

Polity Class 44

12th December, 2023 at 9:00 AM

PUBLIC SERVICE COMMISSIONS (09:15 AM)

- The scheme for setting up public service commissions in India is based on the provisions of the Government of India Act, of 1935.
- Joint State Public Service Commission (JSPSC):
- The Constitution allows for the formation of a JPSC catering to two or more states.
- Unlike the UPSC and SPSC, which are directly established by the Constitution, the creation of a JSPSC requires an act of Parliament upon the request of the relevant state legislatures.
- The president appoints the chairman and members of a JSPSC.
- UPSC may perform the function for a state when the governor requests the same and the president approves.
- No structure and composition of PSCs are provided by the constitution.
- There is no fixed number of members and it is decided by the President or the Governor.
- Members of UPSC and Joint PSC are appointed by the President of India and in the case of SPSC the members and chairperson are appointed by the Governor of the State.
- Qualification: No specific qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state.
- Term of Office for UPSC: The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.
- Term of Office for SPSC: The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier.
- Further Appointment:
- Upon concluding their tenure, the chairman of an SPSC has the opportunity to be appointed as the chairman or a member of the UPSC, or as the chairman of another SPSC. However, eligibility for any other employment under the Government of India or a state is not conferred upon them.
- The outgoing chairman of the UPSC is ineligible for further employment in the Government of India or a state upon the conclusion of their term.
- However, a departing member of the UPSC is eligible for appointment as the chairman of the UPSC or a State Public Service Commission (SPSC), with the restriction of not seeking any other employment within the Government of India or a state.

- **Removal of UPSC Member/Chairman:**
- **The President has the authority to remove the chairman or any member of the UPSC under certain circumstances:**
- **Adjudged insolvent (bankrupt)**
- **Engages in paid employment outside the duties of the office during the term**
- **Deemed unfit to continue in office due to infirmity of mind or body (as per the President's opinion)**
- **Removal of misbehavior is also possible, but in such cases, the matter must be referred to the Supreme Court for an inquiry.**
- **If the Supreme Court upholds the cause of removal after the inquiry and advises so, the President can proceed with the removal.**
- **The President is bound by the advice of the Supreme Court in this regard, as per the constitutional provisions.**
- **During the Supreme Court's inquiry, the President can suspend the chairman or member of the UPSC.**
- **One basis of misbehavior is found in Article 317(4): If the person is interested in any agreement or contract with the government.**
- **Removal of State PSC Member/Chairman:**
- **While the governor is responsible for appointing the chairman and members of a State Public Service Commission (SPSC), their removal authority rests solely with the president, not the governor.**
- **The president can remove them based on the same grounds and through the same procedure as applicable to the removal of a chairman or member of the Union Public Service Commission (UPSC).**

INDEPENDENCE OF THE UPSC/SPSC (09:44 AM)

- **The President/Governor, while determining the conditions of service for the chairman or a member, is prohibited from making adverse changes after their appointment.**
- **All expenses related to the salaries, allowances, and pensions of the chairman and members of a UPSC/SPSC are covered by the consolidated fund of India or the respective State.**
- **Bar on reappointment or any appointment under the government after retirement.**
- **Removal can be done on specific grounds mentioned in the constitution.**

FUNCTIONS:

- **They are supposed to examine appointments to services of the Union and the State.**

- Two or more states may request UPSC for framing and operating schemes of joint recruitment for any services for which candidates with special qualifications are required.
- They are supposed to be consulted in making promotions and transfers from one service to the other and general transfers as well.
- On disciplinary action to be taken against the members of the services.
- For a claim by a civil servant, in case of the cost incurred for legal proceedings in respect of acts done in an official capacity.
- Concerning award or pension in case of injury sustained by civil servant while on duty.
- The PSC need not be consulted by the government w.r.t. to reservation provisions to be made under Article 16(4).
- Annual Reports: The commission shall present their annual reports concerning their work to the President or the Governor as the case may be.
- The President or the Governor in turn shall place a copy of ATR along with the report of the commission in front of the concerned legislature.

