

## Polity Class 01

### **A Brief Introduction of the Syllabus:(01:01:00 PM)**

- *Things to be covered in the subject:*
- A. Constitution.
- B. Polity.
- C. Governance.
- D. Social Issues
- Constitutional understanding is required for Civil Servants.
- Every year around 15 questions from the first three topics in the prelims exam.
- In Mains 125 to 150 marks from the same three topics.
- Need to have a good grip on newspapers.

### **Syllabus:(01:21:00 PM)**

- Indian Constitution its evolution and all its important features and underpinnings.
- Fundamental rights, DPSPs, Fundamental duties, etc.
- Parliament, Union, Centre-States, etc.
- Constitutional bodies, Nonconstitutional bodies, etc.
- Polity, political parties, elections, electoral reforms, etc.
- *Sources:*
- Vision IAS material.
- Indian Polity By Laxmikanth.
- DD Basu.

### **Constitution:(01:40:00 PM)**

- The natural tendency of any society is to move towards entropy- That is destruction or anarchy.
- Human beings are always guided by self-interests.
- This self-interest can easily transform itself into a 'selfish interest' which can lead to exploitation, cheating, manipulation, and other unwanted practices.
- The constitution can help in the strict implementation of rule of law in both letter and spirit.
- It can help in protecting the interests of poorer and weaker sections of society from exploitation by other powerful vested interests.
- Ultimately it can ensure negative entropy which is the sustainability of civilizations for a longer period along with their growth and development.
- *Constitution:*
- In simple terms a constitution is may be defined as a set of laws, rules, and regulations, to ensure rule-based governance.
- In a much broader term, as rightly defined by, the first Prime Minister JL Nehru, the constitution is not a mere law book, it reflects the aspirations, demands, wishes, and the needs of people of the country. It is a dynamic, living organism, it ultimately defines, the soul of the nation.
- It defines the relationship between the citizens and the states, it also defines the rights of the citizens and obligations on the part of the States.
- It also defines the relationship between the three organs of the State.

### **Historical Evolution of Our Constitution:(02:16:00 to 02:31:00 PM)**

- Discussed the following very briefly:
- Regulating Act 1773
- Pitt's India Act 1784
- Morley-Minto Reforms 1909
- Montague-Chelmsford Reforms 1919
- Government of India Act 1935
- Indian Independence Act 1947
- *(Dictation will be given in the next class)*

### **Constitutionalism:(02:44:00 PM)**

- According to Thomas Hobbes - It is the people who have created the State to prevent entropy. The state is given the responsibility of maximizing the welfare of the people and also protecting their lives and assets. To perform these critical functions it has been given certain powers.
- Over a period of time, it was found out that those who are part of the State started using those powers for their own welfare and benefit only.
- They started exploiting ordinary people in the name of governance.

- Even though the constitution has guaranteed fundamental rights to the citizens, organs of the states have deliberately used their powers in such a manner that would exploit the rights of the citizens rather than protecting and promoting their welfare.
- A written constitution may be necessary but not sufficient to protect the rights and freedom of the citizens, what is required is constitutionalism.
- constitutionalism in simple terms can be defined as the strict implementation of the rule of law in both letter and spirit.
- **It has many dimensions:**
- 1. It is about protecting and promoting the Fundamental Rights of the citizens from exploitation by the organs of the State and also by private persons.
- 2. Constitutionalism also means a limited government, that is the three organs of the state (legislature, executive, and judiciary) should have only limited powers.
- For example, in our constitutional democracy, these organs of the state are supreme in their own domain but can not be sovereign.
- It is the constitution that can be called sovereign.
- 3. It ensures checks and balances within the system.
- For example, the legislature can control the functioning of the executives, and the judiciary can impose restrictions on the functioning of both the legislative and executive.
- 4. Constitutionalism also means the implementation of constitutional law which is rule of law.
- All over the world, the organs of the State have used the powers, given to them by the people, in such a manner that it led to the exploitation of the rights of the citizens than promoting their welfare.
- As pointed out by Hobbes the State had become Leviathan. For example, our Parliament is yet to define its privileges. Executives can abuse their powers to restrict the freedoms and rights of the citizens.
- Similarly, the judiciary can use contempt of court to suppress criticism of its decisions.
- Constitutionalism is necessary to prevent this misuse and abuse of power.

