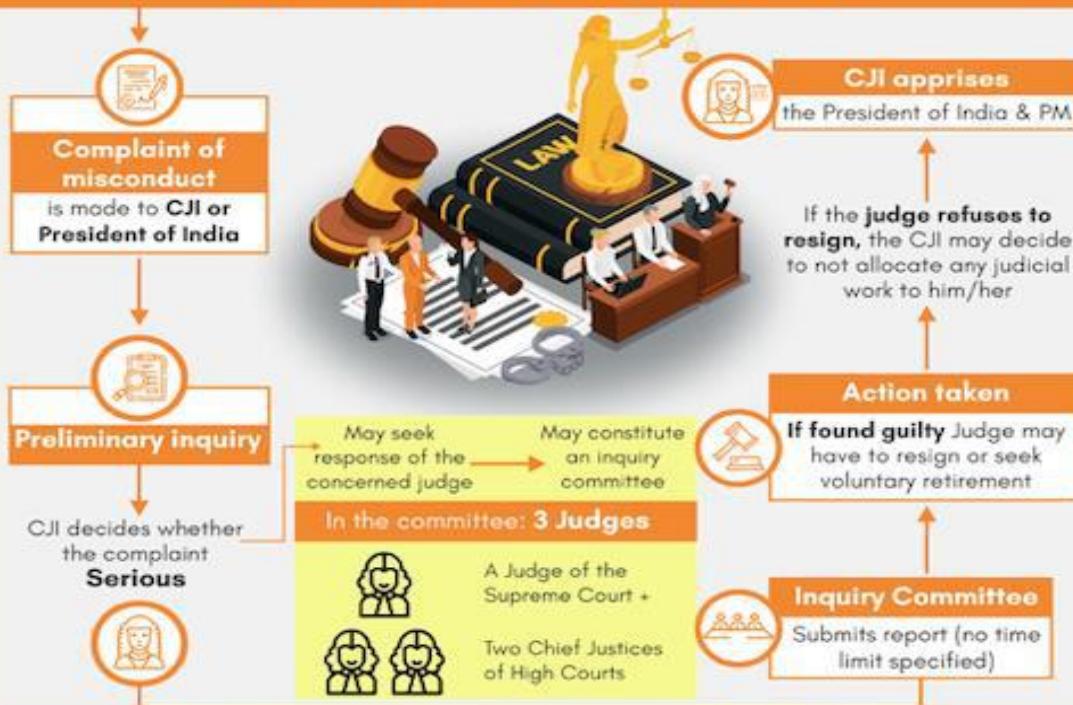
Accountability means any action taken by any authority **requires justifiable explanation for that particular action**. All public institutions and functionaries, whatever their role may be or wherever they stand in the hierarchy have to be accountable for their actions to the people of India.

The Constitution follows the **principle of separation of power** where checks and balances exist on every organ’s conduct. The two organs of the state of India- The Legislature and the Executive are accountable to the Judiciary and to the people at large. But, the question, which has come up, is, “**to whom is the judiciary accountable?**” and “**who is judging the judges?**”

# WHEN JUDGES ARE JUDGED

Mechanisms to investigate charges against a Supreme Court judge

## In-house Procedure of Supreme Court



## Judicial Standards and Accountability Bill, 2010

- Assets Declaration:** Judges will be required to declare their assets and liabilities, and also that of their spouse and children.
- Establishment of Committees:** It establishes the National Judicial Oversight Committee, the Complaints Scrutiny Panel and an investigation committee.
- Complaints Against Judges:** Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- Motion for Removal:** A motion for removal of a judge on grounds of misbehaviour can also be moved in Parliament. Such a motion will be referred for further inquiry to the Oversight Committee.
- Confidentiality and Penalties:** Complaints and inquiries against judges will be confidential and frivolous complaints will be penalised.
- Oversight Committee Powers:** The Oversight Committee may issue advisories or warnings to judges, and also recommend their removal to the President.

## Areas where Judicial Accountability has been found lacking

- **Appointment and Removal of Judges.** – The collegium system in India presents a unique system wherein the democratically elected executive and Parliament at large has no say in appointing judges.
  - Impeachment of judges is a long-drawn-out and difficult process along with its political overtone.
- **Conduct of Judges-** where judges have been alleged to have indulged in corruption (Justice Ramaswami Case, Justice Soumitra Sen), misappropriation, sexual harassment, taking post retirement jobs among others.
- **Opacity in the operations of Judiciary-** The judiciary claims that any outside body having disciplinary powers over them who compromise their independence so they have set up an

"in-house mechanism" investigating corruption.

- **Information asymmetry with Judiciary-** Judiciary has virtually kept itself outside the purview of the Right of Information Act.
- **Contempt of Court-** Using the powers under the Contempt of Court Act, judiciary has been alleged to silence the rightful critics also.
- **Judicial Overreach-** Judiciary has been praised on its activism towards resolving citizen's grievances, however, in this process some of the decisions have encroached the line of overreach also.

### Implications

- Erosion of **public trust in judges and judicial system** when there are issues of integrity and accountability of Judiciary.
- Impacts the **Independence of Judiciary**- when there is lack of accountability to match it.
- **Against the principles of Natural Justice**- e.g. when the Chief Justice decides the "Master of the Rolls" and himself/herself is a party in any case.
- **Mockery of democracy and rule of law** particularly because of continuance as judge for long after indisciplined behavior.
- It goes against the **freedom of expression**. Stopping media from publishing any statements by any judge, is unreasonable from the point of view of freedom of speech and expression.

### Steps taken so far

- **Contempt of Court (Amendment) Bill, 2003** was introduced.
- **Judicial Standards and Accountability Bill, 2010** was introduced.
- Unanimous passing of the **National Judicial Appointments Commission Act** by the Parliament and state legislatures, which was struck down by the Judiciary.
- Draft **Memorandum of Procedure, 2016** is been discussed.

### Measures which can be taken

- A more **formal and comprehensive Code of Conduct for Judges** should be put in place, which is enforceable by law.
- The **Contempt of Court Act** could be amended with following provisions-
  - Cases of contempt should not be tried by courts but by an independent commission of concerned district.
  - The Act should be amended to remove words, 'scandalizing the court or lowering the authority of the court' from the definition of criminal contempt.
  - However, there must be stringent punishment against its misuse on false and malicious allegations made against honest judges.
- A **two-level judicial discipline model** with first level as a disciplinary system that can reprimand, fine or suspend judges for misdemeanors along with providing them some limited measures of immunity; and, second level as a system of removal of judges for serious misconduct, including corruption must be established.
- **Increasing the transparency in public hearing in the courtrooms**- Last year, the Supreme Court approved the live-streaming of court proceedings of cases of constitutional importance. This provision could be extended to the other cases and High Courts also.
- **Independent judicial Lokpal** may be set up with power to take up complaints and initiate action against judges should be set up to ensure accountability of the judiciary. It should be independent from both the judiciary and the government.

### Way Forward

- Bringing a **new Judicial Standards and Accountability bill** along the lines of Judicial Standards and Accountability Bill 2010 (which lapsed) to establish a set of legally enforceable standards to uphold the dignity of superior judiciary and establish a new

- architecture to process the public complaints leveled against the judges.
- **Authority outside judiciary to take disciplinary actions:** This is one solution being discussed. However, it has several shortcomings:
    - potential threat to judicial independence
      - may inject fear in judges while taking any decision that it may annoy powers as seen during the time of emergency
    - design of constitution has been to ensure absolute judicial independence, with no scope for Parliament or the executive interference in judicial conduct or decisions.
  - **Appointment:** the collegium should take adequate safeguards so that only judges of high caliber and impeccable integrity are appointed to the higher courts. This requires infusion of **greater transparency** in the selection of judges.
  - **Greater Internal regulation:** disciplinary actions should be taken promptly at the very first instance of misconduct. For this, a **National Judicial Oversight Committee** should be created by the Parliament which shall develop its own procedures to scrutinize the complaints and investigation. The composition of such committee should not affect judicial independence.

#### **8.4.1. Court's reluctance to come under Right to Information (RTI)**

##### **Background**

Numerous petitions seeking information from the court under RTI are asked to be applied under SC rules. Apart from this various courts have also framed their own rules under which various regulations. Further, although the courts were included in the definition of Public Authorities (section 2 (h)) most of the HCs did not even appoint Public Information Officers (PIOs) even months after this act came to force which denied people their right to information.

However, the **Supreme Court Rules undermined the RTI in four key areas**. Unlike the RTI Act, the Rules do not provide for:

- a time frame for furnishing information
- an appeal mechanism
- penalties for delays or wrongful refusal of information
- makes disclosures to citizens contingent upon “good cause shown”

In sum, the Rules allowed the judiciary to provide information at its unquestionable discretion, violating the text and spirit of the RTI. The RTI Act does not permit any appeals to be entertained by any court under Section 23. Section 23 of RTI Act forbids courts from entertaining “any suit, application or other proceeding in respect of any order made under this Act”. Nevertheless, the contradiction arises from the fact that the Indian Constitution gives powers to the Supreme Court and the high courts that override any statute.

Further, SC has said that the decision of the Registrar General of the Court will be final and not subject to any independent appeal to Central Information Commission. These issues have brought the credibility of judges further under question.

##### **Arguments in favour of bringing judiciary under RTI**

- The lack of stringent in-house accountability and transparency mechanisms has allowed the judiciary to keep itself free from regular public scrutiny. The Right to Information Act is a step forward towards opening a closed and secretive judicial system.
- It will increase the amount of transparency in judiciary in case of appointment of judges as it may decrease nepotism and despotism as criticized to be present in judiciary.
- Courts have always been questioned for pending cases. RTI can place yardstick among judiciary for timely disposal of justice.
- It will increase accountability of judiciary as judges can be held accountable for their decisions.

- It will increase the faith of people if they could also know about judicial working.
- In the famous Raj Narain Vs Indira Gandhi case, the SC laid down the foundation of Right to Information in India stating that the people of the country have the right to know about every public act. Thus, The Supreme Court should begin practicing what it preaches.

Student Notes:

### **Argument against bringing judiciary under RTI**

- Collegium discussions can be freewheeling and include the examination of fairly invasive government intelligence reports and the expression of judges' personal opinions.
- For judges, their credibility and reputation is hugely important, and many feel that the slightest potential slight on this could be debilitating and prevent judges from doing their job.
- It may compromise secrecy & security involved in certain cases. This may prove detrimental for our country.
- It may compromise independence of judiciary as specified by constitution and may lead to politicization of judiciary.
- It may create extra burden on judiciary and delays in judicial appointments & transfers as an over conscious approach may be adopted to avoid conflicts.

### **Way Forward**

In a democracy all institutions, including the judiciary, must be transparent and accountable. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution.

The higher judiciary can be brought under RTI Act with following limitations:

- Sub-judice case where disclosed information can influence judge's verdict.
- Confidential information to maintain unity and integrity of nation.
- If the information does not deal with issue of a public importance and doesn't affect the person in any way.

The Chief Justice of India, as the high priest of the legal system, must uphold the RTI Act and realise that no institution can be considered credible and inspire public confidence unless it is open and transparent. The judiciary can only occupy the high moral ground it often claims, by setting an example, and leading from the frontlines of transparency; not by hiding behind the veil of secrecy.

### **8.4.2. Need for larger benches**

#### **Background**

In the early years, all 8 judges including chief justice sat together to hear the cases. With the increase in workload, Parliament increased the number of judges gradually from 8 in 1950 to the present 34 and the constitution of benches also changed and they sat in smaller benches of two and three to dispose of backlogs (currently about 60,000 cases)

In the 1960s, Supreme Court heard about 100 five-judge or larger benches a year. By the first decade of the 2000s, the court averaged only about 10 constitution benches a year. Thus, various important cases are being heard by smaller benches such as RTE act case was decided by three judges, Naz Foundation case by just two judges etc. However, focusing more judges on constitution benches also comes with a concern that it could come at the cost of less access to the court for other matters.

#### **Reason for demands for larger benches:**

- **Article 145(3) of constitution:** states that any "substantial question of law" relating to the interpretation of the Constitution must be heard by benches of at least five judges More judges mean that there will be more points of view, greater reflection and more thorough

analysis in vital cases. It will also add to legitimacy thus, minimizing coming up of same issue frequently. For example - The issue of privacy itself has been debated in eight or more instances

- It is more **difficult to overturn a five-judge bench** than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law
- Stability would also set the **doctrine of precedent** because as of now both High Courts and lower courts are left confused as to which of the various pronouncements they are meant to follow.

#### Way forward

There needs to be clarity in determining when a case involves a “substantial question” of constitutional law and so requires a larger bench. Also, explanation needs to be given to justify why the matter was being heard by less than five judges.

### **8.4.3. Frequent use of Article 142**

#### Background

There are criticisms on the frequent usage of Article 142 by the apex court in various cases such as highway liquor ban, ordering joint trial of the two Babri Masjid demolition cases, etc.

**Article 142** states that “the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing **complete justice** in any cause or matter pending before it...”

#### Causes of Concern

- **Unlimited power:** Article 142 is not a source of unlimited power and there should be self-restraint in using it that the orders under 142 does not amount to **judicial overreach**.
- **Unconstitutional:** It is against the **doctrine of ‘separation of powers’**, which is part of the basic structure of the Constitution.
- **Uncertainty about discretion as** in the apex court, 31 judges sit in thirteen divisions of two or three to decide the cases and each bench is independent of the other.

#### Way out

- Although apex court has used Article 142 in good ways such as Union carbide case, cleansing of Taj Mahal, release of undertrials in jail etc., yet following restraints should be considered to bring complete justice to various deprived sections of society under Article 142 in general:
- Cases invoking Article 142 should be referred to a Constitution Bench of at least five judges to decrease uncertainty around article 142.
- In cases where the court invokes Article 142, the government must bring out a white paper to study the beneficial as well as the negative effects of the judgment after a period of six months or so from its date.
- Supreme Court should follow its much reiterated principle that recourse to Article 142 of the Constitution is inappropriate, wherever a statutory remedy is available.

## **8.5. Contempt of Court**

#### Background

India's courts have routinely invoked its contempt powers to often punish expressions of dissent on purported grounds of such speech undermining or scandalizing the judiciary's authority.

- In a first, the Supreme Court started contempt proceedings against Justice C S Karnan, a sitting judge of the Calcutta High Court.
- Recently, the Supreme Court issued the suo motu contempt notice to civil rights lawyer Prashant Bhushan against him on his tweets against the CJI.

## Meaning of Contempt of Court

- Contempt of court consists of words spoken or written which tend to bring the administration of Justice into contempt, to prejudice the fair trial of any cause or matter which is the subject of Civil or Criminal proceeding or in any way to obstruct the cause of Justice.
- Article 129 and Article 142 (2)** of the Constitution enables the Supreme Court to issue notice and punish any one including Judges of the High Court for its contempt or contempt of any subordinate courts.
  - The Judiciary was provided with this power under **Contempt of Court Act, 1971** which defines contempt powers of judiciary.

## Rationale behind Contempt of Court

- To ensure that the **Judges do not come under any kind pressure** either from media criticisms or by general public opinion and discharge their duties without any kind of fear and favour or any external influence whatsoever.
- Prevent scandalisation or lowering the authority of any court.
- Prevent interference with the due course of any judicial proceedings.
- Strengthen court's image as legal authority and that no one is above the law.
- Ensure one could not defy court orders according to one's own free will.

## Arguments against Contempt of Court

- Contempt of Court proceedings have the **effect of muzzling free speech** guaranteed under Article 19(1)(a) of the Indian Constitution.
- Article 19(2) includes 'contempt of court' as a reasonable restriction on free speech but its justification in its present form is not tenable in a democracy.
- Pandit Thakur Das Bhargava** in the Constituent Assembly said that powers to reprimand contempt concerned only actions such as the disobedience of an order or direction of a court, which were already punishable infractions.
- Speech in criticism of the courts, ought not to be considered as contumacious, for it would simply open up the possibility of gross judicial abuse of such powers; which has now been proved true in many instances.
- Interestingly, in England, whose laws of contempt we have adopted, there hasn't been a single conviction for scandalizing the court in more than eight decades.

## Law Commission's Stand

- According to 274th Law Commission Report no changes are required to the 1971 statute.
- There are several safeguards built into the Act to protect against its misuse. For instance, the Act contains provisions which lays down cases that do not amount to contempt and cases where contempt is not punishable. These provisions suggest that the courts will not prosecute all cases of contempt.
- The Commission further noted that the Act had withstood judicial scrutiny, and therefore, there was no reason to amend it. In fact, the statute, by laying down procedure, restricts the vast authority of the courts in wielding contempt powers.
- Amending the definition of contempt will lead to ambiguity. This is because the superior courts will continue to exercise contempt powers under the Constitution. If there is no definition for criminal contempt in the Act, superior courts may give multiple definitions and interpretations to what constitutes contempt.
- Even in the absence of the legislation, the Courts have the power to punish for their contempt under the constitution as the Act 1971 is not the source of 'power to punish for contempt' but a procedural statute that guides the enforcement and regulation of such power.

Student Notes:

The Contempt powers should be used in such a way as not to violate Right to Freedom of Speech while also ensuring independence of the Judges. The judiciary must be highly liberal while respecting freedom of speech and allow fair criticism as permitted under 1971 Act.

In addition to that, the **Contempt of Court Act, 1971** must be suitably amended or repealed on the lines of United Kingdom and United States where such a law does not exist. But amendment in 1971 act in 2006 also did not lead to restrain by judiciary. Thus, the right balance between freedom of speech and contempt powers of court can be achieved by the judiciary itself.

## 8.6. Master of the Roster

### Background

In last few years, there has been a heated debate on the topic of 'Master of Roaster'. The recent debate all started with when a public interest lawyer filed a petition in the Supreme Court in the Judges bribery case and asking the Chief Justice of India to recuse in the matter, to which he refused.

