

## **Polity Class 35**

**20th November, 2023 at 1:00 PM**

### **PARLIAMENTARY PRIVILEGES AND IMMUNITIES (01:08 PM)**

- Refer to the uploaded handout for more details.
- 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.
- Individual Privileges:-
- Freedom of Speech: No member can be taken to task anywhere outside the four walls of the house
- Freedom from arrest: Under Section 135 of CPC, a sitting legislator cannot be arrested in a civil case, 40 days before, after and during the ongoing session of the Parliament.

### **STATE LEGISLATURE (01:49 AM)**

- Refer to the uploaded handout for more details.
- Article 168: Constitution of Legislatures in States.—
- (1) For every State there shall be a Legislature which shall consist of the Governor, and two houses (some states such as Bihar) or one house.
- Article 169: Abolition or creation of Legislative Councils in States.—(1)  
Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.
- Article 170: Composition of the Legislative Assemblies:
- (1) Subject to the provisions of Article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.
- (2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.
- The boundary of the constituency shall be drawn on the basis of the 2001 census.
- The total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census;
- Article 171: Composition of the Legislative Councils

- (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State.
- (3) Of the total number of members of the Legislative Council of a State—
  - (a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
  - (b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
  - (c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
  - (d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
  - (e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).
- Process of legislation in states having two houses:
- A Bill other than a Money Bill can originate in either House.
- In case a Bill originates in the Legislative Assembly and is passed in the Legislative Assembly and sent to the Legislative Council, the Option to Legislative Council will have:
  - (i) Pass the bill as it is
  - (ii) Reject the bill
  - (iii) Suggest an amendment
  - (iv) That they do not do anything on the bills for 3 months
- In the case of (ii), (iii), and (iv) the Bill will make a second journey from the Legislative Assembly to the Legislative Council.
- The Legislative Council should pass the bill within 1 month, in any other situation the bill would be deemed passed on the expiry of 1 month.

#### **CRITICAL ANALYSIS OF LEGISLATIVE COUNCIL (03:15 PM)**

- SLCs are considered a superfluous body that serves no special purpose.
- A few experts consider SLCs as a delaying chamber that at best can delay a bill by a maximum of 4 months.

- It is often criticized for having become a chamber of rejected politicians which provides a backdoor entry to defeated candidates.
- It is an expensive affair to maintain a SLC and according to some estimates, it results in a burden of 200 to 300 crores.
- Representation of political parties in the Graduate and Teachers' constituency defeats the whole purpose.
- Some states such as Rajasthan and Tamil Nadu have abolished such councils because of lack of utility.
- It is often criticised that the SLCs are often created or abolished due to political reasons and not due to the purpose they serve.
- Arguments in support of SLCs
- It prevents majoritarianism.
- It prevents hasty and populist legislation.
- It provides representation to the grassroots bodies.
- It provides representation to the diverse sections of society such as teachers, graduates etc.
- It ensures the presence of technical expertise through the nomination route.

#### **CENTER-STATE RELATIONS (03:31 PM)**

- Legislative Relations
- Laws made by the Union apply throughout the territory of India or a part of it.
- Laws made by a state apply to the territory of that state.
- The doctrine of territorial nexus
- In normal circumstances, the law of a state can not have application outside the territory of the state but as per this doctrine, an exception can be made if there exists a sufficient nexus between the subject and the territory of the state.
- In other words, if an entity has an operation outside the state, it may be subject to the laws of other states.
- Some of the cases where the court has applied this doctrine are:
- R.M.D.C. vs State of Bombay
- Charushila Devi vs State of Bihar
- TISCO vs the State of Bihar
- Exceptions to the territorial application of the laws made by the legislature
- In the case of scheduled areas under Schedule V, the Governor by notification may provide that a law of the Parliament and the state legislature may not apply or apply with such modifications as provided in the notification.

- In tribal areas under Schedule VI, the Governor or the President as the case may be may notify that a law of the state legislature or Parliament may not apply or apply with such modifications as mentioned in the notification.
- As per Art 371 A and 371 G a law of the Parliament would not apply to certain matters in Nagaland or Mizoram unless approved by the Legislative Assembly of Nagaland and Mizoram respectively.
- The President can make regulations for the peace and good governance of UTs that may have the effect of a Parliamentary law and also amend the Parliamentary law itself.
- Exceptions to the law-making powers of the states on State subjects:
- Art 249: When the Council of States passes a resolution by a majority of at least 2/3rd of the members present and voting that it is necessary in national interest for the Parliament to make laws for the whole or any part of the territory of India the Parliament becomes competent to make laws on such subject mentioned in the resolution.
- Such a resolution shall remain in force for a maximum period of one year at a time and may be extended by a subsequent resolution Passed by the Rajya Sabha.
- A law passed under such provision shall cease to have effect six months after the resolution ceases to have effect.
- In 1986, RS passed a resolution to allow the Parliament to make laws on a specific subject in the state list to deal with militancy in Punjab and infiltration in J&K.
- Article 250:
- The Parliament may enact a law on a state subject while the proclamation of emergency is in operation.
- Such a law made by the Parliament shall cease to have an effect on the expiration of a period of six months after the proclamation of emergency ceases to operate.

**TOPIC OF THE NEXT CLASS- CENTER-STATE RELATIONS (TO CONTINUE)**