

TARGET PRELIMS 2024

BOOKLET-48; POLITY-2

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2. FUNDAMENTAL DUTIES CONTINUES:

1) RIGHT AGAINST SELF-INCRIMINATION/ RIGHT TO SILENCE

- The right against self-incrimination includes the right to refuse to take the witness stand and the right to refuse to answer an incriminatory question.
- Under Constitution of India, the right against self-incrimination is provided under **Article 20 (3)**. It says that **no person accused of any offence shall be compelled to be witness against herself.**
 - » The above protection extends to both oral evidence and documentary evidence.
 - » However, it doesn't extend to:
 - Compulsory production of material objects.
 - Compulsion to give thumb impression, blood samples etc.;
 - compulsory exhibition of the body.
 - Further, it extends only to criminal offences and not to civil proceedings or proceeding which are not of criminal nature.
 - » **Note:**
 - The right to be **presumed innocent until proven guilty**, and the **right to remain silent in an interrogation essentially flow from this constitutionally guaranteed right against self incrimination.** The right also ensures that police can't coerce anyone to confess to a crime, and obtain a conviction based on that offence.
 - Since the onus of proving the case against the accused beyond reasonable doubt is on the state, a person can't be compelled to testify against himself or share information that might go against him in trial.
- **Supreme Court Verdicts:**
 - » **The State of Bombay vs Kathi Kalu Oghad, 1961:** In this case, an 11 judge bench of the SC ruled that obtaining photographs, fingerprints, signatures, and thumb impressions wouldn't violate the right against self-incrimination of an accused. The court distinguished "to be a witness" from "furnishing evidence".
 - » **Selvi vs Sate of Karnataka, 2010:** Here, the SC ruled that a narcoanalysis test without the consent of the accused would amount to violation of the right against self-incrimination.
 - However, obtaining a DNA sample from the accused is permitted. If an accused refuse to give a sample, the court can draw adverse interference against him under section 114 of the Evidence Act.
 - » **Ritesh Sinha vs State of Uttar Pradesh, 2019:** The SC broadened the parameters of handwriting samples to include voice samples, adding that this would not violate right against self incrimination.
- **All accused have a right to silence and investigators can't force them to speak up or admit guilt:** Supreme Court (July 2023)
 - » The Constitution accords every person a right against self incrimination.
 - » "**Cooperation**" with an investigation can't mean "**confession**", and thus the investigation agency cant make out a case against the accused just because they choose to remain silent.

3. DPSPS

1) UNIFORM CIVIL CODE

- **Why in news?**
 - The 22nd Law Commission of India on Wednesday sought fresh suggestions from various stakeholders, including public and religious organizations, on the Uniform Civil Code (June 2023)
- Uniform Civil Code means **same law for every citizen of the country** in civil matters such as marriage & divorce, succession & inheritance; Minority & Guardianship; and adoption & maintenance.
 - » It doesn't only mean same law (or equality before law) between different communities, but also within the communities (i.e. between men, women, transgenders etc.)
- **Article 44**, of the Constitution of India declares that the state shall endeavor to secure the citizens a Uniform Civil Code.
 - » Further **Article 37** of the constitution states that "the principles laid down under DPSP are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws".
- At the time of independence, **UCC was only accommodated as a DPSP** due to communal disharmony and resistance to remove personal laws against the **backdrop of partition**.
 - » There was a need to placate every community by providing that their way living was not endangered in India.
- **Need of Uniform Civil Code**
 - » **National Integration**
 - » **Absence of UCC can be seen as Violation of Fundamental Right to Equality**
 - » Different civil laws complicates the legal system and leads to more delays.
 - » **Opportunity to reform personal laws**
 - » **Supreme has supported introduction of UCC in a number of rulings:**
- **Why India has not been able to implement UCC yet.**
 - » **Lack of understanding of UCC among people:**
 - » **Diversity of personal practices in India**
 - » **Contradictory Provisions of the Constitution (UCC vs other provisions of the Constitution)**
 - The **sixth schedule of the Constitution** was added for the administration of tribal areas in **Assam, Meghalaya, Tripura and Mizoram** and confers powers on district councils and Regional Councils in those states to make laws with respect to inheritance, marriage, divorce and social customs.
 - **Special Provisions** (Article 371A for Nagaland, 371F for Sikkim, and 371G for Mizoram) provide special provisions protecting the religious or social practices and customary laws.
 - » **Various laws allow for diversity in Civil Code:**
 - For e.g. PESA Act, 1996; the Chota Nagpur Tenacy Act, 1908; and the Santhal Parganas Tenancy Act, 1876, recognize various customary practices among tribals. This is also protected under 5th schedule of the Constitution.
- **Some criticisms of UCC**
 - » **'United' Nation does not mean uniformity.**
 - » **Secularism cannot contradict the plurality prevalent in the country**
 - » **Society is not ready.**