Later on, four senior most judges of the Supreme Court came out to do a press conference and blamed the then Chief Justice of India for selectively allotting cases to preferred benches. In response to that, the CJI published a new subject wise roster for allocation of cases. However, this allocation, did little to pacify the judges as the CJI allocated most important public litigations matters to himself.

### Meaning of Master of Roster

'Roster' as 'a list of people's names and the jobs they have to do at a particular time.' **Master of Roster** is a judge appointed by the SC to list out the allocation of cases to different judges, for preventing two different benches from hearing the same kind of case. It allows effective case management, by allocating similar cases to judges with more experience.

In the Indian context, it usually refers to the administrative power of the **Chief Justice of India** and the **Chief Justices of the High Courts** to allocate the matters that their brother and sister judges shall be hearing, respectively.

## WORKING OF SUPREME COURT OF INDIA

### HOW SC WORKS

**31 JUDGES**

**12 Courts Usually**

Numbered 1 to 12  
Court No.1 is the CJ,  
Court No.2 is Justice Chelameswar as the second seniormost, and so forth..

**CJI is master of roster;** decides on administrative side the bench that will hear a particular 'sensitive case'

- ▶ Court number indicates seniority of SC judge who presides over the bench in that court
- ▶ Normally, Sensitive cases are assigned to benches headed by seniormost judges
- ▶ For last five to six years, the court No.1 or Chief Justice's court has been hearing most of the important & sensitive cases
- ▶ Only a few important cases get assigned to other benches
- ▶ Otherwise, there is a computer devised coding system that lists cases, depending on subject matter, to a particular bench

There has been several judgments of the High Courts and the Supreme Court interpreting the correct positions of 'Master of Roster'. Recently also after this debate, it was formalised that the CJI is *sui generis* (unique) and hence the master of roster.

#### Concerns raised-

- The concentration of immense powers on a single person also against the principles of democracy.
- There are allegations of corruption in the courts. By giving power of deciding the case, it violates the basic principle of law i.e. that no one should be a judge in his own case.
- A just and fair roster must be one that is divided subject-wise among judges according to their experience and expertise in those subjects.
- Politically sensitive matters should be before the five senior judges of the Supreme Court.

#### Arguments against such concerns-

- According to another recent judgment also, seniority in terms of appointment has no bearing on which cases a judge should hear. To suggest that one judge is more capable of deciding particular cases or that certain categories of cases should be assigned only to the senior-most among the judges of the Supreme Court has no foundation in principle or precedent. To hold otherwise would be to cast a reflection on the competence and ability of other judges to deal with cases assigned to them by the Chief Justice.
- The CJI is only "the first among equals" as a judge, but is *sui generis* (one of his kind) in other capacities.
  - Entrustment of such authority in the Chief Justice is necessary for safeguarding the Supreme Court as an "independent safeguard for the preservation of personal liberty".
- The CJI has made the roster system public and portfolios are now being published on the Supreme Court website.

The Chief Justice is entrusted with the function because such an entrustment is necessary for efficient transaction of administrative and judicial work of Supreme Court. The purpose behind this authority to Chief Justice is to ensure that Supreme Court is able to fulfill and discharge constitutional obligations, which govern and provide the rationale for its existence.

Judges need to trust each other. The CJI must also ensure that the allotments of cases to the benches are in an independent and an impartial manner. He should not only act as unbiased but also seem to do so to instill confidence in his colleagues. He should not brush aside any reasonable suggestions in this regard from his colleagues.

## 8.7. Judges and Post-Retirement Positions

### Background

- Recently, the President nominated the former Chief Justice of India, Ranjan Gogoi to the Rajya Sabha.
- The President has used his powers under Article 80 (1)(a) to nominate 12 persons having special knowledge or practical experience in respect of such matters as the following: Literature, science, art and social service.
- Ranjan Gogoi was nominated to the Rajya Sabha within six months of his retirement as the 46th Chief Justice of India
- There has been a number of reactions and counter-reactions to it. A public interest litigation has also been filed in the Supreme Court against this move.

### Arguments in favour

- No legal/ constitutional bar-** the Article 124(7) provides that a retired Supreme Court judge cannot "plead or act in any court or before any authority within the territory of India".
  - This provision only restricts post-retirement appointments in Judiciary itself, but not in posts of president, governor, member of parliament, etc.
  - There is no cooling off period before a Judge following his/her retirement.
- Not a strict separation of power-** the Indian constitution does not provide for a strict separation of powers as available in the American constitution.
  - Further, the legislature and judiciary can work together for nation-building, if there are such exchange of personalities.
  - The presence of judges in Parliament will be an opportunity to project the views of the judiciary before the legislature and vice versa.
- Other instances of post-retirement appointments of judges-** in other domains and areas such as Justice P. Sathasivam was appointed the Governor of Kerala and Justice Hidayatullah became the Vice President of India.
- Has not joined any political party-** The given instance is of nomination of judge. There is a crucial difference between elected and nominated members.
  - Those who are elected to a house from a party are subject to whip of that party. They are bound to vote the way the party directs them, and in general, they can't criticise the party and the govt if the party is in power.
  - On the other hand, a nominated member is an independent member, not subject to any party whip.

### Previous Instances of such appointments-

- Justice Ranganath Mishra- He was appointed to the Rajya Sabha six years after he demitted office as CJI.
- Justice Baharul Islam- He was a Rajya Sabha member and then became a High Court judge, then Supreme Court judge and finally became a Rajya Sabha member again.
- Justice Kawdoor Sadananda Hegde- He served as a member of the Rajya Sabha prior to his joining the Madras High Court. He was sworn into the Supreme Court in 1967.

- **Legal knowledge:** The valuable experience and insights that judges acquire during their period of service cannot be wasted after retirement.
  - **Adds value to the Rajya Sabha debates-** Eminent judges can contribute towards more nuanced law making in the country and strengthen Rajya Sabha as the conscience keeper of the Parliament.

Student Notes:

#### Arguments against

- **Separation of powers and judicial independence:** Justice should not only be done, but seen to be done. Here, accepting and offering post retirement jobs bridges the constitutional distance which executive and judiciary needs to have, creating the perception of bias. This hampers judicial independence when positions are taken within a short time of retirement or accepted before retirement.
- **Conflict of interest-** Positions at tribunals and constitutional bodies create a conflict as Government itself is a litigant and appointment authority at the same time. The first Law Commission, headed by M C Setalvad, had recommended that judges of the higher judiciary should not accept any government job after retirement.
- **Compromises the independence of judiciary-** The acceptance of post-retirement jobs leaves newly retired judges open to political criticism from the opposition, who use it to cast aspersions on the Court, the Judicial system, and the judgments and orders passed by these judges while in office.
  - It sends out the message that if a judge gives ruling in favour of the executive, he/she will be rewarded.
  - More than being a reward for the retired judge, the offer of a plum post-retirement job, sends a message to judges who are still working.
- **Integrity of the judges-** the judges are expected to conduct themselves in such a manner even after their retirement so as not to create an adverse impression about the independence of judiciary.
  - The judges are expected to work without fear or favour and remain above political divides or affiliation in their career.
- **Erode people's trust-** The judiciary thrives on perception and faith. Such actions can shake people's confidence and faith in the independence of judiciary.

#### Practices Worldwide

**USA:** No Supreme Court judge retires lifelong. Done to prevent conflict of interest

**UK:** Supreme Court judges retire at the age of 70. No law stopping judges from taking post-retirement jobs but no judge has taken such a post

#### What can be done to strike a balance?

- **Mandatory cooling off period-** for judges for taking up government assignments after retiring.
  - The cooling-off period will minimise the chances of judgments getting influenced by post-retirement allurements.
  - This cooling-off period can be of six years and no judge should be appointed before completing this period, as the government's tenure is of five years.
- **Increase age of retirement:** Unlike in many other countries, a judge of the higher judiciary in India retires at a comparatively young age and is capable of many more years of productive work.
- **Enact a law:** to set up a commission made up of a majority, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies. In the meantime, judges themselves can fill the legislative void by giving suitable directions.
  - **Extend the application of other statutes to judges-** such as Section 8 of the Lokpal and Lokayukta Act, 2013, which barred its chairman and members from re-employment or taking any assignments as diplomat and Governor and other posts, on ex-judges of the Supreme Court and high courts.

- **Envisioning a transparent process:** Former Chief Justice R M Lodha, had suggested that before a judge retires, the government should provide option of either being a pensioner or continue to draw existing salary. If they opt for pension, government jobs are out but if they opted for full salary, that name should be put in a panel. When a vacancy arises, these persons can be considered and the process becomes devoid of allegations of appeasement, favouritism etc.
- **Amending the constitution:** by incorporating a provision similar to Articles 148 (barring CAG from post retirement job) or 319 (similar provision for UPSC members).

Student Notes:

## 9. Recent Developments

### 9.1. Public Interest Litigation (PIL)

#### Recent Developments

- Recently, while hearing public interest litigation (PIL) challenging the allocation of 4G spectrum to Reliance Jio, Supreme Court (SC) voiced its concerns on the NGO becoming a “**proxy litigant**” and a front for settling corporate rivalry or personal vendetta.
- This observation by SC, once again brought into focus the debate on the proper role of the PIL in the legal system.

#### Positive Contributions of PIL

- Bringing courts closer to the disadvantaged sections of society such as prisoners, destitute, child or bonded labourers, women, and scheduled castes/tribes.
- PIL has become a **vehicle to bring social revolution through constitutional means**.
- It has also **helped in expanding the jurisprudence of fundamental (human) rights in India**.
- PIL also become an instrument to promote rule of law, demand fairness and transparency, fight corruption in administration, and enhance the overall accountability of the government agencies.
- PIL has enabled civil society to play an active role in spreading **social awareness** about human rights, in providing voice to the marginalized sections of society, and in allowing their participation in government decision making.
- Through PIL, judiciary also initiated legislative reforms and filled in legislative gaps in important areas. For example – **Vishaka guidelines** on sexual harassment at workplace.
- PIL has helped the Indian **judiciary to gain public confidence and establish legitimacy in the society**.

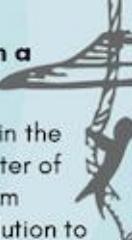


# HOW TO FILE A PUBLIC INTEREST LITIGATION



## Who can file a PIL?

Any member of the public— even a non-governmental organisation, an institution or an individual



## Where can PILs be filed?

Any member of the public can approach the Supreme Court, a High Court or a Magistrate Court, and seek justice for people's welfare

## What are a PIL's merits

Citizens of the country can find legal remedy to larger issues by spending very little in court fees. The litigants can achieve results pertaining to larger public issues, especially those concerning human rights and consumer welfare

## What issues can a PIL be filed on?

A PIL can be filed in the courts for any matter of public interest, from environmental pollution to road safety and construction hazards

However, the person filing the petition must prove to the court that it is being filed in public interest, and not as frivolous litigation

## Evolution of PIL in India

- Principles enshrined in Article 39A of the Constitution of India to protect and deliver prompt social justice with the help of law can be sought as the basis of the concept of PIL.
- Before 1980, only aggrieved party could approach the court for justice (principle of locus standi) but after the emergency era, the court reached out to the people, devising a means for any person of the public (or an NGO) to approach the court seeking legal remedy in case where the public interest is at stake. Justice P.N. Bhagwati and Justice V.R Krishna Iyer were among the first judges to admit PILs in court.

## Present Status

- Spectrum of issues raised in PIL have expanded tremendously—from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government.
- In recent years, anyone could file a PIL for almost anything. It seems that there is a further expansion of issues that could be raised as PIL, e.g. calling back the Indian cricket team from the Australia tour.
- This is contradictory to the main objective of the PIL, which is meant to provide the remedial jurisprudence for those who can't approach the court on account of poverty or some other disability.

- An unanticipated increase in the workload of the superior courts:** PILs have interfered with the normal judicial functioning of the court leading to increase in the number of pending cases before Supreme Court and High Courts, resulting in the choking of the legal system.
- Abuse of process:** PILs have been vastly misused where it has degenerated into private interest litigation. It has given rise to the filing of frivolous and vexatious petitions, filed before the court.
- Friction and confrontation with fellow organs of the government:** A major criticism of PILs is that through this medium judiciary is encroaching the domain of Executive and Legislature. Over the years, the social action dimension of PIL has been diluted and eclipsed by another type of “public cause litigation” in courts. In this type of litigation, the court’s intervention is not sought for enforcing the rights of the disadvantaged or poor sections of the society, but simply for correcting the actions or omissions of the executive or public officials or departments of government or public bodies.

#### Steps taken to prevent misuse of PILs

- The SC has warned that the court shall have the power to impose exemplary compensation on the parties that misuse the PIL. Further, a party that brings a PIL in the court shall have to *prima facie* establish a case before the court, before the court takes up the case for further action.
- The court has also started establishing the Scrutiny Committees consisting of public-spirited lawyers, social workers etc. to scrutinize the PIL filed and submit the report to the court explaining the merit in the case if there is any to save the court’s precious time. In this regard, the court has also been taking help of *Amicus Curiae* (friend of the court). The Supreme Court also cautioned the high courts to be cautious while taking up a PIL that it should not interfere in the policy issues of executives.
- The Supreme Court has devised guidelines defining the process and the issues, which can be accepted as PIL.

#### Way Forward

- Striking a balance in allowing legitimate PIL cases and discouraging frivolous ones.
- One way to achieve this objective could be to confine PIL primarily to those cases where access to justice is undermined by some kind of disability.
- The other useful device could be to offer economic disincentives to those who are found to employ PIL for ulterior purposes.

## 9.2. Affordable Justice Delivery

Recently, the Supreme Court introduced ‘**Middle Income Group Scheme**’ to provide affordable legal services where fees would be charged as per the schedule attached to the scheme. The scheme will be administered through a society named ‘**Supreme Court Middle Income Group (MIG) Legal Aid Society**’ registered for this purpose. The Patron-in-Chief of the society is Chief Justice of India and the Attorney General is its ex-officio Vice President. Its **beneficiaries** will be litigants in the SC whose gross income is less than Rs. 60,000 per month or Rs. 7.5 lakh per annum.

#### Significance

- Right to **free legal aid or free legal service** is an essential fundamental right guaranteed by the Constitution and forms the basis of reasonable, fair and just liberty under Article 21 of the Constitution of India.
- Article 39-A** says that the State shall “ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

## 9.3. Online Justice Delivery

Student Notes:

### Background

The Supreme Court recently passed directions for all courts across the country to extensively use video-conferencing for judicial proceedings so that the congregation of lawyers and litigants can be avoided to maintain social distancing amid the coronavirus pandemic.

Supreme Court invoked its power under Article 142 of the Constitution to validate all proceedings through video-conferencing. Earlier, Kerala High Court also conducted court proceedings through video conferencing and also live streamed the proceedings.

### How online delivery of judicial services help in tackling various issues in judicial system?

- **High pendency:** Between 2006 -2019, there has been an overall increase of 22% in the pendency of cases across all courts. Online judicial services can provide additional aid to clear this backlog and reduce the time and cost involved.
- **Enhanced efficiency of courts:** Standard system generated formats of routine judgments and orders, particularly in civil cases, can be used by courts for quick delivery of judgments.
  - Reduction of paperwork will relieve judges and other court staff from administrative duties and allow them to focus on judicial functions.
  - Real-time online data would facilitate better identification and classification of cases and also enable High Courts to exercise proper supervision and control over subordinate courts.
- **Tackling Infrastructural constraints:** Video and audio enabled hearings can save significant court costs in terms of building, staff, infrastructure, security, transportation costs for all parties to the court proceedings.
- **Availability of judicial data:** The Law Commission of India in its 245th Report noted that the lack of comprehensive and accurate data relating to cases from courts across the country poses a hurdle to efficient policymaking by the government. Digital databases created by online judicial services can address this need.
- **Improving transparency and accountability in the judicial system:** Allowing audio-video recordings of court proceedings can contribute to transparency of court processes by allowing a precise record of the proceedings and at the same time discourage improper conduct in courts and wastage of court time.
  - Information related to judicial statistics placed in the public domain can help the key stakeholders like advocates, litigants, researchers and the public at large to be better informed about the state of the judicial system
- **Promoting ease of doing business:** Online resolution of contractual disputes will boost the confidence of domestic and foreign businesses as they explore investments in India.

### Challenges

- **Lack of investment in court and IT infrastructure:** State of the art e-courts require the deployment of new age technology like high speed internet connection, latest audio and video equipments, cloud computing, availability of sufficient bandwidth etc.
- **Lack of technical knowhow** among court officials and staff and absence of dedicated in-house technical support.
- **Low awareness amongst litigants and advocates:** As per a survey less than 40 per cent of cases were filed exclusively through a computerized system.
- **Digital divide in access to justice:** due to insufficient infrastructure, non-availability of electricity and internet connectivity and low digital literacy in rural areas.
- **Interdepartmental Challenges:** due to lack of coordination, communication and interoperability of software between various departments.
- **Cyber security threats:** Judicial data comprise of sensitive case information and litigant data, their electronic storing and transmission fuels security and privacy concerns.

- Procedural problems:** like admissibility and authenticity of the evidence received through the video and/or audio transmissions, the identity of the witness and/or individuals subject of the hearings, confidentiality of the hearings etc.