ISSUES ASSOCIATED WITH FUNCTIONING OF PSC

- The present recruitment system is archaic and does not suit the requirements of 21st-century democracy.
- Emphasis should be provided on judging a candidate on multiple dimensions including the ability to handle stress, make quick decisions, and above all show empathy and compassion for the weaker section of society.
- The PSCs need to change the one-size-fits-all approach and focus on recruiting for different services based on a specific skill set.
- The PSCs are overburdened with work compromising effective functioning.
- The PSCs must work on improving the coordination with training institutions to upgrade the capability of recruits on specific fronts.
- The government ignores recommendations for PSCs and discussion of reports has been extremely limited in the legislature.
- Since no educational qualifications are prescribed for the members, they are often manned with only former civil servants.
- The emergence of institutions such as CVC has created overlapping functions with the UPSC.
- Issues with SPSCs
- Dens of corruption
- Poor quality of members owing to political interference.
- They are often accused of copying the UPSC.

- The independence of SPSC has been compromised due to excessive political interference.

RECOMMENDATIONS

- They may learn from the recruitment procedure followed by the Indian Armed Forces and International organizations such as the World Bank.
- There is a need to recruit more staff to aid their functioning.
- They should invest in assessing the psycho-social profile of candidates.
- They should move from a negative recruitment strategy to a more positive one.
- Must Involve the outside experts in providing technical input.

UNION TERRITORIES IN INDIA (10:34 AM)

- Role of Administrator
- Any instruction or directive issued by the Central Government or the President is binding on the administration of the Union Territory.
- A Governor of a State may also be appointed as the Administrator of a Union Territory adjoining to that State.
- In that capacity, the Governor is to act independently of his Council of Ministers [Art. 239(2)].

UNION TERRITORY OF PUDUCHERRY

- Article 239(A):
- Parliament is empowered to create by law for Puducherry, a Legislature (elected, or partly elected and partly nominated),
- From those members, a Council of Ministers headed by the chief minister is elected. It has powers, and functions as may be specified in the law.
- The Council of Ministers can advise LG (Except in Discretionary Matters).
- In case of a difference of opinion pf, the LG must refer the matters to the president for opinion.

UNION TERRITORY OF DELHI (10:59 AM)

- In 1991, the Constitution was amended to grant Delhi special status.
- Now, it is officially known as the National Capital Territory of Delhi under Article 239AA.
- The Administrator, appointed under Article 239, is called the Lt. Governor.
- Delhi also has a Legislative Assembly directly elected by the people under the supervision of the Election Commission (Article 239-AA).
- The Legislative Assembly of Delhi can create laws on State List or Concurrent List subjects, excluding certain entries (Article 239AA(3)(a)).

- Parliament has the authority to make laws regarding any matter for the Union Territory (Article 239AA(3)(b)).
- If there's a conflict between a law passed by Parliament and one by the Delhi Legislative Assembly, the former takes precedence (Article 239AA(3)(c)).
- However, if the President approves, the Assembly's law can prevail over the Central Law, but Parliament can later enact laws on the same subject contrary to the Delhi law.
- The three entries are Police, Public Order, and Land, these powers to make laws on them lie exclusively with the center.
- Council of Ministers and Chief Minister:
 - A Council of Ministers, led by the Chief Minister, is established to assist and advise the Lt. Governor, except when the Lt. Governor is required to act at his discretion by law (Art. 239AA(4)).
- Resolution of Differences:
 - In case of disagreements between the Lt. Governor and Ministers, the matter is referred to the President, whose decision is binding.
 - If urgent, the Lt. Governor can take immediate action pending the President's decision.
- Appointment and Tenure:
 - The Chief Minister is appointed by the President, and other Ministers are appointed by the President on the Chief Minister's advice.
 - They serve at the pleasure of the President and are collectively responsible to the Legislative Assembly.
- Ordinance Power and Presidential Authority:
 - The Lt. Governor can promulgate ordinances. The President can take over the administration in case of constitutional breakdown or for the proper administration of the National Capital Territory (Art. 239AB).
- Suspension and Incidental Provisions:
 - The operation of Art. 239AA may be suspended, and the President can make necessary provisions for administering the National Capital Territory.
 - Parliament has the power to make laws to give effect to or supplement these provisions (Art. 239AA(7a)).
- Legislation:
 - Parliament enacted the Government of National Capital Territory of Delhi Act, 1991, to implement and complement the constitutional provisions (2018 SC).
 - This legislative act is not considered a constitutional amendment under Art. 368.