2) UTTARAKHAND UCC

- **Why in news?**
 - » President approves Uttarakhand's UCC Bill (March 2024)
- **Process of passage of the UCC:**
 - » UCC was a poll promise made by then CM of UK Dhami in case of re-election. UK government had formed an expert committee (headed by Retd Justice Ranjana Prakash Desai) in June 2022, to examine the way UCC can be introduced in the state. This committee submitted its report in Feb 2024 and within a few days the state assembly passed the bill. The bill approved by the Governor and was then sent to President. This is because **UCC is a matter of concurrent list** and thus requires approval of the President. President has given its approval in March 2024.
 - » With this, **Uttarakhand** has become the first state in independent India to have a Uniform Civil Code (UCC).
 - » Government has already formed a committee to **make rules and implementation of UCC** which is headed by retired IAS officer and UCC draft committee member Shatrughan Singh.
- **Key Highlights:**
 - » The bill has kept tribal out of its ambit.
 - » It **has complete ban on practices** like, Polygamy, Polyandry, halala, Iddat and Talaq as both men and women will have same rights in matters related to marriage and divorce.
 - » It also allows marriages to be solemnized only between a man and a woman. The **age of marriage** has been set at 21 years for boys and 18 years for girl.
 - » It also makes it **mandatory to register marriage and divorce**, failing which the couple concerned will be deprived of the benefits of all government facilities.
 - But, no marriage shall be deemed to be invalid solely because it was not registered or details mentioned in the memorandum were defective, irregular, or incorrect.
 - All marriages after 26th March 2010, would have to be registered in the state within a period of six months.
 - » **Child Custody**: In case of divorce or domestic dispute between husband and wife, the custody of the child upto 5 years of age will remain with the mother.
 - » **Provisions related to live-in relationship**:
 - **Mandatory Registration of Live-in relations**: Stringent provisions for failures to register live-in relations which calls for imprisonment upto three months and a fine not exceeding Rs 25,000 or both.
 - The **live-in status registration will be required** if such couples want to rent or buy property in the hill state.
 - **The child born out of live-in relationship** will be considered a legitimate child of the couple under UCC and will have all legal rights applicable to children born out of a marriage.
 - **If a women gets deserted** by her live-in partner, she shall be entitled to claim maintenance.
 - **Termination of relationship** also needs to be intimated in format prescribed by government.
 - » **Equal Rights to Property** have been given to sons and daughters for all classes.
 - » **No distinction between legitimate and illegitimate child, adopted child, child born through surrogacy and children born through assisted reproductive technology**.

- » **After the death of a person**, his wife and children are given equal rights in his property along with the deceased's parents.
- **Analysis: Criticism:**
 - » **Doesn't deal with adoption, maintenance and guardianship** (though it provides for maintenance during matrimonial dispute).

4. BASIC STRUCTURE

- **Why in news?**
 - » 50 years of basic structure doctrine: The verdict was given on 24th April 1973 (April 2023)
 - » Vice-President Jagdeep Dhankar has criticized the Supreme Court for using Basic Structure Doctrine to strike down constitutional amendments by Parliament, such as the NJAC Act. (April 2023)
- **What is the Basic Structure Doctrine?**
 - » The Basic structure doctrine is a judicial innovation of the Constitution of India which puts a limitation on the amending powers of the Parliament. It says that the Constitution has some 'Basic Features' that can't be altered or destroyed by amendments by Parliament.
- **Evolution of the Basic Structure Doctrine - Keshavnand Bharti Case and Minerva Mill Case**
 - » The extent of amending powers exercised by Parliament became a cause of adjudication from the very first Constitutional Amendment Act (1951) which curtailed the Right to Property (which was a fundamental right then).
 - » In **Shankari Prasad case** (1951) the SC held (6/11 majority) that the powers of Parliament to amend the Constitution under Article 368 of the Constitution includes the power to amend Fundamental Rights and that the **word 'law' in Article 13 of the Constitution includes only ordinary laws** and not the Constitutional Amendment Acts. Thus, the **Parliament can take away any of the fundamental rights** by Constitutional Amendment.
 - » However, in **Golak Nath case** (1967), the Supreme Court reversed its earlier stand and held **"the Fundamental Rights are given a transcendental and immutable"** position and hence Parliament can't abridge or take away any of these rights. It also held that a CAA is also law within the meaning of Article 13 of the Constitution and hence would be void for violating Fundamental Rights.
 - » **The Parliament sought** to supersede the Golaknath judgement by amending Article 368 itself through 24th CAA, 1971.
 - The amendment said that an amendment under Article 368 will not be considered a law within the meaning of Article 13 of the Constitution and the CAA can't be challenge on the ground that it affects a fundamental Right.
 - » In **Keshavananda vs State of Kerala** 1973, the Supreme Court upheld the 24th CAA.
 - Thus, the **question of amendability of the Fundamental Rights** have been settled i.e. a CAA can amend fundamental rights in India and a CAA will not be considered law under the meaning of Article 13 of the Constitution.

- **However, the Constitutional Bench** (largest ever - 13 judges) also held that there are certain basic features of the Constitution of India, which can't be modified by an amendment under Article 368 of the Constitution of India.
 - These basic features include (without being exhaustive) - sovereignty and territorial integrity of India, the federal system, judicial review, Parliamentary system of government etc.
- Using the doctrine of the 'Basic feature of the Constitution', the Apex court declared second part of the section 3 of 25th CAA as unconstitutional as it limited the powers of Judicial review which is one of the basic features of the Constitution.
- **Through 42nd CAA**, the Parliament tried to remove any limitation on its power of amendment by adding that there is no limitation on the constituent power of the Parliament and no amendment can be questioned in any court on any ground including that of the contravention of any FR.
- **However**, the Supreme Court in the **Minerva Mills case** invalidated the above amendment as it excluded Judicial review which is one of the basic features of the Constitution.
 - » The Court held "*Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed a limited amending power is one of the basic features of the Constitution and, therefore, the limitations on that power cannot be destroyed*"
- **Elements of the Basic Structure**
 - So far, Supreme Court has not defined an exhaustive list of the Basic structure doctrine. But from various judgments we can enumerate following features as part of basic features of the Constitution of India
 - Supremacy of the Constitution; Sovereign, Democratic and Republican nature of the Indian Polity; Secular character of the Constitution of India; Separation of Power; Federal Character of the Constitution of India, Unity and Integrity of the nation; Welfare State; Judicial Review; Freedom and Dignity of the individual; Parliamentary System; Rule of Law; Principle of Equality; Free and Fair Elections; Independence of Judiciary etc.
- **Other important Supreme Court Verdicts which expanded the Basic Structure Doctrine:**
 - » **Indira Gandhi vs Raj Narain 1975:** The Basic structure doctrine was used for the first time to strike down 39th Constitutional amendment Act (1975) provision that barred court's jurisdiction over election disputes.
 - » **Kihoto Hollohan vs Zachillhu (1992):** Free and Fair Elections
 - » **Indira Sawhney vs Union of India, 1992:** Rule of Law
 - » **Bommai Case (1994):** Democracy, Federalism, and Secularism.
 - » **M Nagaraj Case (2006):** Equality
 - » **Coelho Case (2007):** Judicial Review
 - » **NJAC Case (2015):** Judicial Independence