Student Notes:

## Judicial Reforms Undertaken

<b>Integrated Case Management Information System (ICMIS)</b> <ul style="list-style-type: none"> <li>It has been introduced in the apex court for <b>digital filing</b>.</li> <li>Its functions include the option of e-filing cases, checking listing dates, case status, online service of notice/summons, office reports and overall tracking of progress of a case filed with the apex court registry.</li> <li>This will streamline the filing process for both the advocates and the registry. It will ensure transparency, provide easy access to case information and help in reducing the time in filing pleadings which, in turn, would increase the pace of judicial process.</li> </ul>	<b>e-Committee of Supreme Court</b> <ul style="list-style-type: none"> <li>It is a body constituted by the Government of India in the Supreme Court to assist the Chief Justice of India in formulating a National policy on computerization of Indian Judiciary and advice on technological communication and management related changes.</li> </ul>
<b>National Judicial Data Grid</b> <ul style="list-style-type: none"> <li>It is a web portal that provides data related to the number of cases pending in any court in the country.</li> </ul>	<b>Re-engineering committees in High Courts</b> <ul style="list-style-type: none"> <li>These have been established as per the order of the eCommittee of the Supreme Court. The role of these committees is to undertake judicial process re-engineering by streamlining and improvising current court processes, eliminating redundant processes and designing new processes with respect to making court processes ICT enabled.</li> </ul>
<b>eCourts Mission Mode Project</b> <ul style="list-style-type: none"> <li>It is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.</li> <li>The objective of the eCourts Project is to provide designated services to the citizens as well courts by ICT enablement of all district and subordinate courts in the country.</li> <li>The services being delivered to citizens include status of registration of cases, Case status, Case list, daily order sheets and final orders/judgments.</li> <li>e-Courts Services Mobile application and e-Courts National Portal have also been developed.</li> </ul>	<b>Legal Information Management &amp; Briefing System (LIMBS)</b> <ul style="list-style-type: none"> <li>It is a web based portal developed by Department of Legal Affairs, Ministry of Law &amp; Justice for monitoring and handling of various court cases of Govt. Departments and Ministries.</li> </ul>
<b>Judicial Service Centre</b> <ul style="list-style-type: none"> <li>JSCs have been established at all computerised courts which serve as a single window for filing petitions and applications by litigants/ lawyers as also obtaining information on ongoing cases and copies of orders and judgments etc.</li> </ul>	<b>Interoperable Criminal Justice System (ICJS)</b> <ul style="list-style-type: none"> <li>It is aimed at integrating the Crime and Criminals Tracking Network and Systems (CCTNS) project with the e-Courts and e-Prisons databases, as well as with other pillars of the criminal justice system such as forensics, prosecution and juvenile homes in a phased manner.</li> </ul>

### Way Forward

- Development of supporting infrastructure at every level such as facilitation centres with facilities for e-filing and video conferencing at the entrances of court complexes; integrated softwares etc.
- Making rules for use of electronic evidence: Procedural laws / rules may also need to be amended to incorporate the suggestions of having audio-video recording of court proceedings and maintaining standard system generated formats of routine judgments and orders.
- Design and impart regular training courses: for judges, court staff and paralegals for using online systems and maintenance of e-data (such as records of e-file minute entries, summons, warrants, bail orders, order etc). Courses should optimize the use of virtual teaching tools to maximize reach.
- Creating a user friendly e-courts mechanism and awareness generation: which is simple and easily accessible by the common public and provides information in multiple Indian languages.
- Clear rules on data privacy: These must include consequences of data breach, infringement of privacy etc. and an appropriate grievance redressal mechanism.

## 10. Articles Related to the Supreme Court

Article No.	Subject Matter
Article 124	Establishment and Constitution of Supreme Court
Article 124A	National Judicial Appointments Commission (Repealed)
Article 125	Salaries, etc., of Judges
Article 126	Appointment of acting Chief Justice
Article 127	Appointment of ad hoc Judges
Article 128	Attendance of retired Judges at sittings of the Supreme Court
Article 129	Supreme Court to be a court of record

<b>Article 130</b>	Seat of Supreme Court
<b>Article 131</b>	Original jurisdiction of the Supreme Court
<b>Article 131A</b>	Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws (Repealed)
<b>Article 132</b>	Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases
<b>Article 133</b>	Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters
<b>Article 134</b>	Appellate jurisdiction of Supreme Court in regard to criminal matters
<b>Article 134A</b>	Certificate for appeal to the Supreme Court
<b>Article 135</b>	Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court
<b>Article 136</b>	Special leave to appeal by the Supreme Court
<b>Article 137</b>	Review of judgments or orders by the Supreme Court
<b>Article 138</b>	Enlargement of the jurisdiction of the Supreme Court
<b>Article 139</b>	Conferment on the Supreme Court of powers to issue certain writs
<b>Article 139A</b>	Transfer of certain cases
<b>Article 140</b>	Ancillary powers of Supreme Court
<b>Article 141</b>	Law declared by Supreme Court to be binding on all courts
<b>Article 142</b>	Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
<b>Article 143</b>	Power of President to consult Supreme Court
<b>Article 144</b>	Civil and judicial authorities to act in aid of the Supreme Court
<b>Article 144A</b>	Special provisions as to disposal of questions relating to constitutional validity of laws (Repealed)
<b>Article 145</b>	Rules of court, etc.
<b>Article 146</b>	Officers and servants and the expenses of the Supreme Court
<b>Article 147</b>	Interpretation

Student Notes:

## 11. Previous year UPSC Prelims Questions

2019

1. Consider the following statements:

1. The motion to impeach a Judge of the Supreme Court of India cannot be rejected by the Speaker of the Lok Sabha as per the Judges (Inquiry) Act, 1968.
2. The Constitution of India defines and gives details of what constitutes 'incapacity and proved misbehaviour' of the Judges of the Supreme Court of India.
3. The details of the process of impeachment of the Judges of the Supreme Court of India are given in the Judges (Inquiry) Act, 1968.
4. If the motion for the impeachment of a Judge is taken up for voting, the law requires the motion to be backed by each House of the Parliament and supported by a majority of total membership of that House and by not less than two-thirds of total members of that House present and voting

Which of the statements given above is/are correct?

- (a) 1 and 2      (b) 3 only      (c) 3 and 4 only      (d) 1, 3 and 4

Ans (c)

2. With reference to the Constitution of prohibition or limitations or provisions contained in ordinary laws cannot act as prohibitions or limitations on the constitutional powers under Article 142. It could mean which one of the following?

- (a) The decisions taken by the Election Commission of India while discharging its duties cannot be challenged in any court of law.
- (b) **The Supreme Court of India is not constrained in the exercise of its powers by laws made by the Parliament.**
- (c) In the event of grave financial crisis in the country, the President of India can declare Financial Emergency without the counsel from the Cabinet.
- (d) State Legislatures cannot make laws on certain matters without the concurrence of Union Legislature.

3. With reference Constitution of consider the statements: to the India, following
1. No High Court shall have the jurisdiction to declare any central law to be constitutionally invalid.
  2. An amendment to the Constitution of India cannot be called into question by the Supreme Court of India.
- Which of the statements give above is/are correct?
- (a) 1 only
  - (b) 2 only
  - (c) Both 1 and 2
  - (d) Neither 1 nor 2

**Ans (d)**

**2017**

1. In India, Judicial Review implies
- (a) **the power of the Judiciary to pronounce upon the constitutionality of laws and executive orders.**
  - (b) the power of the Judiciary to question the wisdom of the laws enacted by the Legislatures.
  - (c) the power of the Judiciary to review all the legislative enactments before they are assented to by the President.
  - (d) the power of the Judiciary to review its own judgements given earlier in similar or different cases.

**2015**

1. Who/Which of the following is the Custodian of the Constitution of India?
- (a) The President of India
  - (b) The Prime Minister of India
  - (c) The Lok Sabha Secretariat
  - (d) **The Supreme Court of India**

**2014**

1. The power of the Supreme Court of India to decide disputes between the Centre and the States falls under its
- (a) advisory jurisdiction
  - (b) appellate jurisdiction.
  - (c) **original jurisdiction**
  - (d) writ jurisdiction
2. The power to increase the number of judges in the Supreme Court of India is vested in
- (a) the President of India
  - (b) **the Parliament**
  - (c) the Chief Justice of India
  - (d) The Law Commission

**2012**

1. Which of the following are included in the original jurisdiction of the Supreme Court?
1. A dispute between the Government of India and one or more States.
  2. A dispute regarding elections to either House of the Parliament or that of Legislature of a State.
  3. A dispute between the Government of India and a Union Territory.
  4. A dispute between two or more States.

Select the correct answer using the codes given below:

- (a) 1 and 2
- (b) 2 and 3
- (c) 1 and 4
- (d) 3 and 4

**Ans (c)**

**Student Notes:**

**2010**

Student Notes:

2. Consider the following statements:

The Supreme Court of India tenders advice to the President of India on matters of law or fact.

1. On its own initiative (on any matter of larger public interest).
2. If he seeks such an advice.
3. Only if the matters relate to the Fundamental Rights of the citizens.

Which of the statement given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 3
- (d) 1 and 2

**Ans. (b)**

**2005**

3. Consider the following statements:

1. The Parliament cannot enlarge the jurisdiction of the Supreme Court of India as its jurisdiction is limited to that conferred by the Constitution.
2. The officers and servants of the Supreme Court and High Courts are appointed by the concerned Chief Justice and the administrative expenses are charged on the Consolidated Fund of India.

Which of the statements given above is/are correct?

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

**Ans. (b)**

**2001**

4. The Supreme Court of India tends advice to the President on a matter of law of fact
- (a) On its own initiative
  - (b) Only if he seeks such advice
  - (c) Only if the matter relates to the Fundamental Rights of citizens
  - (d) Only if the issue poses a threat to the unity and integrity of the country

**Ans. (b)**

## **12. Previous year UPSC GS Mains Questions**

1. Explain the scope of the Advisory jurisdiction of the Supreme Court of India. (150 words) (92/II/4b/20)
2. What is the position of the Supreme Court under the Constitution of India? Discuss its role as a guardian of the Constitution. (About 250 words) (95/II/1b/40)
3. What is the position of the Supreme Court under the Constitution of India? How far does it play its role as the guardian of the Constitution? (250 words) (02/I/7a/30)
4. How can a judge of the Supreme Court be removed? (20 words) (04/I/9d/2)
5. How will you define 'judicial review'. (82/II/8c(A)/3)
6. The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution. Discuss critically.
7. Starting from inventing the 'basic structure' doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy.
8. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?
9. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.

### 13. Previous Year Vision IAS GS Mains Test Series Questions

Student Notes:

1. *While judiciary has been seen as a harbinger of promoting transparency and accountability in governmental functions, it needs to promote the same regarding its own functioning. Comment w.r.t. the need for judicial reforms in India.*

#### Approach:

Answer should focus on the twin issues of judicial accountability and independence. Also the question asks for need for reforms and not the reforms themselves. Hence there is no need to go into various recommendations for judicial reforms. Rather the logic behind these recommendations should be highlighted.

#### Answer:

- Judiciary's image has received a serious setback in the past few years. Several judges have come under the ambit of all kinds of allegations like corruption, sexual misconduct and favoritism in the appointment of judges. Also the intellectual quality of many judicial pronouncements has been perceived to be mediocre. Cumulatively, this has led to two specific demands.
  - a) First, there is a need to reform the process of judicial appointments; and
  - b) Second, some mechanism needs to be devised to hold judges accountable. Judicial independence and accountability should go together.
- In India, it is only a collegium of judges that recommends to the President, names for elevation to the bench and there is no outside advice available for this purpose. Judicial pronouncements have made the recommendation binding. The current system of appointments is not open to public scrutiny and thus lacks accountability and transparency.
- A closely related aspect related to accountability of judges is the mechanism for removal of judges for deviant behaviour. Other than impeachment under Articles 124(4) and 217(1), there is no mechanism to proceed against any inappropriate behaviour or misdemeanour of judges. At the time of framing the Constitution, it was felt that judicial conventions and norms would constitute strong checks. However, the impeachment provisions have turned out to be impracticable as it is virtually impossible to initiate any impeachment proceedings, let alone successfully conclude them.
- Associated with the above important issues are the need for a cooling off period for judges before taking up government appointments and measures for tackling the problems of judicial backlog.
- The recent episodes regarding sexual misconduct, corruption and nepotism clearly indicate that the credibility of judiciary is now at stake. The NJAC appears to be a step in the right direction but what needs to be ensured is that it functions in a transparent and impartial manner. The entire process should ensure that while judiciary is accountable to the public at large, at the same time, it is free from any unwanted interference. This would need some delicate balancing.

2. *What is the importance of an independent judiciary in a democracy? Highlight the safeguards in our political-constitutional setup to ensure the independence of judiciary.*

#### Approach:

- Describe the meaning of independence of judiciary.
- Briefly state the need for the independence of the judiciary.

- Mention various provisions to ensure independence of judiciary.
- Conclude with the need to balance judicial independence with judicial accountability.

Student Notes:

**Answer:**

Democracy in India rests on the constitutional scheme of separation of powers between the three organs of the government, with adequate checks and balances to ensure that the rights of the citizens are duly protected and there is no misuse of power. A judiciary free from encroachments, pressures and interference is an integral part of this scheme.

The Indian judiciary, with the Supreme Court (SC) at the apex and High Courts (HCs) at the state level, has been assigned a very significant role in the Indian democratic system. The SC is a federal court, the highest court of appeal and the guardian of the Constitution. Along with the HCs, it is the guarantor of the fundamental rights of the citizens.

Independence of judiciary is ensured by following safeguards:

- **Mode of appointment** – Appointment of judges of the SC and the HC is done by the President on the recommendation of the collegium of the judiciary. This ensures that absolute discretion of the executive is curtailed and judicial appointments are not based on political considerations.
- **Security of tenure** – Judges can be removed only on the grounds mentioned in the constitution.
- **Conduct of Judges cannot be discussed** in any legislature except when impeachment motion is under consideration.
- **Fixed service conditions** – The salary, allowances, privileges etc. cannot be changed to their disadvantage after appointment
- **Expenses charged on Consolidated Fund** – therefore free from annual parliamentary voting.
- **Power to punish for its contempt** – Thus, its actions and decisions cannot be opposed or criticised arbitrarily.
- **Other provisions** – such as Ban on practice after retirement, no power with Parliament to curtail its jurisdiction, Freedom to appoint its staff etc. also helps in maintaining its independence.

In a democratic polity, all power is held in trust of the people and must be exercised for the people. Therefore, while safeguarding judicial independence, it is essential to balance it with judicial accountability and transparency.

**3. A dysfunctional judicial delivery system is a serious impediment to establishing the rule of law in our nation. Examine the statement in the context of the problem of case pendency and judicial vacancies in India.**

**Approach:**

- Bring out the facts to present the current picture of judiciary.
- Mention the important issues related to dysfunctional judicial system and explain the reason behind the problem of case pendency and judicial vacancies.
- Provide the probable solutions to deal with the problem.

**Answer:**

There are more than 2.18 crore cases pending in various courts and around 485 top judicial posts are needed to be filled up in high courts. It leads to judicial delays and deprives people of speedy justice.

**Issues associated with pendency of cases:**

- Frequent adjournments and delays in trial have led to increase in the number of under trial prisoners. Trials take decades to complete pointing to the inefficiency of judicial system.
- Many frivolous cases filed by corporates against their business rivals take up too much time of the courts.
- Misuse of PILs take up a lot of time of court, further aggravating the problem.
- Thus while poor suffer due to lack of resources, the powerful misuse the judicial process to suit their needs which is an impediment to the rule of law.

**Issues associated with Judicial Vacancies:**

- Judiciary requires more than 70,000 judges to clear the mounting backlog of cases.
- Judicial infrastructure has not kept pace with the rate of litigation. If all the posts of judges in the judiciary are filled, then there wouldn't be enough courtrooms to accommodate all of them.
- Lack of consensus among the collegium members over recommendations. There is further tussle between executive and judiciary over appointments, due to which many posts have remained vacant.

To uphold the rule of law both these interrelated problems require steps from executive as well as judiciary. Following steps need to be taken:

- As the economic cost of the delay is pegged at 0.5% of gross domestic product. There is urgent need for increased budgetary allocation to cope up with increased number of litigations.
- Government should speed up the process of drafting the memorandum of procedure with consensus of judiciary.
- Government and judiciary should initiate recruitment process six months prior to occurrence of vacancy.
- Frivolous cases should be dealt with a heavy hand and exemplary costs should be imposed on such litigation.
- Provide effective and continuous training for judges and court officers to enhance the quality of dispensation of Justice.
- Need to promote judicial education for enhancing the quality and improving the standards of justice.
- More focus on alternative dispute resolution mechanism like Lok Adalats, Arbitration and Conciliation etc. is required. Promoting Gram Nyayalayas is also desirable.
- Government, which is the biggest litigant, needs to simplify laws and enhance ease of doing business to avoid litigations in the first place.
- Other options, such as changes in procedure, improved quality of law graduates, greater use of information technology must all be explored to ameliorate the situation.

- 4. Despite long term recognition of the problem of pendency of cases in the courts, limited progress has been made in reducing their number. What are the possible reasons for such a scenario? Suggest a framework of measures that can be taken to address this issue.**

**Approach:**

- Introduce by giving a brief description of the statement, 'justice delayed is justice denied.'
- Mention the reasons for long judicial pendency in disposing cases across India.

- Provide factual information to back the same.
- Suggest measures to reduce judicial backlog.

Student Notes:

**Answer:**

More than 22 million cases are currently pending in India's district courts. Six million of those have lasted longer than five years. Another 4.5 million are waiting to be heard in the high courts and more than 60,000 in the Supreme Court, according to government data. These figures are increasing according to the decennial reports.

The following causes have been identified for pendency of cases - litigation explosion; inadequacy of the staff attached to the high courts; inordinate concentration of work in the hands of a few members of the Bar; lack of punctuality among judges; inadequate supply of the copies of judgments and orders, and so on.

