

## **Polity Class 43**

**11th December, 2023 at 9:00 AM**

### **INTRODUCTION (09:10 AM)**

- **A Brief Review Of The Previous Class.**

### **SCHEDULED AND TRIBAL AREAS (09:20 AM)**

#### **Scheduled Areas Under Schedule VI**

- **Autonomous regions/districts limited to Assam, Meghalaya, Mizoram, and Tripura.**
- **Amendments in Schedule VI governed by parliamentary law.**

#### **Administration of Tribal-Dominated Areas**

- **Controlled under Schedule V; the President of India decides declaration as a Schedule V area.**

#### **Criteria for Declaration as a Scheduled Area (Dhebar Commission, 1960)**

- **Preponderance of tribal population (minimum 50%).**
- **Compactness, reasonable size, underdeveloped nature, and economic disparity.**
- **Identification of viable administrative entities like districts, blocks, or taluks.**

#### **Provisions Under the Fifth Schedule**

- **Establishment of Tribal Advisory Council (TAC) by the governor in states with Scheduled Areas.**
- **Composition, functions, and advice related to welfare measures for scheduled tribes.**

#### **Powers of the Governor for Fifth Schedule Areas**

- **Governor determines TAC's functioning, tenure, and service conditions.**
- **Formulation of regulations for peace, good governance, and specific purposes.**
- **Governor's power to regulate land transfer, money lending, and legislation applicability.**

#### **Issues and Challenges Associated with Fifth Schedule Administration**

- **Non-constitution or ineffective functioning of TACs.**
- **Failure to utilize the governor's powers for tribal welfare.**
- **Ambiguity in discretionary powers of the governor.**
- **Lack of accountability due to irregular reports and governance failure.**
- **Conflicting legislation leads to confusion and exploitation.**

#### **Way Ahead for Fifth Schedule Areas**

- Allocation of resources for development.
- Training for effective tribal participation.
- Empowerment of local tribal councils for self-governance.
- Change in government perception towards tribal welfare.

#### **Sixth Schedule Areas**

- Administration via Autonomous District Councils (ADC) and Autonomous Regional Councils (ARC)
- Membership, nomination, and election processes within ADCs and ARCs.

#### **Powers of Autonomous District Councils**

- Legislative and administrative authority in various domains.
- Revenue collection, tax levying, and licensing powers.
- Set of village councils for dispute resolution.
- Establishment of district or regional funds for royalties.

#### **Concerns and Challenges with ADC/ARC Functioning**

- Irregular elections and insufficient funds.
- Representation issues for smaller tribal groups.
- Lack of participation from non-tribal residents.
- Delayed approval of council-made laws and corruption allegations.

#### **Way Ahead for ADC/ARC**

- Strengthening resources, administrative powers, and transparency.
- Expansion of Sixth Schedule scope.
- Encouragement of community participation and regular monitoring.

#### **CITIZENSHIP PROVISIONS (09:35 AM)**

- Art 5 to 10 of the constitution are responsible for the determination of citizenship status at the time of the commencement of the constitution.
- On the other hand the parliament has been empowered to make laws under Art 11 to determine the citizenship status once the constitution comes into force.
- As a result parliament has enacted the Citizenship Act 1955 which has been amended several times thereafter.

#### **Art 5:**

- Art 5 decides the citizenship status of those who were domiciled in India at the time of the commencement of the constitution.
- Any person domiciled in India would be considered a citizen if:

- If he was born in the territory of India.
- Either of his parents was born in the territory of India.
- Or who has been resident in India for 5 years before the commencement of the constitution.

**Art 8:**

- Art 8 on the other hand determines the citizenship status of persons of Indian Origin who were not resident in India at the time of the commencement of the constitution.
- A person of Indian origin would need to register with a counsellor representative or the diplomatic authorities of India in that country.
- A person of Indian origin would be someone who himself/herself or whose parents or grandparents were born in an undivided India.

**Art 6:**

- It determines the citizenship status of those who migrated from Pakistan.
- If a person migrated before 19th July 1948, he shall be eligible for citizenship if he or his parents or grandparents were born in undivided India.
- In case he migrated after the given date, he would need to undergo an additional step of registration with an officer appointed by the government for this purpose.