5. THE UNION (EXECUTIVE AND LEGISLATURE)

1) PRESIDENT

- Why in news?

- » The 2022 Indian Presidential Election was the 16th Presidential election in India held on 18th July 2022 to elect President of India. BJP candidate **Droupadi Murmu** won the election by a margin of 296, 626 votes against Yashwant Sinha, the United Opposition candidate (July 2022)
 - **Note:** Droupadi Murmu is the first member of a Scheduled Tribe and only the second women to become President of India, as well as the first President of India who was born after Independence.

- Introduction:

- » President of India is the head of the Union Executive.

- Constitutional Provisions:

- » **Article 52:** There shall be a President of India.
- » **Article 53:**
 - (1) The executive power of the Union of India shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution
 - (2) The Supreme Command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
- » **Article 54: Election of President**
 - The President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament; and the elected members of the Legislative Assemblies of the States.
- » **Article 62(1):** An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

- Election of the President: Details

- 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 the single transferable vote and the voting is by absolute majority.
- As per Article 54 of the Constitution of India, the President is elected by an electoral college consisting of elected MPs of both houses of Parliament and elected MLAs of the states and Delhi and Puducherry.

Note-1:	Wherever an assembly is dissolved , the <u>members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election</u> .
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Note-2:	The nominated members of both the houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of bicameral legislature) and the nominated members of the legislative Assemblies of Puducherry <u>don't participate in the election of the President</u> .
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- **Value of Votes of MLAs and MPs:**

- » **Article 55:** 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.
- » To achieve this "uniformity" and "parity" the number of votes of each MLA and MP is determined as follows:
 - **Votes of each MLA:** (Total Population of State)/(Total number of elected MLAs in the state * 1000)
 - **Votes of Each MP:** (Total value of votes of all MLAs of all states)/Total number of elected members of Parliament:
 - **Electoral quota to win the elections:** [(Total number of valid votes polled)/2] + 1
- All **doubts and disputes** in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final.

Note:	The <u>election of a person as President cannot be challenged</u> on the ground that the <u>electoral college was incomplete</u> (i.e. the existence of any vacancy among the members of electoral college). <u>If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force.</u>
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- **Why did India go for an Indirect form of election for the selection of President?**
 - » It is in harmony with the Parliamentary form of government, where the President is only a nominal head, and the real powers are vested in the council of ministers.
 - » **Save time and cost:** Direct elections of the President would have used a lot of resources of the country. This was unwarranted considering that the president was only going to be the nominal political head.
- **Why has role been given to MLAs (other than MPs) in the election of President ->** Current system ensures that the President is a representative of the Union and the States equally.
- The term '**Proportional Representation**' is a misnomer and should be called '**Preferential and alternative vote system**'.

Note	Proportional representation takes place where two or more seats are to be filled. In case of President, the vacancy is only one. It could better be called a ' <u>preferential or alternative vote system</u> '.
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- **Qualification:** In order to be qualified for election as President, a person must:
 1. Be a citizen of India
 2. Have completed the age of 35 years
 3. Be qualified for election as a member of the House of People; and
 4. Must not hold any office of profit under the Govt or the Government of any state or under any local or other authority subject to the control of any of the said government.
- **Nomination Stage:** Before election comes the nomination stage, where the candidates intending to stand in the election, files the nomination along with a signed list of 50 proposers and 50 seconders.
 - These proposers can be anyone from the electoral college from the states or national level.
 - **Why?**

- The rule for securing 50 proposers and 50 seconders was implemented in 1974. It was because, several candidates, many without even a bleak chance of winning, would file their nomination to contest the polls.
- An elector cannot propose or second the nomination of more than one candidate.

2) PARLIAMENTARY SECRETARY

- **Who is a parliamentary secretary?**
 - A parliamentary secretary is a member of Parliament in the Westminster system, who assists a more senior minister with her duties. She often holds the rank of Minister of State and has the same entitlement as is assigned to a government department.
- **What are the main criticisms of the office of Parliamentary secretaries?**
 - These posts tend to violate some constitutional provisions
 - a. **Office of Profit clause** (discussed in detail separately)
 - b. **Cap on the number of ministers.**
 - **Article 164(1A)** (and Article 75(2) at central government level) specifies that the number of ministers including the chief minister has to be within 15% of the total number of members of the assembly.
 - This provision was included by the 91st constitutional amendment of Indian constitution on the recommendation of the National Commission for Review of the Working of the Constitution headed by former Chief Justice of India, M.N. Venkatchaliah on misuse and drainage of public money to put a ban on over-sized cabinet.
 - **Article 239AA** provides that in case of National Capital Territory of Delhi, the number of ministers should not exceed 10% of the total number of members in the assembly.

