

Classroom Study Material

POLITY & CONSTITUTION

PART-3



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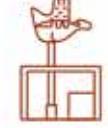
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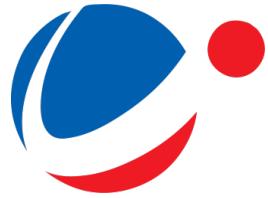
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POLITY PART 3

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UNION EXECUTIVE

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1. Introduction

India adopted the Westminster model of democracy, wherein Parliament is the supreme law-making body. However, it is the executive that has the sole authority and responsibility for the daily administration of the country. It is this branch of the government that executes or enforces the laws made by the Parliament.

The President, Vice President, Prime Minister, Council of Ministers, and the Attorney General form the Union Executive. A similar structure operates at the level of States too, wherein the Governor, Chief Minister, Council of Ministers, and the Advocate General form the State executive.

2. President

A Cabinet form of government usually has two executives – one, the real head, and other, the titular or ceremonial head. It is the President, who is the titular head in India. His office is largely ceremonial in nature.

Such a titular head is needed because:

- The President's office can be considered above party politics, and is a symbol of unity, integrity and solidarity of the nation
- As the life of Council of Ministers is uncertain and subject to it enjoying majority in the Lok Sabha, there has to be an office, with a fixed term, to ensure continuity in administration
- An additional reason in the context of India is federalism. Members of State Legislative Assemblies also participate in the President's elections; and hence the President can be said to represent the States too, apart from the Union.

According to Article 52, *there shall be a President of India who would be the Head of the Union Executive*. Here, the word "shall" means that there would always be a President of India. The post shall never lie vacant. It cannot be abolished. Election of the President must be completed before the expiry of his term. In case of temporary absence due to illness etc., it would be the Vice President who holds the Office of the President, until the President resumes his duties.

2.1. Qualification

In order to be qualified for election as President, a person must:

- be a citizen of India
- have completed 35 yrs. of age
- be qualified to contest elections as a member of the Lok Sabha (House of the People)
- not hold any office of profit under the Government of India or the Government of any State or any local or other authority subject to the control of any of the said Government (Art. 58).

2.2. Conditions of the President's Office

- The President shall not be a member of any house of Union or State legislature. This implies that if such member is elected as President, he shall be deemed to have vacated his seat in that house on which he enters upon his office as President.
- The President shall not hold any other office of profit.
- He is entitled, without payment of rent, to the use of his official residence (the Rashtrapati Bhavan).
- The emoluments and allowances of the President as may be determined by Parliament cannot be diminished during his term of office.

2.3. Term of Office

The President holds the office for a term of 5 years from the date on which he enters upon his office. However, the President's office may terminate within the term of five years, in either of the following two ways:

- a) By resignation in writing under his hand addressed to the Vice-President of India.
- b) By removal for violation of the Constitution, by the process of impeachment (Art. 56). The only ground for impeachment specified in Art. 61 (1) is 'violation of the Constitution' (to be discussed in detail later).

Student Notes:

2.4. Election Procedure

The 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 a single transferable vote, and the voting is by secret ballot.

2.4.1. Electoral College

The **Electoral College** consists of:

1. Elected Members of both the Houses of Parliament.
2. Elected members of Legislative Assemblies of States.
3. Elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry (included by 70th Constitutional Amendment Act, 1992).

This implies, that the following members are **not allowed to vote** in the Presidential election:

- Nominated members of the Lok Sabha.
- Nominated members of the Rajya Sabha.
- Nominated members of the Legislative Assemblies of State.
- Elected and Nominated members of the Legislative Councils of States.
- Nominated members of the Legislative Assembly of Delhi & Puducherry.

The Parliament has powers to regulate by law, the matters relating to the elections of the President and the Vice President (VP). As per the Presidential and Vice-Presidential Elections Act, a candidate, to be nominated for the office of the President, needs 50 electors as proposers and 50 electors as seconders (elector here implies a member of the President's electoral college) for his or her name to appear on the ballot.

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 (Art. 55). In this way, the President shall be a representative of the nation as well as a representative of the people in the different States. It also gives recognition to the status of the States in the federal system.

In order to secure uniformity in the scale of representation of the different States, it is provided that every elected member of the Legislative Assembly (Vidhan Sabha) of a State has to cast as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Assembly, and if, after taking the said multiples of one thousand, the remainder is not less than five hundred, the votes of each member referred to above are further increased by one. To put it in simpler words, each member of the Electoral College who is a member of a State Legislative Assembly (MLA) will have a number of votes calculated as follows:

Value of the vote of an MLA = (Total Population of the State)/ (Total number of elected members in the Legislative Assembly X 1000)

Fractions exceeding one-half being counted as one.

The following example will explain the method of calculation more clearly:

Student Notes:

- Suppose the population of state A is 37,129,852. Let us take the total number of elected members in the Legislative Assembly of A to be 276. To obtain the number of votes which each such elected member will be entitled to cast at the election of the President we have first to divide 37,129,852 (which is the population) by 276 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case the quotient is 134,528.449. The number of votes which each such member will be entitled to cast would be $134,528.449/1000$ i.e. **135** (as fraction is 0.528 which greater than 0.5 thus counted as one).

Each elected member of either House of Parliament (MP) have such number of votes as obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States divided by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

Value of the vote of an MP = (Total number of votes assigned to the elected members of all the State Assemblies)/(Total number of elected members of both Houses of the Parliament)

Fractions exceeding one-half being counted as one.

Further, the system of proportional representation by means of a single transferable vote, by secret ballot, ensures that the successful candidate is returned by an absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as:

Electoral Quota= [Total Number of valid votes polled/ $((1+1)=2)$]+ 1

2.4.2. Manner of Election

Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray.

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballot of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

2.4.3. Issues related to the Election

According to Article 71, all doubts and disputes in connection with the election of the President are inquired into and decided by the Supreme Court of India, whose jurisdiction shall be *exclusive and final* (other Courts have no jurisdiction over the same). An election petition calling in question an election to the office of the President may be presented within 30 days from the date of publication of the declaration of the result of election to the Supreme Court. This can be presented by any candidate at such election or any twenty or more electors joined together as petitioners. Petitions can be filled only on two grounds:

- Nomination of the candidate is wrongly rejected
- Elected candidate is wrongly accepted

No election can be questioned on the ground that there was a vacancy in the Electoral College.

In case, the election is declared void by the Supreme Court, acts done by the President prior to the date of such decision of the Supreme Court shall not be invalidated.

Student Notes:

2.4.4. Critical Analysis

The system of indirect election was criticized by some as falling short of the democratic ideal underlying universal franchise. But indirect election was supported by the framers of the Constitution, on the following grounds:

- Direct election by an electorate as large as in India, would mean a tremendous loss of time, energy and money.
- Under the system of responsible Government introduced by the Constitution, real power would vest in the Prime Minister, who heads the Council of Minister; so it would be anomalous to elect the President directly by the people without giving him real powers.

Some members of the Constituent Assembly suggested that the President should be elected by the members of the two Houses of Parliament alone. The makers of the Constitution did not prefer this as the Parliament, dominated by one political party, would have invariably chosen a candidate from that party and such a President could not represent the States of the Indian Union. The present system, on the other hand, makes the President a representative of the Union and the States equally.

Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of Presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could be better called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

2.5. Vacancy in the Office of President

Condition of Vacancy	Who shall act as President
On Expiry of his Term of Five Years	Election must be conducted before expiry of the term. If somehow election is delayed, the outgoing President continues to hold the office, until his successor assumes the office.
By his Death, Resignation, Removal by impeachment, Otherwise, for e.g. he becomes disqualified to hold office.	Vice President assumes the office until a new President is elected. Elections are to be held within six months of occurrence of the vacancy.
Illness or Absence from India	Vice President assumes the office until the President resumes his duties.

Note: In case the office of Vice President is *vacant*, the Chief Justice of India (or if his office is also vacant, the senior most judge of the Supreme Court available) shall act as the President of India.

When the Vice President, Shri V. V. Giri, who was acting as the President due to the vacancy caused by the death of the President, Dr. Zakir Husain, resigned from the office of the Vice President in 1969, the Chief Justice of India, Shri M. Hidayatullah, discharged the functions of the President.

2.6. Powers and Functions of the President

The powers enjoyed by the President and the functions performed by him are divided into the following heads:

2.6.1. Executive Powers

Article 53(1) provides that executive powers can be exercised by the President either (i) directly

or (ii) through officers subordinated to him.

Here, the 'officers subordinated to him' include the Council of Ministers.

Notably, the Article needs to be read together with Article 74, which provides that:

There shall be a Council of Ministers, with the Prime Minister as its head, to aid and advise the President.

Here the word "shall" means that the Constitution doesn't envisage a situation wherein the President can act without the aid and advice of the Council of Ministers. In case, the government has lost majority, the President is to constitute a caretaker government. Invariably, he asks the incumbent government to continue to hold office, until the next government is formed.

- He appoints the Prime Minister and other ministers; and they hold office during his pleasure.
- He appoints the Attorney General of India and determines his remuneration. He too holds office during the pleasure of the President.

The President also appoints the following:

- Comptroller and Auditor General of India
- Chief Election Commissioner and other Election Commissioners
- Chairman and Members of the UPSC
- Governors of the States
- Chairman and the members of the Finance Commission
- Judges of High Courts and Supreme Court

In making some of the appointments, the President is required by the Constitution to consult persons other than the ministers as well. Thus, in appointing the Judges of the Supreme Court the President shall consult the Chief Justice of India and such other Judges of the Supreme Court and of the High Courts as he may deem necessary [Art 124(2)].

Moreover, besides the power of appointing the above specified functionaries, the Indian Constitution does not vest in the President any absolute power to appoint *inferior officers* of the Union as is to be found in the *American Constitution*. The Indian Constitution thus seeks to avoid the undesirable 'spoils system' of America. Rather it makes the 'Union Public Services and the Union Public Service Commission' –a legislative subject for the Union Parliament, and by making it obligatory on the part of the President to consult the Public Service Commission in matters relating to appointment [Art. 320(3)], except in certain specified cases.

- The President can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the Prime Minister.
- He can require the Prime Minister to submit, for consideration of the Council of Ministers (CoM), any matter on which a decision has been taken by a minister, but which has not been considered by the CoM.
- He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- He can appoint an inter-state council to promote Centre-state and inter-state cooperation.
- He directly administers the Union Territories through administrators appointed by him.

Powers of the President with respect to Administration of Scheduled/Tribal Areas

1. Power to declare an area as Scheduled Area.
2. Power that an area will cease to be a Scheduled Area.
3. Power to constitute Tribal Advisory Committees.

Student Notes:

4. For peace and good governance of Scheduled Areas in a State, the governor can make regulations. Such regulations will have no effect unless they have been submitted for President's consideration and have received his assent.
5. The President can require the Governor to prepare a report on administration of the area.
6. The President can issue directions with respect to administration of such an area.

Student Notes:

Extent of Executive Power of the Union

Article 73 provides:

- 1) All those subjects on which the Union Parliament has powers to make law, Union Executive will have powers on such subjects.
- 2) Whatever power and authority emerges because of any treaty or agreement.
- 3) With respect to the Concurrent List, ordinarily the executive powers will be with the states, but if a law made by the Parliament specifically provides that the power is to be exercised by the Union executive, then it is the Union that will exercise executive powers.

Further, Article 53(3) provides:

If any law passed by the Parliament has given a function to the government of any state, or any other authority, it shall not be understood or deemed to be transferred to the President.

Notably, Article 53 doesn't prevent the Parliament from giving any executive function by law to any authority, other than the President.

Powers with respect to allocation and transaction of business

Article 77 provides:

- 1) *All executive action of the Government of India shall be expressed to be taken in the name of the President*
- 2) *Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument, which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President*
- 3) *The President shall make rules for more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business*

However, the executive powers of the President, like his other powers, are subject to the advice of the Council of Ministers, headed by the Prime Minister (Article 74).

2.6.2. Legislative Powers

The President is an integral part of the Parliament. He enjoys the following legislative powers:

- The President can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting (in case of ordinary bills and financial bills only) of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- He can address the Parliament at the commencement of the first session after each general election and the first session of each year. Apart from this he can send messages to either House of Parliament on any important matter of national, constitutional or public interest.
- The President can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. He can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.
- The President of India has the power to constitute the Parliament partially, by virtue of his powers to nominate members to both the Houses of the Parliament.

- He can nominate two members from Anglo Indian Community to the Lok Sabha, if he is satisfied that the community is not adequately represented in the House.
- He can nominate twelve members to the Rajya Sabha from among persons having special knowledge and practical experience of science, art, literature and social service.
- The Constitution requires the previous sanction of the President for introducing certain legislations.
 - For example, a bill, which seeks to create a new state or change the boundary of an existing state or change the name of a state or a bill which would involve expenditure from the Consolidated Fund of India.
 - Money bills also require the previous sanction of the President before their introduction in the Lower House.
 - Besides, all bills after they are passed in the Parliament need his consent to become Acts.
- When a bill is sent to the Parliament after it has been passed by the Parliament, the President can:
 - give his assent to the bill, or
 - withhold his assent to the bill, or
 - return the bill (if it is not a Money Bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

The President may either give or withhold his assent to a Money Bill. A Money Bill cannot be returned to the House, by the President, for its reconsideration. Also, the President is bound to give his assent to a Constitutional Amendment Bill passed by the Parliament by the prescribed majority and, where necessary, ratified by the requisite number of State Legislatures.

- When a bill passed by a State legislature is reserved by the Governor for consideration of the President, the President can:
 - give his assent to the bill, or
 - withhold his assent to the bill, or
 - direct the Governor to return the bill (if it is not a Money bill) for reconsideration of the State Legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the State Legislature and sent again to him for his reconsideration.
- The President lays reports of the Finance Commission, the Union Public Service Commission, National Commission for SCs and STs, Central Vigilance Commission, Central Information Commission, and the Comptroller and Auditor-General relating to the accounts of the Union etc. before the Parliament.
- According to Article 103, if any question arises that a member of either House of Parliament has become subject to disqualification under Article 102, then the matter shall be referred to the President, whose decision will be final. However, precondition is that the President shall take the opinion of Election Commission before making such a decision and will act according to such an advice.
- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations, but only when the assembly is suspended or dissolved.

2.6.3. Emergency Powers

The makers of the Indian Constitution were influenced by the relevant provisions of the Government of India Act, 1935 and the Constitution of Weimer Republic of Germany wherein emergency provisions had been incorporated. In the Constitution of India, three kinds of emergencies have been envisaged -National Emergency, State Emergency and Financial

To deal with any emergency, the President has been given some extraordinary powers by the Constitution of India.

National Emergency (Art. 352)

- Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war, external aggression or armed rebellion. The 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance'.
- It may be noted that the President can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation. This provision was added by the 38th Amendment Act of 1975.
- When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.
- A proclamation of national emergency may be applicable to the entire country or only a part of it. The 42nd Amendment Act of 1976 enabled the President to limit the operation of a National Emergency to a specified part of India.
- The President can proclaim a national emergency only after receiving a written recommendation from the Cabinet. This means that the emergency can be declared only on the concurrence of the Cabinet and not merely on the advice of the Prime Minister. The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the Prime Minister alone taking a decision in this regard.
- The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978. Further, in the *Minerva Mills* case (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.
- The proclamation of National Emergency must be approved by both the Houses of the Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months, but it was reduced by the 44th Amendment Act of 1978.
 - However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
 - If the Lok Sabha stands dissolved at the time of the declaration of emergency, then it must be approved by the reconstituted Lok Sabha within thirty days from its first sitting, provided the Rajya Sabha has approved it in the meantime.
- After approval by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months. This provision for periodical Parliamentary approval was also added by the 44th Amendment Act of 1978.

All such resolutions must be passed by a special majority, that is, majority of the total membership of that house and majority of not less than two-thirds of the members of that

House present and voting (this special majority provision was also introduced by the 44th Const. Amendment, 1978).

Student Notes:

- The declaration of National Emergency brings about a lot of **changes in the constitutional set up of the country.**

- The immediate effect of such a declaration is that the federal structure of the country is folded to a unitary one for purposes of uniformity of administration. The law making power of Parliament is extended to the items in the State list.
- The President acquires certain extra ordinary powers. He can issue directions or instructions to any State indicating the manner in which their executive power is to be exercised.
- He is also empowered to rearrange the distribution of revenues between the union and the states to ensure availability of sufficient funds to the central government.
- The fundamental rights granted to the citizens can be reasonably restricted in the greater interest of the country. However, such restrictions are withdrawn immediately after the revocation of emergency. Also, the life of the Parliament may be extended by a year.

Note: Kindly refer to the Vision IAS 'Emergency Provisions' document

State Emergency or President's Rule (Arts. 356 and 365)

- President's Rule is also known as 'State Emergency' or 'Constitutional Emergency'.
- It can be imposed under Article 356 on two grounds - one mentioned in Article 356 itself, i.e. failure of constitutional machinery in the States, and another in Article 365 i.e., failure to comply with or to give effect to directions given by the Union. It is under these that the President proclaims President's Rule.
- Art 356 provides that if the President of India, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution, he may declare State Emergency. Such a proclamation may be made by the President, where a State has failed to implement any central directive. Since any dislocation in State administration might affect the national integrity, the provision of President's rule has been provided as a safeguard against such a situation.
- The proclamation should be approved within two months by both the Houses of Parliament. Thereafter, it remains in force for six months. It can be extended for a maximum period of three years with the approval of Parliament, every six months.
- When the President's Rule is imposed in a state, the President dismisses the State Council of Ministers, headed by the Chief Minister (however, the powers of the High Court are not affected). The State Governor, on behalf of the President, carries on the State administration with the help of the Chief Secretary of the State, or the advisors appointed by the President.
- Further, the President either suspends or dissolves the State Legislative Assembly. The powers of the State Legislature in that case are exercised by the Parliament. The Parliament may also delegate these powers to the President.

This type of emergency has been invoked on several occasions since 1951. The 44th Constitutional Amendment Act has provided that such a proclamation can be challenged in a court of law to check its misuse.

In the famous S. R. Bommai case, the Supreme Court held that the Presidential proclamation imposing state emergency is subject to judicial review.

Financial Emergency

- The President proclaims Financial Emergency under article 360, if he is satisfied that the financial stability or credit of India, or any part thereof is threatened.
- This proclamation must be approved within two months from the date of its issue by the Parliament. If the Lok Sabha is dissolved within that period of two months, the proclamation has to be approved within thirty days of the first sitting of the newly constituted Lok Sabha. It can continue for an indefinite period till it is revoked by the President.
- During the period of Financial Emergency, the President can give directions to the States to observe the canons of financial propriety. He can issue directions to reduce the salaries and allowances of all or any class of persons serving under the State, or the Union including the judges of the Supreme Court and High Court.
- All money and financial bills passed by the State Legislature can be reserved for the President's consideration during the period of Financial Emergency.

A state of Financial Emergency has not been declared so far in the country.

2.6.4. Financial Powers

- Money bills can be introduced in the Parliament, only with the President's prior recommendation.
- No demand for a grant can be made except on his recommendation.
- The President causes to be laid before the Parliament the Annual Financial Statement i.e. the Union Budget.
- The President can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.
- The President constitutes a Finance Commission after every five years to recommend the distribution of revenues between the Centre and the States.

2.6.5. Diplomatic Powers

The President enjoys wide diplomatic powers over foreign or external affairs. For the purpose of maintaining ties with the other countries, he appoints diplomatic representatives like Ambassadors or High Commissioners to those countries. The diplomatic representatives of other foreign countries also present their credentials to him before taking up their assignments in this country. The President also represents India in international forums and affairs.

Also, international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to approval of the Parliament.

2.6.6. Military Powers

The President is the supreme commander of the defence forces of India. In that capacity, he appoints the Chiefs of Army, Navy and Air Force. He can declare war or conclude peace, subject to the approval of Parliament.

2.6.7. Judicial Powers

- The President appoints the Chief Justice and the Judges of Supreme Court and High Courts.
- He can seek advice from the Supreme Court on any question of law or fact (Article 143). But the advice given by the Supreme Court is not binding on the President.

2.6.8. Pardoning Powers

Article 72 mentions that:

- 1) *The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence*
 - a) *in all cases where the punishment or sentence is by a Court Martial;*

Student Notes:

- b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
- c) in all cases where the sentence is a sentence of death.
- 2) Nothing in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

Meaning of these terms can be understood as:

Pardon: It removes both the sentence and conviction and completely absolves the convict from all sentences, punishments and disqualifications.

Rerieve: It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Respite: It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, like physical disability of a convict or the pregnancy of a woman offender.

Remission: It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

Commutation: It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

Note that the pardoning power of the President is independent of the judiciary – it is an executive power. The President while exercising this power doesn't sit as a Court of Appeal. The object of conferring this power to President is twofold:

- To keep the door open for correcting any judicial errors in the operation of the law
- To afford relief from a sentence, which the President regards as unduly harsh.

Scope of Judicial Review

Maru Ram case, 1980

In Maru Ram case 1980, the Supreme Court declared that the power of the President under Article 72 is subject to judicial review. It maintained that the power cannot be exercised in an arbitrary manner.

Recent Judgment in Shatrughan Chauhan vs. Union of India (2014)

In this case, the Supreme Court has held that:

1. Inordinate delay can be a justified ground for commutation of death penalty into life imprisonment.
2. Psychiatric conditions developed during incarceration are grounds for clemency.
3. It ruled against the solitary confinement of death row prisoners.
4. At least 14 days prior notice to be given to family members prior to execution.
5. It is not a mere prerogative of the President and the decision is subject to judicial review.
6. It is a constitutional obligation of the President and Governors to dispose off mercy petitions of convicts.
7. Right to seek mercy is a constitutional right, which cannot be subject to whims and fancies of the executive.
8. Though no time limit can be prescribed, it is the duty of the executive to expedite the matter at every stage.

9. Article 21 is available till last breath, even after the mercy petition has been rejected. And the convict can still approach the courts for commutation on the grounds of supervening events.
10. Legal aid to be made available at all stages.
11. Rejection to be intimated at the earliest. It should be intimated to the nearest legal aid center apart from informing the convict.
12. The person has the right to seek judicial review. After the rejection of mercy petition, the judiciary has the power to even invalidate a President's decision, if there is evidence of biasness.

Student Notes:

Comparison with Pardoning Powers of the Governor

According to Article 161, the Governor of a State also possesses powers to grant pardons and suspend, remit or commute the sentence of any person convicted of an offence against a law relating to a matter to which the executive power of the State extends. It means that the governor has pardoning powers, in cases, where conviction is under a law of that State.

The scope of pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161. Their powers differ in the following two ways:

- The power of the President to grant pardon extends to cases where the punishment or sentence is by a Court Martial. But, Article 161 does not provide any such power to the Governor.
- The President can grant pardon in all cases where the sentence given is a sentence of death, but pardoning power of the Governor does not extend to death sentence cases.

The Tamil Nadu government has decided to release seven prisoners convicted in the **Rajiv Gandhi assassination case**. The Supreme Court had earlier commuted the death sentence of the convicts to life term. The Centre has also filed a writ in the case questioning the State government's decision. The Centre has made the contention that since the prisoners were convicted under a Central Act like TADA, the decision of the State government is not legally tenable.

2.6.9. Veto Power

The President of India is vested with the following three types of veto power.

Absolute Veto

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

- a) With respect to private members' bills (i.e. bills introduced by any Member of Parliament who is not a minister); and
- b) With respect to the government bills, when the Cabinet resigns (after the passage of the bills, but before the assent by the President) and the new Cabinet advises the President not to give his assent to such bills

In 1954, President Rajendra Prasad withheld his assent to the PEPSU Appropriation Bill. The bill was passed by the Parliament, when the President's Rule was in operation in the state of PEPSU. But, when the bill was presented to the President for his assent, the President's Rule was revoked.

Again in 1991, President R Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. The bill was passed by the Parliament (on the last day before dissolution of Lok Sabha) without obtaining the previous recommendation of the President.

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. This means that the Presidential veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required for Qualified Veto in U.S.A.).

The President does not possess this veto in the case of Money bills. The President can either give his assent to a money bill or withhold his assent to a money bill, but cannot return it for the reconsideration of the Parliament. Normally, the President gives his assent to the money bill, as it is introduced in the Parliament with his previous permission.

President A.P.J. Abdul Kalam, in 2006 returned the Office of Profit Bill for reconsideration of the Parliament. This was an exercise of the Suspensive Veto power.

Pocket Veto

In this case, the President neither ratifies nor rejects or returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President to not take any action (either positive or negative) on the bill is known as the Pocket Veto. The President can exercise this veto power as the Constitution does not prescribe any time limit within which he has to take the decision with respect to a bill presented to him for his assent.

In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the 'pocket of the Indian President is bigger than that of the American President'.

In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restriction on the freedom of press.

It should be noted here that the President has no veto power in respect of a Constitutional Amendment Bill. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

2.6.10. Ordinance-Making Power

Article 123 of the Constitution empowers the President to promulgate ordinances when the Parliament is not in session and hence, it is not possible to enact laws in the Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

An ordinance may relate to any subject that the Parliament has the power to legislate on. Conversely, it has the same limitations as the Parliament to legislate, given the distribution of powers between the Union, State and Concurrent Lists. Thus, the following limitations exist with regard to the Ordinance making power of the executive:

- i. **Parliament is not in session:** The President can only promulgate an ordinance when either of the two Houses of Parliament is not in session.
- ii. **Immediate action is required:** The President can promulgate an ordinance only when he is satisfied that there are circumstances that require taking 'immediate action'. In Cooper case (1970), the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament.
- iii. **Parliamentary approval during Session:** Ordinances must be approved by Parliament

within six weeks of reassembling or they shall cease to operate. They will also cease to operate, in case, resolutions disapproving the Ordinance are passed by both the Houses.

iv. Coextensive with the law-making powers of the Parliament: The ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:

- An ordinance can be issued only on those subjects on which the Parliament can make laws.
- An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights.

The President may withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the Council of Ministers headed by the Prime Minister.

An ordinance may have retrospective effect and may modify or repeal any act of Parliament, or even another ordinance. It may also amend or alter a tax law, but can never be used to amend the Constitution.

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 House.

The ordinance-making power of the President of India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA and UK. This power has been given to the President to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session.

DC Wadhwa vs. State of Bihar, 1987

It was argued in DC Wadhwa vs. State of Bihar (1987) that the legislative power of the executive to promulgate Ordinances is to be used in exceptional circumstances and not as a substitute for the law making power of the legislature.

Here, the court was examining a case where a State government (under the authority of the Governor) continued to **re-promulgate** ordinances, i.e. it repeatedly issued new ordinances to replace the old ones; instead of laying them before the State Legislature. A total of 259 Ordinances were re-promulgated, some of them for as long as 14 years.

The Supreme Court argued that if Ordinance making was made a usual practice, creating an 'Ordinance Raj', the courts could strike down re-promulgated Ordinances.

Scope of Judicial Review

Judiciary can go for following tests in order to check the legality of Ordinances:

- Both houses are not in session
- It has been done in public interest
- They'll also test the reasonableness
- They can verify whether its arbitrary or vague

2.7. Constitutional Position of the President

The Constitution of India has provided for a Parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the Council of Ministers, headed by the Prime Minister. In other words, the President has to exercise his powers and functions with the aid and advice of the Council of Ministers headed by the Prime Minister.

In estimating the constitutional position of the President of India, the relevant provisions are Article 53, 74, and 75.

Student Notes:

- Art. 53 vests the executive power of the Union in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.
- Article 74 provides that there shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President who 'shall', in the exercise of his functions, act in accordance with such advice.
- Art 75 lays down that the Council of Ministers shall be collectively responsible to the House of People. This provision is the foundation of the Parliamentary system of government.

There was no doubt in minds of the framers of the Constitution that they were setting up a Parliamentary form of Government, modeled after the Great Britain. Dr. Ambedkar categorically stated in the Constituent Assembly, "the President is merely a nominal figure head" that "he has no power of administration at all" and that the President of India occupies the same position as the King of England. His place in the administration was that of a ceremonial device or a seal by which the decisions of the nation were to be made known.

Though the executive power is vested in the President; he is only a formal or constitutional head of the Executive. The real power is vested in the Council of Ministers (headed by Prime Minister) on whose aid and advice the President acts in the exercise of his functions. The Executive has the primary responsibility for the formulation of Governmental policy and its transmission into law. It is responsible for all its action to the legislature, whose confidence it must retain. The basis of this responsibility is embodied in Article 75(iii).

The President is generally bound by the advice of his ministers. He can do nothing contrary to their advice nor can he do anything without their advice.

The President's role as a figurehead is reflected in his indirect election. If he were to be elected by adult franchise, then it might have been anomalous not to give him any real powers and it was feared that he might emerge as a center of power in his own right. Since power was really to reside in the Ministry and the Legislature and not in the President, it was thought adequate to have him elected directly.

2.7.1. Forty-second Amendment of the Constitution, 1976

The amendment removed all doubts about the position of the President under the Indian Constitution. Art. 74 as amended, categorically provided that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in exercise of his functions, act in accordance with such advice". Under this Amendment, the President could not play the role of even an adviser or a guide.

2.7.2. Forty-fourth Amendment of the Constitution, 1978

A proviso was added in Art. 74 to the effect that "the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration". The result is that the President has to act on the advice of the Ministers, but he can ask them to reconsider their advice and if after reconsideration, the Ministers decided to act against the advice of the President they can do so and the President has no choice but to follow it.

2.7.3. Situational Discretion available to the President

Although, as Article 74 provides, the President is bound to act according to the aid and advice of the Council of Ministers; it will, however, be wrong to suppose that the President is a complete non-entity or an absolutely ineffective symbol. It has already been seen that in exceptional and abnormal situations he may have a marginal discretion in some matters, for example:

- The President may choose to dissolve the Lok Sabha when the current government loses majority.
- He can dismiss the Council of Ministers, which has lost its majority.
- The President can appoint a Prime Minister in a situation, where no single party or leader commands majority support. This is very significant, especially at the time of a fragmented electoral verdict.

Student Notes:

In days of crisis, any of these matters may assume a great importance and his decision may have a profound impact on the country's destiny.

In addition, he is empowered to be informed about the country's affairs. Article 78 provides that it shall be the duty of the Prime Minister:

- a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council
- d) Like the British Sovereign, the role of the President is "to advise, encourage and warn" Ministers in respect of the recommendations which they make.

Under Article 111, the President has discretion with respect to ordinary bills. He can send the bill back for reconsideration along with his message, if any. However, once the bill is sent back to him after re-passage with or without amendments, he must give his assent.

After the 44th Amendment Act, the President can even send back for reconsideration the advice of Cabinet. However, he's bound to act on its advice tendered thereafter such reconsideration.

President K.R. Narayanan became the first President to use the powers of sending the advice back for reconsideration. The advice given to him was to impose President's Rule in U.P. against the Kalyan Singh government. Since then a kind of convention has developed that if a President sends an advice back to Cabinet for reconsideration, it is not sent back to the President.

Former President Venkatraman has explained the nature of discretionary power of the President under the Constitution. The President in the Indian context was like the 'emergency light', which automatically came on when the normal flow of power was broken and went out after normal working was restored.

Conclusion

The influence of the President depends on his personality, and a man of character and ability can really exert a potent influence on the affairs of the government. The President can make his influence felt by his advice, help and persuasion by using his knowledge, experience and disinterestedness to arrive at sound decisions on matters affecting the well-being of people and not by his dictating any particular course of action to his ministers.

Ultimately, it is the Council of Ministers, which shall prevail and not the President. The President's role may at best be advisory; he may act as the guide, philosopher and friend to the Ministers, but cannot assume to himself the role of their master- a role, which is assigned to the Prime Minister. The intention of the makers of the Constitution was that the President should be a center from which a beneficent influence should radiate over the whole administration. It was clearly not their intention that he should be the focus of any power.

2.8. Impeachment of the President

An impeachment is a quasi-judicial procedure in Parliament. The President can be removed from his office by the process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges.

The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the resolution is so passed.

Since the Constitution provides the mode and ground for removing the President, he cannot be *removed* otherwise than by impeachment, in accordance with the terms of Arts. 56 and 61.

2.8.1. Explanation

Impeachment is so rare that the term can be misunderstood. A typical misconception is to confuse it with involuntary removal from office.

The word 'Impeachment' originates from the British convention, which means to remove a Government official without any official agreement and after the impeachment conviction has been provided to that official. In India, it is a quasi-judicial procedure and only the President can be impeached on the ground of violation of the Constitution. In this context, it is to be noted that:

- The Nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election.
- The Elected members of the Legislative Assemblies of States and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

So far, no President has been impeached in India.

2.9. List of Presidents of India

Name	Tenure
Dr Rajendra Prasad	January 26, 1950 - May 13, 1962
Dr Sarvepalli Radhakrishnan	May 13, 1962 - May 13, 1967
Dr Zakir Hussain	May 13, 1967 - May 03, 1969
Varahagiri Venkata Giri (Acting)	May 03, 1969 - July 20, 1969
Justice Mohammad Hidayatullah (Acting)	July 20, 1969 - August 24, 1969
Varahagiri Venkata Giri	August 24, 1969 - August 24, 1974
Fakhruddin Ali Ahmed	August 24, 1974 - February 11, 1977
B.D. Jatti (Acting)	February 11, 1977 - July 25, 1977
Neelam Sanjiva Reddy	July 25, 1977 - July 25, 1982
Giani Zail Singh	July 25, 1982 - July 25, 1987
R. Venkataraman	July 25, 1987 - July 25, 1992
Dr Shankar Dayal Sharma	July 25, 1992 - July 25, 1997
K.R. Narayanan	July 25, 1997 - July 25, 2002
Dr. A.P.J. Abdul Kalam	July 25, 2002 - July 25, 2007
Smt. Pratibha Devi Singh Patil	July 25, 2007 - July 25, 2012
Shri Pranab Mukherjee	July 25, 2012 - July 25, 2017
Shri Ram Nath Kovind	July 25, 2017 - Incumbent

2018

1. If the President of India exercises his power as provided under Article 356 of the Constitution of a particular State, then
 - (a) the Assembly of the State is automatically dissolved.
 - (b) the powers of the Legislature of that State shall be exercisable by or under the authority of the Parliament.
 - (c) Article 19 is suspended in that State.
 - (d) the President can make laws relating to that State.

Ans: (b)

2. With reference to the election of the President of India, consider the following statements:

1. The value of the vote of each MLA varies from State to State.
2. The value of the vote of MPs of the Lok Sabha is more than the value of the vote of MPs of the Rajya Sabha.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (a)

2017

3. Which of the following are not necessarily the consequences of the proclamation of the President's Rule in a State?

1. Dissolution of the state legislative assembly
2. Removal of Council of Ministers in State
3. Dissolution of the local bodies

Select the correct code:

- (a) 1 and 2 only
- (b) 1 and 3 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Ans: (b)

2014

4. Consider the following statements:

1. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.
2. All executive actions of the Government of India shall be expressed to be taken in the name of the Prime Minister.

Which of the following is correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (a)

2012

Student Notes:

5. According to the Constitution of India, it is the duty of the President of India to cause to be laid before the Parliament which of the following?

1. The Recommendation of the Union Finance Commission.
2. The Report of the Public Accounts Committee.
3. The Report of the Comptroller and Auditor General.
4. The Report of the National Commission for Scheduled Castes.

Select the correct answer using the codes given below:

- (a) 1 only
- (b) 2 and 4 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

Ans: (c)

2010

6. Who of the following shall cause every recommendation made by the Finance Commission to be laid before each House of Parliament?

- (a) The President of India
- (b) The Speaker of Lok Sabha
- (c) The Prime Minister of India
- (d) The Union Finance Minister

Ans: (a)

Article 281 {Recommendations of the Finance Commission}: The President shall cause every recommendations made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

2009

7. With reference to Union Government consider the following statements:

1. The Ministries/Departments of the Government of India created by the Prime Minister on the advice of the Cabinet Secretary.
2. Each of the Ministries is assigned to a Minister by the President of India on the advice of the Prime Minister.