**Art 7:**

- It determines the citizenship status of those who remigrated from Pakistan to India.
- Such a person shall not be provided citizenship status unless returned to the territory of India with a permit of resettlement or permanent return issued by the government.

**Art 9:**

- A/C to this India did not allow dual citizenship on 26 Jan 1950.
- Therefore if a person acquired Indian citizenship under Art 5, 6, or 8, he would not have been considered a citizen of India, if he had acquired citizenship of the foreign state.

**ACQUISITION OF CITIZENSHIP UNDER CITIZENSHIP ACT, 1955 (10:11 AM)**

**By Birth:**

- At prest a person shall be deemed to be a citizen of India at birth if she takes birth in the territory of India and if either parent is an Indian citizen and the other is not an illegal immigrant.
- Between 1987 to 2004, a person born in the territory of India would have been a citizen if either of the parents were an Indian Citizen at the time of the birth.

- Before 1987, a person taking birth in the territory of India was entitled to Indian citizenship irrespective of the citizenship status of the parents.

#### **By Decent:**

- A person born outside India to either of Indian parents is entitled to Indian citizenship if the Birth was registered at an Indian Embassy or consular representative within a period of one year of birth or during the extension period allowed.
- Before 2004, there was no requirement for registration within a specific time period.
- Before 1992, a person should have been born to an Indian father to be eligible for Indian Citizenship.

#### **By Registration:**

- A person of Indian origin is eligible for Indian citizenship upon meeting certain requirements.
- Similarly a foreign citizen married to an Indian citizen shall be eligible for Indian citizenship upon satisfying certain conditions.

#### **Naturalisation:**

- A person having no ties to India can also become an Indian citizen if he has resided in India for a certain number of years and fulfils some other conditions as well.

#### **By Incorporation of Territory:**

- Since India is a sovereign nation it may acquire other territories and the persons living in such territories shall be eligible for Indian citizenship upon meeting certain requirements.

#### **LOSS OF INDIAN CITIZENSHIP:(10:27 AM)**

- **Renunciation:** A person can voluntarily declare and renounce Indian citizenship.

#### **By termination:**

- If a person acquires the citizenship of another country his Indian citizenship gets automatically terminated and govt. may issue the order for the same.

#### **By deprivation:**

- The govt. may deprive a person of Indian citizenship in case he has Indian citizenship through fraud, false representation etc or has shown disloyalty towards the constitution or unlawfully communicated with the enemy during the war etc.

#### **OCI:**

- An OCI is a person who was an Indian citizen on or after 26 Jan 1950 or was eligible to become a citizen of India after 26 Jan 1950 or is a child or grandchild of such a person.
- A person would not be eligible for OCI status if his parents or grandparents have been citizens of Pakistan or Bangladesh.

**Benefits of OCI:**

- Multi-purpose, multientry lifelong visa of India.
- Exemption from registration with local authorities for any length of stay in India.
- Can exercise ownership rights over the property and apply for an Indian PAN card.
- Eligible for appointment in teaching positions at central universities etc.

**Limitations:**

- No voting rights are provided.
- Can not hold govt. offices.
- Can not contest elections.
- Can not purchase agri land.
- Do not enjoy protection under Art 15, 16, 19, 29, 30.

**Citizenship Amendment Act 2019 :**

- A/C to it all the persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian from Bangladesh, Pakistan or Afghanistan who came to India before 31st Dec 2014 shall not be treated as illegal immigrants if exempted under the Passport of Foreigners' Entry Act by the central govt.
- The amendment sought to provide citizenship to persecuted minorities in the above-mentioned countries.

**OFFICE OF CAG (11:07 AM)**

- CAG is an independent authority under the Constitution of India.
- He is the head of the Indian audit & account department and chief Guardian of Public purse.
- It is the institution through which the accountability of the government and other public authorities to Parliament and State Legislatures and through them to the people is ensured.