Despite recognition of these causes, limited progress has been made in reducing pendency of cases due to the following:

- The number of judges in the country is inadequate to cope with the staggering pendency of cases in different courts. The rise in the number of cases has not been matched by an increase in the number of judges. There are 10-12 judges per million people in India. In developed countries, there are 50 judges per million people.
- However, increasing the number of judges is not the only answer. Some urgent institutional changes are called for. The critical test is not the judge-population ratio but the judge-docket ratio. Docket refers to the list of cases to be tried and is an accurate indication of the work load of a judge. In India, the docket ratio per judge is 987 whereas it is 3,235 per judge in the United States of America. The answer perhaps lies in effective court management, which has not been seriously attempted at by the Indian judiciary. For example, computers have not been used adequately to improve court management.
- Even though Section 301 of the Code of Criminal Procedure provides for the holding of trial proceedings expeditiously, it is an open secret that there is enormous delay in the disposal of cases because of frequent adjournments.
- The glut of cases in the lower courts is where the root of the problem lies. A number of courts still do not have data under the "Date filed" column, the most crucial piece for identifying delays.
- The proportion of cases that are stuck pending police investigations has little bearing in the ability of the courts to speedily finish trials. For instance, in Gujarat, where 92 out of every 100 cases are pending before the court, only 11.5% are waiting for police investigations to be completed. On the other hand, in Assam where 80 out of 100 cases are waiting to be picked up the court, about 59% of cases are awaiting police investigations.
- Inadequate strength of the police force has also played its part in the pile up of cases before the courts.

**Measures needed to reduce judicial backlog:**

- Annual targets and action plans must be fixed for the judicial officers to dispose of old cases where accused is in custody for over two years.
- Quarterly review of judicial officers' performance to curb malpractices like hasty disposal which undermined the quality of justice dispensed, must be made.
- Expeditiously filling vacant posts, improving Court infrastructure and setting standards of judicial recruitment examinations are other measures to improve the quality of district judges.

- Further perceptions of irregularities in judge selection deserve consideration; in this context the National District Judge Recruitment Examination mooted by the Supreme Court must be given a serious thought.
  - Incremental measures like restricting adjournments, curbing summer vacations, and audio-visual recording of court proceedings along with real-time data monitoring of case status will produce a transformative effect.
  - Case Flow Management (CFM) rules can be incorporated by looking into the recommendations of committees formed by the Supreme Court such as the Justice M. Jagannatha Rao committee.
  - Encouraging Alternate Dispute Redressal Mechanisms such as Arbitration, Mediation, Conciliation and Lok Adalats along with fast track courts.
  - Separation of traffic cases from ordinary courts.
  - Improve the quality of subordinate judges, at the level of recruitment as well as on the job training.
  - Implement the concept of evening courts where the services of the retired judges may be taken along with the law graduates. It would be beneficial in two ways: help training the young incumbents and reducing the pendency.
- To conclude, other states should follow the footsteps of Haryana, Chandigarh, Punjab, Himachal Pradesh and Kerala where cases pending over 10 years have been reduced to 1% of the total pendency. In addition the recommendations of the 245<sup>th</sup> Law Commission Report on "Arrears and Backlogs: Creating Additional Judicial Womanpower must be implemented.

**5. *While the power to punish for the contempt of court is a much needed tool to protect the administration of justice from being maligned, it is time that it be relooked into. Critically analyse.***

**Approach:**

- Define contempt of court and give the constitutional and legislative provisions.
- Give arguments in favor of retaining the contempt of court provisions
- Discuss the issues with the current provisions of contempt of court.

**Answer:**

Articles 129, 142 and 215 of the Indian Constitution and the Contempt of Courts Act, 1971 vest the Superior Courts with the power to punish for their contempt. This is also facilitated by the article 19 (2). The purpose behind the contempt provision is to protect the administration of justice from being maligned and to ensure compliance with judicial orders.

The 1971 Act defines civil and criminal contempt. Civil contempt is when a person willfully disobeys any order of a court. Criminal contempt is interfering with the administration of justice, or scandalizing the court or lowering its authority. Hence, it gives the courts wide powers to restrict an individual's fundamental right to personal liberty.

There have been several instances where fair criticism of the judiciary has invited the threat of contempt proceedings, thus thwarting the fundamental right of freedom of speech and expression. This has necessitated a relook into the criminal contempt provisions.

**Relevance of power to punish for the Contempt of Court**

- Power to punish for non-compliance of its orders is essential to maintain the confidence in the judiciary and ensure the rule of law.
- It enforces the equality before law - Acts as a tool against the rich and the powerful by forcing compliance with the orders of the court.

- According to 274th Law Commission Report no changes are required to the 1971 statute. Even in the absence of the legislation, the Courts have the power to punish for their contempt under the constitution. In fact, by laying down the procedure, the act restricts the vast authority of the courts in wielding contempt powers.
- It is also needed to maintain credibility and efficiency of judiciary. For example, the Supreme Court issued contempt proceedings against Justice Karnan for his demeaning behavior.
- It is needed for the independence of the judiciary and protect its functioning from the opinion of media and the public.

### Arguments for relook

- It goes against the fundamental right of Free Speech and Expression.
- In a democracy, judicial accountability is also required. For example, terming FIR against a sitting judge as contempt of court raises the question of its accountability.
- The grounds, on which contempt proceedings can be initiated such as 'scandalizing the court', are open ended and vague which are prone to misuse.
- In UK as well, the offence of 'scandalizing the court' as a ground for criminal contempt has been abolished in 2013.

Law of contempt of court, along with other laws, like sedition, is a remnant of our colonial past, enacted to curtail public scrutiny. A mature approach to criticism will inspire public confidence in judiciary. These laws should be examined to refine the broad provisions prone to misuse. Further, care should be taken that dilution of the Act does not interfere with independent functioning of judicial system in India.

6. *"The process of justice delivery in India has become a punishment in itself". In reference to the above, examine the causes for a large number of under trials in the country. Do you think Supreme Court's recent directive on Section 436A of CrPC would be able to address the issue?*

#### Approach:

The answer should be divided into two parts, the first one addressing the causes for large number of undetrial in India. The second part should bring out why SC ruling is not enough for solving the problem. Reasons must be cited to justify the stand. Finally, end on the kind of reforms that are needed to truly solve the problem of large number of undetrial in India.

#### Answer:

The Under trial problem is defined as number of under trials in proportion to convicts in Indian Prison system. The primary constitutional and moral concern with undertrial detention is that it violates the normative principle that there should be no punishment before a finding of guilt by due process.

Some of the causes of large number of under trials in India are:

- The disproportionately small number of courts in a country with a large population
- The perennially increasing rights and obligations created by ever increasing pieces of legislation
- The low level of efficiency of the judicial system and ;
- The multi-tier appellate system primarily caused the huge backlog in the justice delivery system.
- Another major reason for the large volume of pending cases is the inability of undertrials to furnish a bail bond

The Supreme Court of India based on Section 436A of the CrPC, has recently passed a judgment for states to release under trials who have already served more than half the sentence had they been convicted within two months. Even though the move is well intended there a number of the concerns remain with Section 436A:

- On average over 80 per cent of undertrials in India spend less than one year in prison during the years under consideration. Most of them are unlikely to have spent half of their likely prison term.
- So even though this would help those who have been undertrial for a long period of time it certainly wouldn't solve the problem of undertrials in India.
- Single largest category of crime for undertrials in India is murder which entails sentence of larger duration. Ruling will not benefit them murder being heinous crime.
- Various reports and studies suggest that illiterates, poor and other vulnerable section are over represented in the undertrial population. Justice system must address this systemic bias.

Arguably, the high proportion of undertrials is a reflection of the pathological failure of the criminal justice system to successfully convict and thereby secure peace and security. This failure must be resolved by focussing on systematic institutional reform of the investigation and prosecution of offences. Second, our current legal strategy assumes inordinately long periods of undertrial detention and we show that a Section 436A-focussed strategy will have minimal impact on the undertrial population overall.

Without substantive reforms to the investigation and trial process, early release of undertrials may further aggravate the pathologically low rates of conviction and incarceration in the Indian criminal justice system.

- 7. Article 145(3) of the Indian Constitution says that any “substantial question of law” relating to the interpretation of the Constitution must be heard by benches of at least five judges. But some of the most important constitutional cases, like Salwa Judum and Naz foundation, were decided by smaller benches. Why is there a need for larger benches? What are the possible reasons for smaller benches hearing such important cases?**

**Approach:**

- Answer should focus on the reasons for smaller benches and problems associated with them.
- There is no need to go into a broad discussion of Salwa Judum or Naz Foundation cases.

**Answer:**

- The requirement for large benches is straight forward and logical also. The Constitution is explicit that for important constitutional matters larger benches are needed. Benefits of larger benches hearing important cases can be discussed as under:
  - More judges mean that there will be more points of view, greater reflection and more thorough analysis offered in these vital cases that will help set the direction of the country for decades to come.
  - It also gives such judgments added value and legitimacy. It is more difficult to overturn a five-judge bench than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law on issues that affect millions of lives.

- More judges also mean that it is likelier that the opinion of the bench will reflect that of the overall Supreme Court and not just two or three judges with a minority viewpoint. This is all the more critical in cases where novel questions of law are being addressed and there is no clear precedent on the issue.
- Alternatively, when there is a clear precedent, more judges are required to overturn the decisions of these earlier benches. It is already worrying that some of today's smaller benches are effectively ignoring or de-emphasising judgments of earlier and larger constitution benches. This is undermining the court's entire system of precedent.
- Given all these benefits to larger benches, there must be some reasons because of which they are not being constituted more often. Some of those reasons are as below:
  - As the court has found itself bogged down with more and more cases (over 50,000 are currently pending), it has become more difficult to have larger benches. They take judges away from disposing of the long line of backlogged matters.
  - Also there are no clear cut guidelines on how to determine when a case involves a "substantial question" of constitutional law and so requires a larger bench.
- So there are no alternatives to larger benches as constitution explicitly mandates it. There are no easy answers here, but the court should lay out a vision for how it wants to balance the many competing pressures on its time and judges.

**8. While Public Interest Litigations have provided access to justice for the poor and the marginalized sections of the society but many vested interests have also misused it. In this context, examine the utility of PILs as a tool of social justice.**

**Approach:**

- Highlight how Public Interest Litigations have benefitted the poor and marginalized by illustrating the link between positive contribution of PILs and Judicial Activism.
- Also, discuss the misuse and pitfalls of PIL.
- Conclude by presenting a forward outlook.

**Answer:**

Public interest litigation means any litigation conducted for the benefit of public or for the removal of some public grievance. Any public spirited person can move the court for public cause by filing a petition in the Supreme Court under Article 32 of the Constitution or in the High Court under Article 226 of the constitution or before the Court of Magistrate under sec.133 of Code of Criminal Procedure, 1973 . The traditional requirement of 'locus standi' is relaxed in PIL.

To achieve justice in the society, Public Interest Litigation (PIL) has proved to be a useful tool. It provides a means to justice to disadvantaged sections of society and enables civil society to not only spread awareness about human rights and also allows them to participate in government decision making.

- The most important contribution of PIL has been to bring courts closer to the disadvantaged sections of society such as prisoners, destitute, child or bonded labourers, women, and scheduled castes/tribes.
- As Directive Principles are not justiciable, the courts imported some of these principles into the FRs thus making various socio-economic rights as important—at least in theory—as civil and political rights. This resulted in the legal recognition of rights as important as education, health, livelihood, pollution-free environment, privacy and speedy trial.

- PIL is also an instrument to promote rule of law, demand fairness and transparency, fight corruption in administration, and enhance the overall accountability of the government agencies.
- Through PIL, judiciary also triggered legislative reforms and filled in legislative gaps in important areas. For instance, the Supreme Court in the Vishaka case laid down detailed guidelines on sexual harassment at the workplace.
- The Indian judiciary, courtesy of PIL, has helped in ensuring the reservation of seats for SCs/STs and other backwards classes in employment or educational institutions.

**Ulterior purpose:** While PIL has proved to be a useful tool for the marginalized disadvantaged groups, it is being misused by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes.

Almost any issue is presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). Frivolous PIL plaintiffs waste the time and energy of the courts, the judiciary and add to the burden of increasing backlog.

Although the Supreme Court has compiled a set of “Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL” it is critical to ensure that PIL does not become a back-door to enter the courts to fulfill private interests, settle political scores or simply to gain easy publicity.

PIL enables civil society to play an active role in spreading social awareness about human rights, in providing voice to the marginalised sections of society, and in allowing their participation in government decision making. If civil society and disadvantaged groups lose faith in the efficacy of PIL, that would sound a death knell for it.

**9. *While it has been argued that the judiciary should be brought under RTI, a balance also needs to be maintained between independence of the judiciary and the right of people to know. In this context, discuss the pros and cons of bringing the judiciary under the ambit of RTI.***

**Approach:**

- Introduce the debate around the issue of bringing judiciary under RTI
- Analyse the pros and cons of bringing judiciary under the ambit of RTI. Conclude with suggestions for the same.

**Answer:**

Recently honorable Supreme Court has referred to a five bench judges Constitution Bench, the question whether disclosure of information about judicial appointments, transfers of HC judges amounts to interference in judicial independence. Amidst the controversy of annulment of NJAC by the Supreme Court, the debate of bringing judiciary fully under the ambit of RTI is gaining ground.

Some of the rationale and benefits in bringing judiciary under RTI can be enumerated as-

- **Appointments** through proceedings of the collegium are **absolutely opaque** and inaccessible for public. RTI umbrella over judiciary will bring in transparency and will curb nepotism in appointments. It will also curb instances like superseding of the senior judges for promotions etc.
- The **law of contempt has been often misused** to punish outspoken criticism and exposure of judicial misconducts. Even an FIR cannot be registered against the

judges under the Prevention of Corruption Act. RTI will ensure accountability and will act as a key tool in eliminating misconduct by judges.

- While acting on the premise of judicial independence, judges expediently exclude themselves from disclosure of any kind of information to public. If brought under RTI, such disclosure will create public trust.
- RTI will help in curbing red-tapism and will ensure rationality and logic in judgements.

Student Notes:

However there are some cons of bringing judiciary wholly under RTI.

- There is apprehension that it might undermine the independence of judiciary and the decisions as judges would be apprehensive of public pressure
- Apprehensions that RTI disclosure may affect credibility of the decisions and free and frank expression of judges.
- The disclosure of personal details of judges might be a cause of concern for national security.
- Sometime details of appointments are closely linked with personal details like medical conditions, disclosure of which will undermine the right to privacy.
- Some of the RTI applications may be frivolous and politically motivated.

However, it needs to be noted that judiciary is not an exemption under RTI. Judiciary plays a dual role of administrative functions and the other of judicial decision making and most of administrative functions are under ambit of RTI. The judicial decisions can also be brought under RTI but there is requirement of drawing balance between independence of judiciary and the fundamental right of right to know of people so that judiciary remains people last hope in democracy.

- 10. Criticism about the judiciary should be welcomed, so long as criticisms do not hamper the "administration of justice". In this context discuss whether the power of contempt of court given to the higher judiciary limits the freedom granted by Article 19(1)(a) and whether these two can be reconciled.**

**Approach:**

- In the introduction briefly address the key concern of the statement and link it to the argument on power of contempt and freedom of speech and expression.
- Discuss the need of contempt powers with judiciary.
- Discuss the implications of contempt powers on freedom of speech.
- Discuss how these two can be reconciled.

**Answer:**

Administration of justice requires strong safeguards for the judiciary. Thus:

- Article 129 and 215 of the Constitution of India empower the Supreme Court and High Court respectively to punish people for their contempt.

The Contempt of Court Act, 1971 delineate contempt powers of judiciary to:

- Prevent scandalisation or lowering the authority of any court.
- Prevent interference with the due course of any judicial proceedings.
- Strengthen court's image as legal authority and that no one is above the law.
- Ensure one could not defy court orders according to one's own free will.

In the context freedom of speech and expression, a right underpinned by article 19 1(a), contempt of court is considered a reasonable restriction under Article 19 (2), which empowers contempt laws.

Critics observe that:

- Judiciary has routinely invoked its contempt powers to punish expressions of dissent on grounds of such speech undermining or scandalising the judiciary's authority.
- Acts of speech and expression that do not necessarily impede with the actual administration of justice have been punished invoking the idea of reputation of judiciary in the eyes of the public.

Student Notes:

Rights under article 19 (1) (a) are important as they:

- Empower citizens to express their opinion which is necessary for good public policies.
- Are important in themselves for ensuring a good life, also enshrined under Article 21 of the constitution.

Thus, it becomes imperative to reconcile the freedom of speech and the contempt power of the courts. It can be ensured by taking the following into consideration:

- Judiciary itself underlined guidelines that envisage economic use of the jurisdiction on the one hand and harmonization between free criticism and the judiciary, e.g. Mulgaonkar case 1978. Also, of note are observations in cases such as Ram Dayal Markarha v. state of Madhya Pradesh 1978; Conscientious Group v. Mohammed Yunus 1987; P.N. Duda b. P. Shiv Shankar 1988; Sanjay Narayan, Hindustan Times v. High Court of Allahabad 2011.
- The 2006 amendment in the Contempt of Courts Act, 1971 states that "court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide".

International standards and laws of other democracies would be informative and enable us to arrive at the right standards. e.g. in European democracies such as Germany, France, Belgium, Austria, Italy, there is no power to commit for contempt for scandalising the court. In the U.K., the offence of scandalising the court has become obsolete. In the United States, contempt power is used against the press and publication only if there is a clear imminent and present danger to the disposal of a pending case.

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# JUDICIARY- HIGH COURT, SUBORDINATE COURTS, ISSUES, JUDICIAL REFORMS AND JUDICIAL ACTIVISM

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Student Notes:

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## 1. High Court

The **Article 214** of the Indian Constitution provides for a High Court for each state, but the Seventh Constitutional Amendment Act of 1956 authorized the Parliament under **Article 231** to establish a common High Court for two or more states and a union territory. Articles 214 to 231 of the Constitution deals with the organization, independence, jurisdiction, powers, procedures and other issues related to the High Courts.

At present, there are **25 High Courts** for the states and union territories in the country. The High Courts of Madras, Bombay, Calcutta and Allahabad were the first four High Courts in India, established by the Indian High Courts Act, 1861. Andhra Pradesh is the recent state to have the High Court which was established in 2019.