Which of the statement given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

The Government of India consists of a number of ministries/departments for its administration, each Ministry assigned to a Minister who runs it with the assistance of a Secretary in charge of the particular Ministry. The Ministries are created and assigned by the President on the advice of the Prime Minister under Article 77 of the Constitution.

2003

8. Under which Article of the Indian Constitution did the President give his assent to the ordinance on electoral reforms when it was sent back to him by the Union Cabinet without making any changes (in the year 2002)?

- | | |
|-----------------|-----------------|
| (a) Article 121 | (b) Article 122 |
| (c) Article 123 | (d) Article 124 |

Ans: (c)

9. Under which Article of the Indian Constitution did the President make a reference to the Supreme Court to seek the Court's opinion on the Constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly elections (in the year 2002)?

- (a) Article 142
- (b) Article 143
- (c) Article 144
- (d) Article 145

Ans: (b)

10. Consider the following statements:

In the electoral college for Presidential Election in India.

- 1. The value of the vote of an elected Member of Legislative Assembly equals State Population / Number of Elected MLAs of the State x 100.
- 2. The value of the vote of an elected Member of Parliament equals Total Value of the votes of all elected MLAs / Total Number of elected MPs.
- 3. There were more than 5000 members in the latest elections.

Which of these statements is/are correct?

- (a) 1 and 2
- (b) Only 2
- (c) 1 and 3
- (d) Only 3

Ans: (b)

Student Notes:

3. Vice President

3.1. Introduction

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modeled on the lines of the American Vice-President.

3.2. Qualifications

To be eligible for election as Vice-President, a person should fulfill the following qualifications:

- 1. He should be a citizen of India.
- 2. He should have completed 35 years of age.
- 3. He should be qualified for election as a member of the Rajya Sabha.
- 4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

But, a sitting President or Vice-President of the Union, the governor of any state and a minister for the Union or any state is not deemed to hold any office of profit and hence qualified for being a candidate for Vice-President. MPs and MLAs are eligible for contesting the election of Vice-President but if such a person is elected as Vice-President then he is deemed to have vacated his seat in that House (no separate resignation is required) on the date he enters upon his office as Vice-President. Further, the nomination of a candidate for election of Vice-President must be proposed by 20 electors and seconded by 20 electors as well.

3.3. Election

The Vice President, like the President, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this Electoral College is different from the electoral college for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament (in the case of President, only elected members).
2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

Student Notes:

But, the manner of election is same in both the cases. Thus, the Vice-President's election, like that of the President's election, is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.

3.4. Term of Office

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. The Vice-President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms.

3.5. Vacancy in Office

A vacancy in the Vice-President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting Vice-President, an election to fill the vacancy must be held before the expiration of the term.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy. The newly elected Vice-President remains in office for a full term of five years from the date he assumes charge of his office.

3.6. Powers and Functions

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American Vice-President who also acts as the Chairman of the Senate – the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

3.7. Removal of Vice President

He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya Sabha passed by an effective majority and agreed to by the Lok Sabha. But, no such resolution can be moved

unless at least 14 days' advance notice has been given. Notably, no ground has been mentioned in the Constitution for his removal.

Student Notes:

3.8. Comparison with the USA Vice President

Though the office of Indian Vice-President is modelled on the lines of American Vice-President there is a big difference i.e. an American Vice-President becomes President in case of a vacancy in President's office and remains president for the remaining unexpired term of his predecessor while Indian Vice-President in case of a vacancy in President's office merely serves as an acting president until the newly elected president assume charge. Thus it is clear that the constitution has not assigned any significant function to the Vice-President and this office is mainly created to maintain the political continuity of Indian state.

Prelims Questions

2013

1. Consider the following statements:

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.
2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

2008

2. Who among the following have held the office of the Vice-President of India?

1. Mohammad Hidayatullah
2. Fakhruddin Ali Ahmed
3. Neelam Sanjiva Reddy
4. Shankar Dayal Sharma

Select the correct answer using the code given below:

- (a) 1, 2, 3 and 4
- (b) 1 and 4 only
- (c) 2 and 3 only
- (d) 3 and 4 only

Ans: (b) Vice-Presidents of India:

Name	Tenure
Dr Sarvepalli Radhakrishnan	1952-1962
Dr Zakir Hussain	1962-1967
Varahagiri Venkata Giri	1967-1969
Gopal Swarup Pathak	1969-1974
B.D. Jatti	1974-1979
Justice Mohammad Hidayatullah	1979-1984
R. Venkataraman	1984-1987
Dr Shankar Dayal Sharma	1987-1992
K.R. Narayanan	1992-1997
Krishan Kant	1997-2002
Bhairon Singh Shekhawat	2002-2007
Mohammad Hamid Ansari	2007-2017
Muppavarapu Venkaiah Naidu	August 11, 2017 - Incumbent

sihagn27@gmail.com

Fakhruddin Ali Ahmed (May 13, 1905- February 11, 1977) was President of India from 1974 to 1977.

Student Notes:

Neelam Sanjiva Reddy (May 19, 1913- June 1, 1996) was the sixth President of India, serving from 1977 to 1982.

2004

3. The resolution for removing the Vice-President of India can be moved in the
(a) Lok Sabha alone
(b) Either House of Parliament
(c) Joint Sitting of Parliament
(d) Rajya Sabha alone

Ans: (d)

4. Prime Minister

In the scheme of parliamentary system of government provided by the Constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive). It means, the President is the head of the State while Prime Minister is the head of the government.

Conventionally some specific ministries/departments are not allocated to anyone in the cabinet but the Prime Minister himself. The Prime Minister is usually in-charge/head of:

- Appointments Committee of the Cabinet;
- Ministry of Personnel, Public Grievances and Pensions;
- Ministry of Planning;
- Department of Atomic Energy; and
- Department of Space

4.1. Appointment of the Prime Minister

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the President. However, this does not imply that the President is free to appoint any one as the Prime Minister.

In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

4.2. Term of the Prime Minister

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him. For example, VP Singh in 1990 and Deve Gowda in 1997 resigned after defeat in the Lok Sabha.

4.3. Powers and Functions of the Prime Minister

The powers and functions of Prime Minister can be studied under the following heads:

4.3.1. In Relation to the Council of Ministers

- The Prime Minister recommends persons who can be appointed as ministers by the President. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
- He can allocate and also change the portfolios among the ministers according to his will.
- If a difference of opinion arises between the Prime Minister and any of his subordinate ministers, he can ask the minister to resign or can advise the President to dismiss him.
- The Prime Minister presides over the meeting of the Council of Ministers and also influences the decision of the meeting.
- He guides, directs, controls and coordinates the activities of all the ministers.
- By resigning from office, the Prime Minister can bring about the collapse of the Council of Ministers.

4.3.2. In Relation to the President

- Prime Minister is the principal channel of communication between the President and the council of minister. He communicates to the President all decisions of the council of ministers relating to administration of the affairs of the Union and proposals for legislation.
- He furnishes such information relating to administration of the affairs of the Union and proposals for legislation as the President may call for and if the President so requires, Prime Minister submits for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- He advises the President regarding the appointment of important officials like Attorney General of India, Comptroller and Auditor General of India, Chairman and members of the UPSC, Election Commissioners, Chairman and members of the Finance Commission etc.

4.3.3. In Relation to Parliament

- The Prime Minister is the leader of the Lower House i.e. the Lok Sabha. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
- He can recommend dissolution of the Lok Sabha to President at any time.
- He announces government policies on the floor of the house.

4.3.4. Other Powers and Functions

- The P.M. is the chairman of the NITI Aayog, National Developmental Council, National Integration Council, Inter-State Council, and National Water Resources Council.
- He plays a significant role in shaping the foreign policy of the country.
- He is the chief spokesman of the Union government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
- He is the leader of the party in power.
- He is the political head of the (administrative) services.

4.4. Prime Minister as member of the Rajya Sabha

The Constitution does not prohibit the Prime Minister from being a member of the Rajya Sabha. However, the highest traditions of the parliamentary democracy demand that the Prime Minister be a member of the Lok Sabha, who is directly elected by the people; rather than be a member who has been elected indirectly.

There have also been arguments that the Constitution should be amended to stipulate categorically that the Prime Minister of the Union should be an elected member of the Lok Sabha. For instance, in UK the Prime Minister has to be necessarily a member of the House of Commons.

4.5. Prime Ministerial Form of Government

Student Notes:

The role of the Prime Minister in the parliamentary form of government is so significant and crucial that observers like to call it a 'Prime Ministerial government.' Further, sometimes the Prime Minister can have a powerful national image, thereby, attracting huge votes and further alleviate his standing. It is then argued to have led to transformation of cabinet government into Prime Ministerial government.

In this form of government, the Prime Minister dominates the executive. This is usually the case when there is a single party government in power and the Prime Minister is the unquestionable leader of the party. In such a scenario, the decisions of the Prime Minister are usually approved by the Cabinet. However, they may not be collective decisions, in the true sense of the term. Such form of government may have following advantages and disadvantages:

Advantages	Disadvantages
Timely decisions	Decisions may be hasty and politically motivated
Govt. can act firmly on issues	Decisions often not arrived at, after due deliberation
Administration gets a clear direction	Extra constitutional authorities may come to exercise influence

In Germany, the powerful position of the Chancellor diminishes the role of the cabinet. The prime ministerial government in Germany is called the "Chancellor Democracy." The Chancellor answers to Parliament and the ministers answer to him/her. But the Indian Prime Minister is accountable to Parliament, to the people, and to his/her own party. Article 74(1) of our Constitution expressly states that the Prime Minister shall be "at the head" of the Council of Ministers and should aid and advise the President in the exercise of his functions

4.6. Impact of Coalition Politics on the office of PM

Generally, it is being witnessed that the authority of PM weakens when he heads a coalition government as witnessed in the UPA-2 government (2009-14) or NDA government of 1999-2004. This is because a coalition government is usually formed in case there is a fractured mandate.

Many a times, the members of the constituent parties start treating their leader as the PM, rather than the actual PM.

However, this phenomenon varies with the personality of the PM, nature of coalition politics, and the manner in which it is managed, which also plays an important role. The role of the PM, in such cases, becomes more of a manager of the coalition, rather than a leader of the party alone.

CMs who became PMs:

1. Morarji Desai
2. Charan Singh
3. V.P.Singh
4. P.V. Narasimha Rao
5. H.D. Deve Gowda
6. Narendra Modi

Prelims Questions

2019

1. The Ninth Schedule was introduced in the Constitution of India during the prime ministership of
 - (a) Jawaharlal Nehru
 - (b) Lal Bahadur Shastri
 - (c) Indira Gandhi
 - (d) Morarji Desai

Ans: (a)

2015

2. Consider the following statements :
 1. The Executive Power of the Union of India is vested in the Prime Minister.
 2. The Prime Minister is the ex Officio Chairman of the Civil Services Board.

Which of the statements given above is/are correct ?

Student Notes:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (d)

The Executive Power of the Union Vested in the President.

Cabinet Secretary is the ex-officio chairman of the Civil Services Board.

2012

3. The Prime Minister of India, at the time of his/her appointment:
- (a) Need not necessarily be a member of one of the Houses of the Parliament but must become a member of one of the Houses within six months
 - (b) Need not necessarily be a member of one of the Houses of the Parliament but must become a member of the Lok Sabha within six months
 - (c) Must be a member of one of the Houses of the Parliament
 - (d) Must be a member of the Lok Sabha

Ans: (a)

2009

4. In India, who is the Chairman of the National Water Resources Council?
- (a) Prime Minister
 - (b) Minister of Water Resources
 - (c) Minister of Environment and Forests
 - (d) Minister of Science and Technology
5. Under the administration of which one of the following is the Department of Atomic Energy?
- (a) Prime Minister's Office
 - (b) Cabinet Secretariat
 - (c) Ministry of Power
 - (d) Ministry of Science and Technology

Ans: (a)

2006

6. Who is the President of the Council of Scientific and Industrial Research?
- (a) President of India
 - (b) Vice-President of India
 - (c) Prime Minister of India
 - (d) Union Minister of Science and Technology

Ans: (c)

5. Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority in our politico-administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. **Article 74** deals with the status of the council of ministers while **Article 75** deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

5.1. Appointment and Tenure of the Council of Ministers

Student Notes:

Article 74

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
- The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91st Amendment Act of 2003.
- A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
- The Ministers shall hold office during the pleasure of the President.
- The Council of Ministers shall be collectively responsible to the House of the People.
- The President shall administer the oaths of office and secrecy to a minister.
- Parliament will decide the salary and allowances of the Ministers.

Ministers may be chosen from members of either House and a Minister who is a member of one House, has the right to speak in and to take part in the proceedings of the other House, though he has no right to vote in the House of which he is not member.

5.2. Composition of the Council of Ministers

Following are the four categories of Ministers in the Council of Ministers:

1. **Cabinet Ministers:** Cabinet Ministers are those Ministers who hold very important portfolios like Defence, Home, Finance and Foreign Affairs, etc. They are highest in status, emoluments, and powers. It is these Ministers who constitute the Cabinet, which has been described as a wheel within a wheel (Council of Ministers). Their number varies from time to time, but seldom exceeds twenty. Cabinet Ministers collectively formulate the policy of the Government and are entitled to attend all meetings of the Cabinet. Occasionally, senior leaders are included in the Cabinet as Ministers without portfolio.
2. **Ministers of State:** They are next in rank and can either be given independent charge of ministries/departments or can be attached to Cabinet Ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the Cabinet and attend Cabinet meetings only when specially invited and when affairs of their departments are to be considered.
3. **Deputy Ministers:** Deputy Minister, who are next in rank to Ministers of State do not hold independent charge of any department and perform such functions as the Minister-in-charge may delegate to them.
4. **Parliamentary Secretaries:** They have no independent powers or functions. They assist the Ministers to whom they are attached in the Parliamentary work. They are, in fact, probationers under training and may hope to rise to higher ranks if they do well.

5.3. Functions of the Council of Ministers

Student Notes:

- The main functions of the council of ministers are mainly to aid and advise the President in the exercise of his functions.
- Since the ministry is the highest organ of the Government of India, it determines all the policies relating to the country's administration. It also has the responsibility of formulating internal and foreign policies. Peace and prosperity of the country depends largely on the policy formulated by the Ministry.
- The ministers are not only the head of the executive departments, but are also important members of the majority party in the legislature or at least having majority support in the legislature.
- The Ministry also plays a key role in determining the economic activity of the state. Currency, banking, commerce, trade, insurance and formulation and implementation of other plans are regulated and controlled by the Ministry as well.

6. Cabinet

The cabinet works on the principle of political homogeneity, The Prime Minister and the members of the Council of Ministers belong to the same party except in rare cases. Collective responsibility obliges the ministers to hold the same views and to champion the same policy. Differences between ministers are ironed out in the closed door meetings of the cabinet. In public, they must give the impression of solid unity.

6.1. Functions of the Cabinet

1. **Policy Formulation:** The Cabinet is responsible for policy formulation, both with regard to national and international matters. All policy decisions are taken by consensus and are conveyed by the Prime Minister to the President.
2. **Legislative Powers:** All the Ministers are Members of Parliament and, thus, participate in legislation. Most of the Bills are introduced in the Parliament by the Ministers and are always passed by the Parliament because of the support they enjoy. The Bills to be introduced by the Ministers are considered by the Cabinet and then approved. The Cabinet may make such changes in the Bills as it thinks are necessary.
3. **Financial Powers:** The Cabinet is responsible for all expenses of the Government and the sources of revenue to finance the expenditure.
 - The annual budget prepared by the Finance Minister is controlled by the Cabinet. Here, it may be noted that the budget proposals are kept strictly secret and the Finance Minister takes the Cabinet into confidence only an hour before the introduction of the budget in Parliament. The Cabinet cannot make any changes in the budget. But in the light of discussion on the budget proposals in the Parliament, the Cabinet makes alterations. The alterations, thus made, are subsequently announced by the Finance Minister.
 - The Cabinet is responsible for approving the economic and fiscal policies and also for taking decisions on the reports submitted by the Finance Commission and the Comptroller and Auditor-General of India.
4. **Power of making Appointments:** Although the President enjoys vast powers of appointing high dignitaries of the State but in reality these appointments are made by the President on the recommendation of the Cabinet. The advice of the Cabinet is binding on the President and virtually all the functions of the President are performed by this body. However, the President may ask the Cabinet to reconsider its advice, but only once. The advice given after reconsideration is binding on the President (44th const. Amendment Act).
5. **Coordination for smooth functioning:** The Cabinet not only co-ordinates the work of various departments but also resolves the inter-departmental disputes. M.V. Pylee calls the

Cabinet “the formulator of national policies, the highest appointing authority, the arbiter of inter-departmental disputes and the supreme organ of co-ordination in Government”.

Student Notes:

6.2. Cabinet Committees

To relieve the Cabinet of some burden of work, Cabinet committees have been set up. The N. Gopalaswamy Ayangar's report on the Reorganization of the Machinery of Government (1949) recommended setting up of Standing Committees (permanent in nature) of Cabinet over defined fields, with appropriate strengthening of the secretariat and other organs of these committees. These were the instruments to 'organise coordination on a decentralised basis'.

The Cabinet Committees should cover between them all important areas of government activity. It is also essential that they meet regularly so that sustained attention is given to complex problems and the progress of implementing important policies and programmes is kept under constant review.

The number and names of the Cabinet committees do not remain unchanged, as Ad-hoc committees are constituted from time to time to deal with certain problems and are disbanded after the completion of task. But three or four such committees have existed under all Governments in power at the Centre, namely

- a) **Political Affairs Committee:** It is chaired by the Prime Minister. Its other members include the Home Minister, the Defence Minister, and the External Affairs Minister. The committee deals with all important matters relating to both internal developments and foreign relations.
- b) **Economic Affairs Committee:** Its members are the Prime Minister (Chairman), Finance Minister, Rural Development Minister, and Industry Minister. Its main function is to direct and co-ordinate Governmental activities in the economic field and generally to regulate the working of the national economy.
- c) **Committee on Parliamentary Affairs:** Its members include Information and Broadcasting Minister, Minister for Labour and Parliamentary Affairs, Law Minister, with the Home Minister as its chairman. The committee looks after the progress of Government business in Parliament to secure the smooth passage of legislation and determine the Government's attitude to non-official Bills and resolutions coming up before Parliament.
- d) **Appointments Committee:** The members of the Appointment Committee are the Prime Minister who is also its chairman, the Home Minister and the Minister concerned. It decides all higher-level appointments in the Central Secretariat, Public Enterprises, Banks, the three service chiefs etc. It also decides on the transfer of officers serving on Central deputation.

In 2019, the government set up two new Cabinet Committees:

1. **Cabinet Committee on Investment and Growth**
 - It will **identify key projects required to be implemented on a time-bound basis**, involving investments of Rs 1,000 crore or more, or any other critical projects, as may be specified by it, with regard to infrastructure and manufacturing.
 - It will **prescribe time limits for giving requisite approvals and clearances by the ministries** concerned in identified sectors. It will also monitor the progress of such projects.
2. **Cabinet Committee on Employment and Skill Development**
 - It is supposed to **provide direction to all policies, programmes, schemes and initiatives for skill development** aimed at increasing the employability of the workforce for effectively meeting the emerging requirements of the rapidly growing economy and mapping the benefits of demographic dividend.

- It is required to **enhance workforce participation**, foster employment growth and identification, and work towards removal of gaps between requirement and availability of skills in various sectors.
- The panel will set **targets for expeditious implementation of all skill development initiatives** by the ministries and to periodically review the progress in this regard.

6.3. Features of Cabinet Committees

1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
2. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature. The ad hoc committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.
3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
4. Their membership varies from three to eight. They usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.
5. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
6. They are mostly headed by the Prime Minister. Sometimes other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
7. They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.
8. They are an organisational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

6.4. Principles on which the Cabinet system of Government functions

6.4.1. Principle of Collective Responsibility

The Parliamentary form of government is based on the principle of Collective Responsibility. Article 75(3) of the Constitution states that the Council of Ministers (CoM) is collectively responsible to the Lok Sabha, not to the Council of States (Rajya Sabha). It means that all the Ministers are collectively answerable to the Lok Sabha for the policies and decisions of the government, even though a decision taken may pertain to a single ministry.

The individual ministers may have differences among themselves on certain issues, but once a decision is taken by the Cabinet it becomes a joint decision of all the Ministers. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If a minister does not agree with the decision of the cabinet he has no choice, but to resign. Thus, the Council of Ministers works as a team. It swims or sinks together.

Thus, if the Lok Sabha passes a no-confidence motion against the Council of Ministers, all the ministers have to resign, including ministers from the Rajya Sabha. Alternatively, the CoM can advise the President to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections.

6.4.2. Individual Responsibility of Ministers

Article 75 also contains the principle of individual responsibility. Article 75(2) states that the ministers hold office during the pleasure of the President, which means that the President can remove a minister even at a time when the CoM enjoys the confidence of the Lok Sabha.

However, the President removes a minister only on the advice of the Prime Minister.

Student Notes:

6.4.3. Role of the Prime Minister

The Prime minister is the keystone of the cabinet arch. He is central to the formation of the Council of Ministers, central to its life and death. If the Prime Minister resigns or dies the whole Council of Ministers goes out along with him. The Prime Minister is the “primus inter pares” (first among equals). It is he who summons and presides over meeting of the Cabinet. Moreover, he can remove a minister at any time by demanding a minister's resignation or having him dismissed by the President.

The Prime Minister acts as the connecting link between the President and the Cabinet. Article 78 of the Constitution lays down that it is duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers and to furnish such information relating to the administration of the affairs of the Union. The Prime Minister is also the main link between the Cabinet and Parliament.

Prelims Questions

2017

1. Out of the following statements, choose the one that brings out the principle underlying the Cabinet form of Government:
 - (a) An arrangement for minimizing the criticism against the Government whose responsibilities are complex and hard to carry out to the satisfaction of all.
 - (b) A mechanism for speeding up the activities of the Government whose responsibilities are increasing day by day.
 - (c) A mechanism of parliamentary democracy for ensuring collective responsibility of the Government to the people.
 - (d) A device for strengthening the hands of the head of the Government whose hold over the people is in a state of decline.

Ans: (b)

2013

2. In the context of India, which of the following principles is/are, implied institutionally in the parliamentary government?
 1. Members of the Cabinet are Members of the Parliament.
 2. Ministers hold the office till they enjoy confidence in the Parliament.
 3. Cabinet is headed by the Head of the State.
 - (a) 1 and 2 only
 - (b) 3 only
 - (c) 2 and 3 only
 - (d) 1, 2 and 3

Ans: (a)

3. Consider the following statements:

1. The Council of Ministers in the Centre shall be collectively responsible to the Parliament.
2. The Union Ministers shall hold the office during the pleasure of the President of India.
3. The Prime Minister shall communicate to the President about the proposals for legislation.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 3 only
- (c) 1 and 3 only

(d) 1, 2 and 3

Ans: (b)

Student Notes:

4. With reference to Union Government, consider the following statements:

1. The Constitution of India provides that all Cabinet Ministries shall be compulsorily the sitting members of Lok Sabha only
2. The Union Cabinet Secretariat operates under the direction of the Ministry of Parliamentary Affairs.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (d)

2007

5. **Assertion (A):** The Council of Ministers in the Union of India is collectively responsible both to the Lok Sabha and the Rajya Sabha.

Reason (R): The Members of both the Lok Sabha and the Rajya Sabha are eligible to be the Ministers of the Union Government.

Ans: (a) (A is incorrect, R is correct)

The Council of Ministers in the Union of India is collectively responsible to the lower house of the Parliament, i.e. Lok Sabha only.

7. Attorney General

Attorney General is the highest law officer in the country. He is appointed by the President. He must be a person who is qualified to be appointed a Judge of the Supreme Court. In other words, he must be a citizen of India and must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the President.

The term of the AG is not fixed. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the President. This means that he may be removed by the President at any time. He may also quit by submitting his resignation to the President. Conventionally, he resigns when the government (council of minister) resigns or is replaced, as he is appointed on its advice.

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the President may determine.

7.1. Duties of Attorney-General

As the chief law officer of the GoI, the duties of the Attorney-General include:

- a) To give advice to the government of India upon such legal matters, which are referred to him by the President.
- b) To perform such other duties of a legal character that are assigned to him by the President.
- c) To discharge the functions conferred on him by the Constitution or any other law.

Accordingly, the President has assigned the following duties to the Attorney-General:

- a) To appear on the behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- b) To represent the Government of India in any reference made by the President to Supreme Court under Art. 143 of the Constitution (power of President to consult Supreme Court)

- c) To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

Student Notes:

7.2. Rights and Limitations

In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. He has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting or any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of Parliament. There are some limitations placed on AG as well, such as

- He should not advise or hold a brief against the Government of India.
- He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
- He should not defend accused persons in criminal prosecution without the permission of the Government of India.
- He should not accept appointment as a director in any company or corporation without the permission of the Government of India.

However, he does not fall in the category of government servant and he is not debarred from private legal practices. There are also present the offices of Solicitor General of India and Additional Solicitor General of India (extra constitutional) to assist the Attorney General of India in the fulfillment of his official responsibilities.

In 2017, the Delhi HC ruled that the office of Attorney General (AGI) **does not** come under the **ambit of RTI Act** as it is not a public authority under **section 2(h)** of the act.

Section 2(h): "Public authority" means any authority or body or institution of self-government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

Prelims Questions

2013

1. Consider the following statements:

Attorney General of India can

1. take part in the proceedings of the Lok Sabha
2. be a member of a committee of the Lok Sabha
3. speak in the Lok Sabha
4. vote in the Lok Sabha

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 4
- (c) 1, 2 and 3
- (d) 1 and 3 only

Ans: (c)

8. UPSC Previous Years' Questions

Student Notes:

1. "The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss. (2019)
2. Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time specified for the President to accept/reject such petitions? Analyse. (2014)
3. The size of the cabinet should be as big as governmental work justifies and as big as the Prime Minister can manage as a team. How far is the efficacy of a government then inversely related to the size of the cabinet? Discuss. (2014)

9. Vision IAS Previous Years' Questions

1. ***While in theory, the Cabinet is dependent upon Parliament, in practice it is the master of Parliament. Comment.***

Approach:

- Briefly introduce Cabinet and Parliament
- Explain the theoretical relationship between Cabinet and Parliament
- Discuss the practical relationship between both.
- You can take the opposite view of the statement. (Here only above 2 relationships are taken up. You can argue in the opposite by taking this reverse view.)
- Conclude with your view.

Answer:

- India adopted parliamentary form of government, where Council of Ministers headed by Prime minister form the executive, who are drawn from the legislature that is Rajya Sabha and Lok Sabha. (don't go on technical differences between cabinet and council of ministers)
- Under the Parliamentary system of government, the Cabinet are dependent on Parliament in the following ways:
 - Art.75(3)- council of ministers are collectively responsible for Lok Sabha
 - Answerability- Both the houses exercise control over the executive through asking questions, discussing matters of urgent public importance, moving call-attention notices and adjournment motions
 - by appointing various committees such as public accounts committee, estimates committee, committee on public undertakings
 - Financial control- the executive cannot spend public revenue or levy taxes without the sanction of Parliament.
 - Legislative control- Most of the legislation are initiated by cabinet, but needs parliament approval for passing the bill
- But in practicality, powers of Parliament have been usurped by the cabinet. Increase in the power of cabinet makes Parliament subservient. Parliament is controlled by the body which it was intended to control, due to following reasons:
 - With a stable strength of governing party in parliament, the Cabinet, in reality, becomes the leader of Parliament.
 - The party system - top leaders, which are generally in cabinet, determine all decisions.
 - Anti defection law (issuing of whip)
 - Cabinet consists of senior leaders of party, which enjoys the majority in Parliament, have influence in party.

2. *Distinguish between ordinance making powers of President and Governor. Should the power to promulgate ordinance, which is a legacy of colonial rule, have any place in the constitution of a modern democratic India?*

Student Notes:

Approach:

- First, compare the powers of President and Governors
- Then justify its use also in the modern democratic framework

Answer:

- Just as the President of India is constitutionally mandated to issue Ordinances under Article 123, the Governor of a state can issue Ordinances under Article 213, when the state legislative assembly (or either of the two Houses in states with bicameral legislatures) is not in session. The powers of the President and the Governor are broadly comparable with respect to Ordinance making with in the respective domains of power lists – Union, State and Concurrent. However, the Governor cannot issue an Ordinance without instructions from the President in three cases where the assent of the President would have been required to pass a similar Bill. Specifically –
 - If a bill containing the same provisions which requires the previous sanction of the president.
 - If the Governor would have deemed it necessary to reserve the bill for the previous consideration of the president.
 - If an act contains same provisions which has been reserved for the consideration of the president.
- Ordinance making power is a legacy of British Raj in India. It was incorporated from the Government of India Act, 1935 (wherein the Governor General was granted similar powers). During the freedom movement, this power was vehemently opposed by the Congress. Nevertheless, this power was inserted in the Constitution.
- A vibrant democracy is not governed by ordinances. But there may be extraordinary circumstances requiring immediate legislative actions at a time when the parliament or state legislature may not be in session. However it must be considered an extraordinary power to be used in extraordinary circumstances. If used carefully and with democratic intent, use of ordinances need not be anti-democratic.

3. *"Prime Minister represents the executive government in a way that no single member of the Council of Ministers (CoM) or even the entire CoM can." Discuss.*

Approach:

Use your reasoning, backed by logical arguments and supported by facts, to make a case either for or against the given statement. The PM's role can be highlighted to support your viewpoint.

Answer:

The PM is the linchpin of the Govt. of India. He has an edge over CoM in executive govt. because of the following reasons:

1. He is the head of govt. and all major appointments – political and permanent- are made under his guidance.
2. He is the Leader of Cabinet and any member having difference with the PM can be dropped if he does not change his mind.

3. He is the link between President and CoM.
4. He is also leader of the Parliament and in a Parliamentary form of govt. this very fact infuses great powers in him.
5. Though MEA executes the foreign relation, but it is the PM who is Chief spokesperson in foreign relations.
6. He is, more often than not, the leader of his political party and all the other members of CoM follow his command.
7. Since he is the Chairman of the Planning Commission of India, the ministries headed by other members of CoM can be greatly influenced by him through the planning process.

Student Notes:

4. *Empowered Group of Ministers lead to early and effective decision-making on particular issues. Critically analyse.*

Approach:

Explain briefly the objective behind constituting EGoMs. Then give arguments both in favour of and against setting up EGoMs. Finally, arrive at a suitable conclusion.

Answer:

The objective of the constitution of Empowered Group of Ministers was to facilitate and coordinate decision making for effective and timely actions on policy issues yet the proliferation and overlapping of EGoM's over a period of time hampered the whole process leading to inaction and paralysis.

While Group of Ministers (GoM), an adhoc body, is formed to give recommendations to the Council of Ministers on certain emergent issues and critical problem areas, the Empowered Group of Ministers went a step further to take decisions on the matter it is authorised for, and such decisions will have the force of the government's decision.

A proliferation of EGoM's lead to diffusion of accountability, along with curbing the powers of individual ministries to take decisions w.r.t their departments. . At one time, there were 52 GoMs and EGoMs during the UPA regime, most of which were headed by Mr. Pranab Mukherjee (now the President of India). In all, the UPA government instituted a total of 82 GoMs and 14 EGoMs during its 10-year rule. This process not only led to delay in decision-making on critical policy issues, but went against its own mandate of policy coordination.

However, their selective but effective use, with clear mandate and prescribed time limit, can be helpful in resolving the policy deadlock and improving the governance system. As observed by 2nd ARC, there is a need to ensure that existing issues, which requires inter-ministerial coordination be first placed before the Committee of Secretaries (CoS) and then presented to the Union Cabinet for resolution.

The dismantling of the GoMs and EGoMs by the incumbent government is expected to fast track governance, with Ministers and Officers being asked to take decisions directly on pending matters without referring to the cabinet, and if need arises, then with the help of Cabinet Secretariat of PMO's assistance.

5. ***"The ordinance-making power of the executive needs to be suitably restrained, to create a balance of power between the executive and the legislature and to check the misuse of the same". Do you agree? Justify your stand with examples. 2015-614***

Student Notes:

Approach:

Straight forward approach., mention the constitutional provisions about ordinance making followed by Supreme courts view on ordinance making, few recent examples and a way forward.

Answer:

An ordinance under Article 123 of the constitution is an instrument at the hands of executives and president can make law in a situation

- If neither House of Parliament is in session.
- Circumstances exist, which render it necessary to take immediate action.
- Every ordinance ceases to exist six weeks from the end of the next sitting of Parliament.

Article 213 gives the same power to the Governor of a State.

But under separation of power principle legislature's function is to make laws and executives to implement it. However due to –

- Dynamicity and complexity in governance.
- Practical and political compulsions.

Ordinance route has been resorted to more often than not. For example during emergency and even during normalcy say in Bihar more than 250 ordinances were repromulgated some as long as 14 years which supreme court commented as ordinance raj. It is said ordinance makeup along with administrative adjudications lead to new despotism.

So the ordinance making power needs to be suitably restrained. This need is also reflected in various Supreme Court judgements. Courts have uniformly held, in varying formulations

- That the power of the President and the Governors to issue ordinances is in the nature of an emergency power.
- It held that since promulgating an ordinance was a legislative action, the grounds on which it could be challenged were the same as those on which laws made by Parliament could be challenged.
- The motives of the legislature in passing a statute is beyond the scrutiny of courts
- Supreme court held that ordinance making is not beyond judicial review.(In A.K Roy vs. UOI 1980)
- Supreme Court also held that ordinance cannot be a substitute for the law making power of the legislature and court could strike down the repromulgated ordinances.

Despite these recently centre has promulgated many ordinances like food security, SEBI amendments, criminal law amendments, ordinance on land acquisition(amendment) act among others and out of these 3 of them has been repromulgated second time i.e., in violation of supreme court decisions. Further ordinances on corruption and right to service were dropped by the govt. themselves to save face in light of Supreme Court judgements and media activism.

In sum executive should exercise its power judiciously. Framers of our Constitution envisaged ordinance-making powers only for unforeseen, sudden situations and where the executive required additional legal sanction to address the situation. Thus to safeguard the sanctity of parliamentary democracy ordinance route must be suitably restrained only to meet emergent situation and then misuse shall be effectively checked via checks and balances.

Student Notes:

6. ***It is the Parliamentary system, with its basis on constant accountability, accommodation and inclusion, which can best serve the needs of the country. Examine, keeping in mind the arguments that are periodically put forward for adopting the Presidential system in India.***

Approach:

- Context in which this system was adopted
- Benefits of Parliamentary System in India
- Comparison with Presidential System of Government

Answer:

India already had some experience of running the parliamentary system under the Acts of 1919 and 1935. This experience had shown that in the parliamentary system, the executive can be effectively controlled by the representatives of the people. Thus, accountability was given a greater emphasis than stability of Presidential system. It was because of the pluralistic nature of our society which demanded giving representation to diverse sections and regions and include majority of people into political stream.

It put an emphasis on institution building rather than a form in which the executive power was vested in a single individual.

Its inclusiveness and accommodativeness occurs at two levels: At the legislative level where the MPs are representative of diversity and at the level of CoM as well. Further, an issue based opposition is often heard and its views accommodated in governance.

There are arguments in favour of Presidential System:

First, it will make political parties to be more democratic and careful in selecting a candidate. They will have to choose their best candidate for a head-to-head contest.

Second, the voters will know their candidates intimately. This will increase accountability of the candidates.

Third, the president will be fully in charge of the executive. He will be able to attract the best and brightest to his cabinet, irrespective of their political affiliations.

Fourthly, our democratic institutions have matured and evolved and public is more conscious today, hence, we can switch to new system.

However, parliamentary form of government apart from being pluralistic, accommodative and inclusive offers following benefits:

Smooth Functioning- Close link between executive and legislature avoids conflict between the two organs of government.

Open Administration- The executive remains vigilant and follows propriety to secure its electoral prospects and confidence of Parliament.