**Appointment and Removal of CAG:**

- The CAG is appointed by the President of India by a warrant under his hand and seal.
- The CAG holds office for six years or up to the age of 65 years, whichever is earlier.
- He can resign at any time from his office by addressing the resignation letter to the president.
- He can also be removed by the president on the same grounds and in the same manner as a judge of the Supreme Court. In other words, he can be removed by the president based on a resolution passed to that effect by both Houses of Parliament with a special majority, either on the grounds of proven misbehaviour or incapacity.

### **Independence of CAG:**

- **CAG is appointed by the President by warrant under his hand and seal and provided with tenure of 6 years or 65 years of age, whichever is earlier.**
- **CAG can be removed by the President only in accordance with the procedure mentioned in the Constitution which is the manner same as the removal of a Supreme Court Judge.**
- **He is ineligible to hold any office, either under the Government of India or of any state, once he retires/ resigns as a CAG.**
- **His salary and other service conditions cannot be varied to his disadvantage after the appointment.**
- **His administrative powers and the conditions of service of persons serving in the Indian Audit and Accounts Department are prescribed by the President only after consulting him.**
- **The administrative expenses of the office of CAG, including all salaries, allowances, and pensions are charged to the Consolidated Fund of India that is not subject to vote.**

### **DUTIES AND POWERS OF CAG (11:36 AM)**

- **According to Article 149 and the CAG Act of 1971, the Comptroller and Auditor General (CAG) of India possesses various duties and powers outlined as follows:**
- **Audit of receipts and expenditures from the consolidated fund of India.**
- **Examination of transactions related to contingency funds and public accounts.**
- **Audit of government companies, central Public Sector Undertakings (PSUs), and autonomous bodies receiving government funds.**
- **Conducting audits of accounts for any other authority upon the President's request.**
- **Assessment of the net proceeds from taxes.**
- **Serving as an agent of the Parliament, conducting expenditure audits on its behalf.**
- **Ensuring executive accountability to the legislature in financial administration.**
- **Verification of the legality and proper disbursement of funds in accounts, ensuring expenditure aligns with specific purposes and governing bodies. This function is also termed compliance audit by the CAG.**

### **Performance and Propriety Audit by CAG:**

- **Expansion of CAG's Auditing Scope:**
- **Traditionally focused on Compliance audits.**
- **Recent inclusion of Performance and Propriety audits.**
- **Focus of Performance Audit:**
- **Evaluation of interventions, programs, and institutions.**

- **Assessment based on economy, efficiency, and effectiveness principles.**
- **Examining achievement of social and economic objectives.**
- **Identification of potential areas for improvement.**

#### **Objective of Propriety Audit:**

- **Scrutiny of executive actions beyond mere expenditure formality.**
- **Highlighting instances of losses and extravagant expenditures.**
- **Emphasis on the appropriateness and legitimacy of actions taken by the executive.**

#### **Issues in the functioning of the office of CAG (11:47 AM)**

- **CAG performs the postmortem audit after the expenditure has been made by the concerned.**
- **Since the reports of the CAG are not binding on the govt. several experts believe it does not have a lot of effect on the wrongdoings of the government.**
- **As per some experts CAG is a watchdog that can only bark and not bite.**
- **Therefore reducing the effectiveness of this office.**
- **The actions to be taken based on the reports are dependent on several factors including the effectiveness of the criminal justice system.**
- **The appointment procedure of the CAG lacks independence as it is controlled by the union executive alone.**
- **The constitution does not prescribe any qualifications for the office and the IAS officers are given preference over IAAS officers who have specific domain expertise in such matters.**
- **It is often criticised that the CAG's office has the benefit of hindsight and therefore often is overcritical of govt policy based on the result of the policy.**
- **It therefore results in Policy Paralysis where the govt officers are often afraid of taking tough calls in policy making.**
- **Often experts have argued that the CAG is an overburdened institution considering the complicated state of finances of the govt. in present times.**
- **There is a need to make it into a multimember body and increase the staff strength of the department.**

**(TOPIC FOR THE NEXT CLASS: UTs, HUMAN RIGHTS COMMISSION, COMPARISON OF THE CONSTITUTIONS )**