3) OFFICE OF PROFIT AND ASSOCIATED ISSUES

- **Why in news?**
 - » Governor CP Radhakrishnan said that Raj Bhavan is examining the Election Commission's report on an Office of Profit case against CM Hemant Soren over the extension of a stone mining lease to him. The Election Commission sent its recommendation in Aug 2022. (Dec 2023)
- Office of profit refers to those positions under the government which a member of parliament or legislative assembly should not be holding. The term originated in 18th century England, where no person holding an office or receiving any salary from the king was allowed to serve as a member of house of common.
 - » **The Constitution of India** (Article **102(1)** and Article **191(1)**) specifies holding of office of profit as one of the conditions which disqualify MPs, and MLAs from membership of their respective legislative institutions.
 - » The **essence of this provision** is that there should be no conflict between the duties and interests of an elected member.
 - » Articles 102 and 191 also clarify that a person holding office of minister will not be deemed to hold an office of profit.

- Article 192(2) says that Before giving any decision on any such question, the Governor shall obtain the **opinion of the Election Commission** and shall act according to such opinion.

- **Which offices would be considered office of profit?**

» **'Office of Profit' has not been defined under the constitution.**

- » Over the years following broad principles have evolved from various Supreme Court Judgments (Maulana Abdul Shakur vs Rikhab Chand (1958); Guru Gobind Basu vs Sankari Prasad Ghosal (1964); Pradyut Bordoloi vs Swapan Roy (2001)) to determine whether an office is office of profit or not:
 - Whether the **government has the control** over the appointment, removal or function of the holder of office.
 - Whether the government pay any remuneration.
 - Whether the office has government powers (releasing money, allotment of land, granting of licenses etc.)
 - Whether the body in which office is held wields influence or power by way of patronage.
 - **Note: Not all the conditions have to be satisfied at one go**
 - Supreme Court in various cases has held that all the above tests need not exist conjointly for determining whether an office is an office of profit under the government.
- » In **Jaya Bachan vs. Union of India** case, the Supreme court said that **if the pecuniary gain is receivable** in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not
- » Similarly, in **Raman v. PTA Rahim, 2014**, the court had said that only posts that are capable of yielding pecuniary gains, as distinguished from compensatory allowances, would be offices of profit. Another important point decided in this case is that 'status', 'influence' etc of an office should not be taken into consideration while deciding the question of office of profit.

- **Provisions for exemptions to office of profit rule:**

- » The Constitution specifies that Parliament and state Legislative Assemblies have the **power to enact laws and keep certain offices out of the purview** of the office of profit.
- » **Parliament enacted a law in 1959** to specify offices that would not attract disqualification under the constitution. This law has been amended on several occasions. In 2006, it was amended to include the office of Chairperson of NAC and office of UPFDC, making them immune from disqualification.

4) RAJYA SABHA: SIGNIFICANCE AND ASSOCIATED ISSUES

- **Details**

- » Rajya Sabha is the upper house of the bicameral Parliament of India. It is a permanent house and can't be dissolved. To ensure continuity, one-third of its members retire after every second year, under Article 83(1) of the Constitution, and "biennial elections" are held to fill these vacancies. The term of a member is six years.
- » Out of 245 members:

- » **12** are nominated by the President and;
 - Under Article 80(3), the 12 nominated members should have special knowledge or practical experience in matters like literature, science, art etc.
 - A nominated member may join a party within six months of taking a seat.
- » **233** are representatives of the States and UTs of Delhi and Puducherry.

- **Significance of Rajya Sabha:**

- » **Institutionalize federal principle** of power sharing between Centre and States. It acts as safety valve within the legislature itself, easing federal tensions.
- » **Review and re-evaluation of the bills**
- » **Enhances deliberation.**
- » **Platform for nonpolitical talent and expertise:**
- » **Representation to Vulnerable Sections**
- » **Some Special powers to Rajya Sabha:**
 - Rajya Sabha can pass a resolution [with a majority of not less than 2/3rd of the members presents and voting] empowering the Parliament to make laws in the State List (Article 249) and to create one or more All India Services [Article 312]
 - In case the Lok Sabha is dissolved, and emergency is proclaimed, the proclamation remains valid if a resolution approving it is approved by the Rajya Sabha.

- **Elections of Rajya Sabha MPs:**

- As per **Article 80(4)** of the Constitution, members of Rajya Sabha are elected by indirect election by the elected members of the Legislative assembly of each state. Here the method of **proportional representation by means of single transferable vote** method is used.

- **Criticism of Rajya Sabha:**

- **No direct election** -> not directly accountable to the voters
- **No Equal Representation** to states
- **Money bill mechanism** is being misused to bypass Rajya Sabha
- It has become a **placement mechanism** for losing candidates.
- **Nominated members** haven't been generally very active.

5) SECRETARIAT OF PARLIAMENT

- **Constitutional Provisions: Article 98** in the Constitution of India provides for Secretariat of Parliament.
 - » It says that **each house of the Parliament shall have a separate secretariat staff** and that Parliament may by law regulate the recruitment, and the conditions of service of persons appointed to these secretariats.
 - Clause (1) says that **each house of the parliament shall have separate secretariat staff**. It further adds that nothing in this clause shall be construed as preventing the creation of **posts common** to both Houses of Parliament.
 - Clause (2) provides that Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretariat staff of either house of the Parliament.
 - Clause (3) provides that until provisions under clause (2) are made, President may after consultation with the Speaker of the Lok Sabha or the Chairman of the council of States, as

the case may be, make rules regulating the recruitment, and the conditions of services of persons appointed, to the secretariat staff of the House of the People or the Council of States, and any rules so made shall be subject to provisions of any law made under the said clause Conduct of Business.