Financial Accountability: Government has to seek financial grants by Parliament and the audit of its expenditure by CAG/PAC. In the light of its suitability to Indian context Swaran Singh Commission, NCRWC etc. have recommended its continuity.

Although, several lacunae in the system are visible, like declining representativeness, efficiency and ethos of MPs, corruption, instability owing to coalition politics, weakness of opposition etc. yet it could be said that the system needs a major overhaul but not a switch.

Student Notes:



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STATE EXECUTIVE

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1. Introduction

The State Executive is organized on the same pattern as the Union Executive, with the Governor at the apex, followed by the Chief Minister, the Council of Ministers and the Advocate General of the State. The State Executive is dealt with, in Articles 153 to 167, in Part VI of the Constitution.

2. Governor

The Governor is the chief executive of the State and his position is analogous to that of the President at the Centre. Despite being a nominal executive head (titular or constitutional head), the Governor has “a right to be consulted, to warn and encourage” and his role is overwhelmingly that of a “friend, philosopher and guide” to his Council of Ministers. Under this role, he also functions as a sentinel of the Constitution and a live link with the Union.

The Constitution, under Article 153, provides for a Governor for each state. However, the Article was amended by the Seventh Constitutional Amendment (1956), which came as a result of the State Reorganization Commission and currently, the same person may be appointed as Governor of two or more states.

2.1. Appointment

It is the President who appoints the Governor by warrant under his hand and seal and the Governor holds the office in accordance with the President’s pleasure. In a way, the Governor is a nominee of the Central Government. Also, while the Governor’s prescribed office term is five years, he may be removed at any time by the President.

The founding fathers envisaged the institution of Governor as a non-political office, acting as an organic link between the Centre and the State. But, this has not been followed in practice, and instead something similar to a spoils system has been followed. There have been arguments that the Governor’s office is used as a post retirement reward for politicians and retired bureaucrats.

The First Administrative Reforms Commission emphasized on healthy conventions. The Raja Mannar Committee, appointed by the Tamil Nadu government, suggested the following:

- The CM of the concerned state must be consulted before appointing a person as the Governor
- If the CM is against such an appointment, that person should not be appointed.

This was supported by the Sarkaria Commission and Punchhi Commission on Center-State Relations. However, this practice has hardly been followed.

2.1.1. Why the Governor is appointed and not elected

In the Draft Constitution, the framers of the Constitution had decided upon an elected Governor for each of the States. This decision was in conformity with their idea of giving each State the maximum autonomy as Units of a Federation. However, within two years, the Constituent Assembly decided to abandon this idea in favor of an appointed Governor and this was provided for in the Constitution too. Following are the arguments cited in favor of this move:

1. In a Parliamentary system of Government a popularly elected Governor does not fit well. If the Governor is elected directly by the people, he becomes a direct representative of the people and may very well exercise his powers, not as the constitutional head of the State, but as its real head.
2. Such a position is very likely to create a rivalry between the Governor and the Council of Ministers, whose members are also directly elected by the people.

3. Instead of the Governor being elected directly by the people, if he is elected by the State Legislature, there seems to be not much chance of a rivalry between him and the Ministry. This is because the Ministry is responsible to the same legislature which has elected the Governor. Also, there will exist a grave danger of the Governor becoming a pawn in the hands of political parties that secure his election.
4. Either a directly or an indirectly elected Governor is unlikely to fit into a highly centralized system of government. For, the Governor in either case is a representative of the State who receives his authority from the people of the State. In case of a conflict between the State and the Union, such a Governor is not likely to act as a convenient instrument of the Union Government. On the other hand, the Governor may create difficulties in the path of the Union's authority extending in any form to the State's sphere. This is not in harmony with the idea of emergency powers, under which the Union becomes all-powerful and the federal system ceases to function.

Student Notes:

2.1.2. Conditions for Appointment of the Governor and his Office

Qualifications: The Constitution lays down the following two qualifications for the appointment of a person as a Governor:

- He should be a citizen of India
- He should have completed the age of 35 years.

The Constitution also lays down the following conditions for Governor's office:

- The Governor cannot be a member of either House of the Parliament or any of the State Legislatures.
- If a Member of a Legislature is appointed as the Governor of any State/s, he shall immediately cease to be a Member upon such appointment.
- The Governor cannot hold any office of profit.
- The Parliament determines the emoluments and allowances payable to him and also his free official residence. These emoluments and allowances should not be diminished during his term of office.
- The Chief Justice of the concerned High Court administers the oath of office to the Governor of that State. In the absence of the Chief Justice of the High Court, the oath is administered by the senior-most available Judge of the concerned High Court.
- The Governor can be transferred from one State to another by the President. He can resign any time by addressing his resignation to the President. The Legislature of a State does not have any role in removing the Governor from his post.

In case, the same person is appointed as the Governor of two or more states, the President of India determines the emoluments and allowances payable to him, in a proportion, among the States concerned.

2.2. Removal

Ordinarily, the term of office of Governor is 5 years, but he remains in office during the pleasure of the President. The term of a Governor's office can be terminated earlier by:

1. Dismissal by the President at whose 'pleasure' he holds the office [Article 156(1)]
2. Resignation [Article 156(2)]

The grounds on which a Governor may be removed are not specified in the Constitution. Hence, it is assumed that such powers shall be sparingly used by the President. It has been observed by the Punchhi Commission that the practice of treating Governors as "political footballs" must stop and the institution must be given a fixed term and safeguards to prevent politicization.

2.3. Powers and Functions of the Governor

Student Notes:

The Governor's powers and functions can be studied under the following heads:

1. Executive Powers
2. Legislative Powers
3. Financial Powers
4. Judicial Powers
5. Mercy (Pardoning) Powers
6. Emergency Powers

2.3.1. Executive Powers

- The executive power of the State is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (Art. 154).
- All executive actions of the government of a State are formally taken in the Governor's name. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
- He appoints the Chief Minister, the other subordinate ministers, the Advocate General of the State and they hold office during his pleasure.
- The Governor appoints the State Election Commissioner and his conditions of service and tenure of office. However, the SEC can be removed only in manner and on the grounds as a Judge of a High Court.
- He appoints the Chairman and members of the State Public Service Commission. However, they can be removed by the President of India and not by the Governor.
- He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the Chief Minister.
- He can make a recommendation to the President to impose constitutional emergency in the state under Article 356.
- He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

2.3.2. Legislative Powers

- The Governor of the State summons or prorogues the state legislature and he can dissolve the State Legislative Assembly.
- When both the offices of the Speaker and the Deputy Speaker fall vacant then the Governor appoints any member of the State's Legislative Assembly to preside over its proceedings.
- After a bill is passed in the state legislature, the Governor can give his assent to the bill, or withhold his assent. He can return the bill (if it is not a money bill) for reconsideration of the State Legislature. He can reserve the bill for the President's consideration.
- The Governor can reserve for the President's consideration any bill passed by the State Legislature, which endangers the position of the State High Court. Further, he can also reserve the bill if it is of the nature of ultra-virus, i.e., against the Constitution's provisions, if it is opposed to the Directive Principles of State Policy (DPSP), if it is against the larger interest of the country, if it is of grave national importance, and if the bill is of the nature of dealing with compulsory acquisition of property under article 31A of the Constitution.
- The Governor nominates one member to the State Legislative Assembly from the Anglo-Indian community; he nominates 1/6th of the members of the State Legislative Council from amongst the persons having special knowledge or practical experience in literature, art, science, cooperative movement and social service.
- He can promulgate ordinances when the State Legislature is not in session. These ordinances must be approved by the State Legislature within six weeks from its reassembly.

- He decides on the question of disqualification of the members of the State Legislature in consultation with the Election Commission.
- The Governor of the State lays reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor General relating to the accounts of the State, before the State Legislature.

Student Notes:

2.3.3. Financial Powers

- The Governor of the state confirms that the state budget or the Annual Financial Statement is laid before the State Legislature.
- Money Bills can be introduced in the State Legislature only with the prior recommendation of the Governor.
- Demand for a grant can be made only on the Governor's recommendation.
- To meet any unforeseen expenditure, he can make advances out of the Contingency Fund of the State.
- To review the financial position of the Panchayats and the Municipalities, the Governor constitutes a Finance Commission in the state after every five years.

2.3.4. Judicial Powers

- The Governor is consulted by the President, while appointing the Judges of the concerned State High Court.
- He makes appointments, postings and promotions of the district judges in consultation with the State High Courts.
- He appoints persons to the judicial service of the state (other than the District Judges) in consultation with the State High Court and the State Public Service Commission.

2.3.5. Mercy Powers

The Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence, against any law relating to a matter to which the executive power of the state extends. However, the pardoning power of the Governor differs from that of the President in the manner that the President can pardon death sentence, whereas the Governor cannot pardon a death sentence. However, the Governor can suspend, remit or commute a death sentence if the death penalty is awarded in respect of a state law. The pardoning powers of the Governor and the President also differ in respect of the punishment or sentence by a court-martial where the President enjoys the power to pardon, reprieve, remit, suspend or commute whereas the Governor does not possess any power in this respect.

Recent Development

In 2016, Supreme Court struck down Tamil Nadu Government's decision to release seven killers of the former Prime Minister Rajiv Gandhi. The Constitutional Bench rejected Tamil Nadu's argument that the seven prisoners should not be robbed of their hope to be freed on remission.

Grounds of the judgment

Supreme Court said that the Centre, and not the State, will have the "primacy" in deciding whether remission should be granted to life-term convicts in the cases, which concerned the CBI or any Central agency as in the case of Rajiv Gandhi killers.

Significance of the Judgment

- Court has barred State governments from invoking their statutory remission power for the premature release of those sentenced by a High Court or the Supreme Court to a specified term above 14 years without remission.
- Rejection of the theory that every convict should have a ray of hope to be freed on the grounds of remission
- The State government will now have to get the concurrence of the Centre in cases investigated by Central agencies before it can use its power of remission to release convicts
- Prisoners cannot be released on the whims and fancies of politicians
- Hardened, remorseless criminals cannot be released even after 14 years of imprisonment
- The judgment will also settle the law on the power of State governments to remit sentences, especially of prisoners condemned to death whose sentences have been commuted to life.

Student Notes:

2.3.6. Emergency Powers

The Governor has no emergency powers to meet the situation arising from external aggression or armed rebellion like the President. However, he has the power to make a report to the President whenever he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Hence, he may invite the President to assume to himself the functions of the Government of the State or any of them i.e. invite 'President's rule'.

2.3.7. Special Powers and Responsibilities of Governor

Some of the Governors may have to discharge certain special responsibilities also, under the articles 371 to 371J. In this regard, the Governor, though has to consult the Council of Ministers led by the Chief Minister, acts finally on his individual judgment or discretion. These special cases are mentioned as follows:

- **Maharashtra**- Establishment of separate development boards for Vidarbha and Marathwada.
- **Gujarat**- Establishment of separate development boards for Saurashtra and Kutch.
- **Nagaland**- With respect to law and order in the State for so long as the internal disturbance in the Naga Hills Tuensang Area continues.
- **Assam**- With respect to the administration of the tribal areas.
- **Manipur**- With respect to the administration of the Hill areas in the state.
- **Sikkim**- For peace and for ensuring social and economic advancement of the different sections of the population.
- **Arunachal Pradesh**- Regarding the law and order in the state.
- **Karnataka**- Establishment of a separate development board for Hyderabad-Karnataka region.

Besides, Schedule VI of the Constitution that deals with the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram, also accords special powers and responsibilities to the Governor. He has the power to divide the areas inhabited by different scheduled tribes in an autonomous district into autonomous regions. The governors of these states may also reorganize boundaries of the tribal areas. They may choose to include or exclude any area, increase or decrease the boundaries and unite two or more autonomous districts into one. They can also alter or change the names of autonomous regions without separate legislation. Governors of states that fall under the Sixth Schedule specify the jurisdiction of high courts for each of these cases.

2.3.8. Discretionary Functions of the Governor

Student Notes:

- However, the Governor can act in his wisdom and discretion in certain cases. The Governor has constitutional discretion in following cases: The Governor can act in his discretion in the case of reservation of a Bill for the consideration of the President.
- He can give or withhold assent to Bills, return a Bill for reconsideration of the House concerned or both the Houses, reserving it for the consideration of the President.
- He advises the President on the issue of the failure of the constitutional machinery and recommends for the imposition of the President's rule in the state concerned.
- He can use his discretion while exercising the functions as the administrator of an adjoining Union Territory (in case of additional charge).
- He seeks information from the Chief Minister with regard to the administrative and legislative matters of the state.

The Governor, like the President, also enjoys situational/circumstantial discretion, i.e. the hidden discretion derived from the exigencies of a prevailing political situation in following cases:

- The Governor can appoint a new Chief Minister in a situation where no single party or leader commands majority support. He can dissolve the Assembly on the advice of a Chief Minister who has lost majority support.
- He can dismiss a Ministry where the Ministry refuses to resign even after losing majority support in the House or after being defeated on a non-confidence motion.

2.4. Constitutional Position of a Governor

As in the Centre, the Constitution of India provides for a Parliamentary form of government in the States also. Similar to the President, the Governor at the State level exercises his powers and functions with the aid and advice of the Council of Ministers headed by the Chief Minister, except in matters in which he is required to act in his discretion. After the 42nd amendment, ministerial advice has been made binding on the President, but no such provision has been made with respect to the Governor. In other words, the Governor is a nominal executive; the real executive is the Council of Ministers, headed by the Chief Minister in a state.

Constitutionally, Governor is the head of State, but practically he becomes the man of Centre in the State.

Ideally, the institution of Governor is envisaged as an institution of "cooperative federalism" – the link between the Centre and State. He can bring a national perspective to the State level and concerns of the State to the Centre.

But in practice, it has become an institution of "bargaining federalism" – a mechanism available to the Centre to bargain with the States.

The Office of Governor worked well till 1967 during the era of single party dominance both in the Centre and the States. However, later this office has been repeatedly used for politically motivated ends. Some experts call this the most abused office of the Constitution of India.

2.5. Contemporary Relevance of the Office of Governor

Though there have been suggestion for abolishing this office, but it continues to be relevant in our federal setup. It has been given a key role of maintaining Constitutional governance in the State. The dignity and independence of this Constitutional office warrants a fixed term and impeachment on the same lines as the President. The Governor brings a national level perspective to the state level actions and activities. The importance becomes even more prominent in cases of outbreak of natural disasters, breakout of communal riots etc. The Punchhi Commission has also emphasized the importance of the Office, especially in the context of internal security challenges.

2.6. Contemporary Issues

2.6.1. Role of Governor in a Hung Assembly

- In the context of government being formed by a non-majority party in Goa and Manipur, it has once again questioned the discretion of Governor in calling a person to form a government. Again this issue came to the fore after the recently concluded Karnataka assembly elections.
- Article 164(1) provides for the appointment of chief minister by the Governor. The Supreme Court clarified that there is no qualification mentioned in article 164(1) and reading it with collective responsibility in 164(2), the only condition chief ministerial candidate need to satisfy is that he/she should be commanding majority in the house.
- As for the appointment of Chief Minister, the Sarkaria Commission has recommended:
 - The party or combination of parties with widest support in the Legislative Assembly should be called upon to form the Government.
 - If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
 - In case no party or pre-poll coalition has a clear majority, the Governor should select the CM in the order of preference indicated below:
 - The group of parties which had pre-poll alliance commanding the largest number.
 - The largest single party staking a claim to form the government with the support of others.
 - A post-electoral coalition with all partners joining the government.
 - A post-electoral alliance with some parties joining the government and the remaining supporting from outside.
- M.M. Punchhi Commission elaborated that the Governor should follow “constitutional conventions” in a case of a hung Assembly.
- While SR Bommai case related to discretion of Governor does not apply to hung assembly but it laid emphasis on floor test in the house within 48 hours (although it can be extended to 15 days) so that legislature should decide the matter and Governor’s discretion should merely be a triggering point.

The Governor must be true to the oath of office and must ensure that the person he/she invites to be Chief Minister will be able to form a responsible and reasonably lasting government in the State. Even Dr. B.R. Ambedkar in his speech described how a Governor should use his discretion not as “representative of a party” but as “the representative of the people as a whole of the State”.

2.6.2. Appointment and removal of Governor by the Centre

The qualifications of Governor are not mentioned in constitution. Thus, ex-bureaucrats, retired CJI, active politicians etc. have been appointed as Governors. This leads to Governor being committed to Centre.

Thus, recommendations of the Punchhi Commission on Role of Governor should be considered:

- It has given a set of criteria for the qualification of Governor to be included in Article 157:
 - The Governor should, in the opinion of the President, be an eminent person;
 - The Governor must be a person from outside the concerned State;
 - The Governor should be a detached person and not too intimately connected with the local politics of the State. Accordingly, the Governor must not have participated in active politics at the Centre or State or local level for at least a couple of years before his appointment.
- The tenure of office of the Governor must be fixed, say for a period of 5 years.

- The phrase "during the pleasure of the President" may be deleted from Article 156 of the Constitution.
- In B.P. Singhal vs. Union of India case, SC observed that power to remove Governor cannot be exercised in an arbitrary, capricious or unreasonable manner. This power should only be exercised in rare and exceptional circumstances for valid and compelling reasons.
- A provision may be made for the impeachment of the Governor by the State Legislature on the same lines as the impeachment of the President by the Parliament.
- Governors should not be eligible for any further appointment or office of profit under the Union or State Governments except a second term as Governor, or election as Vice-President or President of India.
- Also, after quitting or laying down his office, the Governor shall not return to active partisan politics.

Student Notes:

2.6.3. Issues related to Dissolution of State Assemblies by the Governor

- **Lack of Objective Criteria for untimely dissolution:** While Article 174 gives powers to the Governor to dissolve the assembly, but the Constitution is silent on as to when and under what circumstances can the House can be dissolved.
- **Political reasons being cited for Dissolution:** Potential for political instability in the future and to prevent emerging alliances is often used as a reason to dissolve state assemblies.
- **Missing Political Neutrality in Governor's Office:** The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day. For e.g. Bihar State Assembly was dissolved by the Governor in 2005 on apprehensions of "horse trading. Later the Supreme Court called the decision to be illegal and mala fide.

Suggestions:

- **Sarkaria Commission:** The state assembly should not be dissolved unless the proclamation is approved by the parliament. Sparing use of article 356 of the constitution should be made. All possibilities of formation of an alternative government must be explored before imposing presidential rule in the state.
- **M M Punchhi Commission:** The Governor should follow "constitutional conventions" in a case of a hung Assembly. It suggested a provision of 'Localized Emergency' by which the centre government can tackle issue at town/district level without dissolving the state legislative assembly

Supreme Court Judgements:

- **S.R. Bommai Case (1994):** The court accorded primacy to a **floor test** as a check of majority. The court also said that the power under Article 356 is extraordinary and must be used wisely and not for political gain.
- **Rameshwar Prasad Case (2006):** Bihar Governor's recommendation for dissolving the Assembly the previous year was held to be illegal and mala fide. A Governor cannot shut out **post-poll alliances** altogether as one of the ways in which a popular government may be formed. The court had also said **unsubstantiated claims of horse-trading** or corruption in efforts at government formation cannot be cited as reasons to dissolve the Assembly

3. Chief Minister

The Chief Minister of a State is the head of the government and is the real executive authority (de facto executive).

The position of the Chief Minister of a State resembles that of the Prime Minister at the Centre. Article 164 simply states that the Chief Minister shall be appointed by the Governor, but this does not mean that the Governor is free to appoint any one as Chief Minister. Generally, the leader of the majority party in the State Legislative Assembly is appointed by the Governor of

the concerned State as the Chief Minister of that state. The Chief Minister's oath is administered by the Governor. In case, no political party has a clear majority in the assembly then the Governor generally appoints the leader of party or coalition and asks him to seek a vote of confidence in the House within a month.

3.1. Powers and Functions of the Chief Minister

The Powers and Functions of the Chief Minister can be studied under the following heads:

3.1.1. In Relation to the Council of Ministers

As the head of the Council of Ministers, the Chief Minister enjoys the following powers:

- The Governor appoints only those persons as Ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- In case of difference of opinion the Chief Minister can advise the Governor to dismiss the concerned minister or he can ask the minister to resign from his post
- The Chief Minister presides over the meetings of the council of ministers and influences its decisions.
- The activities of all the ministers are guided, directed, controlled and coordinated by the Chief Minister.
- As the Chief Minister is the head of the council of ministers, his resignation or death automatically lead to the dissolution of the council of ministers. Thus he can bring about the collapse of the council of ministers by resigning from his office.

3.1.2. In Relation to the Governor

The Chief Minister is the main channel of communication between the Governor and the Council of Ministers. It is the duty of the Chief Minister:

- To communicate to the Governor all decisions regarding the proposals for legislation and relating to the administration of the affairs of the state.
- To furnish the information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for.
- If the Governor so requires, to submit for the consideration of the Council of Ministers, any matter on which a decision has been taken by a Minister but which has not been considered by the Council.
 - He advises the Governor with regard to the appointment of important officials like the Advocate-General of the State, Chairman and Members of the State Public Service Commission, State Election Commissioner and the like.

3.1.3. In Relation to State Legislature

Regarding the Governor's summoning and proroguing of the sessions of the State Legislature, the Chief Minister of the State advices the Governor.

- He can, at any time, recommend the Governor for the dissolution of the State Legislative Assembly.
- The Chief Minister of the State announces the government policies, on the floor of the house of the State Assembly.

In addition to the above mentioned powers and functions, the Chief Minister enjoys some other powers and functions also. They are mentioned below –

- He acts as a Vice-Chairman of the concerned Zonal Council by rotation, holding office for a period of one year at a time.

- The Chief Minister is a member of the Inter-State Council and the National Development Council, both headed by the Prime Minister. He is the chief spokesperson of the State government.
- He is the political head of the services; he is the leader of the party in power. As the leader of the State, he meets various sections of people and receives memoranda from them regarding all their problems, and so on.
- The Chief Minister acts as the crisis manager-in-chief at the political level during emergencies.

Even though the Chief Minister plays a very important role in the state administration, the Governor's discretionary powers reduce to some extent the power, authority, influence, prestige and role of the Chief Minister in the State administration.

4. Council of Ministers

According to Article 163, the Governor has to act on the advice of a Council of Ministers, subject to his discretionary functions.

4.1. Appointment of Council of Ministers

The State Council of Ministers is headed by the Chief Minister. While the Chief Minister is appointed by the Governor, the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Council of Ministers is collectively responsible to the Legislative Assembly of the State and individually responsible to the Governor. The Ministers are publicly accountable for the acts or conduct in the performance of duties.

Any person may be appointed a Minister provided he has the confidence of the Legislative Assembly. However, he ceases to be a Minister if he does not remain a member of the State Legislature for a period of six consecutive months. The salaries and allowances of Ministers are governed by laws made by the legislature of the State.

4.2. Relationship between Governor and his Ministers

The relationship between the Governor and his Council of Ministers is analogous to the relationship between the President and his ministers. However, it is important to highlight that the President is not constitutionally empowered to exercise any function 'in his discretion'. While at the same time, it authorizes the Governor to exercise some functions 'on his discretion'.

Article 163(1) says

There shall be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.

Because of this discretionary jurisdiction, no amendment was made to Article 163(1) by the 42nd Constitutional Amendment Act. Therefore, in exercise of the functions which the Governor is empowered to act in his discretion, he will not be required to act according to the advice of the Council of Ministers or even to seek their advice. If any question arises whether any matter is or is not a matter wherein the Governor is required by the Constitution to act in his discretion, the decision of the Governor shall be final. Furthermore, the validity of anything done by the Governor shall not be called into question on the ground that he ought to or ought not to have acted in his discretion.

5. The Advocate-General

Article 64 of the Indian Constitution provides for an Advocate General for the State. The functions of the Advocate-General in respect of the State are similar to that of the Attorney General in relation to the Centre.

5.1. Appointment

The Advocate-General shall be appointed by the Governor of the State and holds office during the pleasure of the Governor.

5.2. Qualifications

Only a person qualified to be a Judge of a High Court can be appointed as the Advocate-General.

5.3. Remuneration

The Advocate-General of a State shall receive such remuneration as the Governor may determine.

Article 177 gives the Advocate-General the right to speak and take part in the proceedings of the Houses of Legislature of the State. However, he shall have no right to vote.

6. Previous Year UPSC Mains Questions

1. Is there any provision to impeach the Governor of a State? (25 words) (1999)
2. Explain the discretionary powers of the Governor of a State. (2003)
3. What were the two major considerations to have the Governor appointed and not elected? (2008).

7. Vision IAS GS Mains Test Series Questions

1. *What role has the constitution envisaged for the Governor with respect to administration of Scheduled and Tribal Areas? Critically evaluate the success of provisions of Fifth and Sixth schedules in achieving their objectives.*

Approach:

- Give an account of the role of Governor in Scheduled Areas and Tribal Areas.
- Then establish the issues surrounding the success of the Fifth and Sixth schedules in achieving their objectives.

Answer:

Powers of Governor with respect to Scheduled Areas

- The governor is empowered to direct that any particular act of Parliament or the state legislature does not apply to a scheduled area or apply with specified modifications and exceptions.
- He can also make regulations for the peace and good government of a scheduled area after consulting the Tribal Advisory Council. Such regulations may regulate or prohibit the transfer of land or money lending activities.

Powers of Governor with respect to Tribal Areas

- The tribal areas in the four states (Assam, Meghalaya, Tripura and Mizoram) are to be administered as autonomous districts/regions. The governor is empowered to organize and re-organize the autonomous districts/regions.
- Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor.
- The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions. In the case of Assam, this power lies with the Governor.
- The governor may also confer upon these councils the power to try certain suits and offences. Also, the laws made by the council shall have no effect unless assented by the governor.

The objective behind 5th and 6th schedules is granting certain autonomy to the tribal population within the framework of the constitution. This mandate towards devolution determines the protection of tribal customs, better economic development and ethnic security.

Fifth Schedule

The Fifth Schedule applies in nine states. But, it has failed to create the desired impact because it has never been applied the way it should have been. PESA (Panchayat Extension to Scheduled Areas Act) was supposed to be the logical step in the 5th Scheduled areas. However, it was not properly implemented. Tribal communities have progressively been denied self-government and rights to their communities' natural resources that should have been provided under the legislation. Similarly, under FRA (Forest Rights Act), it is the state that decides whether a certain forest is denoted as Reserved Forest or Village forest. This classification controls the rights that local communities have on the forests.

Sixth Schedule

The Sixth Schedule that embodies autonomy has its own shortcomings; breakdown of laws, elections not being contested and rather than empowerment there is exclusion that fails to provide much-needed protection to tribes in the absence of political will. Also, there are lack of courts at village and other levels in some District Councils and there is too much dependence on governments for financial grants, and allotments, etc.

Still, owing to greater autonomy, many tribal regions aspire to be governed by the 6th rather than the 5th Schedule. All the issues mentioned above have arisen out of the developmental deficit in the region and the poor implementation of the constitutional provisions. Hence, the need of the hour is to address the issues with a holistic approach rather than a piecemeal approach.

2. *Several constitutional experts have found the process of appointment and removal of governor to be against the very grain of democratic traditions and constitutional propriety. Do you think that this process warrants a fresh look in context of recent controversies surrounding the post?*

Approach:

Central theme of the question critical review of is process of appointment and removal of governor. Your answer should consist of these points:

- Briefly explain current practice of process of appointment and removal of governor.
- Cite recent trends which lead to the current discussion.
- Give suggestions for the betterment of this practice based on official judgement or committee reports.

Answer:

Our constitution states that Governor is to be appointed by the President of India on the advice of council of ministers according to Article 155. There is no procedure for impeachment of Governor, he shall hold office as per the pleasure of the President. But he can be removed by the President on the grounds of grave delinquency like bribery etc.

In our country, it has become a tradition that whenever there is change of guard at the centre, State governors are removed or appointed as per the convenience of the center.

Recently also it has led to many controversies when current government asked some state governors to resign immediately.

Student Notes:

The Chief Justice K. G. Balakrishnan, in 2010 emphasized that no Governor can be removed on basis of being "out of sync with policies and ideologies of Union Govt. at centre". This decision also states that governors can be removed, but there must be "compelling" reasons for doing so. This judgment also provided an exception that the government can initiate the process of removal of the Governor by first building a case file citing reasons for the removal of the Governor. Principle of natural justice must be followed, Governor must be given a chance to explain his position.

The Sarkaria Commission on Centre-State relations suggested :

- that a Governor should be someone eminent in some walk of life,
- one "not too intimately connected with the local politics of the State," and
- should not be one "who has taken too great a part in politics generally, and particularly in the recent past." It suggested that a politician from the ruling party at the Centre should not be appointed Governor of a State run by another party.

If only these norms are followed in practice, the need to ease out inconvenient Governors will not arise.

Puncchi Commission also emphasised for including specific procedure for appointment/removal of governor in the constitution itself.

So, it is right time to change the current practice of appointment and removal of Governors according to the SC decision and Sarkaria Commission recommendations.

3. *Concerns regarding the wide formulation and indiscreet application of discretionary powers of the Governor need closer attention. Discuss.*

Approach:

- Give a brief description of the discretionary powers of the governor as mentioned in the Indian Constitution.
- Highlight the issues and challenges posed by these powers with respect to India's federal polity. Cite relevant case laws and reports.
- Conclude with suggestions.

Answer:

The governor has a great role in promoting cooperative federalism as he acts as a vital link between the centre and the state government. In this capacity he has certain discretionary powers as given in Article 163(1) and Article 163(2), according to which the governor will have the final say if any question arises about any matter falling into his discretionary powers. Thus, it seems to provide the governor with wide ranging powers.

Not just wide formulation but indiscreet application of these powers has also raised various concerns such as:

- Article 200 and 201: The Governor has the power to withhold the assent to a bill along with reserving the bill for the consideration of the president. States allege that this provision has often been misused by the governor who acts on behest of the union government.
- Article 356: To recommend the imposition of constitutional emergency in a state. For political gains, this power has been abused by central governments more than 120 times till date.

- Article 164: Appointment of chief minister. In case of a hung assembly, the governor's discretion to invite a party to form government has often been questioned, the most recent examples being Goa and Manipur elections.

Governor is charged with the duty to preserve, protect and defend the Constitution; however, governors often perform their functions as 'agents of the centre'.

To limit the discretion of governor, the Supreme Court in the case of S.R. Bommai v. Union of India, held that such exercise of control of the Union executive over the State executive is opposed to the basic scheme of the Indian Constitution.

Sarkaria Commission Report also stated that, 'Even the limited area of choice of action should not be arbitrary. It must be a choice debated by reason, activated by good faith and tempered by caution.'

It should be a right of the citizen to seek remedy through a Court of Law if the Governor fails to defend the Constitution. In this context, the Supreme Court through cases such as Shamsher Singh v. State of Punjab, have set aside the absolute immunity that may be claimed by an office of the Governor.

4. *Highlight the ordinance-making powers of the Governor. Also enumerate the range of steps open to him when a Bill is presented after its passage by the state legislature.*

Approach:

- Briefly, write about the constitutional provisions and, power and functions of Governor.
- Enumerate the steps open to the Governor when a Bill is presented after its passage.
- Conclude answer by suggesting measures to further streamline the process.

Answer:

Article 153 of Indian Constitution provides for the Office of Governor who acts as the executive head of the state and his position is analogous to the President at the Centre.

The Governor enjoys wide ranging powers related to executives, legislature and judiciary. One of the most important legislative power the Governor holds is his Ordinance making power. Under Article 213, the governor may legislate by Ordinance, provided the following two conditions are satisfied:

- When the Legislative Assembly of the State is not in Session or where there are two Houses in the Legislature, when both Houses are not in Session.
- Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action.

An Ordinance promulgated under Article 213 shall have the same force and effect as an Act of the Legislature of the State and can be withdrawn at any time by the Governor.

A bill requires assent of the Governor to become an act. When a bill, after passage, is presented before Governor, he/she has the following options under Article 200:

- May give assent** to the bill and the bill becomes an act, or
- Absolute Veto** - May withhold assent to the bill, then the bill ends and does not become an act, or
- Suspensive Veto** - May return the bill, if it is not a money bill, for reconsideration of the legislature. If the bill is passed again with or without amendments and presented to the governor for assent, the governor must give assent to the bill.

- **May reserve the bill** for the consideration of President. Then he will not have any further role in the enactment of the bill.

Student Notes:

Under Article 201, the President may give assent, withhold assent, and return the bill for reconsideration. In certain cases, like bill affecting the position of the High Court or opposing DPSP's etc., reservation of bill is mandatory.

5. *There is a point of view that the office of Governor has outlived its relevance and needs to be abolished. Critically examine in the current context.*

Approach:

- Introduce by mentioning the reason for constituting the office of governor.
- Mention the controversies and reasons for abolishing the office.
- Highlight the significance of the office.
- Conclude by mentioning some reform measures.

Answer:

The roots of the office of Governor to act as a link between the centre and states are well established in the Government of India Act, 1935. It was continued even after independence so as to ward off any threats of secession by ensuring a strong centre.

Constitutionally, the powers of the office of governor include the following:

- Executive: Related to administration, appointment and removals
- Legislative: Related to law making i.e. assent to the bills
- Discretionary:
 - Invitation to form government when no party gets a clear majority
 - Reservation of bills for consideration by the President.
 - Submitting reports to the President regarding affairs of the state.

However, there have been numerous controversies including the misuse of powers of the Governor. This has led to calls for abolishing the office altogether as:

- The office has become home to retired politicians who favour the interests of the central government over the state government and fail to act in a neutral manner.
- There are several instances of misuse of discretionary power by the Governors to meddle with elected governments like the misuse of Article 356 to impose President's rule in the state.
- The appointment of the Governor is made unilaterally by the central government without consulting the state government. The appointment process is therefore considered undemocratic.
- The circumstances have changed since independence and the fissiparous tendencies have been effectively curbed which calls for review of the need for an office of Governor.
- The functions performed by the Governor are largely ceremonial but the expenditure of maintaining the office acts as a burden on the exchequer.

However, there have been many instances where people manning this Constitutional post rose above partisan politics, and performed their role with dignity and without fear or favour. The misuse of powers should not serve as a justification for abolishing the office. There can be various reform measures such as appointing "eminent persons" from other walks of life rather than career politicians and limiting the discretionary powers of the governor by enforcing recommendations of **Sarkaria and Punnchi commission**. Also issues arising out of partisanship /discretion have been dealt by SC and some committees which provide avenues for reforms:

- In the Nabam Rebia judgment (2016), the Supreme Court ruled that the exercise of Governor's discretion under Article 163 (council of ministers to aid and advise the Governor) is limited and his choice of action should not be arbitrary or fanciful.
- The Rajamannar Committee recommended the deletion of Article 356; Sarkaria, Punnchi and Justice V.Chelliah Commission recommended its use in very rare cases.
- Also, the Governors report recommending the imposition of President's rule may be analysed by the Supreme Court for malafide intention as noted in S.R. Bommai v. Union of India.

Student Notes:

The office of governor continue to remain significant as it ensures the continuance of governance in the State in times of constitutional crisis; his role is often that of a neutral arbiter in disputes settled informally within the various strata of government, and as the conscience keeper of the community. It is still a crucial link of effective communication between the Centre and the States/UT.



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MINISTRIES AND DEPARTMENTS OF THE GOVERNMENT

Student Notes:

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1. Existing Organizational Structure

Student Notes:

Article 77 of the Indian Constitution specifies the power of the President in terms of the conduct of business of the Government of India. It vests the following powers in the President:

- All executive action of the Government of India shall be expressed to be taken in the name of the President
- Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President
- The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business

Exercising powers vested by virtue of Article 77, the President has made the “The Government of India (Allocation of Business) Rules”. The Rules stipulate that the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First schedule to these rules. The Allocation of Business Rules, thus, forms the basis of the structure of Government of India by specifying the Departments among whom the functional division of work of Government of India has been done.

The Allocation of Business Rules comprises an exhaustive listing of the subjects and activities of various Departments of Government of India. It also enlists the attached and subordinate offices and other organizations, including Public Sector Undertakings. This detailed listing has the advantage of clearly demarcating the turf of individual departments so that there is no ambiguity with regard to their responsibilities. The allocation of Business has been kept up to date by a series of amendments and has stood the test of time.