- The Bombay High Court's jurisdiction extends over Maharashtra, Goa, Dadra and Nagar Haveli, and Daman and Diu.
- Calcutta High court jurisdiction is over West Bengal and Andaman and Nicobar Islands.
- Gauhati High Court has jurisdiction over Arunachal Pradesh, Assam, Nagaland and Mizoram.
- Kerala High Court covers Kerala and Lakshadweep.
- Madras High Court has jurisdiction over Tamil Nadu and Puducherry.
- Punjab and Haryana High Court has jurisdiction over the states of Punjab and Haryana, along with UT of Chandigarh.
- Delhi is the only UT that has a High Court of its own.

As per **Article 230** of the Indian Constitution, Parliament may by law extend the jurisdiction of a High Court to any union territory or exclude the jurisdiction of a High Court from any union territory.

### 1.1. Organization of High Court

Every high court (whether exclusive or common) consists of a Chief justice and such other judges as the President may from time to time deem necessary to appoint. The President has the power to determine the strength of a high court from time to time depending on its workload.

### 1.2. Eligibility Criteria for High Court Judges

A person to be appointed as a High Court Judge must fulfill the following criteria:

- a. He should be a citizen of India,
- b. He should have held a judicial office in territory of India for 10 years, or
- c. He should have been an advocate of High Court for at least 10 years (this is similar to the qualification required in case of SC judges too).

Thus, the Constitution does not prescribe a minimum age for appointment as a judge of a high court. However, there's no provision in the Constitution for appointment of a distinguished jurist as a High Court Judge, unlike that of the Supreme Court.

### 1.3. Tenure of Judges

The Constitution has not provided a fixed tenure to a judge of a High Court. However, it provides the following provisions:

- a) He holds office until he attains the age of 62 years. Any question regarding age should be decided by the President in consultation with the Chief Justice of India and decision of the President shall be final.
- b) He can resign from his office by writing to the President.
- c) He can be removed from his office by the President on recommendation of the Parliament.

- d) He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Student Notes:

## 1.4. Appointment of Judges

High Court has the following categories of judges:

### Regular Judges (Art. 217(1))

- They are appointed by the President in consultation with the Chief Justice of India and Governor of the state concerned.
- For appointment of other Judges of the high court the chief justice of concerned high court is also consulted.
- In case of common high court of two or more states, Governors of all the states concerned are consulted by the President.
- Following the ruling of *Second Judges case* (1993) and *Third Judges case* (1998), in case of appointment of high court judges the opinion of collegium consisting of Chief justice of India and two senior most judges of Supreme Court judges must be sought.

### Acting Chief Justice (Art. 223)

The President can appoint a judge of a High Court as an acting chief justice of High Court when:

- The office of Chief Justice is vacant;
- The Chief Justice of the High Court is temporarily absent; or
- The Chief Justice of High Court is unable to perform the duties of his office.

### Additional and Acting Judges (Art. 224)

A duly qualified person can be appointed as an additional judge by the President for a temporary period of not more than two years, if:

1. There is a temporary increase in the business of high court,
2. There are arrears of work in high court.

Similarly, a duly qualified person can be appointed as an acting judge by the President when a judge of that high court (other than chief justice) is:

1. Unable to perform the duties of his office due to absence or any other reason.
2. Appointed to act temporarily as chief justice of that high court.

An Acting Judge holds office until the permanent judge resumes his office, however both the additional and acting judges cannot hold office after attaining the age of 62 years.

### Retired Judges (Art.224A)

The Chief Justice of a High Court can request a retired judge of that High Court or any other High Court to sit and act as a judge of High Court for that state. The President's previous consent is necessary. Such a person will enjoy all the Jurisdiction, powers and privileges of a Supreme Court Judge. But, he will not otherwise be deemed to be a judge of that High Court.

## 1.5. Oath

Every person appointed to be a Judge of a High Court before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule of the Indian Constitution.

Judge of High Court takes oath to bear true faith and allegiance to the Constitution of India as by law established, uphold the sovereignty and integrity of India and duly and faithfully and to the best of ability, knowledge and judgment perform the duties of the office without fear or favour, affection or ill-will and uphold the Constitution and the laws.

## 1.6. Salaries of Judges

- The salaries and allowances of state high court judges including chief justices are charged from the Consolidated Fund of State (Art.266).
- Retired Judges of all the High Courts are entitled to pension which is drawn from the Consolidated Fund of India (Art.266).
- The salaries of the Judges of High Courts are decided by the Parliament by law according to the Article 221 of the Constitution of India.

## 1.7. Removal of Judges

Article 217 (b) provides that the removal of the High Court judges will be done in a manner similar to that provided under Article 124(4) for the Supreme Court judges. Thus, based upon that, along with Judges Inquiry Act 1968, the impeachment of judges can be done only on grounds of ‘proved misbehaviour’ or ‘incapacity’ in a process explained for the Supreme Court judges.

## 1.8. Transfer of Judges

**Article 222** of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court. The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India (CJI). Consent of the Judge for transfer would not be required. CJI is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred and Chief Justice of the High Court to which the transfer is to be effected.

The proposal once referred to the Government, the Union Minister of Law, Justice and Company Affairs would submit a recommendation to the Prime Minister who will then advise the President as to the transfer of the Judge concerned. After the President approves the transfer, the notification will be gazette and the judge remains transferred. In case of transfer, the judge is entitled to receive compensatory allowances in addition to his salary as determined by the President.

The Supreme Court ruled that transfer of High Court Judges could be resorted to only as an exceptional measure and only in public interest, not by way of punishment. In **Third Judges case (1998)**, the Supreme Court opined that in case of transfer of judges, Chief Justice of India should consult in addition to collegiums of four senior most judges of Supreme Court, the Chief Justices of two High Courts (one from which the judge is being transferred and other receiving him). The Supreme Court also ruled that judicial review is necessary to check arbitrariness in transfer of judges, but only the judge who is transferred can challenge it.

## 1.9. Jurisdiction and Powers of High Court

Besides being the protector of Fundamental Rights of citizens, the high court is the highest court of appeal in the state. It is vested with power to interpret the Constitution along with the supervisory and consultative roles. However, no detailed provisions with regard to jurisdiction and powers of the High Court are mentioned in the Constitution. It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution. New additions post-independence are jurisdictions over revenue matters, writ jurisdiction, power of superintendence, etc.

At present, a high court enjoys the following jurisdiction and powers:

### 1.9.1. Original Jurisdiction

- Enforcement of Fundamental Rights (**under Article 226**).
- Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

3. Matters related to will, marriage, divorce, company laws and contempt of court.
4. Disputes relating to the election of members of parliament and state legislature.
5. Regarding revenue matter or an act ordered or done in revenue collection.
6. The four High Courts (i.e. Calcutta, Bombay, Madras and Delhi) have original civil jurisdiction in cases of higher value.

Student Notes:

The three Presidency towns of Calcutta, Bombay and Madras had Original jurisdiction, both civil and criminal, over cases arising within their respective territory. However, the original criminal jurisdiction has been completely taken away by the Code of Criminal Procedure, 1973.

### **1.9.2. Writ Jurisdiction**

**Article 226** empowers High Court to issue writs, including ***habeas corpus, mandamus, certiorari, prohibition and quo warranto*** for enforcing fundamental rights and for any other purpose as well (**enforcement of an ordinary legal right**). The High Court can issue writs to any government authority, any person not only within its territorial jurisdiction, but also outside it if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the High Court is wider than that of the Supreme Court. The Supreme Court can issue writs only to enforce fundamental rights whereas the High Court can issue writs for the breach of any ordinary legal right. Writ jurisdiction of the High Court is also the part of basic structure of the constitution.

### **1.9.3. Appellate Jurisdiction**

This is for cases where people have risen a complaint about a review of the judgement given by the district level or subordinate court of that territory. It is further divided into two categories:

#### **Civil Jurisdiction:**

1. On civil side appeal to high court is either first appeal or second appeal.
2. Appeals from decisions of District Judges and from those of subordinate judges in cases of higher value (broadly speaking) lie direct to the high court on questions of fact as well as law.
3. When any subordinate court decides an appeal from decision of an inferior court, a second appeal lies to the high court from the decision of lower appellate court, but on question of law only not questions of facts.
4. Provisions for Intra-court appeals in Calcutta, Bombay and Madras high court are there if a case is decided by a single judge then an appeal lies to the division bench of same court.
5. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of high court. Thus, an individual cannot go directly to Supreme Court against the decision of a tribunal rather he has to go to high court first.

#### **Criminal Matters:**

1. The decisions of Sessions Judge or an Additional Sessions Judge can be appealed in the high court where the sentence of imprisonment exceeds seven years. Any death sentence awarded by lower court should be confirmed by the High Court whether there's an appeal or not.
2. Appeals from the judgments of Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than petty cases.

### **1.9.4. Power of Superintendence**

A High Court has also the power of superintendence over all the Courts and Tribunals except those dealing with the armed forces functioning in the State. In exercise of this power it may:

1. Call for returns from such Courts.
2. Make and issue, general rules and prescribe forms for regulating the practice and proceedings of such Courts, and

3. Prescribe forms in which books and accounts are being kept by the Officers of any Court.
4. May settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

Student Notes:

This power has made the **High Court responsible for the entire administration of Justice in the State**. It is **both judicial as well as administrative** in nature. The Constitution does not place any restriction on its power of superintendence over the subordinate Courts and this power can be exercised *suo-motu*. It may be noted the Supreme Court has no similar power vis-a-vis the High Court.

#### **Control over Subordinate Court**

- a. A High court is consulted by the governor in the matters of appointment, posting, and promotion of the district judges and in the appointments of persons to the judicial service of the state other than the district judges.
- b. It deals with matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than the district judges).
- c. It can withdraw a case pending in a subordinate court if it involves a substantial question of law that requires interpretation of constitution. It can either dispose the case itself or determine the question and return it to subordinate court with its judgment.
- d. Its law is binding on all subordinate courts functioning within its territorial jurisdiction.

#### **1.9.5. A Court of Record**

The powers of a High Court as a Court of Record are identical to that of Supreme Court. It involves recording of judgments, proceedings and acts of high courts to be recorded for the perpetual memory. These records cannot be further questioned in any court. On the basis of this record, it has power to punish for the contempt of court either with simple imprisonment or with fine or both.

#### **1.9.6. Power of Judicial Review (Art. 13 and Art. 226)**

The High Court has the power to examine the constitutionality of legislative and executive orders of both central and state government. Though, the word judicial review is nowhere mentioned in the Constitution but the Article 13 and 226 explicitly provide High Court with this power.

So the High Court can declare any legislative enactments of centre and states and any executive orders as null and void if they violate constitution. The constitutional validity of legislative enactments and executive orders can be challenged in a high court on following three grounds:

1. If it infringes the fundamental rights,
2. It is outside the competence of authority which frames it,
3. It is repugnant to the constitutional provisions.

## **2. Subordinate Courts**

**Articles 233 to 237 in Part VI of the Constitution** makes following provisions to regulate the organization of subordinate courts and ensures their independence from the executive.

#### **Appointment of District Judges (Art.233)**

The appointment, posting and promotion of district judges in a state are made by the Governor of State, in consultation with the High Court. The qualifications of a person for appointment to the post are:

1. He should not already be in the service of the central or state government.
2. He should have been an advocate or pleader for not less than seven years
3. He should be recommended by the high court for appointment.

The term 'District Judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, session's judge, additional session's judge and assistant session's judge.

### **Appointment of other Judges (Art.234)**

Appointments of persons (other than district judges) to the judicial services of a state are made by the Governor of the state after consultation with State Public Service Commission and the concerned High Court.

### **Control over Subordinate Courts (Art.235)**

The control over the district courts and other subordinate courts, including the posting, promotion, and leave of the persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the High Court.

### **Structure and Jurisdiction**

Structure of subordinate courts has been explained in the diagram at the beginning of the chapter of Supreme Court – General Structure of Indian Judiciary.

The architecture of subordinate judiciary varies across the states and is broadly classified as shown in figure. At the lowest stage, two branches of justice - civil and criminal are bifurcated. The Panchayat courts functioning in civil and criminal areas under various regional names like Nyaya Panchayat, Panchayat Adalat, Gram Kutchery etc.

Munsiff's courts are next level civil courts, the jurisdictions of which are determined by High Courts. Above Munsiffs are subordinate judges who have unlimited pecuniary jurisdiction and act as first appeals from munsiffs.

At District level, District Judge is the highest judicial authority in the district having original and appellate jurisdiction in both civil and criminal matters. The District judge hears first appeals from subordinate judges as well as Munsiffs (unless dealt by subordinate judges) and possess unlimited jurisdiction over both civil and criminal suits. He also has supervisory powers over subordinate judges. He's known as district judge when he deals with civil cases and session's judge when dealing with criminal cases. Appeals against his order lie with the High Court. The Sessions judge can impose any sentence including life imprisonment and capital punishment. However, the High Court needs to confirm the sentence of capital punishment even if there is no appeal from the convict. Since enactment of the Code of Criminal Procedure, 1973, trial of criminal cases is done by the judicial magistrates only.

The Judicial and Metropolitan magistrates discharge judicial functions under administrative control of High Courts in contrast to Executive Magistrates who discharge executive function of maintaining law and order, under control of the state government. The civil judicial administration in previously presidency towns is currently taken up by metropolitan courts. Original jurisdiction of High Courts tries bigger civil suits arising within the previously presidency areas. Civil suits of lower value are tried by civil courts.

## **2.1. Gram Nyayalayas Act, 2008**

The act is aimed at providing speedy and inexpensive justice to people in rural areas at their doorsteps by establishing a village court at the grassroot level. This came into force from 2nd October, 2009. This system was also aimed to clear the **backlog of more than 2.6 crore cases** that are pending before the subordinate courts.

### **2.1.1. Structure**

The Gram Nyayalaya is court of Judicial Magistrate of the first class and its Presiding Officer (Nyayadhikari) is appointed by the State Government in consultation with the High Court. The

Gram Nyayalayas are established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or for a group of Panchayats if there is no Panchayat at intermediate level. The Nyayadhikaris who preside over these Gram Nyayalayas are strictly judicial officers and draw the same salary, deriving the same powers as First Class Magistrates working under the High Courts.

### **2.1.2. Jurisdiction**

The Gram Nyayalaya is a mobile court and exercises the powers of both Criminal and Civil Courts. The seat of the Gram Nyayalaya is located at the headquarters of the intermediate Panchayat, but they go to villages, work there and dispose of the cases. The Gram Nyayalayas try criminal cases (where the alleged offence attracts a punishment of not more than 2 years or when the value of the property involved in criminal case is not more than 20000 rupees), civil suits(cases over cattle trespassing act, minimum wages act, protection of women from domestic violence act and property disputes etc.), claims or disputes.

### **2.1.3. Procedure followed by Gram Nyayalayas**

Gram Nyayalayas can follow special procedures in civil matters, in a manner it deems just and reasonable in the interest of Justice. They, in the first instance, allow for conciliation of the dispute and settlement of the same. The Gram Nyayalayas are not strictly bound by the rules of evidence provided in the Indian Evidence Act, 1872 but are guided by the principles of natural justice and subject to any rule made by the High Court.

### **2.1.4. Appeal against the decision of Nyayalayas**

An appeal in criminal cases shall be made before the Session court, which shall be heard and disposed of within a period of six months from the date of filing of such appeal.

An appeal in civil cases shall be made before the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal.

### **2.1.5. Issue with Gram Nyayalayas**

So far only 11 states have taken steps to notify Gram Nyayalayas. Several states have issued notifications for establishing 'Gram Nyayalayas' but all of them were not functioning except in Kerala, Maharashtra and Rajasthan.

At present, only 208 'Gram Nyayalayas' are functioning in the country as against 2,500 estimated to be required by the 12<sup>th</sup> Five Year Plan.

## **2.2. Alternative Dispute Resolution (ADR)**

ADR is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone. Section 89(1) of Civil Procedure Code (CPC) provides an option for the settlement of dispute outside the court. Such dispute resolution without a trial can be brought about with the help of negotiation, good office (friendly third party different from mediator), mediation, conciliation, arbitration etc. where the parties to the disputes are encouraged to resolve their dispute amicably without taking reports to the regular courts.

It not only benefits the litigants, but also helps in reducing the number of cases before the subordinate courts. Arbitration and Conciliation Act, 1996 is a standard western approach towards ADR, while the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach. Apart from this, a vision document prepared by Ministry of Law and Justice provided for this and ADR centers are established in each district. It also provides for extended financial assistance by Centre to state to hold 10 mega Lok Adalats per high court every year along with holding the regular five Lok Adalats every year in each judicial district of the state.

### 2.2.1. Tools of Alternative Dispute Redressal

- **Arbitration** is a process in which a neutral third party or parties render a decision based on the merits of the case. It is less formal than a trial, and the rules of evidence are often relaxed.
  - It can start only if there exists a valid arbitration agreement between the parties prior to the emergence of the dispute.
- **Mediation** is a process in which a non-partisan third party “the mediator” facilitates the development of a consensual solution by the disputing parties.
  - The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. The authority of the mediator vests on the consent of the parties that he should facilitate their negotiations.
- **Conciliation** is a process by which resolution of disputes is achieved by compromise or voluntary agreement. It is a less formal form of arbitration.
  - In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator.

### 2.2.2. Advantages of ADRs

- The resolution of disputes takes place usually in private which helps in maintaining confidentiality.
- It seems more viable, economic, and efficient as compared to conventional trials.
- It often results in creative solutions, sustainable outcomes, greater satisfaction of the parties, and improved relationships between the parties involved.
- Procedural flexibility saves the valuable time and money and absence of stress of a conventional trial.
- The possibility of ensuring that specialized expertise is available on the tribunal in the person of the arbitrator, mediator, conciliator or neutral adviser.
- Further, it offers greater direct control over the outcome. Personal relationships may also suffer less.