» **Note:** Article 187 makes similar provisions for the Secretariat of State Legislatures.

- **Significance of Separate Secretariat for Parliament**

» Separate secretariat ensures independence of legislature from executive. It marks a feature of a functioning parliamentary democracy.

- **Current Situation:**

- » Each House of Parliament has **separate secretariat staff** of its own, and there are some posts common to both the Houses.
- » Recruitment and service conditions are regulated by Parliament.
- » The Secretariat of each house is headed by **Secretary General**. He is a permanent officer and is appointed by the Presiding officer of the house.
- » Speaker is assisted by Secretary-General, Lok Sabha in the discharge of her constitutional and statutory responsibilities and, Chairperson of Rajya Sabha is assisted by Secretary General, Rajya Sabha in her duties.
- » Secretary General of Lok Sabha and Rajya Sabha have the same status, ranking, pay scale etc. as that of highest government officer (i.e. cabinet secretary).
- » Secretary General also **enjoys certain privileges** such as freedom from arrest, immunity from criminal proceedings, and any other obstruction and breach of their rights.

- **Key Issues in the functioning of Secretariat of Parliament**

- » **Most of the Secretary Generals of Rajya Sabha** have been parachuted from the Civil Services or other services from time to time.
- » For e.g. the current Rajya Sabha Secretary General P.C. Mody is a retired IRS officer.
 - This hampers the principle of Separation of Power (between legislature and Executive)
 - Serving/retired civil servants come with long-held baggage and the clout of their past career.
- » Secretary general should also have vast knowledge of parliamentary procedures, practices, and precedents. Most of the civil servants lack this aspect of expertise.

6) ANTI-DEFECTION LAW

- **Why in news?**

- » Maharashtra assembly speaker Rahul Narwekar recognized the group led by chief minister **Eknath Shinde** as the "**real Shiv Sena**" and **dismissed all the disqualification petition filed against 16 ruling MLAs** (Jan 2024)
 - The speaker was directed by the Supreme Court to decide on the matter.
 - He also **dismissed the Shinde faction's disqualification petition against 14 MLAs from the Uddhav camp**.

- **Introduction**

- » *Aaya Ram Gaya Ram* was a phrase that became popular in Indian politics after a Haryana MLA Gaya Lal changed his party twice within the same day and then again within a fortnight in 1967.
- » The **anti-defection law** sought to prevent such political defections which may be due to reward of office or other similar consideration and lead to **political instability** and **horse trading**.
- » **Constitution (52nd Amendment) Act, 1985**, added the **10th Schedule** to Indian Constitution which lays down the process by which legislators may be disqualified on grounds of defection by the Presiding officer of a legislature based on a petition by any other member of the house. This law came into effect on 1st March 1985.
- **Key Provisions of the law:**
 - » **A member incurs disqualification** under the anti-defection law if:
 - She **voluntary resigns / gives up membership** of the party on whose ticket she is elected to the house.
 - If she **votes/ abstains from voting** in the house against the direction given by the Political party.
 - If an **independent candidate** joins a political party after the election
 - If a **nominated member** joins a party six months after she becomes a member of the legislature.
 - » **Allowed Exceptions:**
 - In case at least 2/3rd legislators of a party in a house merge with or into another party, then neither members who decide to merge nor the ones who stay with the original party will face disqualification.
 - » The law also says that a **question of disqualification** under 10th schedule would be **decided by the Speaker or the Chairman** of the House and his decision in this regard would be **final**. It also **bars the jurisdiction of courts** in any matter connected with the disqualification of a member of House under this schedule.
 - Under Article 190(3) of the Constitution, the Speaker has to satisfy himself that the resignation are voluntary and genuine and can reject them if he feels they are not. The **speaker has absolute discretion on this.**
 - However, Supreme Court in **Kihoto Hollohan's case (1992)**, while analyzing the meaning of the word 'final' in the context of such clause said that it doesn't exclude court's intervention under articles 136, 226 and 227 of the constitution i.e. the decision of Speaker/Chairman is subject to judicial review.
- **Constitutional Validity of 10th Schedule**
 - » The constitutional validity of the 10th schedule was analyzed by the Supreme Court in **Kihoto Hollohan v Zachillu, 1992**. The court held the provisions of 10th schedule valid and said that the provisions don't subvert the democratic rights of the elected members of the Parliament and the legislatures of the state. It doesn't violate their freedom of speech, freedom of vote and conscience as contended.
- **Other important SC judgments:**
 - » **Keisham Meghachandra Singh vs The Hon'ble Speaker of Manipur Legislative Assembly & Ors (2020): Key recommendations of the SC:**
 - **Petition under the disqualification provision** should normally be decided within a period of three months from the date of their filing.