- **Constitutional Human Rights Bodies:**
- **National Commission for SC**
- **National Commission for ST**
- **National Commission for Backward Classes**
- **Statutory Human Rights Bodies:**
- **National Human Rights Commission**
- **National Commission for Protection of Child Rights**
- **National Commission for Women**
- **National Commission for Minority Education**
- **Benefits of a Human Rights Body Getting Constitutional Status:**
- **It elevates their status and raises their reputation.**
- **A body having constitutional backing gets unparalleled powers to provide directions to govt. ministries and departments.**
- **Constitutional bodies enjoy far greater independence and autonomy in their functioning.**
- **Reports of such bodies have to be compulsorily tabled in the Parliament of India along with the ATR by the executive.**
- **Challenges or limitations of Human rights bodies or commission**
- **Lack of independent investigation machinery; relies on state or central agencies for investigations.**
- **Only recommendatory bodies; recommendations are not binding on the government.**
- **Poor discussion of their reports in the legislature further diminishes their powers.**
- **Cannot entertain or inquire into complaints older than a specified period.**
- **Appointments based on political considerations, compromise independent functioning.**
- **Limited power to suggest actions against the Armed Forces.**
- **Shortage of staff and vacancies due to delayed appointments hamper effective functioning.**
- **Suggestions/Reforms required in the functioning of these bodies:**
- **There should be separate cadre and investigative machinery for these bodies.**
- **Encourage better discussions in parliament on their reports.**
- **There is a need to have a broad-based committee for appointments for human rights bodies as is present for NHRC.**

- Open more branches and adopt measures like those adopted by NHRC like complaints can be made in letters or emails to improve accessibility

COMPARISON OF INDIAN CONSTITUTION (11:45 AM)

- Comparison with USA
- It is a written constitution but a brief one.
- It is a rigid constitution that has been amended only 27 times in the last 230-odd years.
- The method of amendment is significantly different from India as in every amendment approval of at least 3/4th of the total states is required.
- The US follows the policy of supremacy of the constitution with the president as the head of the executive and state.
- The President is free to choose his nominees for ministerial positions.
- The USA Follows the principle of strict separation of power and the first three articles of the US Constitution define the exact power of each organ of the state.
- The US Senate is the most powerful upper chamber in the world.
- Important constitutional appointments have to be approved by the Senate.
- Also, International treaties and conventions entered into have to be approved by the Senate.
- In legislative matters, the Senate has the same power as the House of Representatives
- Revenue bills can be introduced only in HoR but the Senate has the same power after that.
- The impeachment trial of the American president is decided by the Senate.
- All the states have been provided equal representation with the Senate.
- They enjoy a tenure of two years.
- The majority party gets the position of speaker
- Judiciary:
 - The US Supreme Court is the final interpreter of the US Constitution it consists of a chief justice and 8 associate judges.
 - The appointments are made by the president and confirmed by the senate
 - the judges are appointed for a lifetime but do not have any retirement age.
 - All the judges sit collectively in all the benches hearing all the cases.
 - It does not have an integrated judicial system and federal courts can entertain cases only related to federal law.

- All the constitutional matters are entertained by the SC alone.
- No power to entertain an appeal against the judgment of state courts unless it has federal implications
- The removal of judges is carried out in a matter similar to the president.

The Topic for the Next Class: INDIA-USA Comparison, Provisions related to elections, etc.