### 2.2.3. Disadvantages of ADRs

- There is no guaranteed resolution. With the exception of arbitration, alternative dispute resolution processes do not always lead to a resolution and still ends up having to proceed with litigation.
- The finality and binding nature of an arbitrator's decision can sometimes be viewed as a disadvantage because it may not always please the parties and courts will often refuse to review it.
- The neutral party – arbitrator, mediator, conciliator, will charge a fee for their time and expertise and depending on their popularity, these fees may be substantial. A judge, on the other hand, charges no fee for his decision.
- Non-binding arbitration. Sometimes the court may order nonbinding or Judicial Arbitration. This means that if a party is not satisfied with the decision of the arbitrator, they can file a request for trial with the court within a specified time period after the arbitration award. Depending on the process ordered, if that party does not receive a more favorable result at trial, they may have to pay a penalty or fees to the other side.

### 2.2.4. High Level Committee on institutionalization of arbitration

A High-Level Committee, under the **Chairmanship of Justice B. N. Srikrishna**, to review the institutionalization of arbitration mechanism and suggest reforms thereto has submitted its report recently.

The Committee has divided its Report in three parts:

The **first part** is devoted to suggest measures to improve the overall quality and performance of arbitral institutions in India and to promote the standing of the country as preferred seat of arbitration. In this direction the Committee recommended:

- (i) Setting up an **Autonomous Body, styled the Arbitration Promotion Council of India (APCI)**, having representatives from all stakeholders for grading arbitral institutions in India.
- (ii) The APCI may recognize professional institutes providing for **accreditation of arbitrators**.
- (iii) The APCI may also hold **training workshops** and interact with law firms and law schools to train advocates with interest in arbitration and with a goal to create a specialist arbitration bar comprising of advocates dedicated to the field.
- (iv) Creation of a **specialist Arbitration Bench** to deal with such Commercial disputes, in the domain of the Courts.
- (v) Changes have been suggested to **make arbitration speedier and more efficacious and incorporate international best practices**.
- (vi) The Committee are also of the opinion that the **National Litigation Policy (NLP)** must promote arbitration in Government Contracts.

The Committee in **Part II** of the Report reviewed the working of the International Centre for Alternative Dispute Resolution (**ICADR**) working under the aegis of the Ministry of Law and Justice, Department of Legal Affairs. The Institution was set up with the objective of promoting ADR methods and providing requisite facilities for the same. The committee recommended declaring the ICADR as an Institution of national importance and takeover of the institution by a statute as revamped ICADR has the potential be a globally competitive institution.

As regards the role of arbitrations in matters involving the Union of India, including bilateral investment treaties (BIT) arbitrations, the Committee in **Part III** of the Report has *recommended* for creation of the post of an '**International Law Adviser**' (**ILA**). It shall advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations, particularly disputes arising out of BITs. The Committee has emphasized that ILA may be consulted by the Department of Economic Affairs (DEA), at the time of negotiating and entering into BITs.

The roadmap of suggested reforms after an in depth examination of the issues, by the High Level Committee can result in a paradigm shift from the current perception of delay in resolution of commercial disputes in India to it being viewed as an investor friendly destination. The suggested reforms will not only lessen the burden of the judiciary, but give a boost to the development agenda of the Government and aid the financial strength of the country and serve the goal of welfare of the citizens.

### **3. The National Legal Services Authority**

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes.

NALSA lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following **main functions** on regular basis:

1. To provide **Free and Competent Legal Services** to the eligible persons;
2. To **organize Lok Adalats** for amicable settlement of disputes; and

Student Notes:

### 3. To organize legal awareness camps in the rural areas.

Student Notes:

The Free Legal Services include:-

- a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- b) Providing service of lawyers in legal proceedings;
- c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

#### 3.1. NALSA Eligibility Criteria for Free Legal Services

**Article 39 A of the Constitution** of India provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. **Articles 14 and 22(1) of the Constitution** also make it obligatory for the State to ensure equality before law and a legal system, which promotes justice on the basis of equal opportunity to all. To receive those services, the person acquiring them should fall under the following categories:

- People with disability
- Women and children
- People who are members of SC & ST communities
- Victims of poverty (beggars) and human trafficking
- Industrial workmen
- People under custody
- People who are victims of natural disasters, caste or ethnic violence, etc.
- People with an annual income lower than 1 lakh

Supreme Court Legal Services Committee has also been constituted to administer and implement the legal services programme so far as it relates to the Supreme Court of India.

### 4. Lok Adalats

Lok Adalat, meaning '**People's Court**' is one of ADR (Alternative Dispute Redressal) mechanism. They are based on Gandhian principles, aims to settle disputes through arbitration at the grass-root level. They were given the **statutory status under the Legal Services Authorities Act, 1987** which aims to constitute legal service authorities to provide free legal services to the weaker sections of the society according to Article 39 A of the Indian Constitution.

Lok Adalat is presided by a sitting or a retired judicial officer as Chairman with two other members usually a lawyer and a social worker. The parties are not allowed to be represented by the lawyers and 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.**

It disposes of largely cases involving claims in the form of Motor Vehicle accident claims, Electricity and water bill related cases, land acquisition, Matrimonial and Family cases, Cheque dishonor etc.

#### 4.1. Levels of Lok Adalat

1. **State Authority Level:** The benches at this level would be constituted by the Member Secretary of the State Legal Services Authority organising the Lok Adalat. Each bench would comprise of sitting or retired High Court Judge or a sitting or retired judicial officer, a member from the legal profession, and a social worker. This social worker should be involved in the upliftment of the weaker areas and must be interested in the implementation of legal services, plans or projects.

2. **High Court Level:** The Secretary of the High Court Legal Services Committee constitutes benches for Lok Adalat at High Court level. Each bench will consist of a sitting or retired judge of the High Court and any one or both of either a member from the legal profession and/or a social worker, who should be involved in the upliftment of the weaker areas.
3. **District Level:** At this level, the Secretary of the District Legal Services Authority will establish benches of Lok Adalat. The bench consists of sitting or retired judicial officer and any one or both of either a member from the legal profession and/or social worker engaged in the upliftment of the weaker sections of the society. This social worker must also be interested in the implementation of legal services schemes or programmes or a person involved in para-legal activities in the area and should preferably be a woman.
4. **Taluk Level:** The Secretary of the Taluk Legal Services Committee establishes benches of Lok Adalat. Each bench consists of a sitting or retired legal officer and any one or both of either a member from the legal profession as well as a social worker involved in the upliftment of the weaker areas. The social worker must be interested in the execution of the legal services or should be involved in para-legal exercises of the area, ideally a woman.

## 4.2. Types of Lok Adalat

1. **National Lok Adalat:** National Level Lok Adalats are held for at regular intervals on a single day throughout the nation, in every one of the courts, from the Supreme Court till the Taluk Levels, wherein the cases are disposed of in huge numbers. They are held every two months across the country to dispose of the pending cases. According to the statistics of the Ministry of Law, more than 50 lakh cases are disposed of annually on an average by these courts.
2. **Permanent Lok Adalat:** It was established according to Section 22 B of the Legal Service Authorities Act, 1987. These are permanent bodies with a Chairman and two members giving an obligatory pre-litigation system for conciliation and settlement of cases pertaining to public utility services. In these courts, even if there is a failure in reaching settlement, the Permanent Lok Adalat has the jurisdiction to decide the matter, provided, the dispute does not relate to any offence. The award given by the Permanent Lok Adalat is last and official for every one of the parties. The jurisdiction of Permanent Lok Adalat is up to Rs.10 Lakhs.
3. **Portable Lok Adalats:** These are mobile dispute settlement bodies and are set up in different parts of the country to resolve matters by encouraging resolution of disputes and easing the burden on the formal judiciary.

## 4.3. Criticism of Lok Adalats

1. They meet infrequently and disposes of a large number of cases on a single day without giving the parties enough time to discuss the issue properly and arrive at a certain settlement (**justice hurried is justice buried**).
2. If the parties do not arrive at a consensus, the case is either returned to the court of law or the parties are advised to seek a remedy in the court of law. It leads to unnecessary delays in the dispensation of justice.
3. There are also instances of parties pressurising their lawyers to stick up to strict procedures of the court.

## 5. Fast Track Courts (FTCs)

These are additional Session Courts set up for speeding up the trials of long pending cases, particularly those involving under trials.

### 5.1. Evolution and Structure

Fast Track Courts were initially established for a period of five years (2000-2005). The 11<sup>th</sup> Finance Commission recommended for establishment of 1734 FTCs for expeditious disposal of cases pending in lower courts. FTCs were established by state governments in consultation

with respective high courts. Judges of these FTCs were appointed on an adhoc basis and they were selected by the High Court of respective states.

Student Notes:

There are primarily three sources of recruitment:

- by promoting members from amongst the eligible judicial officers;
- by appointing retired high court judges and
- recruited from amongst the member of bar of the respected state.

The cases are heard on a daily basis and no adjournments are allowed in the fast track courts. The cases are disposed within a given time frame.

In 2005, the Supreme Court directed the central government to continue with the FTC scheme, which was extended until 2010-2011. Subsequently, the government discontinued the FTC scheme in March 2011 due to financial problems and stopped financing FTCs. But as state governments enjoyed liberty to continue if they want, some states like Arunachal Pradesh, Assam, Maharashtra, Tamil Nadu and Kerala decided to continue with FTCs, while Haryana and Chhattisgarh discontinued. Some states like Delhi and Karnataka extended for a limited period of time. After the Delhi Rape Case, High Court of Delhi directed the state government to establish FTCs for the expeditious adjudication of cases relating to sexual assault. Some other states like Maharashtra and Tamil Nadu have also begun the process of establishing FTCs for rape cases.

## 5.2. Challenges

FTCs were established for speeding up long pending trials. However, success rate of FTCs in disposing of pending criminal cases is a mixed one. Southern states, along with Gujarat and Maharashtra have succeeded in making good use of FTCs. Bihar and UP, which account for 40% of all pending criminal cases have not succeeded much. Further, FTCs are accused of speeding up the trial so fast that they look like summary trials where enough opportunity is not given to the defender to present the case. Therefore, it is said that in fast track court justice is hurried that is equivalent to justice buried. The lack of mechanisms of judicial accountability for retired judges is another issue, which needs to be tackled for effectiveness of FTCs.

## 6. Commercial Courts

The Law Commission of India, in its 253rd report, had recommended for the establishment of the Commercial Courts at various level for speedy disposal of commercial disputes. The bill for the same was introduced in the Rajya Sabha in April 2015 and passed through Lok Sabha on December 2015. Subsequently the **Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act** was passed. The commercial courts have started functioning under the jurisdiction of the Delhi High Court, Bombay High Court, Himachal Pradesh High Court and the Gujarat High Court.

### 6.1. Key features of the 2015 Act

- The term “Commercial Dispute” has been very broadly defined in the Act to encompass almost every kind of transaction that gives rise to a commercial relationship.
- The Section 3 of the Act provided for the constitution of “Commercial Courts” in every district in all states and union territories where the High Court of that state or union territory does not have/exercise ordinary original civil jurisdiction and “Commercial Divisions” within High Courts exercising ordinary original civil jurisdiction.
- The Act provided for the adjudication of Commercial Disputes of more than INR 1,00,00,000 (defined as “Specified Value” in the Act), by the Commercial Courts/Divisions.
- All suits and/or applications relating to a Commercial Dispute of a Specified Value pending before any civil court are required to be transferred to the constituted Commercial Courts/Divisions for fast and speedy disposal of cases.

- In line with the Arbitration and Conciliation (Amendment) Act, 2015, all matters pertaining to international commercial arbitrations were brought within the purview of the High Court,
- Applications and appeals arising out of domestic arbitrations involving purely local Indian parties, which would ordinarily lie before any principal civil court of original jurisdiction (not being a High Court), will now lie before a Commercial Court (where constituted) exercising territorial jurisdiction over such arbitration.
- The provisions of the CPC, to the extent of its application to any suit in respect of a Commercial Dispute have been amended by the Act to streamline the conduct of Commercial Disputes.
- The Act had also introduced strict timelines to ensure prompt resolution of disputes including but not limited to all appeals to the Commercial Appellate Division must be filed within 60 days from the impugned judgment and the Commercial Appellate Division must endeavour to dispose of the case within a period of 6 months
- The Act required appointment of persons having such experience to be judges of the Commercial Courts/Divisions.
- The Act sets an outer limit of 120 days for filing defense beyond which the right to file the defense is forfeited and the Court would be bound to not take such a delayed submission on record.

## 6.2. Significance

It will not only change the speed at which Commercial Disputes will attain finality, but also improve the perception of investors about India as an investment destination.

## 6.3. Issues

- **Vagueness**
  - The definition of “Commercial Disputes” is very vague and wide. The list is not exhaustive and hence it can give rise to a number of litigations.
  - It is extremely difficult to ascertain the value of an intellectual property right and this can give rise to a number of litigations.
- **Exclusion**
  - Breach of confidentiality disputes has not been included in the definition of “Commercial Disputes”, which are really common in this era of competition.
- The qualification that the immovable property must be used exclusively in trade or commerce could raise debates as to whether the property must have been in use for trade or commerce before an agreement is entered into or whether it would also cover agreements entered into for the purpose of using immovable property for the first time for commercial purposes.
- Having the same pecuniary value limit for all High Courts does not take into account the variable factor in such dispute cases.
- Conflict with regular courts
  - Keeping in mind the Act’s objective to reduce pendency, one must recognize the need for appointment of more judges.
  - There is overlapping jurisdiction of the Commercial Divisions proposed for in the five High Courts exercising original jurisdiction.
  - The transfer of pending cases in civil courts to these Commercial Court/Divisions may lead to practical and logistical difficulties.
  - The Act also does not provide for a statutory right to appeal to the Supreme Court from an order of the Commercial Appellate Division.

The Act does not provide for any new or technologically advanced method of conducting the court procedures. For example, the suggestions of e-filing, video conferencing of witness and

use of latest technology will go a long way in making these courts at par with the systems being followed in some countries.

Student Notes:

#### 6.4. The 2018 Amendment to the Act

It seeks to achieve the following objectives:

- The Bill **brings down the specified value of a commercial dispute to 3 Lakhs** from the present one Crore. Therefore, commercial disputes of a reasonable value can be decided by commercial courts. This would bring down the time taken (presently 1445 days) in resolution of commercial disputes of lesser value and thus further improve India's ranking in the Ease of Doing Business.
- The amendment provides for **establishment of Commercial Courts at district Judge level for the territories over which respective High Courts have ordinary original civil jurisdiction** i.e in the cities of Chennai, Delhi, Kolkata, Mumbai and State of Himachal Pradesh. The State Governments, in such territories may by notification specify such pecuniary value of commercial disputes to be adjudicated at the district level, which shall 'not be less than three lakhs rupees and not more than the pecuniary jurisdiction of the district court. In the jurisdiction of High Courts other than those exercising ordinary original jurisdiction a forum of Appeal in commercial dispute decided by commercial courts below the level of District judge is being provided, in the form of Commercial Appellate Courts to be at district judge level.
- The introduction of the **Pre-Institution Mediation process** in cases where no urgent, interim relief is contemplated will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts through the authorities constituted under the Legal Services Authorities Act, 1987. will also help in reinforcing investor's confidence in the resolution of commercial disputes.
- Insertion of **new section of 21A** which enables the Central Government to make rules and procedures for Pre-Institution Mediation.
- To **give prospective effect to the amendment** so as not to disturb the authority of the judicial forum presently adjudicating the commercial disputes as per the extant provisions of the Act.

### 7. All India Judicial Service (AIJS)

#### 7.1. Historical background

- The proposal for an All-India Judicial Service (AIJS) in lines of All-India Services was proposed as early as 1950. The First Law Commission of India (LCI) in its 14th Report on Reforms on the Judicial Administration, recommended an AIJS in the interests of efficiency of the judiciary. In its 77th Report the LCI once again said the AIJS needed serious consideration.
- Further idea of creation of All-India Judicial Services was favoured by the Chief Justices conferences in 1961, 1963, and 1965 and even the Law Commissions (8th and 11th, 116th) suggested for the creation of the service. However, each time it was faced with opposition.
- After the Swaran Singh Committee's recommendations in 1976, Article 312 was modified to include the judicial services.
- Most recently the Central Government revisited the possibility of recruiting judges through an All India Judicial Service (AIJS).

#### 7.2. Rationale for AIJS

- It **focuses on quality** of judges rather than quantity.
- Appropriate way to **recruit the best talent required** for fulfilling the role that is demanded of a judge.

- **Currently**, the subordinate judiciary depends entirely on **state recruitment**. But the brighter law students do not join the state judicial services because they are **not attractive**.
- With **no career progression**, no one with a respectable Bar practice wants to become an additional district judge, and deal with the hassles of transfers and postings. Hence, the quality of the subordinate judiciary is by and large average.
- In this scheme of things, the measure of uniformity in the standards for selection will improve the quality of personnel in different High Courts, as one-third of the judges come there on promotion from the subordinate courts.
- In addition, the objective of inducting an outside element in High Court benches can be achieved in better way as a member of an all India judicial service will have no mental block about interstate transfers.

Student Notes:

### 7.3. Arguments against AIJS

- Issue of **differences in laws** across states.
- Difference in **local languages and dialects**.
- **Mismanagement of legal education** by Bar Council and UGC. Except for a few national law schools, others do not prioritize the legal education too much.
- **Low pay** is a big issue. Despite an effort by the Supreme Court to ensure uniformity in pay scales across States in the All India Judges' Association case, it is still very low.
- **Fewer avenues for growth**, promotion and limited avenues for career advancement.
- **Low district judge representation in the High Courts**, as less than a third of seats in the High Courts is filled by judges from district cadre. The rest are appointed directly from the Bar.
- It will **increase the competition** and it will be difficult from less privileged background to enter the profession.
- Legal education would be commercialized and **aid coachings**.
- Currently, the judges of subordinate courts are appointed by the governor in consultation with the High Court which will not be so if AIJS is implemented. Hence, it **will go against the Independence of Judiciary** as some other body will have a control in appointment and integration because in the judiciary, higher level controls and evaluates lower level.