- The court suggested that an **independent tribunal** can be appointed which will substitute the Speaker of the LS and Legislative Assemblies to deal with matters of disqualifications under the 10th schedule.
 - This tribunal should be headed by a retired SC judge or a retired chief justice of High Courts.
- **Need of Anti-defection law**
 - » **Curbing the instability in the political system**
 - » **Controlling Horse Trading/Corruption**

7) DEVICES OF PARLIAMENTARY PROCEEDINGS

A) QUESTION HOUR

- Question hour has been devised to **help Parliament hold government accountable.**
- Generally, the **first hour** of every parliamentary sitting is slotted as question hour. During this hour, Member of Parliaments (including from ruling party) ask questions to Ministers and hold them accountable for the functioning of the government.
 - » These questions can be of three types:
 - **Starred:** They require oral answers and hence supplementary questions can follow.
 - **Unstarred:** They require a written answer and hence, supplementary questions can't follow.
 - **Short Notice:** they are asked by giving a notice of 10 days and are answered orally.
 - » The **Parliamentary rules provide guidelines** on the kind of questions that can be asked.
 - 150-word limit
 - Precise (not very general)
 - Related to areas of responsibility of government.
 - Not seek information on secrets or matters under court jurisdiction.
 - » Now, question hour in both houses is held on all days of the session except on the day when President addresses the MPs from both the house (i.e. at the beginning of the Lok Sabha and on the first day of a new Parliamentary year) and on the day when Finance Minister presents the budget.
 - » During question hour, even an MP (non-Minister) can be questioned. Such question should be limited to the role of MP or to a bill or resolution being piloted by him.

B) ZERO HOUR

- **Understanding Zero Hour**
 - » It is an informal device (not mentioned in the rules of procedure) available with Member of Parliaments to **raise issues without any prior notice.** It starts immediately after question hour and continues till the beginning of the regular business of the day.
 - » It is an **Indian innovation** in the field of Parliamentary procedure and the concept of zero hour started organically in the first decade of Indian Parliament, when MPs felt the need for raising important constituency and national issues.
- **Significance of Question Hour and Zero Hour**
 - » These parliamentary devices have been used to **shine light on the functioning of government and highlight the irregularities to the public domain.**

- » One of the parliamentary publications describe question hour as, "**the test of the Government's accountability**, an indispensable part of the art of the opposition and even a deterrent on bureaucratic inertia'.
- » The question hour also **helps government to understand the pulse of the nation**.
- » The **information** so made available adds to public information essential to informed debates on matters of interest or concern.
- » Question hour is also **an instrument of unmatched criticality to hold government accountable** (i.e. fulfill the objective of parliamentary democracy) as it is available on daily basis, and provides equality to every member of the House, Rajya Sabha or Lok Sabha

8) LAPSING OF BILLS DUE TO DISSOLUTION OF LOK SABHA

- On dissolution of Lok Sabha, most of the business pending before it or its committees (including bills, resolutions, notices, petitions and son on) lapse. These (if to be pursued in future) need to be introduced again in the newly formed Lok Sabha.
 - » **What doesn't lapse?**
 - Some pending bills and all pending assurances that are to be examined by the Committee of Government Assurance do not lapse on the dissolution of Lok Sabha.
 - A bill for which joint sitting has been notified by the President.
 - A bill pending in Rajya Sabha (but not passed by Lok Sabha)
 - A bill passed by both houses (but pending President's assent)
 - A bill passed by both houses (but returned back by the President for reconsideration)
- **What lapses?**
 - » **A bill pending in Lok Sabha** (whether originating in Lok Sabha, or transmitted to Lok Sabha after passage by Rajya Sabha)
 - » **A bill passed by LS** but pending in Rajya Sabha lapses.

9) MONEY BILL AND ASSOCIATED ISSUES

- **Why in news?**
 - The Supreme Court said that it will constitute a **seven-judge bench** to consider the **issue of validity of passage of laws** like the **Aadhaar Act** as Money Bill (Oct 2023)
 - » Its **formation is due to** the reference made by the Constitution bench in ***Roger Mathew v. South Indian Bank*** on the interpretation of Article 110(1) of the Constitution of India. The correctness of the majority judgement in Aadhaar case on this point was also doubted by the court.
 - » Thereafter in the **PMLA case**, the question was left open for the consideration of larger bench.
 - » The **decision of the 7-judge bench** which is yet to be formed will definitely have a far reach impact on the constitutional law and the contemporary development in the Indian Parliamentary system and politics.
- **What is Money Bill**
 - According to **Article 110** of the Constitution of India a bill is deemed to be money bill if it contains **'only'** provisions dealing with all or any of the following matters:
 - 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;
- e. 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;
- f. 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
- g. any **matter incidental** to any of the matters specified in sub clause (a) to (f)

- **Article 110(3)-> Speaker's decision final.**

- **Article 122 -> prohibits courts from inquiring into proceedings of Parliament and examining their validity.**

- **In order to ensure financial independence and continuity to government functioning**, the Constitution gives **primacy to Lok Sabha** with respect to Money Bill. Such bills can only be introduced in Lok Sabha, can't be amended by Rajya Sabha. The upper house can only make some recommendations to the money bill passed by the lower house within a period of fourteen days which the lower house may accept or reject.
- Since **Powers of Rajya Sabha are greatly reduced on Money bill**, government (majority in Lok Sabha) sometimes bypasses the Rajya Sabha by getting a bill which doesn't satisfy the conditions for money bill declared as money bill.
- **Some recent examples include:**
 - **Adhaar Bill, 2016** contained provisions relating to providing of benefits, subsidies and services funded from Consolidated Fund of India, but it also contained several other provisions like allowing Adhaar to be used for opening bank accounts etc.
 - **Finance Bill, 2016** also had provisions other than those related to taxation. It amended the RBI Act to create **Monetary Policy Committee**. It also amended the Foreign Contribution Regulation Act (FCRA) (with retrospective effect) to change the definition of foreign company.
 - **Finance Bill, 2017** also had provisions related to **structure and organization of the Tribunals**.
 - **Finance Bill, 2019** was used to amend the provisions of the Prevention of Money Laundering Act (PMLA).
- **Supreme Court Verdict on Aadhaar Bill, 2016 in Sep 2018**
 - **Accepts Aadhaar Bill as money bill.**
 - » The Supreme Court held that government was fine to use money bill route as long as the **main focus** on the bill fit the criteria - and even if other provisions were unconnected to taxation or government expenditure.
 - **Dissenting Judgment: Aadhaar Act as Money Bill is a fraud on constitution.**
 - » **Justice Chandrachud** said that **superseding the authority of the Rajya Sabha is in conflict with the Constitutional Scheme and the legitimacy of democratic institutions.**
 - He pointed to an important word in provision (i) of Article 110: "**only**".