2. Structure within the Departments

- a. A department is responsible for formulation of policies of the government in relation to business allocated to it and also for the execution and review of those policies.
- b. For the efficient disposal of business allotted to it, a department is divided into wings, divisions, branches and sections.
- c. A department is normally headed by a Secretary to the Government of India, who acts as the administrative head of the department and principal adviser of the Minister on all matters of policy and administration within the department.
- d. **Wing:** The work in a department is normally divided into wings with a Special Secretary/Additional Secretary/Joint Secretary in charge of each wing. Such a functionary is normally vested with the maximum measure of independent functioning and responsibility in respect of the business falling within his wing subject, to the overall responsibility of the Secretary for the administration of the department as a whole.
- e. **Division:** A wing normally comprises a number of divisions each functioning under the charge of an officer of the level of Director/Joint Director/Deputy Secretary.
- f. **Branches:** A division may have several branches each under the charge of an Under Secretary or equivalent officer.
- g. **Section:** A section is generally the lowest organizational unit in a department with a well-defined area of work. It normally consists of assistants and clerks supervised by a Section Officer. Initial handling of cases (including noting and drafting) is generally done by, assistants and clerks who are also known as the dealing hands.
- h. **Desk Officer System:** While the above represents the commonly adopted pattern of organization of a department, there are certain variations, the most notable among them being the desk officer system. In this system the work of a department at the lowest level is

organised into distinct functional desks each manned by two desk functionaries of appropriate ranks e.g. Under Secretary or Section Officer.

- Each desk functionary handles the cases himself and is provided adequate stenographic and clerical assistance.

Under the Government of India, Rules of Business, 1961, there are presently 51 Ministries, 56 Departments and 2 Independent Departments. Out of these 51 Ministries, only 20 have one or more departments attached to them.

Student Notes:

Ministry	Department Associated
Ministry of Agriculture and Farmers Welfare	<ul style="list-style-type: none"> • Department of Agricultural Research and Education (DARE) • Department of Agriculture, Cooperation and Farmers Welfare
Ministry of AYUSH	
Ministry of Chemicals and Fertilizers	<ul style="list-style-type: none"> • Department of Chemicals and Petrochemicals • Department of Fertilizers • Department of Pharmaceuticals
Ministry of Civil Aviation	
Ministry of Coal	
Ministry of Commerce and Industry	<ul style="list-style-type: none"> • Department for Promotion of Industry and Internal Trade • Department of Commerce
Ministry of Communications	<ul style="list-style-type: none"> • Department of Posts • Department of Telecommunications (DOT)
Ministry of Consumer Affairs, Food and Public Distribution	<ul style="list-style-type: none"> • Department of Consumer Affairs • Department of Food and Public Distribution
Ministry of Corporate Affairs	
Ministry of Culture	
Ministry of Defence	<ul style="list-style-type: none"> • Department of Defence • Department of Defence Production • Department of Defence Research & Development • Department of Ex-Servicemen Welfare
Ministry of Development of North Eastern Region	
Ministry of Earth Sciences	<ul style="list-style-type: none"> • India Meteorological Department (IMD)
Ministry of Education	<ul style="list-style-type: none"> • Department of Higher Education • Department of School Education and Literacy
Ministry of Electronics and Information Technology	
Ministry of Environment, Forest and Climate Change	
Ministry of External Affairs	
Ministry of Finance	<ul style="list-style-type: none"> • Department of Economic Affairs • Department of Expenditure • Department of Financial Services • Department of Investment and Public Asset Management • Department of Revenue
Ministry of Fisheries, Animal Husbandry and Dairying	<ul style="list-style-type: none"> • Department of Animal Husbandry and Dairying • Department of Fisheries
Ministry of Food Processing Industries	

Ministry of Health and Family Welfare	<ul style="list-style-type: none"> • Department of Health and Family Welfare • Department of Health Research, Ministry of Health & Family Welfare
Ministry of Heavy Industries and Public Enterprises	<ul style="list-style-type: none"> • Department of Heavy Industry • Department of Public Enterprises
Ministry of Home Affairs	<ul style="list-style-type: none"> • Department of Border Management • Department of Home • Department of Internal Security • Department of Jammu & Kashmir (J & K) Affairs • Department of Official Language • Department of States
Ministry of Housing and Urban Affairs	
Ministry of Information and Broadcasting	
Ministry of Jal Shakti	<ul style="list-style-type: none"> • Department of Drinking Water and Sanitation • Department of Water Resources, River Development and Ganga Rejuvenation
Ministry of Labour and Employment	
Ministry of Law and Justice	<ul style="list-style-type: none"> • Department of Justice • Department of Legal Affairs • Legislative Department
Ministry of Micro, Small and Medium Enterprises	
Ministry of Mines	
Ministry of Minority Affairs	
Ministry of New and Renewable Energy	
Ministry of Panchayati Raj	
Ministry of Parliamentary Affairs	
Ministry of Personnel, Public Grievances and Pensions	<ul style="list-style-type: none"> • Department of Administrative Reforms and Public Grievances (DARPG) • Department of Pension & Pensioner's Welfare • Department of Personnel and Training
Ministry of Petroleum and Natural Gas	
Ministry of Power	
Ministry of Railways	
Ministry of Road Transport and Highways	
Ministry of Rural Development	<ul style="list-style-type: none"> • Department of Land Resources (DLR) • Department of Rural Development (DRD)
Ministry of Science and Technology	<ul style="list-style-type: none"> • Department of Biotechnology (DBT), Government of India • Department of Science and Technology (DST) • Department of Scientific and Industrial Research (DSIR)
Ministry of Shipping	
Ministry of Skill Development and Entrepreneurship	

Student Notes:

Ministry of Social Justice and Empowerment	<ul style="list-style-type: none"> • Department of Empowerment of Persons with Disabilities • Department of Social Justice and Empowerment
Ministry of Statistics and Programme Implementation	
Ministry of Steel	
Ministry of Textiles	
Ministry of Tourism	
Ministry of Tribal Affairs	
Ministry of Women and Child Development	
Ministry of Youth Affairs and Sports	<ul style="list-style-type: none"> • Department of Sports • Department of Youth Affairs
Independent Departments	
1. Department of Atomic Energy 2. Department of Space	

Student Notes:

3. Attached or Subordinate Offices

Each Department may have one or more attached or subordinate offices. For instance, Department of Pharmaceuticals under the Ministry of Chemicals and Fertilizers has National Pharmaceutical Pricing Authority (NPPA) as an attached office. The role of these offices is:

- Attached offices are generally responsible for providing executive direction required in the implementation of the policies laid down by the department to which they are attached. They also serve as repository of technical information and advise the department on technical aspects of question dealt with by them.
- Subordinate offices generally function as field establishments or as agencies responsible for the detailed execution of the policies of government. They function under the direction of an attached office, or where the volume of executive direction involved is not considerable, directly under a department.

4. Sample Case

4.1. Ministry of Home Affairs

The Ministry of Home Affairs (MHA) has multifarious responsibilities, important among them being internal security, management of para-military forces, border management, Centre-State relations, administration of Union Territories, disaster management, etc. Though in terms of Entries 1 and 2 of List II – ‘State List’ – in the Seventh Schedule to the Constitution of India, ‘public order’ and ‘police’ are the responsibilities of States, Article 355 of the Constitution enjoins the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

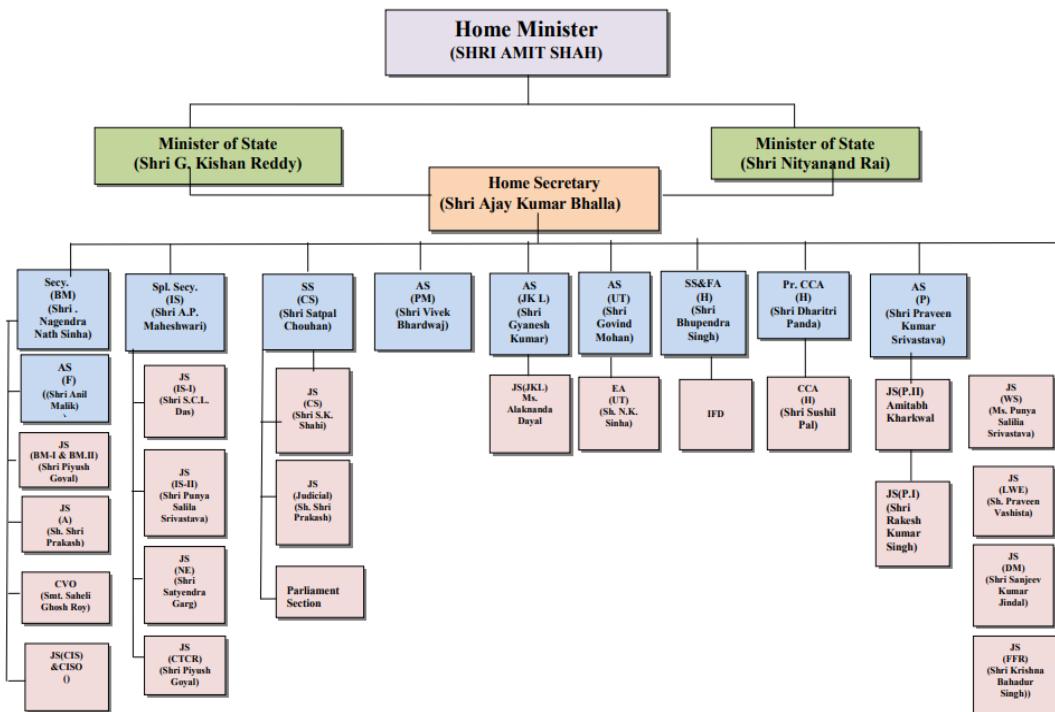
Under the Government of India (Allocation of Business) Rules, 1961, the Ministry of Home Affairs has the following constituent Departments:

- a. **Department of Internal Security**, dealing with the Indian Police Service, Central Police Forces, internal security and law & order, insurgency, terrorism, naxalism, activities of inimical foreign agencies, rehabilitation, grant of visa and other immigration matters, security clearances, etc.;
- b. **Department of States**, dealing with Centre-State relations, Inter-State relations, administration of Union Territories, Freedom Fighters’ pension, Human rights, Prison Reforms, Police Reforms, etc.;

- c. **Department of Home**, dealing with the notification of assumption of office by the President and Vice-President, notification of appointment/resignation of the Prime Minister, Ministers, Governors, nomination to Rajya Sabha/Lok Sabha, Census of population, registration of births and deaths, etc.;
- d. **Department of Jammu and Kashmir (J&K) Affairs**, dealing with the constitutional provisions in respect of the State of Jammu and Kashmir and all other matters relating to the State, excluding those with which the Ministry of External Affairs is concerned;
- e. **Department of Border Management**, dealing with management of international borders, including coastal borders, strengthening of border guarding and creation of related infrastructure, border areas development, etc.; and
- f. **Department of Official Language**, dealing with the implementation of the provisions of the Constitution relating to official languages and the provisions of the Official Languages Act, 1963.

Student Notes:

ORGANIZATIONAL CHART OF MINISTRY OF HOME AFFAIRS (AS ON 13.11.2019)



5. Empowered Group of Ministers

Empowered Group of Ministers (EGoM) is a Group of Ministers (GoM) of the Union Government who, after being appointed by the Cabinet, a Cabinet Committee or the Prime Minister for investigating and reporting on such matters as may be specified, are also authorized (empowered) by the appointing authority to take decisions in such matters after investigation.

It is distinct from a Group of Ministers (GoM) in the sense that a GoM only investigates and reports to the Cabinet, which takes the decision. On the other hand, an EGoM additionally takes decisions on matters it is authorised for, and such decisions have the force of the Government decision.

5.1. Appointment of EGoM

Both EGoM as well as the GoM get appointed under the Government of India's Transaction of Business Rules 1961, which provides that 'Ad hoc Committees of Ministers including Group of

Ministers may be appointed by the Cabinet, the Standing Committees of the Cabinet or by the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified, and, if so authorised by the Cabinet, Standing Committees of the Cabinet or the Prime Minister, for taking decisions on such matters.'

Rule 6(6) of the Government of India's Transaction of Business Rules 1961 additionally provides that 'any decision taken by a Standing or Ad hoc Committee may be reviewed by the Cabinet'. Therefore decisions in a matter taken by EGoM remain subject to review by the Cabinet at the latter's discretion.

5.2. Latest Status of GoM / EGoM

As part of empowering the Ministries and Departments, the Prime Minister on 31 May 2014 decided to abolish all the existing nine Empowered Group of Ministers (EGoMs) and twenty-one Groups of Ministers (GoMs). The rationale behind this move is to expedite the process of decision making and bring in greater accountability in the system.

The issues pending before the EGoMs and GoMs will be processed by respective Ministries /Departments to take appropriate decisions at the level of Ministries and Departments itself. Wherever the Ministries face any difficulties, the Cabinet Secretariat and the Prime Minister's Office will facilitate the decision making process.

6. Alternative Mechanisms

'Alternative Mechanisms' are instruments usually appointed by the Cabinet, a Cabinet Committee or the Prime Minister for deliberating over or investigating and reporting on such matters as may be specified by the appointing authority. For instance in 2017, the government set up an alternative mechanism to fast-track consolidation among public sector banks to create strong lenders. Similarly, there are alternative mechanisms to oversee mergers of state-owned banks, planned privatisation in state-owned companies, minority stake sales etc.

6.1. Similarity with EGoMs

Usually, it is a group of ministers empowered with taking certain decisions on the behalf of the Cabinet, on such matters as have been assigned to them by the appointing authority. The decisions taken by such 'Alternative Mechanisms' have the force of a government decision. Prior to the practice of establishing 'Alternative Mechanisms', the government appointed Empowered Group of Ministers and Group of Ministers under the Government of India's Transaction of Business Rules 1961.

6.2. Rationale behind setting up Alternative Mechanisms

The rationale behind setting up 'Alternative Mechanisms' include:

1. Improved Coordination: To bring synergies and ensure timely clearances on matters of critical importance from different departments and Ministries.
2. Faster Decision Making: This would expedite the process of decision making specially for strategic issues, since prior to this each ministry had to approach the cabinet at each stage for clearances.
3. Reduced workload: To take away some of the workload from the Union Cabinet, and select cabinet committees.
4. Due Diligence: By following due diligence at each step and necessary safeguards are in place to ensure that probing agencies do not interrupt the process later.
5. Lower Litigation: To reduce litigation and pendency of cases with the judiciary, by following due process at each step.
6. Stable Policy Environment: Due diligence, smooth decision making processes and reduced rates of litigation would ensure policy stability & consistency benefitting the overall investment environment in the country.

Accelerated and effective decision-making is a critical element for the government to address key priorities quickly and effectively. This makes 'alternative mechanisms' imperative since these enhance existing decision frameworks and associated governance structures. However, the composition of these alternative mechanisms and their number must be conducive to the end objectives.

7. Strengths and Weaknesses of the Existing Structure

The existing structure of the Government of India has evolved over a long period. It has certain inherent strengths, which have helped it stand the test of time.

However, there are weaknesses also which render the system slow, cumbersome and unresponsive.

7.1. Strengths

- Time Tested System:** adherence to rules and established norms: The Government of India has evolved an elaborate structure, rules and procedures for carrying out its functions which have contributed to nation building and the creation of an inclusive state. These have ensured stability both during crises as well as normal times. It has also experimented with several innovative structures in form of empowered commissions, statutory boards, autonomous societies and institutions, especially in the fields related to research, science and technology.
- Stability:** The structure of Government staffed by the permanent civil servants has provided continuity and stability during the transfer of power from one elected government to the other. This has contributed to the maturing of our democracy.
- Commitment to the Constitution – political neutrality:** The well laid down rules and procedures of government have upheld the neutrality of the civil services and prevented politicisation of government programmes and services. This has helped in the evolution of institutions based on the principles enshrined in the constitution.
- Link between policy making and its implementation:** The framework of the Government of India has facilitated a staffing pattern which promotes a link between policy making and implementation. This has also helped the structure of both the Government of India and the states and promoted the concept of cooperative federalism.
- A national outlook amongst the public functionaries: Public servants working in Government of India as well as its attached and subordinate offices have developed a national outlook transcending parochial boundaries. This has contributed to strengthening national integration.

7.2. Weaknesses

- Undue emphasis on routine functions:** The Ministries are burdened by the large volumes of routine work and are thus unable to focus on policy analysis and policy making. This leads to national priorities not receiving due attention. There is an excessive tendency of centralization even in case of routine jobs, which can easily be outsourced or delegated to other levels of Government.
- Proliferation of Ministries/Departments:** weak integration and coordination: The creation of a large number of Ministries and Departments sometimes due to the compulsion of coalition politics has led to illogical division of work and lack of an integrated approach and silo mentality even on closely related subjects.
- An extended hierarchy with too many levels:** Government of India has an extended vertical structure which leads to examination of issues at many levels frequently causing delays in decision making on the one hand and lack of accountability on the other.
- Risk avoidance:** A fall-out of a multi-layered structure has been the tendency towards reverse delegation and avoidance of risk in decision making. This structure puts an

- increased emphasis on consultations through movement of files as a substitute for taking decisions. This leads to multiplication of work, delays and inefficiency.
- e. **Absence of team work:** The present rigid hierachal structure effectively rules out team work so necessary in the present context where an inter-disciplinary approach often is the need of the hour to respond effectively to emerging challenges.
 - f. **Fragmentation of functions:** At the operational level also, there has been a general trend to divide and subdivide functions making delivery of services inefficient and time-consuming.
 - g. Except in the case of a few committees and boards, there has been considerable weakening of the autonomy conceived at the time of their formation.

8. Recommendations at Various Levels of Government Machinery

8.1. Core Principles of Reforming the Structure of Government

The Second Administrative Reforms Commission enunciates following principles, which must act central to the idea of reforms in the structure of the Government:

- a) The union Government should primarily focus on the following core areas:
 - i. Defence, International Relations, National security, Justice and rule of law
 - ii. Human development through access to good quality education and healthcare to every citizen
 - iii. Infrastructure and sustainable natural resource development
 - iv. Social security and social justice
 - v. Macro-economic management and national economic planning
 - vi. National policies in respect of other sectors
 - a. The principle of subsidiarity should be followed to decentralize functions to state and local Governments.
- b) **Subjects which are closely inter-related should be dealt with together:** While restructuring Government into Ministries and Departments, a golden mean between the need for functional specialization and the adoption of an integrated approach should be adopted. This would involve an in-depth analysis of all the government functions followed by their grouping into certain key categories to be linked to a Ministry.
- c) **Separation of policy-making functions from execution:** The Ministries should give greater emphasis to the policy-making functions while delegating the implementation functions to the operational units or independent organizations/agencies. This is all the more necessary because policy-making today is a specialized function, which requires a broader perspective, conceptual understanding of the domain and proper appreciation of the external environment. Implementation of the policies, on the other hand require in-depth knowledge of the subject and managerial skills.
- d) **Coordinated implementation:** Coordination is essential in implementation as in policy making. The proliferation of vertical departments makes this an impossible task except in cases where empowered commissions, statutory bodies and autonomous societies have been created. There is considerable scope for more of such inter-disciplinary bodies in important sectors.
- e) **Flatter structures:** reducing the number of levels and encouraging team work: The structure of an organization including those in government should be tailor-made to suit the specific objectives it is supposed to achieve. The conventional approach in the Government of India has been to adopt uniform vertical hierarchies (as prescribed in the Manual for Office Procedure). There is a need to shift to flatter organizations with greater emphasis on teamwork.
- f) **Well defined accountability:** The present multi-layered organizational structure with fragmented decision-making leads to a culture of alibis for non-performance. The tendency to have large number of on-file consultations, often unnecessary, lead to diffused

accountability. A clearer demarcation of organizational responsibilities would also help in developing a performance management system for individual functionaries.

Student Notes:

- g) **Appropriate delegation:** Lack of delegation leads to delays, inefficiency and demoralization of the subordinate staff. The principle of subsidiarity should be followed to locate authority closer to the citizens.
- h) **Criticality of operational units:** Government organizations have tended to become top-heavy coupled with fragmentation and lack of authority, manpower and resources at the operational levels that have a direct bearing on citizens' lives. Rationalization of Government staff pattern is necessary, commensurate with the requirements of the citizens.

9. Prelims Questions

2016

1. Consider the following statements:
1. The Chief Secretary in a State is appointed by the Governor of that State.
 2. The Chief Secretary in a State has a fixed tenure.
- Which of the statements given above is/are correct?
- (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

Ans: (a)

2015

2. The Fair and Remunerative Price of Sugarcane is approved by the
- (a) Cabinet Committee on Economic Affairs
 - (b) Commission for Agricultural Costs and Prices
 - (c) Directorate of Marketing and Inspection, Ministry of Agriculture
 - (d) Agricultural Produce Marketing Committee
3. Which of the following brings out the 'Consumer Price Index Number for the Industrial Workers'?
- (a) The Reserve Bank of India
 - (b) The Department of Economic Affairs
 - (c) The Labour Bureau
 - (d) The department of Personnel and Training

Ans: (c)

2014

4. Which of the following is / are the function/functions of the Cabinet Secretariat?
- 1. Preparation of agenda for Cabinet Meetings
 - 2. Secretarial assistance to Cabinet Committees
 - 3. Allocation of financial resources to the Ministries
- Select the correct answer using the code given below.
- (a) 1 only
 - (b) 2 and 3 only
 - (c) 1 and 2 only
 - (d) 1, 2 and 3

Ans: (c)

2008

5. Department of Border Management is a Department of which one of the following Union Ministries?
- Ministry of Defence
 - Ministry of Home Affairs
 - Ministry of Shipping, Road Transport and Highways
 - Ministry of Environment and Forests

Ans: (b)

The Ministry of Home Affairs consists of the following departments:

- Department of Internal Security
- Department of States
- Department of Official Language
- Department of Home
- Department of Jammu and Kashmir Affairs
- Department of Border Management

2005

6. Under which one of the Ministries of the Government of India does the Food and Nutrition Board Work?
- Ministry of Agriculture
 - Ministry of Health and Family Welfare
 - Ministry of Human Resource Development
 - Ministry of Rural Development

Ans: (c)

Under the Ministry of Human Resource Development does the Food and Nutrition Board Work.

2004

7. Which of the following pairs is correctly matched?

Departments Ministry of the Government of India

1. Department of Child Development : Ministry of Health and Family Welfare
2. Department of Official Language : Ministry of Human Resource Development
3. Department of Drinking Water Supply : Ministry of Water Resources

Select the correct answer using the codes given below:

- 1
- 2
- 3
- None

Ans: (d)

Department of Child Development: Ministry of Social Justice and Empowerment.

Department of Official Language: Ministry of Home.

Department of Drinking Water Supply: Ministry of Rural Development.

2002

8. The Consultative Committee of Members of Parliament for Railway Zones is constituted by the
- President of India
 - Ministry of Railways
 - Ministry of Parliamentary Affairs
 - Ministry of Transport

Ans: (c)

The Ministry of Parliamentary Affairs constitutes Consultative Committees of M.P.s attached to various ministries and arranges meetings thereof.

Student Notes:

10. Previous Year Vision IAS GS Mains Questions

Student Notes:

1. *The Cabinet Secretariat has to play a creative, functional, informative and coordinative role in the Cabinet's functioning. Elaborate.*

Approach:

Answer should not just list the functions of cabinet secretariat but also correlate them with the keywords (creative, functional, etc) mentioned in the statement.

Answer:

- Cabinet Secretariat is a very important institution in the structure of central administration. It is responsible for secretarial assistance to the cabinet, its committees and ad hoc Group of Ministers, and for maintenance of record of their decisions and proceedings. Prime Minister is the political head while Cabinet Secretary is the administrative head of the Cabinet Secretariat.
- Cabinet Secretariat functions are creative in the sense that it prepares agenda for the cabinet meetings. Its primary responsibility is to provide such information and material as necessary for deliberations of the cabinet, Cabinet Committees, Group of Ministers and Committee of Secretaries.
- Cabinet Secretariat has to facilitate smooth transaction of business in ministries/departments by ensuring adherence to 'transaction of business' and 'allocation of business' rules. Its role is functional as it has to monitor the implementation of the decisions of the Cabinet.
- An important function of the Cabinet Secretariat is to ensure that the President, the Vice-President and Ministers are kept informed of the major activities of all ministries and departments by means of monthly summary of their activities. So it plays a major informative role in the functioning of the central government.
- Cabinet Secretariat also assists in the decision-making of the government by ensuring inter-ministerial co-ordination. It helps in ironing out differences among ministries and evolving consensus through the standing/ad hoc committees of secretaries. So it plays a major coordinative role as well.
- By preparing the agenda for cabinet meetings, taking minutes, circulating decisions and following them up to see that action has been taken, the Cabinet Secretariat is playing a very important role.

2. *"A periodic cleaning-up of the statute books helps prevent conflicts and ambiguities creeping into the legal system." Discuss the statement in light of the initiative taken by the government to repeal old laws.*

Approach:

Question needs to be answered in three different parts. Start with the advantages of the unambiguous and efficient legal system. Throw light on the present Indian system and its consequences. Explain the initiatives by entities like Law commission along with detailed discussion on the sectors listed for repealing the laws. Conclude with the recent government efforts in this regard.

Answer:

Rule of law is the defining principle of a well-functioning modern democratic polity. The essence of good governance is to upgrade the statute books as per demands of market, state and society; for rule of law to operate, statute books must be free from ambiguities, repetitions and redundancies. In India cumbersome statute books are often misused and result in pernicious rent seeking legal system.

- Sensing the need to revamp the legal system, government announced its intentions to repeal obsolete laws. It observed that these laws should be repealed on account of three reasons—they are redundant having outlived their purpose, have been superseded by more current laws, or pose a material impediment to growth, development, governance and freedom.
- Subsequent to government announcement, the 20th law commission initiated project titled the **Legal Enactments Simplification and Streamlining (LESS)** aimed at preparing various reports on the laws, rules, regulations which need to be repealed or amended.

Law commission observed that-

- There are over 300 **colonial-era enactments** in force in India. Many of these are redundant, not implemented, and sometimes even misused. The subject matter of these Acts is now governed by laws enacted post-Independence, which are much more in tune with contemporary realities.
- Many British era levies are now replaced by new taxes this often leads to double taxation without any substantial increase in revenue. E.g. the Ganges Tolls Act, 1867.
- Currently, there are 44 **labour related statutes** enacted by the central government dealing with wages, social security, welfare, occupational safety and health, and industrial relations. The obvious cost of India's labour laws is corruption, since, 'it is impossible to comply with 100% of the laws without violating 10% of them.'
- There are laws dealing with speech and expression like sedition law. These laws define offences in widely worded terms, perpetrate confusion and ambiguity, and often used as a tool of harassment. They are left to the arbitrary interpretation of public authorities, and are often misused.

Government taking serious note of the issues raised by the 20th Law commission has introduced a bill in parliament to repeal 36 laws. It is planning to repeal 287 different laws related with labour market and the financial system. However, government needs to be cautious in its approach. It should not be done like outright downsizing of laws but rightsizing giving due consideration to needs of effective legal framework.

3. *Proliferation of Ministries and Departments in the government not only leads to weak coordination and integration but also fragmentation of functions. Comment in the context of India.*

Approach:

- Start with reason of proliferation of ministries and departments in India, advantage and disadvantage of proliferation
- Explain the proliferation with example and address both the aspects of argument
- Conclude answer by suggesting solution

Answer:

There has been proliferation of the Ministries and Departments in Government to achieve welfare objectives of the Constitution. It has the advantage of specialization, focus and resource channelization but it also has the disadvantages of lack of coordination and inability to adopt an integrated approach to national priorities and problems.

For example, different aspects of transport are dealt by different Ministries. Ministry of Civil Aviation deals with civil aviation; while Ministry of Railways with rail transport; Ministry of Shipping, Road Transport and Highways deals with maritime shipping,

highways and motor vehicles and the Ministry of Urban Development deals with urban transport systems. Thus, it has been fragmented into multiple disciplines making the necessary integrated national approach to this important sector difficult. For example, the proposed scheme of integrated travelling card across different modes of transport is still in infancy.

Similarly initiatives like 'Housing for All' often require approvals from Ministries of Defence, Environment and Forests & Climate Change, Civil Aviation etc. Streamlining approvals for construction projects in urban areas is being pushed so as to enable time bound and hassle free clearances for projects.

From the above examples it is clear that there is a need to strike a balance between requirements of functional specialization and need for a holistic approach. In order to evolve an integrated approach, it would be desirable to categorize the functions of Government into a reasonable number of groups. In India, Departmental Standing Committees of Parliament is a good example of integration of inter-connected subject matters. **Privatization and disinvestments** of loss making public sector enterprises is also useful in restricting the number of ministries and departments in post liberation period. This will enable government of the day to streamline ministries and departments and retaining only those which have direct relevance for core governance functions.

But the size of the Council of Ministers reflects the needs of representative democracy for a large and diverse country like India. It would also be unrealistic to expect curtailment in the size of the Council of Ministers in a multiparty democracy.

Instead, a more pragmatic approach would be to retain the existing size of the Council of Ministers but increase the level of coordination by providing for a senior Cabinet Minister to head each of the 20-25 closely related Departments. And Individual departments could be headed by the Minister of State. For this arrangement to work, adequate delegation and division of work among the concerned Ministers would have to be worked out.

The office of cabinet secretary should be used with greater efficiency. The committee of secretaries is a good platform providing ample scope to bring inter-ministerial coordination.

It would lead to enhanced coordination and adequate Ministerial representation in a large and diverse country, without causing a proliferation. The era of coalition politics, which at times necessitated ministerial proliferation to please allies is behind us at least for some time now and this is the opportune moment to kick in this reform.

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UNION LEGISLATURE

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1. Structure of Parliament

Student Notes:

The Parliament of India consists of three parts:

- i. The President of India
- ii. Upper House or the Council of States or '*Rajya Sabha*' (Second Chamber or House of Elders)
- iii. Lower House or the House of the People or '*Lok Sabha*' (First Chamber or Popular House)

1.1. President as a part of Parliament

The Indian Constitution has followed the British pattern, rather than the American one. The British Parliament consists of House of Lords (Upper House), House of Commons (Lower House) and the Crown (King or Queen). The President of India, like the English Crown, is not a member of either House of Parliament. However, he is an integral part of the Parliament and performs the following functions:

- i. A bill passed by both Houses of Parliament cannot become a law without the President's assent
- ii. He/she summons and prorogues both the House, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session etc.

The Parliamentary system of government emphasizes the interdependence between the Legislature and the Executive. Thus, India has a President-in-Parliament system. On the other hand, America follows the Presidential system, wherein emphasis is more on separation of powers and less on interdependence between the Executive and the Legislature.

1.2. Rajya Sabha: Composition

The Rajya Sabha shall be composed of not more than 250 members. Of these, 12 are nominated by the President. The remainder 238 shall be the representatives of the states and the union territories elected by the method of indirect election. The seats in the Rajya Sabha are allocated to the various states and union territories, roughly in proportion to their population; each state is, however, represented by at least one member. The total number of seats in the Rajya Sabha at present is 245, including 12 members nominated by the President.

- **Nomination**

The 12 nominated members shall be chosen by the President from amongst persons having 'special knowledge or practical experience in literature, science, art, and social service'. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha, without going through the process of election.

- **Representation of States**

238 seats in the Rajya Sabha are allocated to the various states and union territories, roughly in proportion to their population. The representatives of each state shall be elected by elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of single transferable vote.

- **Representation of Union Territories (UTs)**

The representatives of UTs shall be chosen in such manner as Parliament may prescribe. Under this power, the Parliament has prescribed that the representatives of UTs to the Council of States shall be indirectly elected by members of an electoral college for that Territory, in accordance with the system of proportional representation by means of single transferable vote. Before the reorganisation of J&K, only 2 UTs, namely, Delhi and Pondicherry had representation in Council of States. The population of others was too small to have any representation.

NOTE – According to the Jammu and Kashmir Reorganisation Act, 2019 - On and from the appointed day, four sitting members of the Council of States representing the existing State of Jammu and Kashmir shall be deemed to have been elected to fill the seats allotted to the Union territory of Jammu and Kashmir.

Student Notes:

The Rajya Sabha thus reflects a federal character by representing the Units of the federation. The distribution of seats in the Rajya Sabha to the states is provided in the IVth Schedule. However, it does not follow the American principle of equality of state representation in the Second Chamber. In India, the number of representatives of States to the Rajya Sabha varies from 1 (Nagaland) to 31 (Uttar Pradesh). In USA, each state has a representation of 2 in the Senate. Various committees/commissions, including “Punchhi Commission on center-state relations”, have recommended for providing equal representation to all the states, as in the US senate.

States/UTs	No. of Seats
Andhra Pradesh	11
Arunachal Pradesh	1
Assam	7
Bihar	16
Chhattisgarh	5
Goa	1
Gujarat	11
Haryana	5
Himachal Pradesh	3
Jammu and Kashmir (see NOTE above)	4
Jharkhand	6
Karnataka	12
Kerala	9
Madhya Pradesh	11
Maharashtra	19
Manipur	1
Meghalaya	1
Mizoram	1
Nagaland	1
National Capital Territory of Delhi	3
Odisha	10
Puducherry	1
Punjab	7
Rajasthan	10
Sikkim	1
Tamil Nadu	18
Telangana	7
Tripura	1
Uttarakhand	3
Uttar Pradesh	31
West Bengal	16

1.3. Lok Sabha: Composition

The maximum strength of Lok Sabha is fixed at 552 by the Constitution. A maximum of 530 members are representatives of states. UTs are to be represented by a maximum of 20 members and the President can nominate 2 members from the Anglo-Indian community, if the community is not adequately represented in the Lok Sabha.

i. Representation of States

The people directly elect the representatives of states from the territorial constituencies in the states on the basis of principle of universal adult franchise. Every Indian citizen above 18 years of age, who is not otherwise disqualified, is entitled to vote in such an election.

ii. Representation of UTs

The members from the UTs are to be chosen in a manner as the Parliament may by law provide. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the representatives of UTs are also chosen by direct election.

iii. Nominated Members

The President can nominate 2 members from the Anglo-Indian community if he/she is of the opinion that the Anglo-Indian community is not adequately represented in the Lok Sabha.

Prelims questions

2003

1. Which one of the following statements is correct?
 - (a) Only the Rajya Sabha and not the Lok Sabha can have nominated members.
 - (b) There is a constitutional provision for nominating two members belonging to the Anglo-Indian community to the Rajya Sabha.
 - (c) There is no constitutional bar for a nominated member to be appointed as a Union minister.
 - (d) A nominated member can vote both in the Presidential and Vice-Presidential elections.

Ans: (c)

2. System of Elections

2.1. Lok Sabha

- **Territorial Constituencies**

The territory of India is divided into suitable territorial constituencies for the purpose of holding direct elections to Lok Sabha. The Constitution has provided for uniformity of representation in two respects:

- a. **Between the different states:** Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is, so far as practicable, the same for all states. (This provision does not apply to a state having a population of less than 6 million).
- b. **Between the different constituencies in the same state:** Each state is divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the state.

NOTE – According to the Jammu and Kashmir Reorganisation Act, 2019 - On and from the appointed day, there shall be allocated five seats to the successor Union territory of Jammu and Kashmir and one seat to Union territory of Ladakh, in the House of the People.

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- **Readjustment after each Census**

After every Census, a readjustment is to be made in allocation of seats in the Lok Sabha to the States and division of each State into territorial constituencies. The parliament is empowered to determine the authority and manner in which it is to be made.

Under **Article 82 of the Constitution**, the Parliament may by law enact a Delimitation Act after every census. After the Act comes into force, the Central Government constitutes a Delimitation Commission. This Delimitation Commission demarcates the boundaries of the Parliamentary Constituencies as per provisions of the Delimitation Act.

