

Polity Class 31

3rd November, 2023 at 1:00 PM

PRESIDENT RULE (CONTINUES) (01:08 PM)

- **SR Bommai Case**
- **In the S R Bommai vs Union of India case, the Supreme Court ruled that:-**
- **Judicial review of invoking Article 356 is possible.**
- **A review of the material is possible.**
- **The exercise of these powers should not be arbitrary.**
- **In case of misuse of Article 356, the court can restore the dissolved Legislative Assembly, reinstate the dismissed CoM and revoke Article 356.**
- **Dissolution of LA should be done only after Parliamentary approval.**
- **Governor must treat floor test as a test to determine the majority of the govt in the state.**
- **After 1993, fewer instances of presidential rule were witnessed.**
- **Reasons:**
- **Pressure created by regional political parties- influential and coalition.**
- **President activism.**
- **24*7 Media coverage including Social media.**

UNION LEGISLATURE (01:36 PM)

- **Rajya Sabha (RS)**
- **Composition of RS-**
- **Not more than 250 members**
- **Present strength- 245**
- **233 are representatives of states and UTs.**
- **UTs- Delhi and Puducherry have representation.**
- **12 members can be nominated who have special knowledge and experience in Literature, Arts, Science, and Social Science.**
- **States have unequal representations. The representation is based on the 1948 population.**
- **In the USA, every state has 2 seats in the Senate.**
- **Comparison of the Council of States (CoS) in India with the Senate in the USA:**
- **India has provided unequal representation to the states in the Rajya Sabha, unlike the USA where all the states have an equal number of seats.**

- The NCRWC examined the question of providing equal representation to the states in RS.
- Some of the arguments in favour of equal representation for the states in RS are as follows:
 - Smaller states feel that the present system is discriminatory against them and gives importance to more populous states. E.g. North Eastern states put together have 14 seats in total. At the same time, the U.P. alone has 31 seats in CoS.
 - The USA has been a perfect example of a federation that provides equal representation to all the states and a similar system should be followed in India.
 - Providing representation on the basis of population figures has turned the Rajya Sabha into a replica of the Lok Sabha. Rather it was supposed to be away from the populist politics of the Lok Sabha and act as a chamber of discussion and deliberation.
- Arguments against equal representation of states in CoS:
 - Equal representation for the states may lead to greater demand for the smaller states resulting in an ever-increasing size of the Rajya Sabha.
 - If the smaller states are granted equal representation in RS, they might use their influence to stall important representation. This could lead to a legislative deadlock and hinder the functioning of the Parliament.
 - Granting equal representation regardless of the population numbers may be considered as discriminatory against the larger states. In a democracy based on the principles of one person one vote, it may appear unfair that the smaller states would have an equal say as the larger states.
- **RAJYA SABHA MEMBERSHIP**
 - RS members are indirectly elected by the people.
 - These members are required to achieve a quota to get elected.
 - $\text{Quota} = (\text{Total number of votes (MLA)} / (\text{Total number of seats} + 1)) + 1$
 - Qualification for membership of CoS:
 - Citizen of India
 - Make an affirmation/ take an oath as mentioned in the third schedule.
 - Minimum 30 years of age
 - Must be qualified according to a law of Parliament i.e. RoPA 1951.
 - Section 3 of RoPA 1951 says that the candidate must be a voter in any constituency in India.
 - Tenure
 - Members have 6 years of term. 1/3rd members retire every two years.

- RS is a permanent house.