Hence, it is argued that without addressing these identifiable lacunae, any new reform will not make a difference. A career judicial service will make the judiciary more accountable, more professional, and arguably, also more equitable. This can have far-reaching impact on the quality of justice and on people's access to justice as well.

## 8. Judicial Activism and Judicial Overreach

The Supreme Court has cautioned judges many times against judicial overreach and advised that judges must remain within the limits of the law and not peddle individual perceptions and notions of justice.

### 8.1. Difference between Judicial Activism and Judicial Overreach

Under our Constitutional scheme, the judiciary has to enforce the laws laid down by the legislature in accordance with our Constitution for which it has wide powers ranging from issuing writs of certain nature to the entertainment of petitions by special leave etc.

- Further, new innovations like the concept of Public Interest Litigations in recent times, has led to an enormous expansion of unaccountable judicial power in the nation's politics.
- Thus, the exercise of judicial powers in a manner which leads to redefinition of power equations between different organs of the state and the judiciary is called as judicial activism.
- However, Judicial Activism doesn't necessary mean that judiciary is inclined to expand its powers. It is more about the positive role played by the judiciary owing to the factors like a

- near collapse of responsible government, a legislative vacuum due to coalition governments and public confidence in the judiciary.
- Judicial Activism when overtly exercised results in usurping the powers of the Executive or the Legislature, which are the other two important organs of governance and is called as Judicial Overreach.
  - The power to legislate is squarely conferred on the Legislature by the Constitution. No such legislative power is given to the Courts by the Constitution. Judicial Activism cannot be used for filling up the lacunae in Legislation or for providing rights or creating liabilities not provided by the Legislation.

#### **What did the Supreme Court say in its recent judgment?**

- The court said that judges should not peddle individual perceptions and notions of justice. A judge's solemn pledge has to remain embedded to Constitution and the laws.
- The apex court said if a judge considered himself or herself a "candle of hope" and took decisions under the influence of such a notion, it might do more harm than good to the society.
- While using the power one has to bear in mind that 'discipline' and 'restriction' are the two basic golden virtues within which a judge functions as per the Supreme Court.

#### **Way Forward**

- There is a very fine line between Judicial Activism and Judicial Overreach. It would be in the best interest of our country if judges understand this and restrain themselves from crossing this line too often.
- The judiciary cannot rule the nation by legislating as well as executing through its judgments. It's simply not meant to do that. It can rightly be argued that a legitimate judicial intervention is the one which clearly falls within the permissible scope of judicial review.
- Purely political questions and policy matters not involving decision of a core legal issue should therefore remain outside the domain of judiciary.

## **8.2. Examples of Judicial Activism in India**

Following are some of the examples of Judicial Activism in India:

### **8.2.1. Persons in custody to be debarred from contesting elections**

As per the 2004 judgment of the Patna High Court in **Jan Chaukidari vs. Union of India** — upheld by the Supreme Court in July, 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 judges relied on the Representation of the People Act 1951 (RPA), 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, the reasoning goes, those in such custody are not qualified for membership of legislative bodies.

#### **Reasoning Against the Judgment:**

For a person to be qualified for the membership of legislature, RPA, 1951 states that one has to be an 'elector' as defined in Section 2(e). Section 2(e) defines an elector as "a person whose name is entered in the electoral roll of that constituency and who is not subject to any of the disqualifications mentioned in Section 16 of the RPA, 1950."

Since the law mentions Section 16 of RPA, 1950 as the basis of disqualification from being an elector, the SC relied on Section 62(5), which does not define 'elector' and only debars a person in jail from voting, not from contesting an election. Thus, Section 62(5) distinguishes between an 'elector' and a 'voter'.

The Supreme Court's judgement effectively amends the law passed by the Parliament.

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

Student Notes:

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

**Section 8 of the Representation of People Act, 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 the RP Act 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 the convicted persons could be disqualified from contesting the elections but could continue to be the Members of Parliament and State Legislatures, once elected.

### Reasoning Against the Judgment:

The Constitution enlists the disqualification criteria in Article 102(1), which is on the basis of 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:

First, it held Section 8(4) to be in violation of Article 102, and its corresponding provision for the States, Article 191, of the Constitution. A careful reading of the article 102 clearly empowers the Parliament to define the criterion for disqualification by enacting a law and none of the five clauses of Article 102(1) are attracted to invalidate Section 8(4).

Second, the Supreme Court has held that Parliament had no legislative competence to enact Section 8(4). This reasoning, too, is difficult to accept because Entry 72 to List 1 of the 7th Schedule in the Constitution specifically allows Parliament to legislate on elections to the Parliament or the State legislatures. It is well settled that legislative entries in the Constitution are to be widely construed, and in any case the Parliament has residual power to legislate under Entry 97 to List 1.

## 8.2.3. SC Ruling on Appointments in Central Information Commission

The Supreme Court in September 2012 ruled that only sitting or retired Chief Justices of High Courts or a Supreme Court judge can head the Central and State Information Commissions and that hearing can only be carried out by benches having a judicial member and an expert.

This judgment amounted to a *suo-motu* amendment in the Right to Information Act, 2005 by the Supreme Court. The reasoning stated by the SC was that since the work of the Commission was quasi-judicial in nature it should be manned by the judges. Interestingly enough, the retirement age for Central Information Commission (CIC) is 65 years, while the retirement age for judges is 65 in SC. Thus, it is practically impossible to have a retired SC judge as the head of the CIC.

The aim of SC was to ensure that a rational and transparent process be used to fill the vacancies in the CIC. But any aim, however noble, cannot justify the means used in a scenario when a clear separation of powers is enunciated in the Constitution.

In 2013, the above judgement was recalled by the Supreme Court.

## 8.2.4. Supreme Court's Ruling on Fixed Tenure for Bureaucrats

To insulate the bureaucracy from political interference and to put an end to frequent transfers of civil servants by political bosses, the Supreme Court in October, 2013 directed the Centre and

the States to set up a **Civil Services Board (CSB)** for the management of transfers, postings, inquiries, process of promotion, reward, punishment and disciplinary matters. A Bench also said that the bureaucrats should not act on verbal orders given by politicians and suggested a fixed tenure for them.

The Bench asked the **Parliament to enact a Civil Services Act under Article 309** of the Constitution, setting up a CSB, "which can guide and advise the political executive transfer and postings, disciplinary action, etc." The Bench directed the Centre, State governments and the Union Territories to constitute such Boards "within three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB."

The decision clearly encroached the legislative domain of the Parliament.

### **8.2.5. Voter's right to cast negative vote**

With a view to bring about purity in elections, the Supreme Court held that a voter could exercise the option of negative voting and reject all candidates as unworthy of being elected. The voter could press the 'None of the Above' (NOTA) button in the electronic voting machine. The Court directed the Election Commission to provide the NOTA button in the EVM.

The NOTA option would indeed compel political parties to nominate sound candidates. The bench noted that giving right to a voter to not 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 to the kind of candidates being put up by the Political 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 defeats the 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 Representation of the People Act and Article 19(1)(a) of the Constitution to the extent they violate the secrecy of voting.

### **8.2.6. The VVPAT Ruling**

Supreme Court (SC), in the case of **Subramanian Swamy vs. Election Commission of India (ECI)**, has held that VVPAT (Vote Verifiable Paper Audit Trial) is "indispensable for free and fair elections". In accordance to that, the Supreme Court has 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 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. This ruling is obviously a victory for accountable voting in India, but it leaves a few questions unanswered. While it 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.

### **8.2.7. Ruling on Election Manifesto**

On a petition filed by an advocate 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 content of manifestos.

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

Secondly, 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. "Freebies shake the root of free and fair elections to a large degree," it said.

Considering that there was no enactment that directly governed the contents of the election manifesto, the Court directed the E.C. 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.

### **8.2.8. Stay on Caste-Based Rallies in UP**

The Allahabad High Court stayed caste-based rallies in Uttar Pradesh, a move that will block off a key avenue that the major political parties use to expand their support base, especially before elections.

The Lucknow bench of the High Court sent a notice staying caste-based rallies to four major political parties, the Union and the State governments, and the Election Commission. The four parties are the Congress, the Bharatiya Janata Party (BJP), the Samajwadi Party (SP) and the Bahujan Samaj Party (BSP).

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, most prominently in Uttar Pradesh, where two of the major parties have specific caste bases. The petitioner said there had been a spurt of such rallies in the state, damaging social unity and harmony, and that they were against the spirit of the Constitution.

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 to discuss the problems facing that community, and there is no law barring such a meeting.

The aforementioned decisions of the Supreme Court and the Allahabad High Court may be perceived as making or amending the law, a function that is in the domain of the legislature.

### **8.2.9. Ruling on Nomination Papers**

The Supreme Court in September, 2013 ruled that a returning officer could 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 a 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 **Public Interest Litigation 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 a 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.

## **8.2.10. Judgment on Commutation of Death Sentence**

Student Notes:

In a landmark judgment, the Supreme Court in January, 2014 ruled that an inexplicable, inordinate delay in deciding on mercy plea of a death row convict is sufficient ground for commutation of death sentence to life. The Court said that the government cannot keep mercy pleas pending for years. It said that if there is a procedural lapse in deciding on the mercy plea of a death row convict then it can be a ground for commuting death sentence to life. The Apex Court also laid down important guidelines on dealing with death row convicts and their mercy pleas.

The Court directed that death row convicts should not be placed under solitary confinement. Also, such convicts must be provided all legal aid if he/she wishes to submit a mercy plea. The Court also mandated the respective state governments to place necessary material before the Governor while sending the mercy plea. Once the mercy plea is rejected, it should be conveyed in writing to the convict.

## **8.2.11. Supreme Court's Ruling on Acid Sale**

In July, 2013 the Supreme Court issued detailed directions to all State governments and Union Territories to frame rules within three months for regulating the sale of acid. In December, 2013 the Supreme Court gave another four-month time to the States and Union Territories to frame rules for regulating the sale of acid. A Bench headed by Justice R M Lodha also asked all Chief Secretaries to file a response on providing free-of-cost treatment, including plastic surgery, to acid attack victims.

It directed that whenever an FIR is lodged in an acid attack case, the Sub-Divisional Magistrate (SDM) of the area concerned will hold inquiry into the procurement of acid by the "wrongdoer". Taking the Haryana government schemes as model, the SC asks the government to respond why they should not bear cost of corrective plastic surgery required by acid attack victims and follow up psychiatric treatment to enable the victim to recover from the horrific experience.

The SC also asked the police to inform the concerned SDM immediately about an acid attack case so that he could inquire how the corrosive substance was procured.

## **8.2.12. Interlinking of Rivers**

The Supreme Court directed the Centre to constitute a 'Special Committee' forthwith for inter-linking of rivers for the benefit of the entire nation.

A Bench of Chief Justice S.H. Kapadia and Justices A.K. Patnaik and Swatanter Kumar, in its judgment in a 2002 case relating to networking of rivers, said the committee should submit a bi-annual report to the Union Cabinet, which must consider the report and take decisions.

The bench noted, "As pointed out in the report by National Council of Applied Economic Research and by the Standing Committee, the delay has adversely affected the financial benefits that could have accrued to the concerned parties and the people at large, and is in fact now putting a financial strain on all concerned."

## **8.2.13. Earlier Cases of Judicial Activism**

Judicial activism was made possible largely due to PILs (Public Interest Litigation). PIL, a manifestation of judicial activism, has introduced a new dimension regarding judiciary's involvement in public administration. The sanctity of *locus standi* and the procedural complexities are totally side-tracked in the cases brought before the courts through PIL. In the beginning, the application of PIL was confined only to improving the lot of the disadvantaged sections of the society, who by reason of their poverty and ignorance, were not in a position to seek justice from the Courts and, therefore, any member of the public was permitted to maintain an application for appropriate directions.

After the Constitution (Twenty-fifth Amendment) Act, 1971, by which primacy was accorded to a limited extent to the Directive Principles vis-a-vis the Fundamental Rights making the former

enforceable rights, the expectations of the public soared high and demands on the courts to improve the administration by giving appropriate directions for ensuring compliance with statutory and constitutional prescriptions have increased. Beginning with the **Ratlam Municipality** case, the sweep of PIL had encompassed a variety of causes. Ensuring green belts and open spaces for maintaining ecological balance; forbidding stone-crushing activities near residential complexes; earmarking a part of the reserved forest for Adivasis to ensure their habitat and means of livelihood; compelling the municipal authorities of the Delhi Municipal Corporation to perform their statutory obligations for protecting the health of the community; compelling the industrial units to set up effluent treatment plants; directing installation of air-pollution-controlling devices for preventing air pollution; directing closure of recalcitrant factories in order to save the community from the hazards of environmental pollution.

The decision of the Supreme Court in **Bela Banerjee case**, in which even after the Constitution (Fourth Amendment) Act, 1955 specifically laying down that no law concerning acquisition of property for a public purpose shall be called in question on the ground that the compensation provided by that law is not adequate, the Supreme Court reiterated its earlier view expressed in **Subodh Gopal and Dwarkadas cases** to the effect that compensation is a justiciable issue and what is provided by way of compensation must be "**a just equivalent of what the owner has been deprived of**".

**Golak Nath case** is also an example of judicial activism in that the Supreme Court for the first time, by a majority of 6 against 5, despite the earlier holding that the Parliament in exercise of its constituent power can amend any provision of the Constitution, declared that the fundamental rights as enshrined in Part III of the Constitution are immutable and so beyond the reach of the amendment process. The doctrine of "prospective overruling", a feature of the American Constitutional Law, was invoked by the Supreme Court to avoid unsettling matters, which attained finality because of the earlier amendments to the Constitution. The declaration of law by the Supreme Court that the Indian Parliament has no power to amend any of the provisions of Part III of the Constitution became the subject matter of animated discussion.

**Kesavananda Bharati** case had given a quietus to the controversy as to the immutability of any of the provisions of the Constitution. By a majority of seven against six, the Court held that under Article 368 of the Constitution, Parliament has power to amend any provision in the Constitution, but the amendment power does not extend to alter the **basic structure** or framework of the Constitution. Illustratively, it was pointed out by the Supreme Court that the following, among others, are the basic features: (i) Supremacy of the Constitution; (ii) Republican and Democratic form of Government; (iii) Secularism; (iv) Separation of powers between the legislature, the executive and the judiciary; and (v) Federal character of the Constitution. Supremacy and permanence of the Constitution have thus been ensured by the pronouncement of the summit court of the country with the result that the **basic features of the Constitution** are now beyond the reach of Parliament.

#### **Vishakha vs. State of Rajasthan case**

Vishakha, a non-governmental organization working for gender equality, had filed a writ petition seeking the upholding of the fundamental rights of working women under Article 21 of the constitution. The immediate reason for the petition was the gang rape of a *saath in* (a social worker involved in women's development programme) of Rajasthan in 1992. The assault was an act of revenge as the saath in had intervened to prevent a child marriage. The Supreme Court provided a landmark judgment in the area of sexual harassment against women. Since in this particular aspect there was no law or enactment by the legislature, so the judiciary applied its activist power and provided some guidelines.

After providing the guidelines, the Court said "Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the rights to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field".

## Supreme Court directives on Police Reform

In 1996, two former Director Generals of Police took the issue to the Supreme Court, requesting the Court to direct central and state governments to address the most glaring gaps and bad practice in the functioning of the police.

On 22 September 2006, the Supreme Court of India delivered a historic judgement in **Prakash Singh vs. Union of India** case instructing central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start police reform. The Court's directives seek to achieve two main objectives:

- 1. Functional Autonomy for Police:** through security of tenure, streamlined appointment and transfer processes, and the creation of a "buffer body" between the police and the government
- 2. Enhanced Police Accountability:** both for organizational performance and individual misconduct.

The Supreme Court required all governments, at centre and state levels, to comply with its directives and file affidavits of compliance.