The number of seats allocated to each state was frozen by the 42nd Amendment Act of 1976 till the year 2000 at the 1971 level. The 84th Amendment Act, 2001, extended this period up to 2026.

The 87th Amendment Act, 2003 allowed the rationalization of territorial constituencies on the basis of census of 2001.

The orders of Delimitation Commission have the force of law and cannot be called in question before any court. These orders come into force on a date to be specified by the President of India on this behalf. The copies of its orders are laid before the House of People and the State Legislative Assembly concerned, but no modifications are permissible in them. So far, Delimitation Commissions have been constituted 4 times - in 1952, 1963, 1973 and in 2002.

- **Reservation of seats for SCs and STs**

Seats are reserved for SCs and STs in the Lok Sabha on the basis of population ratios of these groups in each state. Thus, the ratio of Lok Sabha seats reserved in a state for SCs or STs to the total number of seats allotted to that state in Lok Sabha is the same as the ratio of SCs or STs population in the concerned state to total population of that particular state. Currently 84 seats are reserved for SCs and 47 seats for STs in the Lok Sabha.

2.2. Rajya Sabha

The members of Rajya Sabha are elected indirectly by the elected members of the Legislative Assembly of each state (or an electoral college in case of UTs) by the means of Proportional Representation by single transferable vote. This was done in order to give some representation to minority parties and communities. According to the Supreme Court, Rajya Sabha is not a federal chamber at par with the US Senate. Members do not vote on state lines but on party lines.

- The Rajya Sabha polls have a system of **open ballot**, but it is a limited form of openness. As a measure to check rampant cross-voting, the system of each party MLA showing his or her marked ballots to the party's authorised agent, before they are put into the ballot box, has been introduced. The independent candidates are barred from showing their ballots to anyone.
- The None of the Above (**NOTA**) option doesn't apply to the Rajya Sabha polls.
- The Supreme Court has ruled that **not voting for the party candidate will not attract disqualification under the anti-defection law**. As voters, MLAs retain their freedom to vote for a candidate of their choice. However, the Court observed that since the party would know who voted against its own candidate, it is free to take disciplinary action against the legislator concern
- **Domicile** in a state is not a necessary qualification for a person to be elected as a Member of Rajya Sabha from a particular state.
- According to the Supreme Court, a member can vote in a Rajya Sabha election even before taking oath as legislator. It said that voting at the Rajya Sabha polls, being a non-legislative activity, can be performed without taking oath. A person becomes a member as soon as the

list of elected members is notified by the ECI. Further, a member can also propose a candidate before taking oath.

Student Notes:

Why proportional representation was not adopted for Lok Sabha?

- I. Difficult for the voters to understand the system due to its **complicated nature and low literacy rate** in the country.
- II. Proportional Representation system is ill suited to Parliamentary system of government, since it causes the fragmentation of Legislature into small groups. Consequently, the Parliament would be divided into small groups, which might withdraw support to the government if something, which displeased them, happened. Thus, it might lead to an **unstable government**.

3. Conduct of Business

3.1. Duration of the Houses

- The Rajya Sabha is a permanent body, not subject to dissolution. The Parliament via. the Representation of People Act, 1951 has provided that the term of office of a member of Rajya Sabha shall be six years. $\frac{1}{3}$ rd of its members (as nearly as possible) retire on expiration of every second year, in accordance with provisions made by the Parliament. Thus, there is an election of $\frac{1}{3}$ rd of the membership of the Rajya Sabha at the beginning of every third year.
 - The order of retirement of the members is governed by the Council of States (Term of Office of Members) Order, 1952, made by the President in exercise of powers conferred upon him by the Representation of People Act, 1951. In the first batch, it was decided by lottery as to who should retire.
- The normal life of Lok Sabha is 5 years, but the President may dissolve it earlier. Further, the normal term of the Lok Sabha may be extended during the period of national emergency by a law made by the Parliament for one year at a time for any length of time. However, this extension cannot continue beyond a period of six months after the proclamation of Emergency ceases to operate.

3.2. Sessions of Parliament

a. **Summoning:** The President summons each House of the Parliament from time to time. But the maximum gap between two sessions of Parliament cannot be more than six months. There are usually three sessions in a year namely:

- i. **The Budget Session**
- ii. **The Monsoon Session**
- iii. **The Winter Session**

A ‘session’ of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in case of Lok Sabha). During a session, the House meets every day to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is termed ‘recess’.

The sitting of a House may be terminated by dissolution, prorogation or adjournment.

b. **Adjournment:** Within a session, there are a number of meetings. Each daily meeting consists of two sittings: a morning sitting (11 AM to 1 PM) and a post lunch sitting (2 PM to 6 PM). An adjournment suspends the work in a sitting for a specified time – hours, days or weeks.

Adjournment Sine Die means terminating a sitting of Parliament for an indefinite period. The power of adjournment as well as adjournment sine die lies with the presiding officer of the House.

c. **Prorogation:** Prorogation (done by the President) terminates the session of the House. Though in England prorogation wipes all business pending at the date of prorogation, in India, all bills pending in Parliament are expressly saved by Art. 107(3). The only effect of a prorogation is that pending notices, motions and resolutions relapse.

d. **Dissolution:**

- i. As stated earlier, only the Lok Sabha is subject to dissolution. It ends the very life of the existing House. The dissolution of Lok Sabha may take place in two ways:
 - a. Automatic dissolution on the expiry of its tenure of five years or the terms as extended during a national emergency.
 - b. By an exercise of the President's power under Art. 85(2)
- ii. The President on the advice of Council of Ministers exercises the powers of dissolution and prorogation. Whereas, the power to adjourn daily sittings of Lok Sabha and Rajya Sabha belong to the Speaker and Chairman respectively.
- iii. Dissolution ends the very life of the Lok Sabha so that all matters (Bills, Motions, Resolutions, Notices, Petitions etc.) pending before the House lapse with dissolution. If those matters have to be pursued, they must be re-introduced in the next House after fresh elections. However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:
 - A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha)
 - A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
 - A bill, which is not passed by the two houses due to disagreement and if the President has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
 - A bill pending in the Rajya Sabha not passed by the Lok Sabha does not lapse.
 - A bill passed by both Houses but pending assent of the President does not lapse.
 - A bill passed by both Houses but returned by the President for reconsideration does not lapse

Lame Duck Session: It refers to the last session of the existing Lok Sabha after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are known as lame ducks.

Quorum: It is the minimum number of members required to be present in the House before it can transact any business. It is $1/10^{\text{th}}$ of the total number of members in each House (including the Presiding Officer). Thus, a minimum of 55 members in the Lok Sabha and 25 members in the Rajya Sabha must be present if any business is to be conducted.

Prelims questions:

2016

1. Which of the following statements is/are correct?
 1. A bill pending in the Lok Sabha lapses on its prorogation.
 2. A bill pending in the Rajya Sabha, which has not been passed by the Lok Sabha, shall not lapse on dissolution of the Lok Sabha.

Select the correct answer using the code given below:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

Student Notes:

4. Membership of Parliament

Student Notes:

4.1. Qualifications

In order to be chosen as a Member of Parliament, a person:

- a. must be a citizen of India;
- b. must not be less than 30 years of age in the case of Rajya Sabha and not less than 25 years of age in the case of Lok Sabha; and
- c. must make and subscribe before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Additional qualifications may be prescribed by Parliament by law. Consequently, the Parliament has laid down the following additional qualifications in the Representation of People Act, 1951:

- a. He must be registered as an elector for a parliamentary constituency.
- b. He must be a member of a scheduled caste or a scheduled tribe in any State or Union Territory, if he wants to contest a seat reserved for them.

4.2. Disqualifications

• Constitutional and Legislative Provisions

A person is disqualified for being elected as a Member of Parliament by the constitution (Art. 102) if:

- a. He holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- b. He is of unsound mind and stands so declared by a competent court;
- c. He is an undischarged insolvent;
- d. He is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- e. He is so disqualified under any law made by Parliament.

Representation of the Peoples Act, 1951 provides for further grounds for disqualification for Membership of Parliament:

1. Section 8(1) provides for disqualification on conviction for certain offences

A person convicted of an offence punishable under the following crimes will be disqualified:

a. **Crimes under Indian Penal Code 1860:** Disqualification under this provision pertains to various sections and subsections of the IPC. These include:

- i. **Section 153A** i.e. the offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony; or
- ii. **Section 171E** i.e. offence of bribery or
- iii. **Section 171F** i.e. offence of undue influence or personation at an election or
- iv. **Section 376(1) or (2) or Section 376A or Section 376B or Section 376C or Section 376D** which include provisions related to rape; or
- v. **Section 498A** i.e. offence of cruelty towards a woman by husband or relative of a husband or
- vi. **Section 505(2) or (3)** i.e. offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code;

- b. **Protection of Civil Rights Act 1955**, which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising there from;
- c. Section 11 of the **Customs Act, 1962** which relates to the offence of importing or exporting prohibited goods.
- d. Sections 10 to 12 of the **Unlawful Activities (Prevention) Act, 1967**. This offence relates to being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place.
- e. **Foreign Exchange (Regulation) Act, 1973** related to dealings in foreign exchange, import and export of currency, etc.;
- f. **Narcotic Drugs and Psychotropic Substances Act, 1985** related to produce/manufacture/ cultivate, possess, sell, purchase, transport, store, and/or consume any narcotic drug or psychotropic substance.
- g. Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disruptive activities) of the **Terrorist and Disruptive Activities (Prevention) Act, 1987**;
- h. Section 7 of the **Religious Institutions (Prevention of Misuse) Act, 1988**;
- i. **Offences under various sections of the RPA, 1951**: Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot papers from polling stations) or Section 135A (offence of booth capturing) Section 136(2)(a) (offence of fraudulently defacing or fraudulently destroying any nomination paper) of RPA, 1951;
- j. Section 6 of the **Places of Worship (Special Provisions) Act, 1991**; which relates to the conversion of a place of worship.
- k. Section 2 or Section 3 of the **Prevention of Insults to National Honour Act, 1971**; that relate to the offence of insulting the Indian National Flag or the Constitution of India and that of preventing singing of National Anthem respectively.
- l. Commission of **Sati (Prevention) Act, 1987**;
- m. Prevention of Corruption Act, 1988;
- n. Prevention of Terrorism Act, 2002

The **period of disqualification** under the above offences will be **six years** from the date of such conviction if sentenced to only fine, and **six years** from release in case of an imprisonment.

2. Under **Section 8(2)**, a person convicted for the contravention of any law regarding **prevention of hoarding or profiteering, adulteration of food or drugs or Dowry Prohibition Act, 1961** and sentenced to imprisonment for not less than 6 months.
3. Under **Section 8(3)**, a person convicted of **any offence** (other than any offence mentioned in Section 8(1) or Section 8(2)) **and sentenced to imprisonment for not less than two years** will be disqualified from the date of such conviction and will continue to be disqualified for a further period of six years since his release.
4. **Section 8(4)***: It makes exception for sitting MPs and MLAs. Unlike ordinary candidates, they will not be disqualified with immediate effect. They will be disqualified only after 3 months from the date of conviction. If they appeal against the decision within 3 months, they will not be disqualified till the court disposes the appeal.

***Lily Thomas Case:** The Supreme Court held **Section 8(4)** as being **ultra vires of the constitution**. The Court held that section 8(4) is 'beyond the powers conferred on Parliament by the Constitution'.

Under Article 102(1), a person shall be disqualified from being chosen as, and for being, a member of either House of Parliament, if he is so disqualified by or under any law made by Parliament. Article 191 makes a similar provision with regard to membership

of the State Legislative Assemblies or councils. As these Articles make no distinction between being “chosen as” and “for being” a member, the court had no difficulty in concluding that Parliament had no power to make a law to undo these express provisions of the Constitution.

The court, however, clarified that a person—whether a member or a non-member—will not suffer disqualification if he obtains a stay of his or her conviction, and not just sentence.

5. **Section 8A provides for disqualification on ground of corrupt practices** i.e. a person guilty of certain **corrupt practices** specified in **Section 123 of RPA, 1951** shall stand disqualified. Such disqualification is subjected to the condition that the charges are established through an **election petition** before the **High Court** and presented to the President as a High Court Order. Further, the **President** will decide upon the disqualification and the duration of such disqualification after obtaining an opinion from the **Election Commission**.
6. **Section 9** provides that a person who having held an office under the Government of India or under the Government of any State in the past and has been dismissed for corruption or for disloyalty to the State will be disqualified for a period of five years from the date of such dismissal.
7. **Section 9A provides for disqualification for government contracts, etc** i.e. person shall be disqualified if there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.
8. **Section 10 provides for disqualification for office under government company** i.e. A person shall be disqualified if, and for so long as, he is a **managing agent, manager or secretary of any company or corporation** (other than a cooperative society) in the capital of which the **appropriate government has not less than twenty-five per cent share**.
9. **Section 10A: Disqualification for failure to lodge account of election expenses.**

However, it is mentioned in **Section 11 of RPA, 1951** that Election Commission may remove any of the above disqualification except under Section 8A or reduce the period of any such disqualification.

- **Disqualification on the ground of Defection**

The Tenth Schedule to the Constitution, popularly known as the Anti-Defection Law, was introduced by the Constitution (Fifty-second Amendment) Act, 1985. It was further amended by the Constitution (Ninety-First Amendment) Act, 2003 and lays down the conditions regarding disqualification on ground of defection. The main provisions of the Tenth Schedule are:

- An **elected member of Parliament, who has been elected as a candidate set up by a political party and a nominated member of Parliament who is a member of political party** at the time she/he takes her/his seat would be disqualified on the ground of defection if she/he **voluntarily relinquishes her/ his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party**.
- An **independent member** of Parliament will also be disqualified if **she/he joins any political party after her/his election**.
- A nominated member of Parliament who is not a member of a political party at the time of her/ his nomination and who has **not become a member of any political party before the expiry of six months** from the date on which she/he takes her/his seat shall be disqualified if she/he joins any political party after the expiry of the said period of six months.

- No disqualification would be incurred when a legislature party decides to **merge with another party and such decision is supported by not less than two-thirds of its members.**
- Special provision has been made to enable a person who has been elected to the office of the **Speaker or the Deputy Speaker** of the House of People or to the office of the **Deputy Chairman** of the Council of States to **sever her/his connections with her/his political party without incurring disqualification.**
- The question as to whether a **member of a House of Parliament** has become subject to disqualification will be determined by the **presiding officer of the House**; whereas the question is with reference to the **Presiding Officer** herself/himself it will be decided by a **member of the House elected by the House on that behalf.**

As per article **361B of the Constitution**, such member of the House belonging to any political party who is disqualified for being a member of the House under the Tenth Schedule shall **also be disqualified to hold any remunerative political post** for duration of the period commencing from the date of her/his disqualification till the date on which the term of her/his office as such member would expire or till the date on which she/he contests an election to a House and is declared elected, whichever is earlier.

4.2.1. 91st Amendment Act

It was brought to implement the recommendations of the committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the report of Law Commission of India in its report on “Reform of Electoral Laws” (1999) and the National Commission to Review the Working of the Constitution (NCRWC) all of which had recommended outlawing split. It provides that:

- Split (1/3rd of the members defect from the party) is not an exception to the anti-defection law.
- Council of Ministers should not be more than 15% of the strength of the lower house. Art.75 and 164 have been amended to this effect. However, in case of smaller states like Sikkim, Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of 12 Ministers is proposed.

Advantages of Anti-Defection Law

- It brings political stability.
- It helps in checking corruption.
- It promotes party discipline.
- It restricts the breach of trust with voters.

Criticisms of Anti-Defection Law

- It reduces freedom of speech and expression of MPs.
- It subjects the party to party whip and reduces MP's accountability to the public.
- The law still has many loopholes and has not been able to completely curb defections, as seen in Karnataka and MP state assemblies in recent years.

Suggestions for Reforms

- According to Dinesh Goswami Committee, the issues related to defection must be decided by the President or Governor as per the advice of the Election Commission.
- Dissent within the party shouldn't be equated with defection.
- In Bangladesh, such matter is referred to a neutral body by the Speaker.
- In Singapore, final decision lies with the Parliament as a whole.
- Finally, it is not simply a matter of law as humans can always circumvent legal provisions. It's a matter of ethics, which must be upheld by all the MPs in unison.

4.3 Vacant of Seats by Members

Student Notes:

A Member of Parliament shall vacate his seat in the following cases:

a. **Dual Membership:**

- a) A person cannot become member of both Lok Sabha and Rajya Sabha at one time. If a person is elected to both the Houses, he needs to intimate within 10 days in which House he desires to serve. If he fails to make such intimation, his Rajya Sabha membership will end.
- b) If a sitting Lok Sabha member becomes Rajya Sabha member or vice versa, his seat in the first House will become vacant.
- c) If a person has contested elections on two seats in a House and is elected on both, he needs to choose one. If he fails to do so, both the seats will become vacant.
- d) Similarly, if a person is elected to the Parliament and a State Legislature then he must resign his seat in the State Legislature within 14 days; otherwise his seat in the Parliament shall fall vacant.

b. **Disqualification:** If a person incurs any of the disqualifications mentioned in Art. 102, RPA, 1951 (Constitutional and Legislative provisions) or the disqualifications on the ground of defection (10th Schedule). [Kindly refer to Section 4.2]

c. **Resignation:** A member may resign his seat by writing to the Chairman or the Speaker (as the case may be). The seat falls vacant upon the acceptance of resignation. However, the Speaker/Chairman may not accept the resignation if he is satisfied that it is not voluntary or genuine.

d. **Absence without permission:** The house may declare a seat vacant if the member in question is absent from all meetings of the House for a period of 60 days without the permission of the House. In computing the period of 60 days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

4.4. Salaries and Allowances

Members of Parliament are entitled to receive such salaries and allowances as may be determined by Parliament. Though there is no provision of pension in the Constitution, the Parliament has provided pension to the members. The salaries and allowances of the Speaker/Dy. Speaker of Lok Sabha and Chairman/Dy. Chairman of Rajya Sabha are also determined by the Parliament. They are charged on the Consolidated Fund of India and are not subject to annual vote of the Parliament.

Prelims questions:

2017

1. **For election to the Lok Sabha, a nomination paper can be filed by**

- (a) Anyone residing in India.
- (b) A resident of the constituency from which the election is to be contested.
- (c) Any citizen of India whose name appears in the electoral roll of a constituency.
- (d) Any citizen of India.

Ans: (c)

2002

2. **The term of the Lok Sabha**

- (a) Cannot be extended under any circumstances
- (b) Can be extended by six months at a time
- (c) Can be extended by one year at a time during the proclamation of emergency
- (d) Can be extended for two years at a time during the proclamation of emergency

Ans: (c)

5. Presiding Officers of the Parliament

Student Notes:

5.1. The Speaker of Lok Sabha

The office of the Speaker occupies a pivotal position in our parliamentary democracy. It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House.

Even though the Speaker speaks rarely in the House, when he does, he speaks for the House as a whole. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy.

In India, through the Constitution of the land, through the Rules of Procedure and Conduct of Business in Lok Sabha and through the practices and conventions, adequate powers are vested in the office of the Speaker to help him in the smooth conduct of the parliamentary proceedings and for protecting the independence and impartiality of the office.

- **Election**

In the Lok Sabha, the lower House of the Indian Parliament, both Presiding Officers—the Speaker and the Deputy Speaker- are elected from among its members by a simple majority and removed by an effective majority (majority of all the then members of the House). As such, no specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that Speaker should be a member of the House.

One of the first acts of a newly constituted House is to elect the Speaker. The Speaker presides over the sitting in which the Speaker is elected, if it is a newly constituted House. If the election falls later in the life of a Lok Sabha, the Deputy Speaker presides. Usually, a member belonging to the ruling party is elected the Speaker. A healthy convention, however, has evolved over the years whereby the ruling party nominates its candidate after informal consultations with the Leaders of other Parties and Groups in the House. This convention ensures that once elected, the Speaker enjoys the respect of all sections of the House. There are also instances when members not belonging to the ruling party or coalition were elected to the office of the Speaker.

The speaker has to vacate his office in case of following instances:

- a. If he ceases to be a member of the Lok Sabha.
- b. If he resigns by writing to the Deputy Speaker.
- c. If he is removed by a resolution passed by a majority of all members of the Lok Sabha. When such a resolution is under consideration, he cannot preside at the sitting though he may be present. However, he can speak and take part in the proceedings and vote in the first instance (though not in case of equality of votes)

Whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly elected Lok Sabha meets.

- **Role and Functions**

- a. The basic function of the Speaker is to **preside over the house and conduct the meetings of the House in orderly manner**. No member can speak in the House without his permission. He may ask a member to finish his speech and in case the member does not obey he may order that the speech should not be recorded.
- b. All the **bills, reports, motions and resolutions are introduced with Speaker's permission**. He puts the motion or bill to vote.
- c. He does not participate in the voting but when there is a tie (equal number of votes on both sides) he can use his **casting vote**.
- d. His **decisions in all parliamentary matters are final**. He also rules on points of order raised by the members and his decision is final.

- e. He is the **custodian of rights and privileges of the members**.
- f. He **adjourns the House** or suspends a meeting in the absence of a quorum.
- g. He **disqualifies a member** of his/her membership in case of defection under the provisions of the 10th schedule. The decision of the Speaker is subject to judicial review.
- h. He also **accepts the resignation of members** and decides about the genuineness of the resignation.
- i. In case of **joint sitting** of Lok Sabha and Rajya Sabha, the Speaker presides over the meeting.
- j. When a Money Bill is transmitted from the Lower House to the Upper House, the Speaker **shall endorse on the Bill his certificate that it is a Money Bill**. The decision of the Speaker as to whether a Bill is a Money Bill is final.
- k. He acts as the **ex-officio chairman of the Indian Parliamentary group of the Inter-Parliamentary Union**. He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country.
- l. He **appoints the chairman of all the parliamentary committees** of the Lok Sabha and supervises their functioning
- m. He is the **chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee**.

5.2. Speaker Pro Tem

The speaker of the last Lok Sabha vacates his office immediately before the first meeting of newly elected Lok Sabha. Therefore, the President usually appoints the senior-most member of the Lok Sabha as the Speaker *Pro Tem*. The President administers the oath to him. The Speaker *Pro Tem* has all the powers of the Speaker. He presides over the first sitting of the newly elected Lok Sabha. He also enables the House to elect the new Speaker. When the new Speaker is elected by the House, the office of the Speaker *Pro Tem* ceases to exist. Thus, it is a temporary office existing only for a few days.

5.3. Deputy Speaker

While the office of Speaker is vacant or the Speaker is absent from a sitting of the House, the Deputy Speaker presides except when a resolution for his own removal is under consideration. While presiding he assumes all the powers of the Speaker.

Whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

5.4. Chairman & Deputy Chairman of Rajya Sabha

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He presides over the meetings of Rajya Sabha. In his absence the Deputy Chairman, who is elected by its members from amongst themselves, presides over the meeting of the House. The Deputy Chairman can be removed by a majority of all the then members (effective majority) of Rajya Sabha. But the Chairman (Vice-President) can only be removed from his office by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha. In both cases, the office holder needs to be given 14 days' notice.

He presides over the Rajya Sabha as long as he does not officiate as the President of India during a vacancy in that office. In such an instance, the Deputy Chairman performs the duties of Chairman of Rajya Sabha.

The functions of the Chairman of Rajya Sabha are similar to those of the Speaker of Lok Sabha except that the Speaker has certain special powers according to the constitution (e.g. certifying a Bill as Money Bill, presiding over a joint sitting of the two Houses etc.)

2017

1. Consider the following statements:

1. In the election for Lok Sabha or State Assembly, the winning candidate must get at least 50 percent of the votes polled, to be declared elected.
2. According to the provisions laid down in the Constitution of India, in Lok Sabha, the Speaker's post goes to the majority party and the Deputy Speaker's to the Opposition.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (d)

2013

2. Consider the following statements:

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.
2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

2004

3. Consider the following statements:

1. The Speaker of Lok Sabha has the power to adjourn the House sine die but, on prorogation, it is only the President who can summon the House.
2. Unless sooner dissolved or there is an extension of the term, there is an automatic dissolution of the Lok Sabha by efflux of time, at the end of the period of five years, even if no formal order of dissolution is issued by the President.
3. The Speaker of Lok Sabha continues in office even after the dissolution of the House and until 'immediately before the first meeting of the House'.

Which of the statements given above are correct?

- (a) 1 and 2
- (b) 2 and 3
- (c) 1 and 3
- (d) 1, 2 and 3

Ans: (d)

2000

4. Which one of the following statements about a Money Bill is not correct?

- (a) A Money Bill can be tabled in either House of Parliament
- (b) The Speaker of Lok Sabha is the final authority to decide whether a Bill is a Money Bill or not
- (c) The Rajya Sabha must return a Money Bill passed by the Lok Sabha and send it for consideration within 14 days
- (d) The President cannot return a Money Bill to the Lok Sabha for reconsideration.

Ans: (a)

5. The Speaker can ask a member of the House to stop speaking and let another member speak. This phenomenon is known as:
- Decorum
 - Crossing the floor
 - Interpolation
 - Yielding the floor

Ans: (d)

Decorum = Parliamentary etiquette.

Crossing the floor = Changing the party.

Interpolation = Seeking clarification through ruling.

Yielding the floor = Respecting Speaker's order.

Student Notes:

6. Leaders in Parliament

6.1. Leader of the House

Under the Rules of Lok Sabha, "Leader of the House" means the Prime Minister, if he is a member of the House, or a Minister who is a member of the House and is nominated by the Prime Minister to function as the Leader of the House. Similarly, Leader of the House in the Rajya Sabha is a Minister and a member of Rajya Sabha and is nominated by the Prime Minister to function as such. The same functionary in USA is known as the 'Majority Leader'.

6.2. Leader of the Opposition

The leader of the largest Opposition party having not less than 1/10th seats of the total strength of the House is recognized as the leader of Opposition in that House. His main function is to provide constructive criticism of the policies of the government and to provide an alternative government. The leader of Opposition in the Lok Sabha and Rajya Sabha were awarded statutory recognition in 1977. They are also entitled to salary and allowances equivalent to that of a Cabinet Minister. The same functionary in the USA is known as the 'Minority Leader'.

Leader of Opposition controversy: A party needs 10 per cent of the strength of the House (55 in the Lok Sabha) to stake claim, and the largest Opposition, the Congress, with 44 seats (2014 Lok Sabha elections) was way short of that number. Although UPA had 60 members, this was of no relevance in appointing Leader of the Opposition. Hence, the Speaker Sumitra Mahajan has refused to recognize leader of Congress party as Leader of Opposition.

The Congress demanded an amendment to the relevant laws to allow the single-largest party in the Opposition to send its legislative party leader to attend meetings of key appointment panels. Amendment was made with regard to the appointment of the CVC and also the CBI director but the Lokpal Act was not modified to bring the single-largest Opposition party on board if it did not secure 10 per cent seats in the Lok Sabha.

In 2019 Lok Sabha elections, Congress won 52 seats with UPA at 91, so the current 17th Lok Sabha doesn't have a Leader of Opposition as well.

Arguments in favour of compulsorily appointing Leader of Opposition

The 10% rule came about as part of a decision by the very first Speaker, G.V. Mavalankar. This point was later incorporated in Direction 121 (1) of the Directions by the Speaker, Lok Sabha, and The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (facilities) Act of 1998. Many political experts have pointed out that it has become redundant after the enactment of the Tenth Schedule of the Constitution under which even a one-member party is recognised as a legislature party. Thus, the decision on appointment of the Leader of Opposition remains a prerogative of the Speaker.

The issue again came to the fore when the Supreme Court asked the Centre to submit details on steps it has taken towards appointing a Lokpal, which has been delayed for five years.

Government had told the court that the Lokpal could not be appointed as there was no Leader of Opposition in the selection panel and a change in law that would allow the Congress - as largest opposition group - to be a member has yet to be approved in parliament.

Student Notes:

SC told the government that the Lokpal should be set up without delay and the lack of a Leader of Opposition should not hold up the process. The ruling meant that the government can select a Lokpal without taking the Congress, the main opposition group, on board.

Arguments against

Because, the post of Leader of the Opposition can go only to the leader of a political party and not to the leader of an alliance, whether formed before the election or after, it would be "highly irregular" to give the post to the leader of any party in the current Lok Sabha as no party meets the minimum requirement of seats. Besides, public funds are involved as the Leader of the Opposition enjoys the rank of a Cabinet Minister with all attendant perks and benefits.

Way Forward

Failing to appoint a Leader of Opposition could have a negative effect on Indian democracy. The absence of a countervailing opinion in appointing the Lokpal would allow the government completely free rein.

Courts cannot inquire into proceedings of Parliament, but recognising the Leader of Opposition is not a proceeding of the House within the meaning of Article 122. Hence, in the interest of the democracy and legislature's control over government, SC can ask Speaker to appoint a leader of opposition even if his/her party fails to capture 10% seats.

6.3. Whip

The concept of the whip was inherited from colonial British rule. Every major political party appoints a whip, who is responsible for the party's discipline and behaviour on the floor of the house. Usually, he directs the party members to stick to the party's stand on certain issues and directs them to vote as per the direction of senior party members. Disciplinary action can be taken against the members in case of violation of direction of the whip. However, there are some cases such as Indian presidential election where no whip can be issued directing Member of Parliament or Member of Legislative Assembly on whom to vote. This office is based on conventions of parliamentary government and is mentioned neither in the Constitution nor in the Rules of the House or in a parliamentary statute.

Prelims questions:

2018

1. Consider the following statements:

1. In the first Lok Sabha, the single largest party in the opposition was the Swatantra Party.
2. In the Lok Sabha, a "Leader of the Opposition" was recognised for the first time in 1969.
3. In the Lok Sabha, if a party does not have a minimum of 75 members, its leader cannot be recognised as the Leader of the Opposition.

Which of the statements given above is/are correct?

- (a) 1 and 3 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Ans: (b)

7. Devices of Parliamentary Proceedings

Student Notes:

7.1. Question Hour

Question Hour is the first hour of a parliamentary sitting devoted to questions that Members of Parliament raise about any aspect of administration and government activity. It is mentioned in the Rules of Procedure of the House. The concerned Minister is obliged to answer to the Parliament, either orally or in writing, depending on the type of question raised. Questions are one of the ways Parliament can hold the executive accountable. The questions are of three kinds:

- a. A **Starred Question** (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow. Only 20 questions can be listed for oral answer on a day.
- b. An **Unstarred Question** requires a written answer and hence, supplementary questions cannot follow. Only 230 questions can be listed for written answer on a day.
- c. A **short notice question** is one which relates to a matter of urgent public importance and is asked by giving a notice of less than 10 days. It is answered orally.

Notices of Questions

A member gives notice in writing addressed to the Secretary-General, Lok Sabha/Rajya Sabha, intimating his intention to ask a question. Besides the text of the question, the notice states clearly:

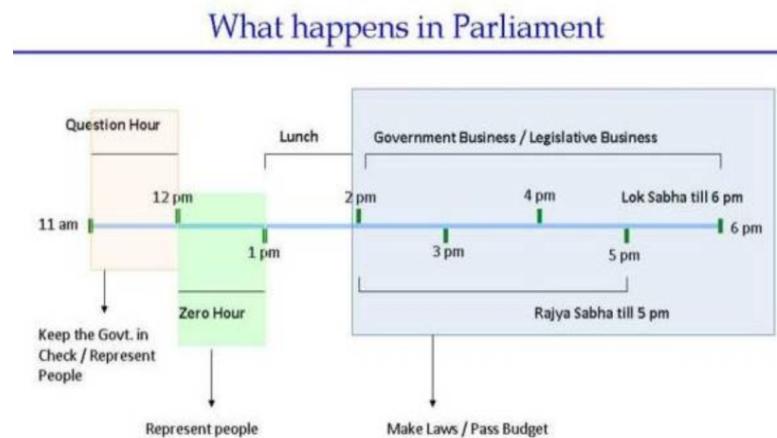
- the **official designation of the Minister** to whom the question is addressed.
- the **date** on which the question is desired to be placed on the list of questions for answer.
- the **order of preference**, if any, for its being placed on the list of questions when a member tables more than one notice of questions for the same day.

The **normal period of notice of a question** is not more than twenty-one and not less than ten clear days. A short notice question can be asked with a notice shorter than ten days, but the member has to state briefly the reasons for asking the question at short notice.

7.2. Zero Hour

The time immediately following the Question Hour has come to be known as "Zero Hour". It starts at around 12 noon (hence the name) and members can, with notice to the Speaker prior to the start of the daily session, raise issues of urgent public importance during this time. It is an Indian innovation (not mentioned in the Rules of Procedure) and has been in existence since 1962.

- In Lok Sabha, only 20 matters are allowed to be raised during the Zero Hour.
- In Rajya Sabha, total number of requests is not allowed to exceed seven on a single day.
- A member is allowed to make only one Zero Hour request during a week.
- It is not mandatory to have a Zero Hour every day during the session.



7.3. Motions

Student Notes:

Discussion on any matter can take place only when a motion is made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by ministers or private members. The motions are of three principal categories:

- a. **Substantive Motion:** It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.
- b. **Substitute Motion:** It is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.
- c. **Subsidiary Motion:** It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub-categories:
 - i. **Ancillary Motion:** It is used as the regular way of proceeding with various kinds of business.
 - ii. **Superseding Motion:** It is moved in the course of debate on another issue and seeks to supersede that issue.
 - iii. **Amendment:** It seeks to modify or substitute only a part of the original motion

Closure Motion

It is a motion moved by a member to cut short the debate on a matter before the House. If the House approves it, debate is stopped and the matter is put to vote. There are four kinds of closure motions:

- i. **Simple Closure:** It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'.
- ii. **Closure by Compartments:** In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
- iii. **Kangaroo Closure:** Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
- iv. **Guillotine Closure:** It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over)

Privilege Motion

It is concerned with the breach of parliamentary privileges by a Minister. It is moved by a member when he feels that a minister has committed breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts.

Calling Attention Motion

It is introduced by a member to call the attention of a Minister to a matter of urgent public importance and to seek an authoritative statement from him on that matter.

Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure

Adjournment Motion

Adjournment Motion is the procedure for adjournment of the business of the house for the purpose of discussing a matter of urgent public importance, and needs the support of 50 members to be admitted. The Adjournment Motion, if admitted, leads to setting aside of the normal business of the House for discussing the matter mentioned in the Motion. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions.

- It should raise a matter which is definite, factual, urgent and of public importance;
- It should not cover more than one matter;
- It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
- It should not raise a question of privilege;
- It should not revive discussion on a matter that has been discussed in the same session;
- It should not deal with any matter that is under adjudication by the court; and
- It should not raise any question that can be raised on a distinct motion.

The purpose of an Adjournment Motion is to take the Government to task for a recent act of omission or commission having serious consequences. Its adoption is regarded as a sort of censure of the Government. Thus, Rajya Sabha is not permitted to make use of this device.

No-Confidence Motion

In India, a Motion of No Confidence can be introduced *only* in the Lok Sabha. The motion is allowed for discussion when a minimum of 50 members of the Lok Sabha support the motion. If the motion carries, the Lok Sabha debates and votes on the motion. If majority of the members of the Lok Sabha vote in favour of the motion, the motion is passed and the Government is bound to vacate the office in accordance with Article 75 of the Constitution, which says that the council of ministers shall be collectively responsible to the Lok Sabha.

Censure Motion

This motion can be moved only in the Lok Sabha by the Opposition of the House. It can be moved against the Council of Ministers or an individual Minister or a group of Ministers for their failure to act or for certain policies and actions and may express regret, indignation or surprise of the House at the failure of the Minister or Ministers.

The Motion should be specific and self-explanatory so as to record the reasons for the censure, precisely and briefly (No-Confidence motion does not need to state such reasons). If the Censure Motion is passed, the Council of Ministers need not resign from office but is bound to seek the confidence of the Lok Sabha as early as possible.

Motion of Thanks

The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year.

This address of the president, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'. At the end of the discussion, the motion is put to vote. This motion must be passed in the House. Otherwise, it amounts to the defeat of the government.