- **Supreme Court Verdict on Finance Bill, 2017 (Nov 2019): Rojer Mathew vs South Indian Bank Ltd And Ors**
 - In **Nov 2019**, a **five Judge Constitutional Bench** of the Supreme Court judgement while examining the legality of a **number of changes to the composition of tribunals passed** through **Finance Bill, 2017**, which the **court struck down**, it also **brought up the money bill question**.
 - The bench headed by CJI Ranjan Gogoi decided "It is clear to us that the majority dictum [in the Aadhaar judgment] did not substantially discuss **the effect of the word 'only'** in Article 110(1) and offers little guidance on the repercussions of a finding when some of the provisions of an enactment passed as a "Money Bill" do not conform to Article 110(1)(a) to (g)." The court was dissatisfied with the way the Aadhar judgement in the K Puttuswamy case had dealt with the issue of what could be certified as a money bill.
 - The court has thus also raised question of whether the Finance Act 2017 could have been passed as money bill.
 - **The matter has been referred to a larger Seven Judge Bench.**

10) PARLIAMENTARY PRIVILEGES

- Parliamentary privilege refers to **rights and immunities enjoyed by Parliament as an institution, MPs in their individual capacity and various committees**. These privileges ensure effective working of the Parliament and ensure authority, dignity and honour of the Parliament and its members.
- The Indian Constitution specifies the powers and privileges of Parliament in Article 105 and those of State legislatures in Article 194. This includes
 - i. **Freedom of Speech** in Parliament subject to other provisions of the Constitution and standing order of the house (Article 105(1), 194(1)).
 - ii. **Immunity for all speeches and votes** in the parliament or any committee from judicial scrutiny (Article 105(2), 194(2))
 - Immunity for persons publishing any report, paper, votes or proceeding by Parliament or under the authority of parliament.
 - iii. Powers and privileges and immunities of each house of the Parliament, and of the members and the committee of each house, shall be such as may from time to time be defined by Parliament by law. (105(3), 194(3))
 - Until then it would have the same privilege as the British Parliament had in 1950.
 - This was amended by the **44th Constitutional Amendment Act**. It provided that other privileges of each house of Parliament, its committees and its members are to be those which they had on the date of commencement (i.e. 20th June 1979), until defined by Parliament.
 - Till now, parliament or state legislature have not passed any law to codify their privileges.
 - iv. The above immunities are also applicable to persons who by virtue of this constitution has the right to speak in, or otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament. (104(4), 194(4))
- **Note**

- Article 194 is an exact reproduction of Article 105 and it deals with the state legislatures and their members and committees.

- **Two Types of Parliamentary Privileges**

1. **Collective Privilege:**

- The privileges, immunities enjoyed by each house of the parliament collectively
 - Right to publish its reports, debates and proceedings
 - Excluding strangers from its proceedings
 - Holding secret sittings
 - To Punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members)
 - The Courts are prohibited to enquire into proceedings of a House or its committees

2. **Individual Privilege:**

- In Civil cases, no arrest during the session of the house of 40 days before the beginning of the session and 40 days after end of the session
- Freedom of Speech in Parliament. No proceeding can be initiated against them in any court for anything said or any vote given in Parliament or its committees.
 - This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Parliament.
- They are exempted from jury service.

- **Need of Parliamentary Privileges**

- Enable each house of the legislature to discharge function properly and free of any pressure.
- The members of highest deliberative body in the country and in each state should have freedom of speech to ensure all views (no matter how small, fringe or different) are being discussed.
- Immunity from Judicial proceedings ensure non-interference by Judiciary in the parliamentary proceedings and separation of powers.
- These privileges ensure that undue influence, pressure or coercion is not brought on the legislature in the course of its functioning.

- **What constitutes a breach of privilege?**

- » A breach of privilege is a violation of any of the privilege of MPs/Parliament.
 - Among other things, any action 'casting reflections' on MPs, parliament or its committees; could be considered breach of privilege.
- » **No clearly laid out rules** on what constitutes breach of privilege and what punishment it entails.
 - This has led to a very high weightage being given to view of the members of the house.

- **Sources of the Parliamentary Privilege**

- » **Not codified yet**
- » They are based on following sources:
 1. Constitutional provisions
 2. Various laws made by Parliament
 3. Rules of Both the Houses
 4. Parliamentary Conventions

5. Judicial Interpretations

- Cases of breach of privileges?