## 9. Comparison between the Supreme Court and High Court

BASIS FOR COMPARISON	SUPREME COURT	HIGH COURT
 Meaning	The Supreme Court is the primary court of justice in the country.  (Articles 124-147) in Part V	The High Court is the apex judiciary body of a State's administration.  (Articles 214-231) in Part VI
 Articles in the Constitution	It is headed by the Chief Justice of India.	It is headed by the Chief Justice of the State.
 Headed by	There is only one Supreme Court in India.	There are total 25 High Courts in India, three of which have jurisdiction in more than one state.
 Number of Courts	Over all courts and tribunals of the country.	Over all courts, under its jurisdiction, which in turn is limited by the boundary of the concerned state.
 Superintendence/Territorial jurisdiction	Supreme Court can issue writs only where a fundamental right has been infringed.	High Courts can issue writs for enforcement of Fundamental Rights as well as for any other purpose i.e. ordinary legal rights of the citizen.
 Writ jurisdiction	<b>He should</b> <ul style="list-style-type: none"> <li><input type="radio"/> be a citizen of India.</li> <li><input type="radio"/> have been a judge of a High Court (or high courts in succession) for five years; or</li> <li><input type="radio"/> have been an advocate of a High Court (or High Courts in succession) for ten years; or</li> <li><input type="radio"/> be a distinguished jurist in the opinion of the President.</li> </ul>	<b>He should</b> <ul style="list-style-type: none"> <li><input type="radio"/> be a citizen of India.</li> <li><input type="radio"/> have been a Barrister for more than five years; or</li> <li><input type="radio"/> been a civil servant for over 10 years along with serving the Zila court for at least 3 years; or</li> <li><input type="radio"/> have been a pleader for over 10 years in any High Court.</li> </ul>
 Qualifications of Judges	By the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States.	By the President in consultation with the Chief Justice of India and the Governor of the state in question.
 Appointment of Judges	31 judges (including the Chief Justice and 30 other judges). Recently, the strength was increased from 31 to 34.	For every High Court, there is a Chief Justice and many other judges. The number of judges appointed is defined by the President of India.
 Number of judges	Judges retire at the age of 65 years.	Judges retire at the age of 62 years.
 Retirement of Judges	The judge of Supreme Court cannot plead before any court during his or her tenure or after his or her retirement.	The judge of High Court cannot plead before any court during his or her tenure and after retirement cannot plead in a court below the high court.
 Pleading	The President can issue the removal order only after an address by Parliament which must be supported by a special majority of each House of Parliament.	He can be removed by President on recommendation of Parliament.
 Removal/Transfer of Judge	The salaries and allowances of Chief Justice of India and Supreme Court judges are charged from Consolidated Fund of India.	The salaries and allowances of state high court judges including chief justices are charged from Consolidated Fund of State while pension is drawn from Consolidated Fund of India.
 Salaries and Pensions		

Student Notes:

## 10. Previous Year UPSC GS Prelims Questions

Student Notes:

**2019**

1. With reference to the Constitution of India, consider the following statements:
1. No High Court shall have the jurisdiction to declare any central law to be constitutionally invalid.
  2. An amendment to the Constitution of India cannot be called into question by the Supreme Court of India.
- Which of the statements given above is/are correct?
- (a) 1 only
  - (b) 2 only
  - (c) Both 1 and 2
  - (d) Neither 1 nor 2
- Ans. (d)**

**2016**

2. With reference to the 'Gram Nyayalaya Act', which of the following statements is/are correct?
1. As per the Act, Gram Nyayalayas can hear only civil cases and not criminal cases.
  2. The Act allows local social activists as mediators/reconciliators.
- Select the correct answer using the code given below.
- (a) 1 only
  - (b) 2 only
  - (c) Both 1 and 2
  - (d) Neither 1 nor 2
- Ans. (b)**

**2013**

3. With reference to National Legal Services Authority consider the following statements:
1. Its objective is to provide free and competent legal services to the weaker section of the society on the basis of equal opportunity.
  2. It issues guidelines for the State Legal Services Authorities to implement the legal programmes and schemes throughout the country.
- Which of the statements given above is/are correct?
- (a) 1 only
  - (b) 2 only
  - (c) Both 1 and 2
  - (d) Neither 1 nor 2

**Ans. (c)**

**2008**

4. How many High Courts in India have jurisdiction over more than one State (Union Territories not included)?
- (a) 2
  - (b) 3
  - (c) 4
  - (d) 5
- Ans. (b)**

**2007**

5. Consider the following statements:
1. The mode of removal of a Judge of a High Court in India is same as that removal of a Judge of the Supreme Court.

2. After retirement from the office, a permanent Judge of a High Court cannot plead or act in any court or before any authority in India.

Student Notes:

Which of the statements given above is/are correct?

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

**Ans. (a)**

**2006**

6. **Assertion (A):** In India, every state has a High Court in its territory.

**Reason (R):** The Constitution of India provides for a High Court for each state.

Which of the statements given above is/are correct?

- (a) Both reason and assertion are true and (R) is a correct explanation of (A).
- (b) Both reason and assertion are true but (R) is not a correct explanation of (A).
- (c) Assertion (A) is right while reason (R) is wrong.
- (d) Assertion (A) is wrong while reason (R) is right.

**Ans. (d)**

7. Consider the following statements:

1. A person who has held office as a permanent Judge of a High Court cannot plead or act in any court or before any authority in India except the Supreme Court.
2. A person is not qualified for appointment as a Judge of a High Court in India unless he has for at least five years held a judicial office in the territory of India.

Which of the statements given above is/are correct?

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

**Ans. (d)**

**2005**

8. Consider the following statements:

1. There are 25 High Courts in India
2. Punjab, Haryana and the Union Territory of Chandigarh have a common High Court.
3. National Capital Territory of Delhi has a High Court of its own.

Which of the statements given above is/are correct?

- (a) 2 and 3
- (b) 1 and 2
- (c) 1, 2 and 3
- (d) 3 only

**Ans. (a)**

**2005**

9. Consider the following:

1. Disputes with mobile cellular companies
2. Motor accident cases
3. Pension cases

For which of the above are Lok Adalats held?

- (a) 1 only
- (d) 1 and 2
- (c) 2 only
- (d) 1, 2 and 3

**Ans (c)**

**DELHI**

**JAIPUR**

**PUNE**

**HYDERABAD**

**AHMEDABAD**

**LUCKNOW**

**CHANDIGARH**

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**2004**

**10.** Consider the following statements:

1. The highest criminal court of the district is the Court of District and Sessions Judge.
2. The District Judges are appointed by the Governor in consultation with the High Courts.
3. A person to be eligible for appointment as a District Judge should be an advocate or a pleader of seven years' standing or more, or an officer in judicial service of the Union or the State.
4. When the Sessions Judge awards death sentence, it must be confirmed by the High Court before it is carried out.

Which of the statements given above are correct?

- (a) 1 and 2
- (b) 2, 3 and 4
- (c) 3 and 4
- (d) 1, 2, 3 and 4

**Ans. (d)**

**2003**

**11.** Which one of the following High Courts has the Territorial Jurisdiction over Andaman and Nicobar Islands?

- (a) Andhra Pradesh
- (b) Calcutta
- (c) Madras
- (d) Orissa

**Ans. (b)**

**2002**

**12.** The salaries and allowances of the Judges of the High Court are charged to the

- (a) Consolidated Fund of India
- (b) Consolidated Fund of the State
- (c) Contingency Fund of India
- (d) Contingency Fund of the State

**Ans. (a)**

**2001**

**13.** Consider the following statements regarding the High Courts in India:

1. There are eighteen High Courts in the country.
2. Three of them have jurisdiction over more than one state.
3. No Union Territory has a High Court of its own.
4. Judges of the High Court hold office till the age of 62.

Which of these statements is/are correct?

- (a) 1, 2 and 4
- (b) 2 and 4
- (c) 1 and 4
- (d) 4 only

**Ans. (b)**

Student Notes:

## 11. Previous Year UPSC GS Mains Questions

Student Notes:

1. How are Chief Justices of High Courts in India appointed? 3 marks (1987)
2. Bring out the issues involved in the appointments and transfer of judges of the Supreme Court and High courts in India. 6 marks (1998)
3. What is the common point between Articles 14 and 226 of the Indian Constitution? 20 marks (2008)
4. Is the High Courts' power to issue 'writs' wider than that of the Supreme Court of India? 15 marks (2006)
5. Write short notes, notes not exceeding 150 words on Role of the Judiciary in India. 20 marks (1979)
6. Discuss the importance of the independence of judiciary in a democracy. 20 marks (1984)
7. Present your views for and against the creation of an All India Judicial Service. 20 marks (1997)
8. What constitutes the doctrine of 'basic features' as introduced into the Constitution of India by the Judiciary? 30marks (2000)
9. Write notes on the Lokpal bill. 10 marks (2007)
10. Do you think there is a need for a review of the Indian Constitution? Justify your view. 30 marks (2008)
11. What are the major changes brought in the Arbitration and Conciliation Act, 1966 through the recent ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss. 12.5 marks (2015)

## 12. Previous Year Vision IAS GS Mains Questions

1. ***Examine the need of ADR mechanisms in India and comment on their efficacy in dispute redressal.***

**Approach:**

- The question is about the need and efficacy of ADR mechanisms. First and foremost one should know what ADR mechanisms are.
- The need of ADR mechanisms can be examined by highlighting the shortcomings that exist in the formal justice system. It also needs to be explained how the ADR mechanisms curb these shortcomings.
- Thereafter, the efficacy should be examined. While doing this, the limitations that exist in the ADR mechanisms should be discussed. A trade-off between the strengths and weaknesses would explain whether these are effective or not vis. a vis. the formal justice system.

**Answer:**

Justice delivery system plays a fundamental role in promoting public interest and preservation of order in the society. An effective system for resolution of disputes is essential for dispensing justice. However, the formal justice delivery system suffers from various limitations. Consider for instance, the following:

- To get justice through courts one has to often go through difficult and expensive procedures involved in litigation. Moreover, there exist serious concerns regarding costs, delays and congestion in the courts.
- Dispute resolution through legal proceedings in the courts has become excessively procedural and adversarial in nature, thereby resulting in undue delays, high costs and unfairness in litigation. Huge pendency of cases has created serious implications for the trust and credibility, which the society is supposed to have in the judicial system.

- Besides this, the adversarial nature of litigation in formal courts is found to be unconducive to social and business relationships, which need to be preserved. Thus this system neither generates a climate of consensus, compromise and co-operation nor does it end in harmony. This state of affair often causes dissatisfaction among disputants and creates a need for a more flexible means of dispute resolution.

It is in light of these limitations that the need for Alternative Dispute Resolution (ADR) mechanisms arise. Under ADR disputes are settled with the assistance of a neutral third person, who is generally of parties' own choice. Moreover, this person is usually familiar with the nature of dispute.

Further, the proceedings are informal, without any procedural technicalities. The process is not only expeditious, inexpensive and confidential, but it also aims at substantial justice. The goal here is to provide more effective dispute resolution. Thus, the availability of ADR creates more choices within the justice system. This is how the shortcomings faced in the formal justice delivery system can be overcome through the ADR methods.

However, despite the advantages that ADR enjoys over the formal justice system, it is not a substitute to litigation. There exists a different set of limitations in the ADR too. For instance:

- ADR processes cannot be used in those situations where the dispute is regarding systematic injustice, discrimination, and violation of human rights or serious frauds.
- ADR processes do not set precedent, since they function in private. They seek to resolve individual disputes. Moreover, resolution may be different in two similar cases, depending on the surrounding conditions.
- In cases that involve an extreme power imbalance between the parties, ADR processes cannot work well. A more powerful party may coerce the weaker party to accept the unfair consensus.
- In multi-party disputes, ADR processes cannot work effectively, if some of the parties do not participate.
- ADR settlements do not have any educational or deterrent effect on the public, since they are settled privately. Only courts can award punitive damages.
- Many people are not aware of the existence of ADR methods. Unless they are aware they cannot use these methods.

So, the efficacy of ADR depends on the trade-off between its benefits and limitations. It needs to be stressed once again that though ADR mechanisms are effective, they cannot be a substitute for litigation and a formal justice system.

## **2. Elaborate the functions and structure of Nyaya Panchayats. Also discuss how it works at the grass-root level for the dispensation of justice.**

### **Approach:**

- Brief introduction of Nyaya Panchayats.
- Briefly write the structure
- Functions or objectives of Nyaya Panchayats
- Analysis of its working at the grass-root level.

### **Answer:**

- Nyaya Panchayats can be described as village courts. It works on principles of natural justice and tends to remain procedurally as simple as possible. It helps in

- settlement of disputes at the local level, thus speeding up of justice and decongesting mainstream courts.
- Structure of Nyaya Panchayats:
    - Nyaya Panchayats are constituted for every Village Panchayat area or a group of Village Panchayat areas depending on the population and area
    - Nyaya Panchayats consist of five Panchas who are elected by the voters enrolled in the voter's list of that Village Panchayat or group of Village panchayats
    - Every Panch holds the office of Nyaya Pramukh for a period of one year by rotation on the basis of seniority by age.
  - Functions of Nyaya Panchayats
    - To provide speedy and cheap disposal of cases.
    - To bring justice nearer to the grass root levels without involving the expenditure which would otherwise have to be incurred in establishing regular courts.
    - To dispose of a large number of cases and thus relieve the burden of regular courts.
    - To succeed in getting a large number of cases compromised through peaceful conciliation.
    - To provide better chances of conciliatory method of approach.
  - Though Nyaya Panchayats do not exist throughout the country, but its positives in various states can be taken up as:
    - To a large extent, they have justified their existence.
    - They have brought justice to the very doorsteps of villagers –which is cheap, speedy and free from procedural techniques.
    - They have helped the parties in reaching compromise which reduced burden of the regular courts.
  - Yet it also suffers from limitations and defects:
    - The big land holders, casteism, social and religious taboos continue to play a major role in influencing the Nyaya Panchayats.
    - Low budget reduces Nyaya Panchayats activities considerably.
    - Fear of official favouritism and factionalism
    - Low educational level of Panchs makes it difficult to handle Nyaya Panchayat operations.

**3. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has a larger jurisdiction but the Supreme Court still remains the elder brother. -Justice R.C Lahoti. In the context of the above statements describe the relationship between the apex court and the high courts in India.**

**Approach:**

The Answer needs to highlight how both Supreme Court and High Courts have defined areas of jurisdiction under the provisions of constitution. Mention the provisions that make Supreme Court the apex court within India as well as the provisions that provide High Court a wider Jurisdiction. Keep in mind particularly Articles 132 to 136, 139A, 141, 144, 226 and 227. Also Remember Tirupati Balaji Developers Pvt. Ltd. and Ors. Vs. State of Bihar Case 2003.

**Answer:**

The relationship between the Supreme Court and High court in the constitutional scheme of things includes independence and hierarchy both. There are provisions

which give an edge, and assign a superior place in the hierarchy, to Supreme Court over High Courts. For instance,

- Article 139-A empowers the Apex Court to transfer any case pending before one High Court to another High Court or may withdraw the case to itself.
- Article 141 makes the law declared by the Supreme Court binding on all courts, including High Courts, within the territory of India. And
- Article 144 mandates that all authorities, civil and judicial, in the territory of India — and that would include High Court as well — shall act in aid of the Supreme Court.

The cases involving the interpretation of the Constitution are decided only by the Supreme Court, while the cases of constitutional interpretation cannot be decided by the High courts, the High Court issues the certificates that the cases require constitutional interpretations and should be taken by the Supreme court. The Constitutional provisions that attest to a larger jurisdiction of High Court are:

- Under Article 226 regarding writ jurisdiction the high court has wider powers than the Supreme Court. However, power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause ( 2 ) of Article 32.
- Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces.

The Supreme Courts apex status in judicial matters is further affirmed by the Article 136 which provides an extraordinary jurisdiction to it. However, the Constitution has clearly divided the jurisdiction between these two institutions in exercise of their constitutional mandate but while doing so these institutions have to have mutual respect for each other as was observed Justice Lahoti by in the Tirupati Balaji Developers Pvt. Ltd. and Ors. Vs. State of Bihar Case 2003.

**4. Give an account of the factors responsible for the limited success of Lok Adalats. What measures are required to ensure that Lok Adalats function as an effective dispute redressal mechanism?**

**Approach:**

- Factors responsible for limited success of Lok Adalats
- Measures to improve functioning of Lok Adalats

**Answer:**

Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Lok Adalats serve very crucial functions in India due to many factors like pending cases, illiteracy, poverty, high vacancy in courts etc.

Several limitations of Lok Adalats include:

- **LOK ADALATS ARE NOT APPROPRIATE FOR COMPLEX CASES:** 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.
- **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 also lacking.

Student Notes:

This also impedes the process of exploration of various resolution options and ultimately the success rate in matters where parties desire confidentiality.

Student Notes:

- **AURA OF COURT PROCEEDINGS:** Lok Adalats are forums 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.
- **DIMINISHED PARTY AUTONOMY:** It cannot be said that the parties remain in absolute control of the proceedings in contradistinction to what happens in mediation.
- **NEEDS CONSENT OF BOTH THE 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.

At this juncture 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.

#### **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.
- Accreditation of NGOs for Legal Literacy and Legal Awareness Campaign
- 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 or Committee 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 trifling disputes.

#### **5. Centralising recruitment through an All-India Judicial Service (AIJS) will not address the multiple problems in the judiciary and cause new ones instead. Critically evaluate.**

##### **Approach:**

- Briefly discuss the problems being faced by the judiciary.
- Discuss whether the government's proposal of an All-India Judicial Service (AIJS) will address the problems or further exacerbate them.
- Suggest a way forward.

Indian Judiciary has been battling multiple issues that have affected speed, efficiency and quality of justice. For example:

- Steady increase in number of cases reaching higher courts from lower levels, indicating substandard justice delivery.
- In 2015, approximately 25-30 million cases were pending in various courts.
- In 2015, there were about 400 vacancies of judges in 24 High Courts. Judge-population ratio of 10.5-11 to one million is one of the lowest in world.
- Corruption and lack of transparency in the appointment of judges.
- Issues such as large number of undertrails, long duration of resolution, inefficient and time consuming processes etc.

In this context, All India Judicial Services (AIJS) has been proposed through which district judges will get recruited centrally through an all-India examination and allocated to each State. The rationale of recruitment through AIJS is based on the following grounds:

- **Wide selection pool:** Through AIJS, judges will be selected at the national level and thus it is expected to make judiciary more professional and equitable leading to an improvement in the quality of judgments.
- **Reduction in vacancy:** It is expected to reduce vacancies by avoiding delays in examinations and recruitment.
- **Attractive career option:** Currently, the subordinate judiciary depends entirely on state level recruitment by respective High Courts. But the brighter among the law students do not join the state judicial services because they are not attractive. An 'All India Service' status with associated privileges may change this.
- **Uniform standards:** The measure of uniformity in the standards for selection will improve the quality of personnel in different High Courts, as one-third of the judges come there on promotion from the subordinate courts.

However, the idea has been criticized for not addressing core issues and creating new ones. For example:

- It ignores the fact that Bar Council of India has mismanaged legal education and there has been a lack of effort to improve the standard of legal education in the country.
- While efforts have been taken by the Supreme Court to promote uniform pay scales across States, pay is abysmally low when compared to the private sector.
- Trial court judges face similar problems in case of transfers and other issues as civil servants and have even lesser avenues for growth and promotion.
- Those High court judges appointed from District cadre are already in advanced stage of their careers and have shorter tenures than judges appointed directly from the Bar.

New problems that may arise due to AIJS:

- Being a centralised recruitment, it risks preventing the less privileged from entering judicial services.
- Also, it may be difficult for it to take into account local language, laws, practices and customs, which vary across States.

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