7.4. Resolutions

A resolution is one of the procedural devices to raise a discussion in the House on a matter of general public interest. Subject to the provisions of the rules, a member or a Minister may move a resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same by leave of the House. Resolutions are classified into three categories:

- i. **Private Member's Resolution:** It is moved by a private member and is discussed only on alternate Fridays and in the afternoon sitting.

Student Notes:

- ii. **Government Resolution:** It is moved by a minister and can be taken up any day from Monday to Thursday.
- iii. **Statutory Resolution:** It can be moved by a private member or a minister. It is so called as it is always tabled in pursuance of a provision in the constitution or an act of the Parliament.

Student Notes:

7.4.1. Differences between Motions and Resolutions

- i. While all resolutions are substantive motions, a motion need not necessarily be substantive.
- ii. All motions are not necessarily put to vote of the House, whereas all resolutions are required to be voted upon.

7.5. Point of Order

A Point of Order relates to the interpretation or enforcement of the Rules of Procedure or such articles of the Constitution that regulate the business of the House. It should raise a question that is within the cognizance of the presiding officer. A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a Point of Order.

Prelims questions:

2017

1. The Parliament of India exercises control over the functions of the Council of Ministers through
 1. Adjournment motion
 2. Question hour
 3. Supplementary questions
- Select the correct answer using the code given below:
- (a) 1 only
 - (b) 2 and 3 only
 - (c) 1 and 3 only
 - (d) 1, 2 and 3

Ans: (d)

2014

2. Consider the following statements regarding a No-Confidence Motion in India:
 1. There is no mention of a No-Confidence Motion in the Constitution of India.
 2. A Motion of No-Confidence can be introduced in the Lok Sabha only.

Which of the statements given above is / are correct?

 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

Ans: (c)

8. Legislative Procedure in Parliament

The Bills introduced in the Parliament can be classified into four categories:

- i) **Ordinary Bills** which are concerned with any matter other than financial subjects
- ii) **Money Bills**, which are concerned with financial matters.
- iii) **Financial Bills** which are concerned with financial matters (but are different from Money Bills)
- iv) **Constitution Amendment Bills**, which are concerned with the amendment of various provisions of the constitution.

8.1. Ordinary Bills

Student Notes:

The different stages in the legislative procedure in Parliament relating to Ordinary Bills are as follows:

- i) **First Reading/Introduction:** Article 107(1) suggests that an ordinary bill can be introduced in either House of Parliament i.e. Lok Sabha or Rajya Sabha. However, it is required to be passed by both the houses before it is sent for the assent of the President. It can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill. It is to be noted that any member other than a minister, however, who wants to introduce the bill has to give notice of such intention and ask for the leave of the house. If a bill has been published in the official gazette before its introduction, no motion for leave of the house is necessary for its introduction.

If leave of the house is granted, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion on it. Thereafter, the question is put to the vote of the House.

- ii) **Publication in Gazette:** After a Bill has been introduced, it is published in the Official Gazette as soon as possible. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

- iii) **Second Reading/Consideration Stage:** The Second Reading is the most detailed of all stages for this is where the bill is minutely examined. It can be thought of as consisting of two stages.

a. **First Stage:** The first stage consists of general discussion on the Bill as a whole. The principle underlying the Bill is discussed and not the details. Hereafter, it is upon the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straightaway take it into consideration.

- In case of Select committee, members are chosen from amongst the members of the house where the bill originated while in case of a Joint Committee, members are selected from both houses. The Chairman of the joint committee is chosen by the presiding officer of the House where the bill originated.
- If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Members of the Committee can move amendments to the various clauses. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure.
- After the Bill has thus been considered and adopted by the committee, the Lok Sabha secretariat prepares a report for presentation to the House, which then considers the Bill again as reported by the Committee.
- If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move the motion for consideration of the Bill before it goes through the Committee stage as stated earlier.
- After the report of the Select Committee is presented to the house, the minister may make any of the motions that the bill be taken for consideration as reported

- by the committee or be referred to the same or a different committee or circulated/re-circulated for seeking further opinion.
- b. **Second Stage:** After the motion that the bill be taken into consideration is adopted, it gets into the second stage. This stage consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause that have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amendments become part of the Bill if they are accepted by a majority of members present and voting.
 - iv) **Third Reading** Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to its details other than those that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage. In passing an ordinary Bill, a simple majority of members present and voting is necessary.
 - v) **Bill in the other House:** After the Bill is passed by one House, it is sent to the other House to seek their concurrence. Here also it goes through the stages described above except the introduction stage. The other House can take either of the following courses:
 - a. It may reject the Bill altogether. In such a case provisions of Art 108(1) (a) as to a joint sitting may be applied by the President.
 - b. It may pass the Bill as it is or with amendments. If passed as it is, the bill goes to the President for his assent. However, in case of amendments, the Bill will be returned to the originating House. If the House which originated the Bill accepts the Bill as amended by the other House, it will be presented to the President for his assent (Art. 111). If however the originating House does not agree to the amendments made by the other House and the bill is sent again to the latter for its concurrence. If the latter house continues to insist on its amendments, there is a deadlock.
 - c. The latter house may take no action on the Bill i.e. keep it lying on its Table. In such a case if more than 6 months elapse from the date of receipt of the Bill, a deadlock is deemed to have taken place. While calculating such period of six months, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.
 - d. To resolve the deadlock, the President may summon a joint sitting to deliberate and vote on the bill, unless it has lapsed because of the dissolution of the Lok Sabha. The Joint Sitting is presided over by the Speaker of the Lok Sabha. At the joint sitting, the decision is taken by the majority of the total number of members of both houses present and voting.
 - vi) **President's Assent:** When a Bill has been passed by both Houses of Parliament either singly or at a joint sitting as provided in Art. 108, the Bill is presented to the President for his assent. If the President withholds his assent, there is an end to the Bill. If he gives his assent, the Bill becomes an Act from the date of his assent. Instead of either refusing assent or giving assent, the President may return the Bill for reconsideration of the Houses with a message requesting them to reconsider it. If, however, the Houses pass the Bill again with or without amendments and the Bill is presented to the President for his assent after such reconsideration, the President shall have no power to withhold his assent from the Bill.

8.2. Money Bills

Under article 110(1) of the Constitution, a Bill is deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:

- 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; 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.
- e) 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
- f) Any matter incidental to any of the matters specified in sub-clauses (a) to (f).

Student Notes:

A Bill is not deemed to be Money Bill by reason only that it provides for:

- i) The imposition of fines or other pecuniary penalties.
- ii) The demand or payment of fees for licenses or fees for services rendered.
- iii) The imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

A Money Bill can be introduced in the Lok Sabha only. It can only be introduced on the prior recommendation of the President. The Rajya Sabha cannot make any amendments to it or reject it, but can give its recommendations. Rajya Sabha has to return the Bill to the Lok Sabha in 14 days with or without recommendation. The Lok Sabha may or may not accept oots recommendations. If after 14 days, the bill is not returned to the Lok Sabha, it is deemed to have been passed both the houses at the expiration of 14 days. Hence, the power of the Rajya Sabha wrt Money Bills is not co-equal with the Lok Sabha as is the case with ordinary bills. It is merely consultative. There is no chance of any disagreement between the two houses in regard to Money Bills. President cannot return a Money Bill for reconsideration. Furthermore, the defeat of its motion to pass a money bill in the Lok Sabha leads to the resignation of the government.

Furthermore, Constitution Amendment Bills cannot be treated as Money Bill, even if all its provisions attract article 110(1). This is because such amendments are governed by article 368 which over-rides the provisions regarding Money Bills.

Certification of Money Bills

- i) The Constitution of India under Article 110(4) requires that every money bill has to be certified so by the Speaker of the Lok Sabha before its transmission to the Rajya Sabha. Hence, if any question arises whether a Bill is a Money Bill or not, the decision of Speaker is final. The Speaker is under no obligation to consult any one in coming to a decision or in giving his certificate that a Bill is a Money Bill.
- ii) The Speaker's certificate on a Money Bill once given is final and cannot be challenged.
- iii) A Money Bill cannot be referred to a Joint Committee of the Houses.

Categories of Money Bills

1. **Finance Bill:** Finance Bill is a secret bill introduced in Lok Sabha every year immediately after the presentation of the General Budget to give effect to the financial proposals of the Government of India for the following financial year. Finance Bills are treated as Money Bills since they substantially deal with amendments to various tax laws and other incidental matters.
2. **Appropriation Bill:** An Appropriation Bill is introduced in Lok Sabha immediately after adoption of the relevant demands for grants. Such Bills are categorised as Money Bills as they seek to authorise appropriation from the Consolidated Fund of India, of all moneys

required to meet the grants made by the House and the expenditure charged on the Consolidated Fund of India.

Student Notes:

8.3. Financial Bills

Commonly, any bill that relates to revenue or expenditure can be thought of as a Financial Bill. However, the term Financial Bill has been used in a technical sense in the Indian Constitution which makes it important to be understood clearly in relation to a money bill.

Only those Financial Bills can be money bills which bear the certificate of the Speaker of the Lok Sabha to that effect. Financial bills that do not receive the certificate of the Speaker can be of two types, as have been dealt with under Article 117 of the Indian Constitution:

1. **First Class [Financial Bills under Article 117 (1)]:** Bills that contain any of the matters specified in Article 110 but does not contain solely those matters.
2. **Second Class [Financial Bills under Article 117(3)]:** Any ordinary bill that contains provisions involving expenditure from the Consolidated Fund of India.

Comparison between Money Bills and Financial Bills

- i) While a Money Bill deals solely with matters specified in article 110(1) (a) to (g) of the Constitution or incidental matters, a Financial Bill does not exclusively deal with all or any of the matters specified in the said article that is to say it contains some other provisions also.
- ii) Financial Bills of the first class, like Money Bills, can be **introduced** only in Lok Sabha on the recommendation of the President. However, other restrictions in regard to Money Bills do not apply to this category of Bills. Financial Bill under article 117(1) of the Constitution can be referred to a Joint Committee of the Houses.
- iii) Financial Bills of the second class i.e. those under article 117 (3) of the Constitution can be introduced in either House of Parliament like any other ordinary Bill. However, recommendation of the President is essential for **consideration** of these Bills by either House and unless such recommendation is received, neither House can pass the Bill. However, the Bill may be introduced without President's recommendation, but in such a case its consideration cannot take place.

8.4. Constitution (Amendment) Bills

Article 368 of the Indian Constitution lays the procedure for the amendment of the Constitution. The Constitution does not provide for a separate Constituent Body to amend the constitution. This power has been vested in the Parliament itself. An amendment of the Constitution may be initiated in either House of the Parliament. This bill can be presented both by the Government or a Private Member. However, in case such a bill is brought by a Private Member, it has to be examined and recommended for introduction in the House by the Committee on Private Members' Bills and Resolutions.

In context of the procedure involving their amendment, there are three categories of articles in the Constitution:

- Articles amendable by a Simple Majority
- Articles that require special majority
- Articles that require Special Majority as well as ratification by legislatures of not less than half of the States of the Indian Union.

a. **Amendment by Simple Majority:** A bill that seeks to amend the following provisions of the Constitution require only simple majority and shall not be deemed to be a Constitution (Amendment) Bill under Article 368:

1. admission or establishment of new states, formation of new states and alteration of areas, boundaries or names of existing ones (Articles 2,3 & 4)

2. creation or abrogation of Legislative Councils in a State (article 169)
3. administration and control of Scheduled areas and Scheduled tribes (para 7 of the Fifth Schedule)
4. administration of Tribal areas in the states of Assam, Meghalaya and Mizoram (para 21 of the Sixth Schedule)

Student Notes:

A bill providing for the formation of new states and alteration of areas, boundaries or names of existing ones, can be introduced in either House of the Parliament only on the recommendation of the President. Before making such recommendation, the President shall refer the bill to the concerned states for their views within such period as specified by him. However, the President is not bound by the views of the states.

For the Parliament to pass a law providing for the creation or abolition of a Legislative Council in a State, the legislative assembly of the State has to pass a resolution to that effect by a majority of not less than two thirds of the members of the assembly present and voting. The Parliament however may approve or disapprove of such resolution or may not take any action on it.

b. Amendment by Special Majority: A bill that seeks to amend any part of the Constitution has to be passed by a special majority i.e. a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting. In the strictest sense, the special majority is required for voting at the third reading stage of the bill. However, exercising abundant caution, the requirement of special majority has been provided for all effective stages of the Bill in the Rules of the Houses.

c. Amendment by Special Majority and ratification by states: A bill seeking to amend the following provisions of the Constitution has to be passed by a special majority of both houses of the Parliament and has also to be ratified by the legislatures of not less than half of the states by passing resolutions to that effect, before it is presented to the President for assent:

1. the election of the President (Article 54 & 55),
2. the extent of the executive power of the Union and the States (Art 73 & 162),
3. the Supreme Court and the High Courts (Article 341, Chapter IV of Part V and Chapter V of Part VI of the Constitution),
4. representation of states in the Parliament, or
5. the procedure for amendment of the Constitution itself (Article 368)

There is no time limit prescribed by the Constitution within which the States must signify their ratification of a Constitution (Amendment) Bill.

9. Financial Legislation by the Parliament

9.1. Annual Financial Statement/Budget

As per Article 112 of the Constitution, at the beginning of each financial year, the President of India causes to be laid before both the Houses of the Parliament, a statement of the estimated receipts and expenditure of the Government of India for that year. This is known as the 'annual financial statement' or commonly known as the Budget for that financial year.

The Budget not only provides estimates but also presents an opportunity to the Government to review and explain its financial and economic policy and programmes to the Parliament. It is a money bill. The estimated expenditure shows separately in the Annual Financial Statement as:

1. Expenditure charged upon the Consolidated Fund of India
2. Expenditure to be made from the Consolidated Fund of India

The presentation of the Annual Financial Statement is followed by a general discussion in both the Houses of the Parliament. At this stage no motion is moved nor is the Budget put to vote. The role of the Rajya Sabha does not extend beyond this general discussion.

After this General discussion is over, estimates are then submitted in the form of demand for grants on particular heads and each particular head is then voted on in the House of People. While the estimates related to the expenditure charged upon the Consolidated Fund of India cannot be put to vote of the Parliament, each house can discuss any of these estimates. These include:

- Emoluments and allowances of President and expenditure of his/her office.
- Salary and allowance of Chairman, Vice Chairman of Upper house and Speaker, Deputy Speaker of Lower house.
- Salary, Allowances, Pensions of Judges of SC
- Pensions of judges of HC
- Salary, Allowances, Pensions of CAG.
- Salary, Allowances, Pensions of UPSC chairperson and its members
- Administrative expenses of the office of CAG, UPSC, and SC
- Debt charges for which Government of India is liable
- Sums required for enforcement of any judgment, decree etc.
- Other expenditure defined by an Act of Parliament to be charged on consolidated fund of India.

On the other hand, the estimates of the expenditure, other than those which are charged, are placed before the Lok Sabha in the form of 'demand for grants' to be voted on.

9.1.1. Cut Motions

Cut motions are part of the budgetary process which seeks to reduce the amounts for grants. They can be moved in the Lok Sabha only. Cut Motions can be divided into three categories:

1. **Disapproval of Policy Cut:** That the amount of the demand be reduced to Re.1/- representing disapproval of the policy underlying the demand. A member giving notice of such a motion shall indicate in precise terms the particulars of the policy which he proposes to discuss. The discussion should be confined to the specific point or points mentioned in the notice and it shall be open to members to advocate an alternative policy.
2. **Economy Cut:** The objective of the motion is to reduce the amount of die expenditure and the form of the motion is "The amount of the demand be reduced by Rupee... (a specified amount)". Such specified amount may be either a lump sum reduction in the demand or omission or reduction of an item in the demand.
3. **Token Cut:** The objective of the motion is to ventilate a specific grievance within the sphere of responsibility of the Government of India and its form is "The amount of the demand be reduced by Rupee 100" .

9.1.2. Appropriation Bill

As soon as the demand for grants have been voted by the House of People, a bill to provide for the appropriation out of the Consolidated Fund of India is introduced. This bill is called the Appropriation Bill. No money can be withdrawn from the Consolidated Fund of India except under an Appropriation Act.

This Bill provides for appropriation of money related to:

1. The grants so made by the House of the People; and
2. The expenditure charged on the Consolidated Fund of India

9.1.3. Finance Bill

Similarly, the taxing proposals of the budget are provided for in another bill called the Annual Finance Bill. The Finance Bill is taken up for consideration and passing after the Appropriation Bill is passed. However, certain provisions in the Bill relating to levy and collection of fresh duties or variations in the existing duties come into effect immediately on the expiry of the day

on which the Bill is introduced by virtue of a declaration under the Provisional Collection of Taxes Act.

Student Notes:

Each of these bills are then passed as a Money Bill and no amendment relating to varying the amount or altering its destination or varying the amount charged on the Consolidated Fund of India can be proposed. The Parliament has to pass the Finance Bill within 75 days of its introduction.

9.1.4. Vote on Account

As the whole process of Budget beginning with its presentation and ending with discussion and voting of demands for grants and passing of Appropriation Bill and Finance Bill generally goes beyond the current financial year, a provision has been made in the Constitution empowering the Lok Sabha to make any grant in advance through a vote on account to enable the Government to carry on until the voting of demands for grants and the passing of the Appropriation Bill and Finance Bill.

Normally, the vote on account is taken for two months for a sum equivalent to one sixth of the estimated expenditure for the entire year under various demands for grants. During an election year, the vote on account may be taken for a longer period say, 3 to 4 months if it is anticipated that the main demands and the Appropriation Bill will take longer than two months to be passed by the House.

As a convention vote on account is treated as a formal matter and passed by Lok Sabha without discussion.

Vote on account is passed by Lok Sabha after the general discussion on the Budget (General and Railway) is over and before the discussion on demands for grants is taken up.

9.1.5. Interim Budget

An outgoing government is required to present an interim budget if its tenure is about to come to an end due to impending General Elections. In such situations, the task of presenting a full Budget is left for the next government. A full Budget approves government spending for the full financial year. So for any reason, if the government of the day is not able to present in the Parliament a full budget before the end of the financial year, it requires Parliament's sanction for expenditures till the time a full Budget is presented.

An Interim Budget gives the complete financial statement, very similar to a full Budget, albeit for a period lesser than year. It is not the same as a 'Vote on Account'. While a 'Vote on Account' deals only with the expenditure side of the government's budget, an Interim Budget is a complete set of accounts, including both expenditure and receipts.

While the law does not debar the Union government from introducing tax changes, successive governments have avoided making any major changes in income tax laws during an Interim Budget.

9.2. Accounts of Government of India

The accounts of Government are maintained in three parts: -

- Consolidated Funds of India
- Contingency Funds of India
- Public Account

9.2.1. Consolidated Fund of India

All the revenues received by the Government by way of taxes and non-tax revenues are credited to the Consolidated Fund constituted under Article 266(1) of the Constitution of India. The inflow to this fund is by way of taxes like Income Tax, Central Excise, Customs and also non-

tax revenues, which arise to the government in connection with the conduct of its business. Loans raised by issue of treasury bills are also received in this fund. The government meets all its expenditure including loan repayments from this fund. No amount can be withdrawn from the fund without the authorization from the Parliament.

9.2.2. Public Account

The Public Account is constituted under Article 266 (2) of the Constitution. All other public moneys (other than those covered under Consolidated Fund of India) received by or on behalf of the Government of India are credited to the public account of India.

The transactions under Debt, Deposits and Advances in this part are those in respect of which Government incurs a liability to repay the money received or has a claim to recover the amounts paid. The receipts under Public Account do not constitute normal receipts of Government. Parliamentary authorization for payments from the Public Account is therefore not required. This fund can be operated by executive action only.

9.2.3. Contingency Fund of India

The Contingency Fund of India is set up in the nature of an imprest account under Article 267 (1) of the Constitution of India. The corpus of this fund is Rs. 500 crores. Advances from the fund are made for the purposes of meeting unforeseen expenditure by the President of India. The amount is resumed to the Fund to the full extent as soon as Parliament authorizes additional expenditure. The Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs holds the fund on behalf of the President of India.

9.3. Charged Expenditure

In order to preserve the independence of certain institutions, the constitution provides that some expenses are supposed to be charged on the consolidated funds of India. It means that though parliament is empowered to discuss these expenses, they do not constitute the votable part of the budget. Hence parliament doesn't exercise direct financial control over these institutions.

10. Procedure for removing deadlock between the two Houses

A deadlock is deemed to have taken place if:

- (i) The Bill is rejected by the other House.
- (ii) If the two Houses fail to agree upon the provisions of the Bill as introduced or upon the amendments that may have been proposed by either House.
- (iii) If more than six months have elapsed from the date of receipt of the Bill by the other House without the Bill being passed by it.

Such a situation does not arise in case of Money Bills, since the Lok Sabha has the final power of passing it. In case of a disagreement over a Money Bill, the Lok Sabha has the plenary power to override the wishes of the Rajya Sabha.

In case of a Constitution Amendment Bill, there is no provision of a joint sitting and it must be passed in both Houses separately.

With respect to all other Bills (including 'Financial Bills'), the machinery provided by the Constitution for resolving a deadlock is a joint sitting of the two Houses (Art. 108)

10.1. Joint Sitting

The President may notify to the Houses his intention to summon them for a joint sitting in case of a deadlock. Such a notification cannot be made by the President if the Bill has already lapsed due to the dissolution of the Lok Sabha. However, once the President has notified his intention

to hold a joint sitting, the subsequent dissolution of Lok Sabha cannot stand in the way of the joint sitting being held.

Student Notes:

The Speaker of Lok Sabha presides over a joint sitting of two Houses and the Deputy Speaker in his absence. If the Deputy Speaker is also absent, the Deputy Chairman of Rajya Sabha presides. If he is also absent, such other person as may be determined by the members present at the joint sitting, presides over the meeting. It is clear that the Chairman of Rajya Sabha does not preside over a joint sitting as he is not a member of either House of Parliament.

The quorum to constitute a joint sitting is $1/10^{\text{th}}$ of the total number of members of the two Houses. The joint sitting is governed by Rules of Procedure of Lok Sabha and not of Rajya Sabha. Normally, due to larger membership, the Lok Sabha succeeds in getting its demands fulfilled.

There are restrictions on amendments to the Bill, which may be proposed at the joint sitting:

- i) If, after its passage in one House, the Bill has been rejected or has not been returned by the other House, only such amendments may be proposed at the joint sitting, which are made necessary by the delay in the passage of the Bill.
- ii) Other amendments as are relevant to the matters pertaining to which the Houses have disagreed, may be proposed at the joint sitting.

Since 1950, the provision of a joint sitting has been invoked only four times for the following bills:

- i) Dowry Prohibition Bill, 1960
- ii) Banking Service Commission (Repeal) Bill, 1977
- iii) Prevention of Terrorism Bill, 2002
- iv) Women's Reservation Bill (2008)

Prelims questions

2013

1. What will follow if a Money Bill is substantially amended by the Rajya Sabha?
 - (a) The Lok Sabha may still proceed with the Bill, accepting or not accepting the recommendations of the Rajya Sabha
 - (b) The Lok Sabha cannot consider the Bill further
 - (c) The Lok Sabha may send the Bill to the Rajya Sabha for reconsideration
 - (d) The President may call a joint sitting for passing the Bill

Ans: (a)

2012

2. A deadlock between the Lok Sabha and the Rajya Sabha calls for a joint sitting of the Parliament during the passage of-

1. Ordinary Legislation
2. Money Bill
3. Constitution Amendment Bill

Select the correct answer using the codes given below:

- | | |
|------------------|------------------|
| (a) 1 only | (b) 2 and 3 only |
| (c) 1 and 3 only | (d) 1, 2 and 3 |

Ans: (c)

3. In the Parliament of India, the purpose of an adjournment motion is
 - (a) to allow a discussion on a definite matter of urgent public importance.
 - (b) to let opposition members collect information from the ministers.
 - (c) to allow a reduction of specific amount in demand for grant.
 - (d) to postpone the proceedings to check the inappropriate or violent behaviour on the part of some members.

Ans: (a)

4. What is the difference between “vote-on-account” and “interim budget”?

 1. The provision of a “vote-on-account” is used by a regular Government, while an “interim budget” is a provision used by a caretaker Government.
 2. A “vote-on-account” only deals with the expenditure in Government’s budget, while an “interims budget” includes both expenditure and receipts.

Which of the statements given above is/are correct?

Ans: (c)

5. When the annual Union Budget is not passed by the Lok Sabha,

 - (a) The Budget is modified and presented again
 - (b) The Budget is referred to the Rajya Sabha for suggestions
 - (c) The Union Finance Minister is asked to resign
 - (d) The Prime Minister submits the resignation of Council of Ministers

Ans: (d)

Ans: (c)

Ans: (c)

2004

8. With reference to Indian Parliament, which one of the following is not correct?

 - (a) The Appropriation Bill must be passed by both the Houses of Parliament before it can be enacted into law
 - (b) No money shall be withdrawn from the Consolidated Fund of India except under the appropriation made by the Appropriation Act
 - (c) Finance Bill is required for proposing new taxes but no another Bill/Act is required for making changes in the rates of taxes which are already under operation
 - (d) No Money Bill can be introduced except on the recommendation of the President

Ans: (c)

- 9.** Which one of the following statements is not correct?

 - (a) In Lok Sabha, a non-confidence motion has to set out the grounds on which it is based
 - (b) In the case of a no-confidence motion in Lok Sabha, no conditions of admissibility have been laid down in the Rules
 - (c) A motion of no-confidence once admitted, has to be taken up within ten days of the leave being granted
 - (d) Rajya Sabha is not empowered to entertain a motion of no-confidence.

Ans: (a)

- 10.** With reference to Indian Public Finance, consider the following statements:

 1. Disbursements from Public Accounts of India are subject to the Vote of Parliament.
 2. The Indian Constitution provides for the establishment of a Consolidated Fund, a Public Account and a Contingency Fund for each State.

3. Appropriation and disbursements under the Railway Budget are subject to the same form of parliamentary control as other appropriation and disbursements.

Which of the statements given above are correct?

Student Notes:

Ans: (b)

- 2003

- Consider the following statements:

 1. The joint sitting of the two houses of the Parliament in India is sanctioned under Article 108 of the Constitution.
 2. The first joint sitting of Lok Sabha and Rajya Sabha was held in the year 1961.
 3. The second joint sitting of the two Houses of Indian Parliament was held to pass the Banking Service Commission (Repeal) Bill

Which of these statements is correct?

Ans: (d)

All the options given in the Question are correct

- All the options given in the question are correct.

 - Article 108 – Joint sitting of both Houses in certain cases.
 - The First Joint sitting was held on 6 May, 1961, in which Dowry Prohibition Bill, 1960 was passed.
 - The Second Joint sitting was held to pass the Banking Service Commission (Repeal) Bill, 1977, on 16 May, 1978.

2002

- 12.** Which one of the following Bills must be passed by each House of the Indian Parliament separately, by special majority?

Ans: D

11. Rajya Sabha

11.1. Historical Evolution and rationale behind creation of the Second Chamber

The nomenclature ‘Council of States’ also known as Rajya Sabha, was announced on 23rd August, 1954. The origin of the second Chamber can be traced to the Montague-Chelmsford Report of 1918. The Government of India Act, 1919 provided for the creation of a ‘Council of State’ as a second chamber of the then legislature with a restricted franchise which actually came into existence in 1921. The Governor General was the ex-officio President of the then Council of State. The Government of India Act, 1935, hardly made any changes in its composition.

In independent India, the Central Legislature which was known as Constituent Assembly (Legislative) and later Provisional Parliament was unicameral till the first elections were held in 1952. It was decided to have a bicameral legislature for independent India primarily because a federal system was considered to be most feasible form of Government for such a vast and diverse country. It was considered that a single directly elected House would be inadequate to meet the challenges facing free India. Therefore, a second chamber known as the 'Council of States' was created. It was thought of as another Chamber, with smaller membership than the Lok Sabha. It was meant to be the federal chamber i.e., a House elected by the elected members of Assemblies of the States and Union Territories with a legislature alongside some nominated members.

11.2. Role of Rajya Sabha

Student Notes:

- i) **Revising Chamber:** Rajya Sabha has a special role to play as a revising Chamber. Though there have not been many revisions, yet there is always a possibility of revision as a result of second sober thought. In our parliamentary system, Rajya Sabha has the authority to discuss and reasonably delay legislation. As a Second Chamber, it has the mandate to secure a second sober look at hasty legislation.
- ii) **Federal Chamber:** Another significant role of the Rajya Sabha was guided by the need for giving representation to the states in the federal legislature. Rajya Sabha is a federal Chamber where the representatives of each state are elected by the elected members of the Legislative Assembly of the state. As a federal Chamber, it has been assigned some special powers, impacting federal interests. The Rajya Sabha being the representative forum of the States endeavors to remain ever concerned and sensitive to the aspirations of the states. In the process, it strengthens the country's federal fabric and promotes national integration.
- iii) **Deliberative Chamber:** The prime role of the Rajya Sabha as a deliberative Chamber has been reinforced by the provision of nomination to the Rajya Sabha of 12 Members noted for their contribution to literature, science, art and social service. The high traditions of debates and discussions in the House have guided the Members of Rajya Sabha not only to hold informed debates on public issues but also to endeavor to make proceedings relevant to public welfare.
- iv) **Chamber of Continuity:** Rajya Sabha is a permanent Chamber, not subject to dissolution and one-third of its Members retire every second year. The hallmark of the Rajya Sabha is the principle of continuity as a perpetual House and as a continuous institution in the parliamentary framework. A scheme of having a Chamber of legislative continuity was needed in a parliamentary system to meet the legislative and constitutional contingency at a time when the popularly elected House may be under dissolution or in the process of reconstitution after election. A Bill which is pending in the Rajya Sabha and has not been passed by the Lok Sabha, will not lapse on the dissolution of the Lok Sabha. Thus, the continuity of the Rajya Sabha ensures a significant measure of legislative continuity.
- v) **Chamber not concerned with Government formation:** The Government of the day is collectively responsible to the House of People, the directly elected House. Rajya Sabha being an indirectly elected House has no role in the making or unmaking of the Government. Since the Governments are not formed, nor do they fall on the basis of the numerical strength of the Rajya Sabha, this Chamber is relatively free from the compulsions of competitive party politics. While it is often argued that since Rajya Sabha cannot bring down a Government, its role is limited in a political perspective. Nevertheless, the Rajya Sabha has played a significant role in contributing to the national discourse in full measure.
- vi) **Effective Smaller Chamber:** Rajya Sabha is comparatively a smaller Chamber than the Lok Sabha given its maximum strength is lesser than the Lok Sabha. Being a smaller House, it affords opportunities for close camaraderie and greater consensus-building among the Members. Spirit of accommodation and adjustment among the Members, across party lines, contribute to the effectiveness of this House. It also helps in better time management of the House, besides discussions on wide ranging issues.
- vii) **Chamber Securing Executive Accountability:** Rajya Sabha, as a constituent part of Parliament, has been securing executive accountability through its various committees. At present, there are 24 Department-related Parliamentary Standing Committees in the Parliament, out of which eight are functioning under the direction and control of the Chairman, Rajya Sabha. The constructive criticism and considered recommendations made by such Committees have been found to be useful by the Ministries and Departments concerned to tone up their functioning and to formulate realistic budgets, plans and

programs for the welfare of the people. These Committees have considered some of the important legislations and presented reports thereon to both Houses of Parliament.

Student Notes:

- viii) **Chamber of Ventilating Public Grievances:** Rajya Sabha reflects the problems faced by different states. Its Members, being the representatives of states, articulate the concerns of respective states and their people. Through procedural devices such as Questions, Calling Attention, Special Mentions, Short Duration Discussion, Half-an-Hour Discussion, Motions, Resolutions, etc., it has raised issues of public importance, focused attention on matters affecting policies of the Government and provided a forum for ventilation of public grievances. Through these devices, it has managed not only to elicit information but also put pressure on the Government to reorient its policies for serving larger public interests.

11.3. Comparison of Lok Sabha with Rajya Sabha

11.3.1. Equal Powers in relation to Lok Sabha

There are some important matters in respect of which the Constitution has placed both Houses of Parliament on an equal footing as may be seen from the following list:

- a) Equal right with the Lok Sabha in the election and impeachment of the President (Arts. 54 and 61).
- b) Equal right with the Lok Sabha in the election and removal of the Vice-President (Art. 66). However Rajya Sabha alone can initiate the removal of the Vice-President. He is removed by a resolution passed by the Rajya Sabha by a special majority and agreed to by the Lok Sabha by a simple majority
- c) Equal right with the Lok Sabha to make law defining parliamentary privileges and also to punish for contempt (Art. 105).
- d) Equal right with the Lok Sabha to approve the Proclamation of Emergency (issued under Art. 352), Proclamations regarding failure of the Constitutional machinery in States (issued under Art. 356) and even a sole right in certain circumstances.
- e) Enlargement of the jurisdiction of the Supreme Court and the UPSC.
- f) Approval of ordinances issued by the President.
- g) Equal right with the Lok Sabha to receive reports and papers from various statutory authorities, namely:
 - a. Annual Financial Statement [Art. 112(1)];
 - b. Audit Reports from the Comptroller and Auditor General of India [Art. 151(1)];
 - c. Reports of the Union Public Service Commission. [Art. 323(1)];
 - d. Reports of the Special Officer for the Scheduled Castes and Scheduled Tribes [Art. 338(2)];
 - e. Report of the Commission to investigate the conditions of the Backward Classes [Art. 340(3)];
 - f. Report of the Special Officer for Linguistic Minorities [Art. 350 B(2)].

11.3.2. Unequal status with Lok Sabha

In comparison with certain matters where Rajya Sabha enjoys coequal powers with Lok Sabha, there are matters where it does not enjoy the same status as the lower house. For instance:

- a) A Money Bill can be introduced only in the Lok Sabha and not in Rajya Sabha.
- b) Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days with or without recommendations.
- c) The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both cases, the Money Bill is deemed to have been passed by the two Houses.
- d) A Financial Bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both have equal powers.
- e) The final power to decide whether a particular Bill is a Money Bill is vested in the Speaker of the Lok Sabha.

- f) The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
- g) The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both Houses is less than that of opposition parties.
- h) Rajya Sabha can only discuss the budget but cannot vote on the demands for grants.
- i) A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha
- j) The Rajya Sabha cannot remove the Council of Ministers by passing a no-confidence motion. This is because the Council of Ministers is collectively responsible only to the Lok Sabha.

11.3.3. Special Powers of Rajya Sabha

Apart from the coordinate powers it enjoys with the Lok Sabha, the Constitution vests some special powers in the Rajya Sabha to exercise its federal mandate as it represents States and Union territories in Parliament. Such special powers lend credence to its status as an Upper House vis-à-vis the Lok Sabha.

- a) **Legislation on State matters:** As a federal chamber, it can initiate Central intervention in the State Legislative field. Article 249 of the Constitution provides that the Rajya Sabha may pass resolution, by a majority of not less than two-thirds of the Members present and voting, to the effect that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List. If such a resolution is adopted, Parliament will be authorized, to make laws on the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further.
- b) **Creation of All India Services:** Another exclusive power of the Rajya Sabha is contained in Article 312 of the Constitution wherein if the Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it's necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament will have the power to create by law such services.
- c) **Approval of Proclamation:** Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under articles 352, 356 and 360.

Prelims questions

2012

1. Which of the following special powers have been conferred on the Rajya Sabha by the Constitution of India?
 - (a) To change the existing territory of a State and to change the name of a State.
 - (b) To pass a resolution empowering the Parliament to make laws in the State List and to create one or more All India Services.
 - (c) To amend the election procedure of the President and to determine the pension of the President after his/her retirement
 - (d) To determine the functions of the Election Commission and determine the number of Election Commissioner

Ans: (b)

12. Parliamentary Committees

Student Notes:

The Parliament cannot give close attention to all the legislative and other matters before it. This is owing to the varied, complex and voluminous nature of the work. Hence, part of its work is transacted in Committees of the House, known as Parliamentary Committees. Parliamentary Committee means a Committee which

- i) Is appointed or elected by the House or nominated by the Speaker/Chairman
- ii) Works under the direction of Speaker/Chairman
- iii) Presents its report to the House or to the Speaker/Chairman
- iv) Has a secretariat provided by the Lok Sabha/Rajya Sabha Secretariat

Both Houses of Parliament have a similar committee structure, with a few exceptions. The appointment, terms of office, functions and procedure of conducting business are regulated as per rules made by the two Houses under Article 118(1) of the Constitution.