COMPOSITION OF LOK SABHA (02:53 PM)

- Before 2020, the maximum size was 552- 530 from states and 20 from UTs. 2 Anglo-Indians could be nominated.
- After 2020, the maximum size is 550. The actual size is 543- 524 from states and 19 from UTs.
- Elections of the members of the Lok Sabha are done using the First Past the Post system.
- For this purpose, the entire country has been divided into territorial constituencies.
- From each constituency 1 seat is won.
- Allocation of seats to the states should be done according to the last preceding census.
- However, the allocation of seats to a state has been frozen on the basis of the 1971 census till the first census after 2026.
- The exercise of drawing boundaries of a constituency is called delimitation. It is done on the basis of the 2001 census till the first census after 2026.
- Qualifications
- Citizen of India
- Make an affirmation/ take an oath as mentioned in the third schedule.
- Minimum 25 years of age
- Must be qualified according to a law of Parliament i.e. RoPA 951.
- Section 4 of RPA says that-
- The candidate must be a voter in any constituency in India in case of an unreserved constituency.
- For a reserved constituency, the candidate must be an SC/ST as applicable.
- Lakshadweep- If the candidate is contesting an election from an ST constituency, he must be an ST in that UT.
- Sikkim- If the candidate is contesting an election from an ST constituency, he must be a voter/elector in the state of Sikkim.
- Reserved ST seat from an autonomous district of Assam- Must belong to ST community from that autonomous district.
- Grounds on which membership of a person can be disqualified-
- Article 102-
- Applies for contesting the elections as well as continuing as a member.

- Also applies to sitting MPs.
- The decision in this regard is taken by the President of India.
- The president needs to consult the Election Commission of India and ECI's advice is binding on the President in this regard.
- Sitting MPs- Decision is taken by the Presiding officer of the house
- Article 102(1)
- Holding an Office of Profit.
- Unsound Mind.
- Undischarged insolvent (bankrupt).
- If the MP is not a citizen of India.
- If disqualified according to the law made by Parliament.
- Office of Profit (OOP)
- It originated in the UK to protect the independence of the legislators from the influence of the crown.
- It also ensures the Principle of separation of powers between executive and legislature that is already diluted in a Parliamentary democracy.
- India also adopted this concept in its constitution from the British system. In general, the office of Profit is interpreted to be a post that brings to the office holder some financial gain or advantage where the amount of such profit is immaterial.
- Supreme Court has laid down the following principles to decide whether the office can be labelled as OOP-
- Whether the Govt is appointing authority or not.
- Whether the Govt has the power to terminate the position.
- Whether the govt determines the remuneration associated with the office or not.
- Source of remuneration and what are the powers that come with the appointment.
- In the Jaya Bachchan case, the court held that what matters is whether the office is capable of yielding any profit or not and not whether the person has actually gained any monetary benefits.
- The Parliament and the state legislature have been given the power to make laws to exempt certain offices from the definition of OOP.
- Accordingly, the President has enacted the Prevention of Disqualification Act, 1959 in which a list of offices have been mentioned that are exempt from disqualification.
- In recent times, some MLAs have been appointed as Parliamentary secretaries to circumvent the constitutional limit on the size of the council of ministers. For ex- 21 MLAs of Delhi Legislative Assemblies were appointed as Parliamentary secretaries.

In the past, the court has declared that the appointment of MLA as Parliamentary secretary would attract disqualification under the OOP provisions.

- **Despite this, the state governments have repeatedly appointed MLAs as Parliamentary secretaries.**
- **In 2017, Goa Govt passed an ordinance to exempt more than 50 offices from the category of OOP.**
- **Similarly, appointments have been made in states such as Punjab and Manipur on this matter. Such action violates the idea of separation of powers and compromises the independence of the legislature.**
- **Way ahead**
- **The 2nd ARC has recommended amendments to RoPA to comprehensively define this term.**
- **It also recommended that all the offices with executive decision-making powers and financial control should be treated as Offices of Profit.**
- **It further recommended that offices in a purely advisory capacity to the executive should not be treated as OOP.**
- **The Parliamentary committee on this matter has recommended that the Parliament and the state legislatures must not amend the laws related to it retrospectively as it defeats the entire purpose of the law.**

TOPIC OF THE NEXT CLASS- ANTI-DEFECTION LAW, PRESIDING OFFICERS, LAW-MAKING PROCEDURE