- » 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 visitor's gallery.
 - Sentenced to simple imprisonment.
- » Similarly, there are many cases on breach of privilege of state assemblies.
 - In June 2017, Karnataka Assembly speaker ordered the imprisonment of two journalists for a year based on recommendations in two separate reports of its privilege committee.
- **Criticism of Parliamentary Privileges:** Against Freedom of Speech; Against Right to Life and Personal Liberty; No Codification -> Unlimited Power; Conflict of Interest -> Politicians act as judge in their own case; Used for non-essential reasons; Against Separation of Power

11) NO CONFIDENCE MOTION

- **Why in news?**
 - Lok Sabha Speaker Om Birla admitted a motion of No-Confidence against the government moved by Congress Deputy Leader in Lok Sabha Gaurav Gogoi (July 2023)
- **Introduction**
 - **Article 75(3)** of Indian Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha.
 - **Similarly**, in Part VI of the Constitution, **Article 164(2)** says "The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State."
 - This means that majority of the Lok Sabha members/Legislative Assembly members must support the PM/CM and her Council of Ministers.
 - In other words, Lok Sabha/Legislative assembly can remove the ministry from office by passing a no-confidence motion.
- A no-confidence motion is an attempt, usually by an opposition party, to get the government of the day to prove its majority on the floor of the house.
- **Rule 198** of the **Rules of Procedure and Conduct in Lok Sabha** specifies the procedure for a motion of no-confidence.
 - » Any member of the Lok Sabha can move the motion. The member moving the motion doesn't have to give reasons in support of the motion.
 - » If the speaker is of the opinion that the motion is proper, then she reads the motion to the house. A minimum of 50 members have to accept the motion. If not, the motion fails and the member who moved the motion is informed about it.
 - » **If a no-confidence motion is passed** (i.e. accepted by the majority)

- Government has to resign
- **Significance of No Confidence Motion**
 - » The motion helps in testing the majority of the government. Thus it ensures collective responsibility and thus accountability of council of ministers towards the Lok Sabha.
 - » When the motion is being taken up, members of Lok Sabha have an opportunity to present their views on performance of the government.
 - » It provides an opportunity to debate and discuss key issues of national significance.
- **History of No-Confidence Motion in India:**
 - » **27 No-Confidence Motion** have been moved so far. None of these motions, including the one against the PM Modi government in 2018, has been successful.
 - In **1979**, PM Morarji Desai realized that he didn't have the support of the majority of MPs, and therefore resigned before the house votes on the motion.
- **Note:**
 - » Difference between "No-Confidence Motion" and "Motion of Confidence / Trust Vote"
 - Motion of confidence/trust vote is moved by government, as an ordinary motion under Rule 184.
 - » The term '**No-confidence motion**' is **not mentioned in the constitution of India**. It is provided in the Rules of Procedure of the Lok Sabha.

12) ORDINANCE MAKING POWER OF THE PRESIDENT

- **Why in news?**
 - » In May 2023, the President of India promulgated the ordinance - 'National Capital Territory of Delhi (Amendment) Ordinance, 2023' (May 2023)
 - The ordinance promulgated by President Droupadi Murmu gave the LG of Delhi, who is appointed by the Centre, power over services, and established a "National Capital Service Authority" comprising of chief ministers and two senior IAS officials, which would decide matters "by majority of votes of the members present and voting" - essentially creating a stipulation in which the view of the elected CM could be potentially be overruled.
- **Introduction:**
 - » **Article 123 (Article 213 for Governors)** of the constitution empowers the President to promulgate ordinance during recess of Parliament. The Ordinance making power is the most important legislative power of the President. It has been vested in her to deal with unforeseen and urgent matters.
 - » These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.
 - » **What can ordinance do?**
 - It cannot amend constitution. Otherwise, it can do everything which parliament is empowered to implement.
- **Constitutional Safeguards:** The exercise of the Ordinance power is subject to 4 limitations :

- i. Ordinance can be promulgated **only when atleast one of the Houses of the Parliament is not in session.**
 - ii. President can make ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
 - **In Cooper case, (1970),** the Supreme Court held that **President's satisfaction can be questioned in a court on the ground of Malafide.**
 - iii. His ordinance making power is **coextensive as regards all matters except duration**, with the law-making powers of the Parliament. Two implications - Subject restrictions and Article 13 restriction.
 - iv. Every ordinance issued by president during recess of Parliament **must be laid before both the Houses of Parliament when it reassembles.**
 - If the ordinance is approved by both the houses, it becomes an act.
 - If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament.
 - The **President can withdraw ordinance at any time**, however, it is not a discretionary power and must be done on the advice of Council of Ministers.
- **Statement explaining the circumstances**
 - 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 Houses.
 - **Important SC Judgments**
 - **In Cooper case, (1970),** the Supreme Court held that **President's satisfaction can be questioned in a court on the ground of Malafide.**
 - **D C Wadhwa Case (1987)**
 - The court ruled that **successive re-promulgation of ordinances with the same text without any attempt to get the bills passed by the assembly would amount to violation of the constitution and the ordinance so re-promulgated is liable to be struck down.** It held that **the exceptional power of law-making through ordinance cannot be used as a substitute for legislative power of the state legislature.**
 - **Krishna Kumar Singh vs. State of Bihar, 2017:** In a blow to Ordinance Raj, a 7 judge Constitutional Bench of the Supreme Court **widened the boundaries of judicial review** to the extent that it can now examine whether the President or the State Governor was spurred by an "oblique motive" to bypass the legislature and promulgate an ordinance.
 - Further, the court added that **"the ordinance making power is not a parallel source of legislation. The court also held that "re-promulgation of ordinance is a fraud on the constitution and a sub-version of democratic and legislative process".**
 - **Why this temptation for ordinance?**
 - » Reluctance to face legislatures on certain issues
 - » Lack of majority in upper house
 - » Repeated and willful disruption by opposition parties

6. TOPICS TO BE COVERED

- 1) SUSPENSION OF MPS
- 2) DISQUALIFICATION OF MPS/ MLAS
- 3) OFFICE OF SPEAKER
- 4) DEPUTY SPEAKER
- 5) DEPUTY CHAIRPERSON OF RAJYA SABHA
- 6) LEADER OF OPPOSITION
- 7) DELIMITATION COMMISSION

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