By their nature, Parliamentary Committees are of two kinds:

- **Standing Committees:** Standing Committees are permanent and regular committees, which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business. The work of these Committees is of continuous nature. Among the Standing Committees, the three Financial Committees i.e. Committees on Estimates, Public Accounts and Public Undertakings keep a tight eye over Government expenditure and performance. While members of the Rajya Sabha are associated with Committees on Public Accounts and Public Undertakings, the members of the Committee on Estimates are drawn entirely from the Lok Sabha. Besides the three Financial Committees, there are 24 Department Related Standing Committees (DRSCs).
- **Ad hoc Committees:** These are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. Ad hoc committees can be further divided into two categories:
 - Committees which are constituted from time to time, by either of the two Houses on a motion adopted in that behalf or by Speaker/Chairman to inquire into and report on specific subjects. E.g., Committees on the Conduct of certain Members during President's Address, Committee on Members of Parliament Local Area Development Scheme etc.
 - Select or Joint Committees on Bills which are appointed to consider and report on a particular Bill. These Committees are distinguishable from the other ad hoc committees to the extent that they are concerned with Bills and the procedure to be followed by them as laid down in the Rules of Procedure and Directions by the Speaker/Chairman. Joint Parliamentary Committees are set up by a motion passed in one House and agreed to by the other House.

12.1. Important Parliamentary Committees

12.1.1. Public Accounts Committee

This Committee consists of 15 members elected by the Lok Sabha and 7 members of the Rajya Sabha are associated with it. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The main duty of the Committee is to ascertain whether the money granted by Parliament has been spent by the Government "within the scope of the Demand". The Appropriation and Finance Accounts of the Government of India and the Audit Reports presented by the Comptroller and Auditor General mainly form the basis for the examination of the Committee. Cases involving losses, nugatory expenditure and financial irregularities come in for severe criticism by the Committee. The Committee is not concerned with questions of policy. It is concerned only with the execution of the policy laid down by Parliament and its results.

12.1.2. Estimates Committee

Student Notes:

This Committee consists of 30 members who are elected by the Lok Sabha every year from amongst its members. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The main function of the Committee on Estimates is to report what economies, improvements in organization, efficiency, or administrative reform, consistent with the policy underlying the estimates may be effected and to suggest alternative policies in order to bring about efficiency and economy in administration. From time to time the Committee selects such of the estimates pertaining to a Ministry or a group of Ministries or the statutory and other Government bodies as may seem fit to the Committee. It examines whether the money is well laid out within the limits of the policy implied in the estimates and suggests the form in which the estimates shall be presented to Parliament. The Committee also examines matters of special interests which may arise or come to light in the course of its work or which are specifically referred to it by the House or the Speaker.

12.1.3. Committee on Public Undertakings

The Committee on Public Undertakings consists of 15 members elected by the Lok Sabha and 7 members of Rajya Sabha are associated with it. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The functions of the Committee on Public Undertakings are:

1. To examine the reports and accounts of Public Undertakings.
2. To examine the reports, if any, of the Comptroller and Auditor General on the Public Undertakings.
3. To examine in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.
4. Such other functions vested in the Committee on Public Accounts and the Committee on Estimates in relation to the Public Undertakings as are not covered by clauses (1), (2) and (3) above and as may be allotted to the Committee by the Speaker from time to time. The Committee does not, however, examine matters of major Government policy and matters of day-to-day administration of the Undertakings.

12.1.4. Business Advisory Committee

It regulates the program and timetable of the House. It allocates time for the transaction of legislative and other business brought before the House by the government. It recommends the time that should be allocated for the discussion of the stage or stages of such Government Bills and other business as the Chairman in consultation with the Leader of the House may direct for being referred to the Committee. The Committee may also indicate in the proposed time-table the different hours at which the various stages of the Bill or other business are to be completed. All proposals for late sittings of the House, dispensing with the Question Hour or lunch hour, extension of sittings of the House beyond the normal hours of adjournment and fixing additional sittings/cancellation of sittings are placed before the Committee for its recommendation. The Lok Sabha committee consists of 15 members including the Speaker as its chairman. In the Rajya Sabha, it has 11 members with the Chairman as its ex-officio chairman.

12.1.5. Departmentally Related Standing Committees

A full-fledged system of 17 Department Related Standing Committees came into being in April 1993. In 2004, the number of DRSC's was raised to 24. These Committees cover under their jurisdiction all the Ministries/Departments of the Government of India. These Committees are as under:

1. Committee on Chemicals and Fertilizers
2. Committee on Coal and Steel

3. Committee on Health and Family Welfare
4. Committee on Information Technology
5. Committee on Personnel, Public Grievances, Law and Justice
6. Committee on Social Justice and Empowerment
7. Committee on Commerce
8. Committee on Home Affairs
9. Committee on Human Resource Development
10. Committee on Industry
11. Committee on Science & Technology, Environment & Forests
12. Committee on Transport, Culture and Tourism
13. Committee on Agriculture
14. Committee on Defence
15. Committee on Energy
16. Committee on External Affairs
17. Committee on Finance
18. Committee on Food, Civil Supplies and Public Distribution
19. Committee on Labor
20. Committee on Petroleum & Natural Gas
21. Committee on Railways
22. Committee on Rural Development
23. Committee on Urban Development
24. Committee on Water Resources

Student Notes:

Constitution: Till 13th Lok Sabha, each of these Standing Committees used to consist of 45 members-30 nominated by the Speaker from amongst the members of Lok Sabha and 15 members nominated by the Chairman from amongst the members of Rajya Sabha. But with restructuring of DRSCs in July, 2004 each DRSC now consists of 31 members-21 from Lok Sabha and 10 from Rajya Sabha. A Minister is not eligible to be nominated to these Committees.

Term of Office: The term of members of these Committees is one year.

Functions: With reference to the Ministries/Departments under their purview, the functions of these committees are:

- i) Consideration of Demands for Grants.
- ii) Examination of Bills referred to by the Chairman, Rajya Sabha or the Speaker, Lok Sabha as the case may be.
- iii) Consideration of Annual Reports.
- iv) Consideration of national basic long-term policy documents presented to the House and referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be.

These Committees do not consider matters of day-to-day administration of the concerned Ministries/Departments. With the emphasis of their functioning to concentrate on long-term plans, policies and the philosophies guiding the working of the Executive, these Committees are in a very privileged position to provide necessary direction, guidance and inputs for broad policy formulations and in achievement of the long-term national perspective by the Executive.

Importance of Parliamentary Committees

- The main purpose behind setting up these committees is to ensure the accountability of Government to Parliament through more detailed consideration of measures in these Committees.
- These Committees have had an important impact on the general toning up of debates and efficiency of functioning of Parliamentary system.

- They offer an opportunity to the members of the House to have glimpse into the working of Governments and understand the practical problems and constraints.
- Committees help with this by providing a forum where Members can engage with domain experts and government officials during the course of their study. For example, the Committee on Health and Family Welfare studied the Surrogacy (Regulation) Bill, 2016 which prohibits commercial surrogacy, but allows altruistic surrogacy. This helps them gain expertise and specialisation about the subjects dealt with by the Committees, which in turn is bound to result in elevating the standard of debate on the floor of the House.
- Committees also provide a forum for building consensus across political parties. The proceedings of the House during sessions are televised, and MPs are likely to stick to their party positions on most matters. Committees have closed door meetings, which allows them to freely question and discuss issues and arrive at a consensus.
- Parliamentary committees investigate issues and bills proposed so that the Parliament can be well informed before making a decision of national importance.
- It increases the ability of Parliament to scrutinize government policies and make it accountable
- The committees can make recommendations and amendments to the bill. These are not binding on the Parliament.
- In the past, we have seen that scrutiny by committees has helped resolve significant issues in Bills. For instance, the Prevention of Corruption Amendment Bill which has been pending in the Rajya Sabha since 2013. The Bill has been examined by two parliamentary committees and has gone through a number of iterations. This has resulted in significant issues in the Bill getting addressed.

Student Notes:

Concerns related to their functioning

While Committees have substantially impacted Parliament's efficacy in discharging its roles, there is still scope for strengthening the Committee system. The rules do not require all Bills to be examined by a Committee. This leads to some Bills being passed without the advantage of a Committee scrutinising its technical details. Recently, there has been a declining trend in the percentage of Bills being referred to a Committee. In the 16th Lok Sabha, DRSCs examined 41 Bills, 331 Demands for Grants, 197 issues, and published 503 Action Taken Reports. In the 15th Lok Sabha, 71% of the Bills introduced were referred to Committees for examination, as compared to 27% in the 16th Lok Sabha. So far in the 17th Lok Sabha no Bill has been referred to a Committee yet. This raises concern over the diminishing importance of parliamentary committees and whether proper deliberations are taking place before the passage of various bills.

Prelims questions

2007

1. Consider the following statements:

1. The Chairman of the Committee on Public Accounts is appointed by the Speaker of the Lok Sabha.
2. The Committee on Public Accounts comprises Members of Lok Sabha, Members of Rajya Sabha and a few eminent persons of industry and trade.

Which of the statements given above is/are correct?

- | | |
|------------------|---------------------|
| (a) 1 only | (b) 2 only |
| (c) Both 1 and 2 | (d) Neither 1 nor 2 |

Ans: (a)

2013

2. Consider the following statements-

The Parliamentary Committee on Public Accounts.

1. Consists of not more than 25 Members of the Lok Sabha.

2. Scrutinizes appropriation and finance accounts of the Government.
 3. Examines the report of the Comptroller and Auditor General of India.
- Which of the statements given above is/are correct?
- (a) 1 only
 - (b) 2 and 3 only
 - (c) 3 only
 - (d) 1, 2 and 3

Ans: (d)

Student Notes:

13. Parliamentary Privileges

Parliamentary privileges are the rights and immunities provided by the Constitution to both Houses collectively and their members individually, without which they cannot discharge their functions. Both the Houses of Parliament as well as of State Legislature have similar privileges under the Constitution. These privileges protect the freedom of speech of legislators and insulate them against litigation over matters that occur in these houses. Without these privileges the house can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in discharge of their duties.

Arts. 105 and 194 of our Constitution deal only with two matters, namely, freedom of speech and right of publication.

After the 44th Amendment of 1978, the position with regards to privileges relating to other matters is as follows:

- i) The privileges of MPs were to be same as those of members of the House of Commons (as they existed at the commencement of the Constitution), until out Parliament itself takes up legislation relating to privileges.
- ii) Since no such legislation is made by the Parliament, the privileges are same as in House of Commons subject to such exceptions, which are necessary due to difference in constitutional setup. Reference to House of Commons was omitted in 1978.

In an earlier case, the Supreme Court held that if there was any conflict between the existing privileges of Parliament and the Fundamental rights of a citizen, the former shall prevail. For instance, if the House of a Legislature expunges a portion of its debates from its proceedings, or otherwise prohibits its publication, anybody who publishes such prohibited debate will be guilty of contempt of Parliament and punishable by the House and Fundamental Right of freedom of expression [Art. 19(1)(a)] will be no defence. However, in a later case, **the Supreme Court has held that though the existing privileges would not be fettered by Art 19(1)(a), they must be read subject to Arts. 20-22 and 32.**

Furthermore, it stated that immunity or protection against criminal prosecution to the members is available only in regard to their official activities and not for acts done in their personal capacity.

Parliamentary privileges can be classified into two broad categories:

13.1. Individual Privileges

These are the privileges enjoyed by the members individually. These are as follows:

- a. **Freedom from arrest:** The members cannot be arrested during a session of Parliament or a meeting of a committee and 40 days before the beginning and 40 days after the end of a session. This immunity is however confined to arrest in civil cases and does not extend to arrest in a criminal case or under the law of Preventive Detention.
- b. **Freedom of Attendance as Witness:** In accordance with the English practice, a member cannot be summoned without the leave of the House to give evidence as a witness while the Parliament is in the session.
- c. **Freedom of Speech:** A Member of Parliament cannot be made liable in any court of law in respect of anything said in Parliament or any committee thereof. This freedom is however

subject to the rules framed by the House under its powers to regulate its internal procedure. Further the Constitution also imposes another restriction, namely, that no discussion shall take place in the Parliament with respect to conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties (except when a motion for removal of the Judge is under consideration).

13.2. Collective Privileges

The collective privileges of the House are:

- a. The right to publish debates and proceedings and the right to restrain publication by others. The 44th Amendment Act, 1978 restored the freedom of press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in case of a secret sitting.
- b. The right to exclude others from its proceedings. Under the Rules of Procedure, the Speaker and the Chairman have the right to order the withdrawal of strangers from any part of the House.
- c. The right to regulate the internal affairs of the House and to decide matters arising within its walls. What is said or done within the walls of the Parliament cannot be inquired into in a Court of Law
- d. The right to punish members and outsiders for breach of its privileges.
- e. No person can be arrested, and no legal process served within the precincts of the House without the permission of the presiding officer.

13.3. Breach of Privilege and Contempt of the House

When any of the privileges either of the members individually or of the House in its collective capacity are disregarded or attacked by any individual or authority, the offence is called a 'breach of privilege'.

Among other things, any action 'casting reflections' on MPs, parliament or its committees; could be considered breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.

Contempt of the House may be defined generally as "any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officers of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results."

While all breaches of privilege constitute contempt of the House, a person may be guilty of a contempt of the House even though he does not violate any of the privilege of the House, e.g. when he disobeys an order to attend a committee or publishes reflections on the character or conduct of a member in his capacity as a member.

There have been 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 visitors' gallery.

Committee on Privileges: This is a standing committee constituted in each house of the Parliament/state legislature. This Committee consists of 15 members in Lok Sabha (LS) and 10 members in Rajya Sabha (RS) to be nominated by the Speaker in LS and Chairman in RS, respectively.

Its function is to examine every question involving breach of privilege of the House or of the members of any Committee thereof referred to it by the House or by the Speaker. It determines with reference to the facts of each case whether a breach of privilege is involved and makes suitable recommendations in its report.

13.4. Punishment in case of breach of privilege or contempt of the House

Student Notes:

The house can ensure attendance of the offending person. The punishment may take the form of *admonition, reprimand or imprisonment*. For instance, in 2008, an editor of an Urdu weekly referred to the deputy chairman of Rajya Sabha as a “coward” attributing motives to a decision taken by him. The privileges committee held the editor guilty of breach of privilege.

14. Sovereignty of Parliament

The doctrine of sovereignty of Parliament is associated with the British Parliament. **Parliamentary sovereignty** (also called **parliamentary supremacy** or **legislative supremacy**) is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute sovereignty, and is supreme over all other government institutions, including executive or judicial bodies. There are no ‘legal’ restrictions on the authority and jurisdiction of British Parliament. The Indian Parliament, on the other hand cannot be regarded as a sovereign body in the similar sense as there are ‘legal’ restrictions on its authority and jurisdiction. The factors that limit the sovereignty of Indian Parliament are:

- i) **Written Nature of the Constitution:** The Constitution is the fundamental law of the land in our country. The parliament has to operate within the prescribed limits of the Constitution.
- ii) **Federal System of Government:** India has a federal system of government with a constitutional division of powers between the Union and the States. Both have to operate within the spheres allotted to them. Hence, the law-making authority of the Parliament gets confined to the subjects enumerated in the Union List and Concurrent List and does not extend to the subjects enumerated in the State List (except in certain exceptional circumstances).
- iii) **System of Judicial Review:** The adoption of an independent judiciary and the system of judicial review has also restricted the supremacy of the Parliament. Both the Supreme Court and the High Courts can declare the laws enacted by Parliament as void and *ultra vires*, if they contravene any provision of the Constitution.
- iv) **Fundamental Rights:** The authority of Parliament is also restricted by the incorporation of a code of justiciable Fundamental Rights under Part III of the Constitution. Article 13 prohibits the State from making a law that either takes away totally or abrogates in part a fundamental right. Hence, a parliamentary law that contravenes the fundamental rights shall be void.

15. Functions, Role and Issues concerning Parliament

Our constitution has adopted a Parliamentary System of Government. Under such a system there is a curious mixture of the legislative and executive organs of the state. While discussing the functions of Parliament this aspect should always be borne in mind. To begin with the Parliament provides the Council of Ministers to run the administration of the State and holds it responsible. The membership, of the Council of Ministers is drawn from the two chambers of the Parliament.

15.1. Functions and Roles of the Parliament

- i) **Controlling the Executive:** A very significant function of Parliament is to exercise its control on the Council of Ministers by way of holding it responsible for its acts of omissions and commissions. Article 75(3) expressly states that the Council of Minister remains in office, so long as it enjoys the confidence of the Lok Sabha. The Parliament exercises the control by asking question to the ministers through its members, by raising adjournment motions, cut motions, censure motions or debates. More importantly the Lok Sabha can pass a vote of no confidence against the Council of Ministers, which compels it to resign collectively.

- Thus the parliament holds the ministers responsible individually and collectively. This critical function of the Parliament ensures a responsive and responsible government.
- ii) **Law Making:** Law making is the primary function of any legislature. The Parliament of India makes law on all matter included in the Union list and concurrent list (of course the state legislatures share with the parliament the power to make law from the concurrent list with its prior permission.) However under certain special circumstances the Parliament can make law for the states also. The special circumstances are
- Promulgation of Emergency.
 - A resolution passed by Rajya Sabha with special majority asking to make law for the states in the national interest, which can remain valid for one year.
 - A resolution by two or three states urging upon the Parliament to make law for them on certain items of the State list.
 - If there is any international treaty or agreement is to be executed.
 - When President's Rule is in operation in a State. An ordinary bill is initiated in either House of Parliament.
- iii) **Controlling the Finance:** The Parliament, particularly, the Lok Sabha exercises substantial functions in the domain of finance. The legislature of any responsible system of Government has to ensure that public funds are raised and spent with its consent and control. The Constitution of India has armed the union Parliament more particularly the Lok Sabha to exercise greater control over the National finance:
- The executive or the Government of the nation has no authority to spend any money on its own without the approval of the Parliament.
 - Every financial year, the budget prepared by the Finance Minister is presented in the Lok Sabha for its approval.
 - Any proposal for levying new taxes or any proposal for expenditure needs the sanction of the Parliament.
 - There are also two very important Committee of the Parliament known as Public Accounts Committee and the Estimates Committee, and Comptroller and Auditor General, a Constitutional authority appointed by the President who examines the legality of expenditure and places a report for discussion in the Parliament.
- However it may be noted that Lok Sabha enjoys the exclusive power to control the national finances. The Rajya Sabha has no role to play in such a field.
- iv) **Deliberations:** As an organ of information the Parliament has a formidable role to play. All the important administrative policies are discussed on the floors of the Parliament. So the Cabinets not only gets the advice of the Parliament and learns about its lapses, but the nation as a whole is enlightened about serious matters of public importance. This undoubtedly contributes to the growth of political consciousness on the part of the people.
- v) **Constituent Functions:** Parliament is the only body, under the constitution, to initiate any proposal for amendment of the constitution. A proposal for amendment can be initiated in either House of Parliament. The bulk of such proposals are approved finally when passed by both the chambers with special majority of two-thirds of its members. However some provisions require the approval of at least half of the states after they are passed by the Parliament with required majority.
- vi) **Electoral Functions:** The Parliament has some electoral functions to perform. It takes part in the election of the President and the Vice-President of India. It also elects various members to its committees, and the presiding officers and Deputy presiding officers.
- vii) **Judicial Functions:** The judicial functions of the Parliament are no less significant. It has the power to impeach the President, the Vice-President, the judges of the Supreme Court and the High Court, the Chairman and members of the Public Service Commissions' of the Union and the States as well, the Comptroller and Auditor General. It can also punish its members and officials for its contempt. This power is not subject to review of the court.

15.2. Issues concerning Indian Parliament

Student Notes:

- **Reduction in the number of sittings:** The 16th Lok Sabha worked for a total number of 1,615 hours, 20% more than the 15th Lok Sabha. However, this is 40% lower than the average of all full term Lok Sabhas (2,689 hours). Furthermore, there has been a general decline in the number of sitting days. The 16th Lok Sabha sat for 331 days in comparison with an average of 468 days for previous full term Lok Sabhas.
- **Discipline and decorum:** There have been increased instances of interruptions and disruptions leading sometimes even to adjournment of the proceedings of the House. This, not only, results in the wastage of time of the House but also affects adversely the very purpose of Parliament. The 16th Lok Sabha lost 16% of its scheduled time to disruptions, while in the same period, the Rajya Sabha lost 36% of its scheduled time.
- **Declining quality of parliamentary debates:** Parliamentary debates, which once focussed on national and critical issues, are now more about local problems, viewed from a parochial angle.
- **Low representation of women:** Although, women's representation has steadily increased in the Lok Sabha, only 5% of the House in the first-ever election to 14% in the 17th Lok Sabha, this is still inadequate when compared to democracies like U.S. that has 32% and Bangladesh with 21% women members. Of the 543 constituencies in 2019, about half (48.4%) have never voted a woman MP since 1962.
- **Inadequate Discussion:** Bills are being passed with no/minimum discussion and by voice vote amidst pandemonium in the House. In the 16th Lok Sabha, 32% of the Bills were discussed for more than three hours vis-a-vis previous two Lok Sabhas (22% and 14% in the 15th and 14th Lok Sabha respectively). It must be highlighted that the bills passed within 30 minutes have decreased significantly from 26% in the 15th Lok Sabha to 6% in the 16th Lok Sabha.
- **Reduced Scrutiny by Parliamentary Committees:** Although more Bills have been discussed for longer, this Lok Sabha has referred a significantly lower proportion of Bills to Committees for scrutiny. In the 16th Lok Sabha, 25% of the Bills introduced were referred to Committees, much lower than 71% and 60% in the 15th and 14th Lok Sabha respectively.
- **Legislation through Ordinances:** The Constitution confers upon the President the power to promulgate an Ordinance at a time when both Houses of the Parliament are not in Session and on being satisfied that circumstances exist rendering it necessary for him to take immediate action. However, there has been an over issuance of frequent and large number of Ordinances even when there exist no urgency or exceptional circumstances.
- **Codifying Parliamentary Privileges:** Parliamentary privileges have not been codified leading to uncertainty and anxiety over their misuse.

15.3. Implications of poor functioning of Parliament

- **Lack of accountability of the government:** If the parliament doesn't function properly, it can not hold the government accountable for its actions.
- **Low productivity:** Disruptions and reduced number of sittings lead to lesser workforce productivity of both Houses. For instance, productivity for Lok Sabha in the 2016 winter session was 14%, while that of the Rajya Sabha was 20%.
- **Cost to the Public Exchequer:** Certain legislations when delayed lead to high cost to public exchequer and also bear a huge cost to society. E.g. It is estimated that the delay in passing the GST Bill cost the nation 4% of GDP.
- **Legislative Vacuum:** Delay in policy making creates a legislative gap which is then filled with other bodies in a direct assault on the doctrine of Separation of Powers.
- **Declining faith in democratic process:** Parliament as an institution becomes less relevant for national policy making.

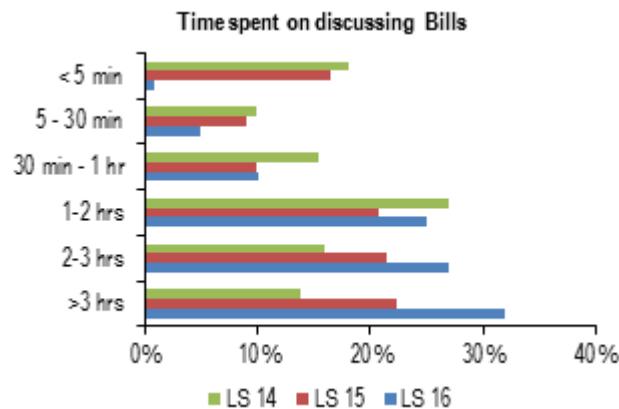
15.4. Suggested Parliamentary Reforms

Student Notes:

1. **Nodal Standing Committee on Economy:** The National Commission to Review the Working of the Constitution (NCRWC) has recommended establishing a Nodal Standing Committee on Economy to oversee major issues of fiscal, monetary, financial, and industrial and trade policies in an integrated manner. It suggested that internal groups of the Committee would evaluate performance against physical targets and draft reports, which would together be presented as an annual report to Parliament, by the Committee.
2. **Building a better image of Parliament:** It is necessary to establish a new rapport between the people and the Parliament. Parliament must have access to public opinion and public must have access to Parliament. If corruption is suspected inside the portals of legislatures, the press and the public must be free to question it and expose it without being threatened under the law of parliamentary privileges.
3. **Improving the quality of Members:** It is the primary duty of every Parliamentarian to maintain and project a good image of Parliament by his conduct both inside and outside the House. Every member must be imbued with a sense of purpose and responsibility. Members of important parliamentary committees need to lay down a strict code of conduct for themselves.
4. **Reducing expenditure:** There is a need to drastically slash parliamentary spending under various heads. Strictest self-control is necessary because parliamentary budget, by convention, is not questioned or debated. A strict limit needs to be placed on the number of Ministers and equivalent posts both at the Union level and in the States.
5. **Improving information supply:** Members of the Parliament must remain up to date with the latest information in regard to developments in all areas of parliamentary concern. The Parliament must build its own independent national information reservoir with a network of feeding and retrieval points. Some of the modern tools and techniques like briefing by experts, audio-visual aids, practice oriented studies etc can be used.
6. **Planning Legislation and improving its Quality:** Legislation in the Indian Parliament has often been criticized for hasty drafting and for being rushed through Parliament in an ad hoc and haphazard manner. There is need for a dynamic approach to legislative engineering and systematic programming of laws. This can be done by streamlining the functions of the Parliamentary and Legal Affairs Committee, making greater use of the Law Commission etc.
7. **Setting up a Constitution Committee:** While executive power of the Union is co-extensive with its legislative power, the constituent power under the Constitution belongs exclusively to Parliament. The responsibility of Parliament therefore becomes much greater in the case of Constitution (Amendment) Bills. The proposed involvement of Parliament and scrutiny can be achieved through a novel device in form of a Constitution Committee of Parliament.
8. **Departmental Committees and Improving Accountability:** These Committees strengthen the Government by providing valuable insights into its own working, providing sharper and more effective surveillance tools and restoring the balance between Parliament's legislative and deliberative functions and its role as a representational body. They also save valuable parliamentary time to the advantage both of Parliament and the Government. However, if the Subject/Ministry based Standing Committees have to have a real meaning and fulfill the purposes for which they were conceived and not to become merely part of a spoils system and distribution of perks and benefits.
9. **Codifying Parliamentary Privileges:** These privileges should not be allowed to be used in such a manner as to nullify themselves and become rights against the people. The specific parliamentary privileges which may be deemed to be in conformity with contemporary thinking and absolutely necessary for the free and independent functioning of the institution of Parliament should be clearly defined, delimited and simplified.

2012

1. Which of the following are the methods of Parliamentary control over public finance in India?
1. Placing Annual Financial Statement before the Parliament.
 2. Withdrawal of moneys from Consolidated Fund of India only after passing the Appropriation Bill.
 3. Provisions of supplementary grants and vote-on-account.
 4. A periodic or at least a mid-year review of programme macroeconomic forecasts and expenditure by a Parliamentary Budget Office.
 5. Introducing Finance Bill in the Parliament.



Select the correct answer using the codes given below:

- (a) 1, 2, 3 and 5 only
 (c) 3, 4 and 5 only
 (b) 1, 2 and 4 only
 (d) 1, 2, 3, 4 and 5

Ans: (a)

2001

2. In what way does the Indian Parliament exercise control over the administration?
- (a) Through Parliamentary Committees
 - (b) Through Consultative Committees of various ministries
 - (c) By making the administration send periodic reports
 - (d) By compelling the executive to issue writs

Ans: (a)

16. Performance of the 16th Lok Sabha

The 16th Lok Sabha held its sessions between June 2014 to February 2019. During the 16th Lok Sabha, 133 Bills were passed and 45 Ordinances were promulgated. Some of the major issues discussed in Parliament were the agrarian crisis in the country, inflation, and various natural calamities.

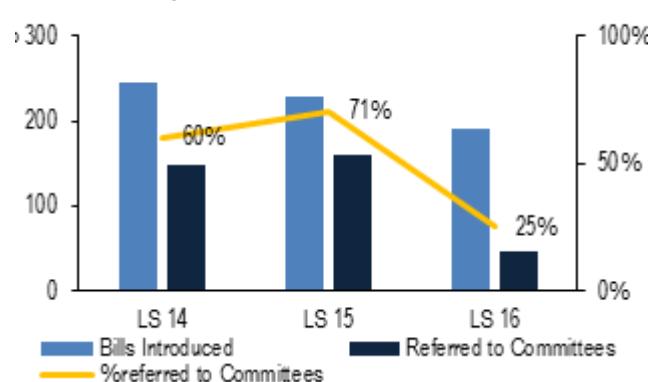
Total Hours of Work Done by the 16th Lok Sabha

- The 16th Lok Sabha worked for a total number of 1,615 hours, 20% more than the 15th Lok Sabha. However, this is 40% lower than the average of all full term Lok Sabhas (2,689 hours).
- There has been a general decline in the number of sitting days. The 16th Lok Sabha sat for 331 days. On average, full term Lok Sabhas sat for 468 days.
- This Lok Sabha lost 16% of its scheduled time to disruptions, better than the 15th Lok Sabha (37%), but worse than the 14th Lok Sabha (13%).
- Rajya Sabha lost 36% of its scheduled time. In the 15th and 14th Lok Sabhas, it lost 32% and 14% of its scheduled time, respectively.

Legislative Business of the 16th Lok Sabha

- Compared to the first Lok Sabha, later ones have spent less proportion of time on legislative business. This 16th Lok Sabha spent 32% of its time on legislative business, higher than the average of other Lok Sabhas (25%).
- The 16th Lok Sabha spent 13% of its time on question hour, 10% on short duration discussions, and 0.7% on calling attention motions.
- In the 16th Lok Sabha, a no-confidence motion was moved against the government and discussed in the Monsoon Session of 2018. This was the 27th time a no-confidence motion was discussed since the first Lok Sabha. It was discussed for 11 hours 46 minutes and was negated thereafter.
- The motion of thanks was amended twice by Rajya Sabha in 2015 and 2016. 16th Lok Sabha spent 4.5% of its time, and Rajya Sabha spent 6% of its time debating the President's Address.

Proportion of Bills referred to Committees



Student Notes:

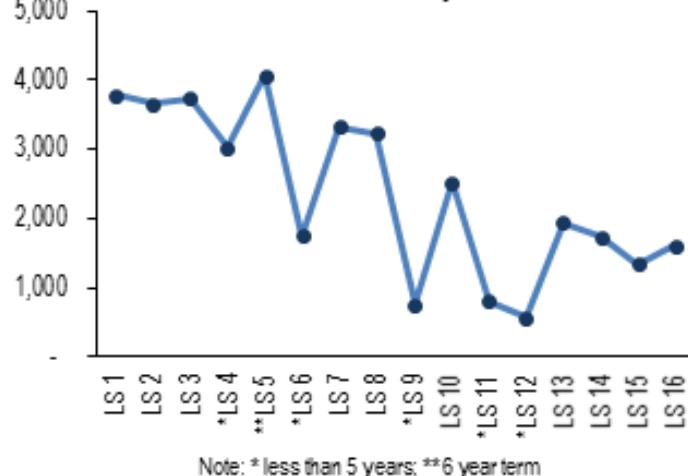
Parliamentary Committee Scrutiny

- In the 16th Lok Sabha, 133 Bills were passed, 15% higher than the previous Lok Sabha.
- 32% of the Bills were discussed for more than three hours in Lok Sabha. This is higher than the previous two Lok Sabhas (22% and 14% in the 15th and 14th Lok Sabha respectively). Bills passed within 30 minutes have decreased significantly from 26% in the 15th Lok Sabha to 6% in the 16th Lok Sabha.
- Although more Bills have been discussed for longer, this Lok Sabha has referred a significantly lower proportion of Bills to Committees for scrutiny. Due to time constraints, it is not possible for each MP to discuss and scrutinise all Bills in the House. Committees allow for detailed scrutiny of legislation, provide a forum for feedback from various stakeholders, and act as a consensus building platform across political parties.
- In the 16th Lok Sabha, 25% of the Bills introduced were referred to Committees, much lower than 71% and 60% in the 15th and 14th Lok Sabha respectively.

Union Budget Discussion

- 17% of the budget was discussed in the 16th Lok Sabha, higher than the previous two Lok Sabhas.
- In budget session 2018-19, 100% of demands were passed without discussion. This also happened in 2004-05 and 2013-14 during the 14th and 15th Lok Sabha respectively.

Total hours of work done by Lok Sabha



17. UPSC Previous Years' Questions

Student Notes:

1. Individual Parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcomes. Discuss. (2019)
2. "Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people." Discuss. (2017)
3. The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-defection law which was legislated but with a different intention? (2013)
4. Bring out the powers and responsibilities attached to the office of the Speaker of the Lok Sabha. (2010)
5. What are the grounds of disqualification of a Member of Parliament from either House? Quote relevant provisions in your answer. (2010)
6. The 'Powers, Privileges and Immunities of Parliament and its members' as envisaged in Article 105 of the Constitution leave room for a large number of un-enumerated privileges'. How can this problem be addressed? (2014)
7. Discuss the role of Public Accounts Committee in establishing accountability of the government to the people. (2017)
8. The Indian Constitution has provisions for holding joint session of the two Houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reason thereof. (2017)
9. Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee. (2018)
10. Individual Parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcomes. Discuss. (2019)

18. Vision IAS Previous Years' Questions

1. *The practice of passing of bills without the scrutiny by the parliamentary standing committees undermines their significance and sets a wrong precedent. Discuss.*

Approach:

- Define parliamentary standing committees and mention the instances/data of passing of bills without the scrutiny by the parliamentary standing committees recently.
- Explain the implications of passing of bills without the scrutiny by the parliamentary standing committees.
- Conclude accordingly.

Answer:

Parliamentary standing committees are permanent committees appointed or elected by the House or nominated by the Speaker/Chairman. They present their report to the Houses; thereby assist the working of the Parliament in its various activities. Some of them are Public Accounts Committee, Estimates Committee, Committee on Public Sector Undertakings, Departmental Standing Committees etc.

Despite their significance, only 25% of the bills introduced were referred to the Committees in the 16th Lok Sabha, as compared to 71% and 60% in the 15th and 14th Lok Sabha respectively. In the first session of the 17th Lok Sabha, 14 bills were passed and none were scrutinised by any Parliamentary Committee. Important bills like the RTI amendment Bill 2019, UAPA bill 2019 etc. were passed without their scrutiny and critical analysis by the Standing Committees.

Implications of passing bills without going through the Parliamentary Committees:

Student Notes:

- It restricts the ability of the Parliament to scrutinize government policies and make the government less accountable due to lack of an informed debate.
- In the absence of scrutiny by the Standing Committees, **legislations passed may not become holistic and farsighted**. Further, such laws may require frequent amendments, which delay the process and defeat the purpose.
- It diminishes the role of the Opposition whose members are part of the Parliamentary Committees.
- It complements other actions such as frequent use of guillotine, ordinances, which try to evade scrutiny of the Legislature.
- It reduces engagement with relevant stakeholders as the Committees act as links between the Parliament and the people on the one hand, and the administration and the Parliament on the other.
- It bypasses the non-partisan functioning of the Committees whose meetings are held behind closed doors and members are not bound by party whips, which allow them to have meaningful exchange of views.
- It dithers financial prudence as the Committees ensure economy and efficiency in public expenditure because the ministries/ departments are more careful while formulating their demands.

It sets a wrong precedent as it is against the constitutional mandate of Legislative oversight over the Executive. It is imperative to adopt the recommendations of the National Commission to Review the Working of the Constitution, 2002 of referring all bills to the Committees, longer tenure for its members and strengthening the Committees with adequate research support.

2. How is structure and electoral process of Rajya Sabha different from Lok Sabha? Do you think Rajya Sabha has been able to perform its envisaged role in recent times?

Approach:

- Introduce in brief about Rajya Sabha and Lok Sabha.
- Differentiate between the structure and electoral process of Rajya Sabha and Lok Sabha.
- Discuss with the help of appropriate examples, whether Rajya Sabha has been able to provide the necessary checks and balances in recent times or not.
- Conclude on the basis of the above points.

Answer:

The Indian Parliament comprises of the President and two Houses i.e. the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Though both the Houses together form the supreme legislative body in India, they present some structural and electoral differences, such as:

Structural differences:

	LOK SABHA (LS)	RAJYA SABHA (RS)
STRENGTH	<ul style="list-style-type: none"> As per Article 81, maximum strength of LS can be 552. Out of this, 530 have to be elected from the States, 20 from UTs and 2 are to be nominated by the President from the Anglo- 	<ul style="list-style-type: none"> As per Article 80, maximum strength of RS can be of 250. Out of which, 238 members are to be elected from the States and UTs and 12 are nominated by the President.

	<p>Indian community.</p> <ul style="list-style-type: none"> Present Strength: 545, out of which 530 are representatives of States, and 13 from UTs, while 2 Anglo-Indians are nominated. 	<ul style="list-style-type: none"> Present Strength: 245, out of which 233 are representatives of States and UTs of Delhi and Puducherry, while 12 are nominated.
PRESIDING OFFICERS	The Speaker of the LS is elected from amongst its members.	The Vice President of India is the ex-officio Chairman of the RS.
TENURE	<ul style="list-style-type: none"> The normal life of the LS is five years only. It can be dissolved by the President even before completion of its term. 	<ul style="list-style-type: none"> It is a continuing chamber where one third of the members retire every second year. It is a permanent body and is not subject to dissolution.

Student Notes:

Electoral differences:

	LOK SABHA	RAJYA SABHA
MODE OF ELECTION	Members are directly elected by the people from territorial constituencies.	Members are indirectly elected by the elected members of the state legislative assemblies.
ELECTION PRINCIPLE	Universal Adult Franchise and First Past The Post system (FPTP).	Proportional Representation (PR) by means of a single transferable vote.
QUALIFICATION	The candidate must not be less than 25 years of age	The candidate must not be less than 30 years of age .
RESERVATION OF SEATS	Article 334 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in LS.	There is no reservation for SCs and STs in RS.
REPRESENTATION OF UTs	All UTs get representation as per their population.	Only UTs with Legislative Assemblies get representation. Therefore, only Delhi and Puducherry send their representatives to RS.

Assessment of the effectiveness of the Rajya Sabha in recent times:

- Several **important bills** such as Rights of Transgender Persons Bill, 2014 and Jammu and Kashmir Reorganisation Bill, 2019 originated in the RS and later became Acts.
- In the absence of strong opposition in the Lok Sabha since 2014 elections, the RS has played an important role in keeping a **check over arbitrary or hurriedly passage of the bills** by the LS e.g. the Citizenship (Amendment) Bill 2014.

- As a **House for sobriety and second thought**, the RS has served an important role in preserving the federal structure and protection of the interests of the states. For instance: during the passage of the GST Bill.
- Since Rajya Sabha **has limited power over money bill**, important bills such as the Aadhar Bill, 2016 was introduced in the Parliament as a money bill. Similarly, it does not have power to discuss Budget or pass a no confidence motion.
- Some bills like that of Prevention of Terrorism Bill, 2002 was defeated in RS, but was passed in a **joint session** as the RS lacks adequate numbers in a joint session.
- Being a council of states, it is envisaged to uphold the interests of the states, but due to **coalition politics**, the interests of parties take precedence over the interests of the States.
- Rajya Sabha has also been used as a **back door entry for defeated candidates** in general elections. Besides, low attendance of members also affects the effectiveness of the House.

It may seem that RS has less powers vis-à-vis the LS. However, the role of the RS is still important. It is not only a House for second thought but is also a representative of the states' interests. While playing the role of a watchdog, the RS must assert itself as a House of correction to improve the legislations passed by the LS.

3. *The crucial position accorded to the Speaker in Indian legislatures, makes it imperative to protect them from undue political pressures and incentives. Examine.*

Approach:

- Introduce by highlighting the position of the Speaker in Indian Legislature.
- Discuss the instances in our polity where the Speaker of the Assembly has precipitated a political crisis by seemingly political decisions.
- Discuss the provisions and measures that can help to protect the Speaker from undue political pressures and incentives.
- Conclude on the basis of above points.

Answer:

The office of the Speaker occupies a pivotal position in our parliamentary democracy. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy. The crucial position of speaker can be understood from the following points:

- The Speaker of the Lok Sabha conducts the business in house; and decides whether a bill is a money bill or not.
- They maintain discipline and decorum in the house and can punish a member for their unruly behaviour by suspending them.
- They also permit the moving of various kinds of motions and resolutions such as a motion of no confidence, motion of adjournment, motion of censure and calling attention notice as per the rules.
- The power to disqualify an MP or MLA under anti-defection law lies with the presiding officer of houses and assemblies.

In view of these, there are many safeguards in the Constitution such as security of tenure, salaries charged on Consolidated Fund of India, discussing their conduct only on substantive motion etc. to protect the office of Speaker from undue political pressure.

Though the Constitution envisages the Speaker as a neutral position but there have been numerous instances in our polity where the action of Speaker has raised concerns.

- Sixteen MLAs from the ruling party in the Arunachal Pradesh Assembly and nine MLAs in Uttarakhand Assembly were disqualified by the Speaker, in 2016 despite not officially leaving the party or defying its directives, etc.
- Controversies regarding declaration of Aadhar Bill, 2016 as money bill by the speaker.

Thus, more steps are required in addition to the existing safeguards. For instance:

- Power to decide upon the question of disqualification can be entrusted to Election Commission of India.
- After getting elected as Speaker, he/she must resign from the party membership as practiced in matured democracies like UK. Also, his constituency should go uncontested in the next general election.
- Democratic conventions must be evolved through political consensus in order to ensure non-partisan actions by speaker.

4. *What are the grounds for disqualification of members of legislatures under the Tenth Schedule of Indian Constitution? Analyse the merits and demerits of having such provisions in a parliamentary democracy like India.*

Approach:

- In the introduction, briefly, describe and write about the 10th schedule.
- Mention the ground for disqualification provided under the Tenth Schedule of Indian Constitution.
- Enumerate the merits and demerits of Anti-Defection Law and give arguments for and against these provisions.
- Suggest the way forward in the conclusion.

Answer:

The Tenth Schedule, which is popularly known as the Anti-defection Law, was added to the Constitution through the 52nd Constitutional Amendment Act, 1985. The law provides the following grounds for disqualification:

- Member of Parliament or State Legislature belonging to a political party is deemed to have defected if:
 - He either voluntarily resigns or gives up the membership of his political party, or
 - He disobeys the directives of the party leadership on a vote or abstains from voting without taking prior permission within 15 days from such voting or abstention.
- An independent candidate joins the party after the election.
- A nominated member joins a party six months after becoming an MP/MLA.

Over a period of time, the Anti-defection Law has been exposed to different situations, which have highlighted both its merits and demerits.

Merits

- It seeks to protect and provide stability in the government by disqualifying defecting legislators.
- It promotes discipline in the party and ensures that members elected with party support, and on the basis of party manifestoes, remain loyal to the party policies.

- Defection amounts to breach of trust of people, and the Anti-defection Law safeguards this trust.

Student Notes:

Demerits

- The Act reduces the accountability of the government to the Parliament and the people by preventing members of the House from changing the party.
- It restrains the basic freedom of speech and expression of the parliamentarians and reduces them from thinking lawmakers to mere numbers required for passing a Bill.
- The decision of presiding officer (PO) as final has also been problematic in the past. However, in the Kihoto Hollohan vs. Zachillhu case, the Supreme Court held that the decision of PO is subject to judicial review.

Thus, the need of the hour is to strengthen the Law by creating mechanisms for greater inner-party democracy, limiting the usage of whips and referring the anti-defection cases to president/governor. Also, we need to create a disincentive for political parties from accepting defecting legislators in their fold.

5. ***Vast powers have been vested in the office of the Speaker to strengthen the democratic institutions of the parliamentary system, and not to stifle dissent or protest in the House. Comment in the context of India.***

Approach:

- Briefly give an overview of the office of speaker
- Powers and privileges of speaker that strengthens parliamentary system
- Some contentions with respect to the office along with examples
- Suggestions and way ahead

Answer:

The Speaker of Lok Sabha or State Legislative Assembly is elected from amongst its members. He is guardian of powers and privileges of the members, the House as a whole and its committees.

- Maintains order and decorum in the House for conducting its business and regulating its proceedings. Maintaining impartiality of the office, he ensures that ample time is given to Parliament as a whole and opposition in particular to ensure accountability.
- Adjourns the House and suspends the meeting in absence of quorum.
- Decides whether a bill is money bill or not and his decision on this is final.
- Decides on the question of disqualification of a member arising on the ground of defection (although not outside the purview of Judicial review –Kihoto Hollohan Case 1992).
- Appoints the chairman of all Parliamentary Committees of Lok Sabha and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

However in recent times, the office of Speaker has been criticised for not being as impartial or effective as had been envisaged:

- Speaker of Uttarakhand Assembly decided on a case of defection while a notice of resolution for his own removal from the office is pending. Supreme Court had to intervene and observed that Speaker should refrain in such cases.

- Supreme Court has accepted a plea with respect to the Speaker's approval of Aadhaar Bill, 2016 as a Money Bill. It is argued that declaring a bill which includes larger concerns like that of privacy, data protection etc. should also involve Rajya Sabha to have a meaningful debate.
- Parliamentary logjam has been a consistent scene on the floor of parliament whereby Speaker have been unable to facilitate a smooth functioning and accused of bias.

Our constitutional maker envisaged integrity and impartiality from the office. But it has been progressively eclipsed by political interests and made subservient to needs of ruling party. Judicial review is also used in exceptional circumstances. We need a permanent institutional solution. UK's model of appointing a committee of two senior legislators to assist the speaker over question of money bill is a case to consider. In UK, a parliamentary convention has developed, where an MP elected as Speaker, resigns from respective party. This lends credence to his impartiality.

Both, government and opposition need to cooperate so that parliament can function smoothly and speaker is not put into difficult situations too often. Also, Speaker needs to keep in mind the democratic ethos while presiding over esteemed office and his actions must appear to be objective and neutral as "Justice should not only be done, it must also be seen to be done".

6. Elaborate the process of legislation in the Indian Parliament for an ordinary bill. How is a money bill different from an ordinary bill?

Approach:

- Explain the process of passage of an ordinary bill.
- Then discuss the difference between money bill and ordinary bill.

Answer:

The primary function of legislatures is to make laws for its people. In Indian Parliament, a definite procedure is followed in the process of making law. For Ordinary bill, the process of legislation involves the following five stages:

1. First Reading: The ordinary bill can be introduced in either house by a minister/other member. Upon grant of leave by house, the member reads the title and objectives, but no discussion happens on this bill at this stage. Following this, bill is published in gazette.

2. Second Reading: At this stage, the detailed scrutiny of bill happens and the bill takes the full shape. It has 3 sub stages:

- Stage of general discussion
- Committee stage
- Consideration stage

Clause by clause scrutiny of the bill is carried out, clauses voted upon and amendments moved.

3. Third Reading: No amendments are allowed anymore and either bill is completely accepted or rejected. If majority accepts, it is passed and transmitted to second house.

4. In Second house: Bill goes through all 3 stages and may be:

- passed
- passed with amendments
- rejected

- no action up to 6 months
5. **Provision of joint sitting:** In case of deadlock between the house over passing of bill emerges, the President can summon a joint sitting of Lok Sabha and Rajya Sabha. The members of both houses vote jointly and the bill passes by simple majority.
6. **Assent of President:** After the bill is passed from both the houses, it is presented to the office of President for assent. The President can exercise any of the following options:
- Assent
 - Withhold assent
 - Return bill for reconsideration

If assent is given, it becomes an act and is placed on statute book.

Differences b/w ordinary and money bill:

	Ordinary Bill	Money Bill
1.	Can be introduced in either Lok Sabha or Rajya Sabha	Can only be introduced in Lok Sabha
2.	Can be introduced by either minister or member	Introduction only by minister
3.	Can be introduced w/o President's recommendation	Can be introduced only with President's recommendation
4.	Can be amended/rejected by RS	Rajya Sabha can only return the bill
5.	RS can only detain bill for 6 months	RS can detain bill for max 14 days
6.	Does not require certification of speaker when transmitted to RS	Requires Speaker's certification
7.	Sent for President's assent if passed by both houses. In case of deadlock, joint sitting can be summoned	Can be sent for president's assent even if approved only by LS. No provision for joint sitting
8.	Its defeat in LS may lead to resignation of government	Defeat in LS leads to resignation of govt.
9.	Can be rejected, approved or returned for reconsideration by President	Can be rejected or approved but cannot be returned by President

7. **Privileges should be defined and delimited for the free and independent functioning of the legislatures. In this context, discuss whether there is a need to re-examine the balance between fundamental rights and parliamentary privileges in India.**

Approach:

- Define Parliamentary privileges in brief.
- Discuss the pros and cons of delimiting and defining privileges to balance them with Fundamental Rights.
- Give a suitable conclusion.

Answer:

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.

According to Article 105, the powers, privileges and immunities of Parliament and MPs are to be defined by the Parliament. No law has so far been enacted in this respect. In

the absence of any such law, it continues to be governed by British Parliamentary conventions.

Student Notes:

Parliamentary privileges can be used as a tool against critics – the civil society and the media. This endangers the fundamental right to speech and expression of these institutions and the public. It can be corroborated from a recent incident in Karnataka, where journalists were sent to jail for breach of privileges.

There exists compelling reasons to clearly define and delimit parliamentary privileges to balance it with Fundamental Rights, because of the following reasons:

- To remove their vagueness, uncertainty and inscrutability.
- These Privileges may be misused to hide misdeeds like corruption and may have far-reaching implications for a clean public life. For example, in 1998, a constitutional bench of Supreme Court in P.V. Narasimha Rao vs. CBI held that bribe takers who had taken bribes and voted against the no-confidence motion were immune from prosecution; but the bribe givers have no such immunity.
- It raises the issue of conflict of interest as it allows parliamentarians to become judges in their own cause and thus violates the principle of fair trial.

However there are some concerns:

- The codification of privileges would make the privileges subject to fundamental rights and hence, to judicial scrutiny and evolution of new privileges would become difficult.
- The codification at the present moment would leave no space for future adjustment when a new situation may arrive.
- Legislators also argue that codification of privileges may harm the sovereignty of the Parliament.

Way Forward

The privileges should no more be allowed to remain uncertain and vague; privilege must be invoked in rare circumstances to prevent real obstruction in legislative functioning and not in a way that sets law makers above ordinary comment and criticism. Parliament has a duty to look carefully before making any law, so that it doesn't harm other's rights and uphold the Constitution ethos in true spirit.

8. The Departmentally-Related Standing Committees have been referred to as mini-parliaments in India. Highlight their relevance in a democratic polity and discuss, with examples, how they improve the overall effectiveness of the Parliament.

Approach:

- Start your answer with brief introduction about Departmentally-Related Standing Committees.
- Write about their relevance and contribution in democratic process.
- Conclude your answer with few shortcomings and suggestions to improve their efficiency.

Answer:

A full-fledged system of 24 Departmentally Related Standing Committees (DRSC) covers under their jurisdiction all the Ministries/ Departments of the Government of India. It is a path-breaking endeavour of the Parliamentary surveillance over administration.

Relevance in a democratic polity:

- Parliament as a whole can't go into details of each bill or grant due to its huge size and paucity of time. This is facilitated by DRSCs. They perform legislative role consisting of parliamentarians. Hence, called mini-parliaments.
- Imparts legitimacy to Indian democracy as the functionaries of committee are elected representatives.
- Effective in obtaining public feedback and building political consensus on contentious issues.
- Has important functions like -Consideration of Demands for Grants; Examination of Bills referred to by the Chairman, Rajya Sabha or the Speaker, Lok Sabha; Consideration of Annual Reports; Consideration of national basic long term policy documents presented to the House and referred to it.

Improving overall effectiveness:

- Function throughout the year and in a way so as to compensate for Parliamentary time crunch. It makes parliamentary control over executive much more detailed, close, continuous, in-depth and comprehensive.
- Usually invites experts while scrutinising Bills.
- Devoid of any political positioning/populist opinion.
- Mandatory scrutiny of bills by committees ensures better planning of legislative business. For example, DRSC on Commerce provided useful insights for 'ease of doing business'.
- Each DRSC focuses on a set of ministries and, therefore, helps its members build sector knowledge.

However, DRSCs don't have dedicated subject-wise research support. Also, there are issues relating to the transparency (Committees meet behind closed doors and only the final report is published). Important Constitution Amendment bill to enable the GST was passed by Lok Sabha without reference to the DRSC.

It is important to further strengthen the ability of DRSCs to undertake detailed scrutiny of legislative issues. Reforms would inter-alia include mandatory examination of all Bills, creating research teams, and improving the transparency of input/evidence/submissions to the DRSCs.

9. *The Rajya Sabha is merely a secondary house rather than a second house in the Indian Parliamentary system. Critically analyze the statement. Also, compare and contrast the position of the Rajya Sabha vis-à-vis the State legislative councils.*

Approach:

- State the reasons why the Rajya Sabha has been deemed as a secondary house in the Indian Parliamentary system.
- List the importance of the Rajya Sabha.
- Compare and contrast the position of the Rajya Sabha and the State Legislative Councils.

Answer:

The Indian Constitution provides for a bicameral legislature comprising of the Rajya Sabha (RS), representing Indian states with indirectly elected members and the Lok Sabha (LS) representing Indian people with directly elected members.

The RS has been deemed as a secondary house because:

Student Notes:

- It is considered to be a delaying house, which prolongs the bill passing procedure.
- It has an unequal status vis-a-vis LS regarding introduction of money and financial bills and it cannot pass a no-confidence motion.
- It is criticized for being a haven for crony capitalists, party fundraisers, etc. who are more interested in their party agenda than their representative states. Further, domicile requirement has been removed post the verdict in Kuldip Nayyar case (2006).
- RS elections are notorious for alleged poaching by political parties.
- In joint sittings, the will of LS supersedes the apprehensions of RS due to the former's numerical strength.

However, there are a number of areas in which it enjoys equal powers to that of LS and some in which it enjoys greater powers than LS, making it an important Parliamentary institution.

- It maintains the federal equilibrium as it protects the interests of the states.
- Bills passed hastily in Lok Sabha are intensely scrutinized in the RS.
- It provides for representation of eminent society members via nomination who otherwise may not participate in elections.
- It has equal powers with the LS regarding ordinary bills, constitutional amendment bills and approval of ordinances.
- It has two exclusive powers - to authorize the Parliament to make law on a State list subject (Article 249) and to authorize the Parliament to create new All-India services (Article 312).

Position of the RS vis-à-vis State Legislative Councils (SLCs):

- RS and SLCs are upper houses in the Parliament and State Legislatures respectively. However, RS is a permanent entity while SLCs are optional entities that can be abolished.
- The RS consists of state representatives and maintains federal equilibrium. The issue of federal significance does not arise in the case of the SLCs.
- SLCs act as dilatory chambers as they can only delay an ordinary bill for maximum four months. The RS has equal power with the LS regarding ordinary bills. Both RS and SLC can delay money bill by 14 days.
- The RS enjoys special power under Articles 299 and 312 that is not available to the SLCs.

10. *It has been argued that over the years there has been a steady decline in the efficacy of Parliament as an institution of accountability. Analyse and also suggest appropriate measures to address the relevant concerns.*

Approach:

- Give arguments in support of decline in the efficacy of Parliament.
- Discuss the possible reasons of impaired parliamentary functioning.
- Suggest ways to improve the efficiency of the parliament.
- Conclude with relevance of debate, deliberation and dialogue in a democracy.

Answer:

The Parliament in India was envisaged as a representative institution playing a key role in social and political unity. Being an elected body, it also has a key position in the structure of governance in India with functions ranging from law making and oversight

of the executive to scrutiny of the budget. However, in recent times there has been a lament about the decline of this body in light of the following factors:

- 50% decrease in average Parliamentary sittings between 1960 (120 days/year) to present (65-70 days/year).
- Loss of productive time and resources due to frequent disruptions.
- Frequent use of ordinances to bypass parliamentary scrutiny.
- Reduced deliberations and time spent on bills and budget.

Student Notes:

Reasons for decline in parliamentary efficacy

- **Anti-defection law and party-whips:** It disincentivizes active participation of individual MPs as they have to heed to party lines to avoid disqualification.
- **Executive/Government control:** The Government control over the summoning of each house and the legislative business to be deliberated, hinders the envisaged parliamentary control over the executive.
- **Decline in effectiveness of parliamentary committees:** MPs are unable to pay attention to committees as their constituencies make a huge demand on their time. Also, no mechanism exists for regular assessment of performance of committees.
- **Erosion of political ethics and professionalism** because of commercialization and criminalization of politics, and loss of individual integrity.
- **Lack of research staff:** It hinders the ability of legislators to deep-dive into important issues and constructive deliberations in the house.
- **Live telecasts and media attention:** This encourages MPs to take grandstands on issues to grab undue public attention.

Following measures are required to restore the credibility of the Parliament:

- **Fix minimum number of sittings:** 120 for Lok Sabha, and 100 for Rajya Sabha as was recommended by National Commission to Review the Working of the Constitution.
- **Advanced annual calendar** of the sittings of the house, which is drawn by the Parliament itself, and not at the sole discretion of the executive.
- **Adopt system of shadow cabinet** where opposition MPs can assume portfolios, and hence scrutinize and track the progress in detail.
- **Electoral reforms** to check criminalization, use of money power, and curb the menace of fake news.
- **Responsible opposition**, which invests in constructive debates, and minimal disruptions to promote responsible legislation.
- **Providing a role for the Election commission** in deciding issues such as defection.
- **Strengthening** of committee system.
- Encouraging greater say of the electorate by considering measures such as right to recall.

Parliament as the highest legislative office of India owes its accountability to the ultimate sovereign – the people of India. Constructive debates, deliberations, disputes and dialogue are the soul of Indian democracy, and the parliament needs to be the flag-bearer.

11. *Parliamentary committees increase the efficiency and expertise of Parliament. In this context, examine the role played by public accounts committee and suggest measures to further strengthen it.*

Student Notes:

Approach:

- Bring out the role of Parliamentary committees in increasing the efficiency and expertise of Parliament.
- Examine the role played by Public Accounts Committee and suggest measures to further strengthen it further.

Answer:

A significant feature of Indian legislative process is the appointment of Parliamentary committees for various legislative purposes. Parliamentary committees play a vital role in increasing the efficiency and expertise of parliament in the following manner:

- **In-depth study of the issue under consideration:** Since the Parliament has very limited time at its disposal, committees are able to give more attention and time to a particular issue.
- **Performing important functions** like studying the demands for grants made by various ministries, looking into expenditure incurred by various departments, investigating cases of corruption etc.
- **Effective Supervision:** Departmentally related standing committees supervise the work of various departments, their budget, their expenditure and bills.
- **Reducing the burden on the Parliament:** Joint Parliamentary Committees (JPCs) can be set up for the purpose of discussing a particular bill or for the purpose of investigating financial irregularities etc.
- **Ironing out ideological and party differences-** Committees provide a forum to build consensus across party lines, help develop expertise in subjects and enable consultation with independent experts and stakeholders, thus streamlining the decision making process.

Role played by Parliamentary Accounts Committee (PAC)

- PAC maintains parliamentary oversight over finances of the government. Its main mandate is to examine the audit reports submitted by the Comptroller and Auditor General (CAG) of India.
 - PAC brings to the notice instances of unauthorized expenditures or expenditures beyond sanctioned limits. Functions extend “beyond the formality of expenditure to its wisdom, faithfulness and economy”.
 - It also examines cases related to under-assessments, tax-evasion, non-levy of duties, misclassifications etc., identifies the loopholes in the taxation laws and makes recommendations in order to check leakage of revenue.
- However, currently the Committee faces challenges such as lack of adequate strength, lack of technical expertise, no investigative powers and it cannot act suo-motu until the CAG audit reports are presented to it,

Following measures will strengthen it further and aid it in effectively checking the wrongdoings on the part of Executive-

- Stipulate a time limit within which CAG audit reports should be presented to the Parliament.
- Time limit should be fixed for government departments to submit Action Taken Report.
- PAC should have suo-motu powers of investigations.

- Sufficient technical assistance should be provided to them through Lok Sabha or Rajya Sabha Secretariats.
- Testimony of witnesses should be made public either by telecasting it or allowing the Press or by making the transcript of testimony public.
- Minutes of meeting of the PAC should be made public.

Student Notes:

- 12.** *List the parliamentary mechanisms available for the scrutiny of regulators. Also, discuss major steps through which parliamentary oversight of regulators can be strengthened.*

Approach:

- Give a brief introduction about and the need for scrutiny of regulators.
- Enlist some of the parliamentary mechanisms available for the scrutiny of regulators.
- Suggest as to how parliamentary oversight of regulators can be strengthened.

Answer:

Legislative oversight of regulators is considered necessary for ensuring regulatory independence, preventing arbitrary action by the government officials and as well as implementation of regulations consistent with government policies. In India, parliamentary scrutiny of the regulators takes place through the following means:

- **Question Hour:** Every regulator falls within the administrative domain of a government department. During question hour, MPs can ask questions to scrutinize the functioning of ministries and the regulators related to their departments.
- **Discussions:** Parliament may take up the role of regulators for debate under different Rules of Procedure of Parliament (such as half-hour discussions and discussions under Rule 193 in the Lok Sabha).
- **Department related Standing Committees:** There are 24 Department Related Standing Committees that comprise members from both Houses of Parliament. These committees are Ministry specific, and may review the working of regulators falling within their respective departments.
- **Finance Committees:** The Committee on Estimates reviews budgetary estimates of regulators. The annual audit reports on the accounts of the regulators are tabled before Parliament and reviewed by the Public Accounts Committee (PAC). The PAC may require the regulator's officers to depose before the Committee.
- **Ad-hoc Committees:** Parliament may establish ad-hoc committees which may examine the working of regulators.

At the same time, following major steps should be taken up for strengthening the parliamentary oversight of regulators:

- The 2nd administrative reforms committee (ARC) recommends that once in five years, a body of reputed experts should be constituted to **propose guidelines for the evaluation** of the regulator for the next five years based on which principles can be finalized to hold the regulator accountable.
- 2nd ARC also recommends that **annual reports** submitted by the regulators to Parliament should include the **progress on pre-agreed evaluation parameters** and should be discussed in the parliamentary committee.
- Annual report and the committee's discussions with the regulator should be made widely **accessible to the public**.
- **Expert support should be provided to MPs** as effective scrutiny depends on their skill and resources.

- Committees should conduct **periodic review of regulators** as ad-hoc scrutiny of the regulator is not adequate for effective oversight.

Student Notes:

- 13. *Parliamentary scrutiny over public finance is an important aspect of governmental accountability. In this context, discuss the role, importance and challenges in establishing a Parliamentary Budget Office (PBO) for effective oversight of budgetary process.***

Approach:

- Briefly discuss the role of parliament in scrutiny over public finance and its effectiveness.
- Mention the role and significance of a Parliamentary Budget Office (PBO) in effective oversight of budgetary process.
- Discuss the challenges to be faced in establishing a PBO.

Answer:

In a parliamentary democracy, legislature plays a crucial role in scrutiny of public finance. MPs, through debates, discussions and voting on motions, hold the government accountable for the money that it spends from the public exchequer. Constitutional bodies like CAG and parliamentary committees like the PAC maintain a close oversight on manner of government spending.

However, due to lack of resources such as time, detailed information and expertise on financial/economic matters with individual members, it becomes difficult to hold the government accountable to higher standards. As such, many times it has been felt that spending by the government has been inefficient and ineffective, if not profligate or politically expedient. In this light, a need has been felt for an independent and impartial body that provides technical and objective analysis of Budgets and public finance to the House and its committees.

Role:

Specifically, the functions of PBOs can be different in different countries. Generally, the following features are found:

- Independent and objective economic forecasts;
- Baseline estimate survey;
- Analyzing the executive's Budget proposals and their costs-benefits; and
- Providing medium- to long-term analysis.

Costing is a standard practice for many PBOs. Budgets generally start with an economic forecast. A PBO can present either its own independent forecast or it can validate the government's, providing an objective analysis on the official forecast. A PBO is very different from research wings or Finance Committees or Public Accounts Committee (PAC). It is comprised of independent and specialized staff such as Budget analysts, economists, public finance experts.

Also, it must be non-partisan, independent and mandated to serve all parliamentarians including treasury bench and opposition.

Significance:

PBOs provide legislators with high-quality analysis that is independent of the executive. They specialize in objective and policy neutral analysis on the full budget cycle, the broad fiscal challenges facing the government, budgetary trade-offs and the financial implications of legislative proposals. Such research can raise the quality of debate and

scrutiny in Parliament as well as enhance fiscal discipline. Most importantly, it strengthens the role of Parliament in financial oversight.

Student Notes:

Challenges:

The key challenges faced by any country that establishes a PBO are threefold—Guaranteeing independence and viability of the office in the long-run, ability to carry out truly independent analysis and demonstrating impact. However, political will and public support would help overcome these challenges.

Going forward, it will be important to understand that a PBO can only provide independent research; it cannot prevent executives from taking bad fiscal decisions.

14. *Parliamentary privileges are not always used for the aims they were intended to serve. In this context, discuss the need for codification of these privileges in light of recent developments.*

Approach:

- Define Parliamentary Privileges.
- Discuss the rationale behind parliamentary privileges.
- Highlight the misuse of parliamentary privileges.
- Discuss the case for codification of the same & conclude.

Answer:

Parliamentary privilege is the sum of certain rights, immunities and exemptions enjoyed by each House collectively, and by the members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.

Articles 105 and 194 clearly lay down that the power, privileges and immunities of the legislature shall be as may from time to time be defined by the legislature, and until so defined, shall be those of the House of Commons.

Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.

Legislative privileges are provided so that legislatures can discharge their duties without fear and favor and without external interference. These sections protect the freedom of speech of parliamentarians and legislators; insulate them against litigation over matters that occur in these houses.

However, these sections have been prone to misuse. For e.g. In 2003, the Tamil Nadu assembly Speaker directed the arrest of five journalists for publishing articles critical of the AIADMK government. In 2017, the Karnataka assembly Speaker ordered the imprisonment of two journalists for a year based on recommendations in two separate reports of its privilege committees.

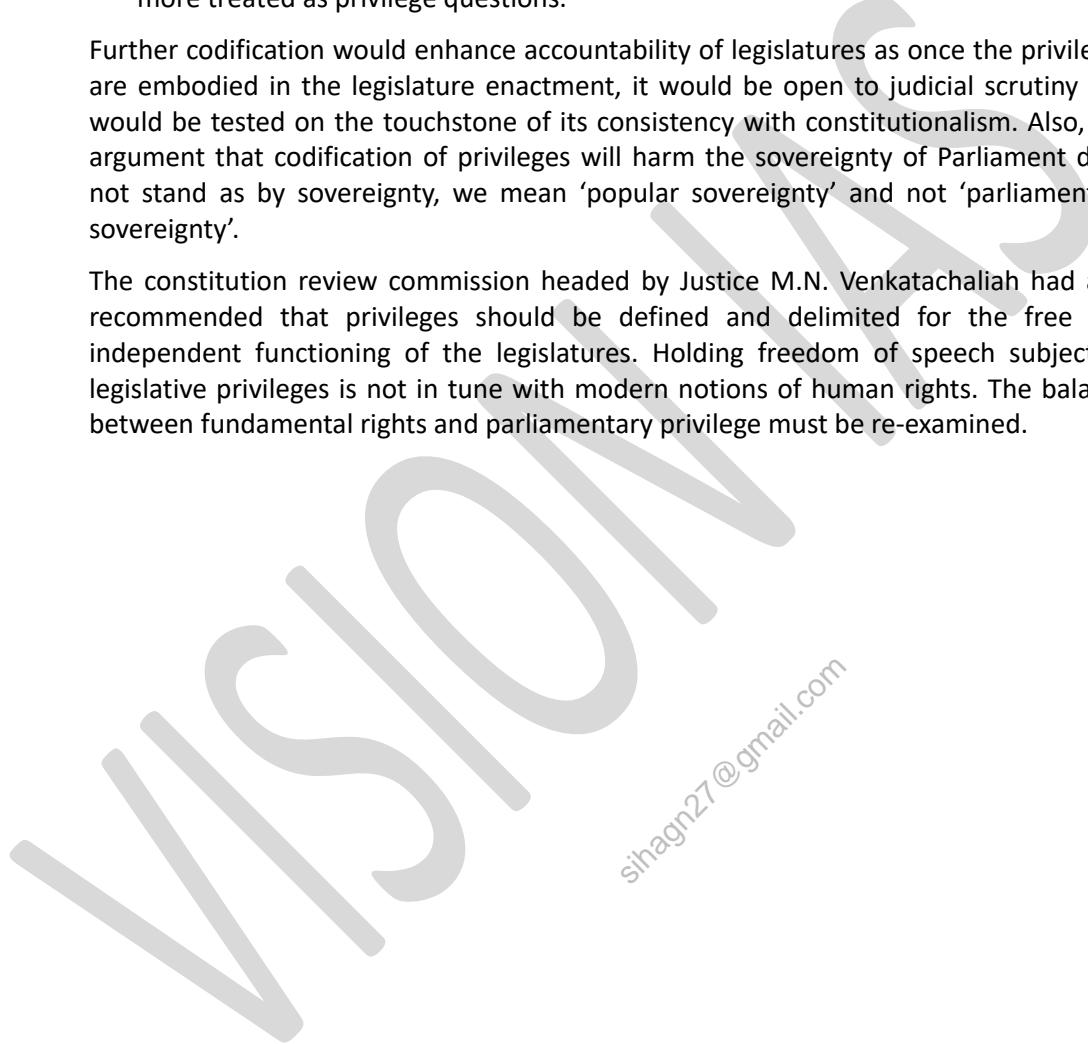
Thus, there is a felt need for codification of these parliamentary privileges because of following reasons:

- **Too wide powers:** Our legislators have the power to be the sole judges to decide what their privileges are, what constitutes their breach, and what punishment is to

- be awarded in case of breach. It is too wide a power, which clearly impinges on constitutionalism, i.e. the idea of limited powers.
- **Increased misuse:** There have been increasing instances of the misuse of the privileges by legislatures in India. Though constitution makers have left the space for the codification of the privileges, there have been no such steps taken by the parliament thereafter. This has left vagueness and ambiguity in the privileges, making them prone to misuse.
 - **Lack of counterparts in other democracies:** The U.S. House of Representatives has been working smoothly without any penal powers for well over two centuries. Australia too codified privileges in 1987. In fact, the British House has itself broken from the past. Acts and utterances defamatory of Parliament or its members are no more treated as privilege questions.

Further codification would enhance accountability of legislatures as once the privileges are embodied in the legislature enactment, it would be open to judicial scrutiny and would be tested on the touchstone of its consistency with constitutionalism. Also, the argument that codification of privileges will harm the sovereignty of Parliament does not stand as by sovereignty, we mean 'popular sovereignty' and not 'parliamentary sovereignty'.

The constitution review commission headed by Justice M.N. Venkatachaliah had also recommended that privileges should be defined and delimited for the free and independent functioning of the legislatures. Holding freedom of speech subject to legislative privileges is not in tune with modern notions of human rights. The balance between fundamental rights and parliamentary privilege must be re-examined.



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