#### **Important Features of Constitutionalism:(03:32:00 PM)**

- *A written Constitution*
- *Parliamentary democracy*
- *Federal Form of Government*
- *Independent Judiciary*
- *Judicial Review*
- *Separation of powers between three organs of the government.*
- *Fundamental Rights*
- *Civilian control over the army.*
- *Civilian control over Police.*
- In India, all the above features are present in the functioning of our parliamentary democracy. But at the same time, it can be said that these features are present mostly in letters but not in spirit.
- It can be said that in India we have constitutional formalism than constitutionalism, which is the difference between what is ideal and what is there in reality.
- For example, 43.5% of MPs in Parliament have criminal records against them.
- More than 47 million cases are pending at all levels of the judiciary.
- People are still discriminated against in the name of religion, caste, region, language, and so on.
- But at the same time, the country has achieved significant progress in various fields clearly showing a decisive movement towards constitutionalism.

**Topics for the next class:** Continuation of understanding of the Constitution.

#### **Polity Class 02**

#### **A Brief Overview of the Previous Class:(01:01:00 PM)**

#### **Evolution of Indian Constitution:(01:12:00 PM)**

- **Regulating Act, 1773:**
- It was the first significant step taken by the British Government to control and regulate the activities of the East India Company (EIC)
- It also laid the foundation for the central administration in India.
- It designated the governor of Bengal as the Governor General of Bengal.
- It provided for the establishment of the Supreme Court at Calcutta.
- **Pitt's India Act, 1784:**
- It differentiated between the commercial and political functions of the company.

- The Court of Directors was made responsible for commercial functions whereas the Board of Control was given the responsibility of political functions.
- **Charter Act of 1813:**
- It abolished the trade monopoly of the Company in India, however, the company's monopoly in trade with China and trade in tea with India was kept intact. Thus, trade with India for all commodities except Tea was thrown open to all British subjects.
- It asserted the sovereignty of the British Crown over the Company's territories in India.
- **Charter Act 1833:**
- It made the Governor General of Bengal the Governor General of India and vested in him all civil and military powers.
- It ended the activities of East India Company as a commercial Body.
- **Charter Act of 1853:**
- It separated for the first time the legislative and executive functions of the Governor General.
- It has introduced a Parliamentary form of government.
- It also introduced an open competition system for the recruitment of the civil servants
- **Government of India Act, 1858:**
- It ended the company's role in India.
- It also changed the designation of Governor General to the Viceroy of India.
- It also ended the system of Double Government by abolishing the Board of Control and Court of Directors.
- **Indian Councils Act, 1861:**
- It has introduced the Portfolio System in India wherein the work of the government is divided into various departments based on the division of work and specialization.
- It started the process of decentralization by restoring the legislative powers to Bombay and Madras Presidencies.
- **Indian Council Act 1892:**
- It provided for the nomination of non-official members in the central legislative council.
- It also expanded the function of the legislative council by giving them the power to discuss the budget.
- **Indian Councils Act, 1909:**
- It introduced the system of Communal Representation with the concept of a Separate Electorate.
- It has retained an official majority in the central legislative council but allowed provincial legislative councils to have a non-official majority.
- **Government of India Act, 1919:**
- It introduced the system of Dyarchy at the provincial level.
- Provincial subjects were divided into reserved subjects and transferred subjects.
- Transferred subjects were to be administered by Governor with the help of the Council of Ministers, whereas the reserved subjects were under the exclusive domain of the governor and his executive council.
- It provided for the establishment of a public service commission to conduct examinations for recruitment to civil services.
- **Government of India Act, 1935:**
- It has for the first time introduced federalism in India by dividing the powers between the center and the provinces.
- The Union list or Federal List had 59 subjects, the Provincial or state list had 54 subjects, and the Concurrent list (Where both union Provinces can make legislation) had 36 items.
- It also introduced the dyarchy at the central level and abolished the same at the Provincial level. But it was not implemented at the central level.
- It also introduced Bi-cameralism in 6/11 provinces.
- It also provided for the establishment of the Reserve Bank of India.
- It provided for the establishment of not only a Federal Public Service Commission but also State (Provincial) Public Service Commissions and Joint Public Service Commissions.
- It also provided for the establishment of the Supreme Court or the Federal Court which came into existence in 1937.

#### **Important Features of the Indian Constitution: (01:55:00 PM)**

- *(Dictations from 02:50 PM)*
- **Written Constitution:**
- Our Constitutional forefathers have opted for a written constitution for the following reasons:
- a. At the time of independence maximum number of people in our country were poor, backward, and illiterate, without a written constitution, it becomes almost impossible to make them aware of their rights.

- b. even though India is an ancient country it has very little experience with the functioning of the democratic systems.
- A written constitution can provide much-needed guidance to political parties and people regarding how to protect and promote their democratic ideals.
- c. There is every possibility of the executive turning itself into a dictator a written constitution by clearly defines the powers, as well as limitations on the exercise of the powers, can ensure the democratic functioning of the polity.
- **Rule of Law:**
- A major difference between a democracy and a dictatorship is the concept of rule of Law.
- Indian constitution is based on this concept of the Rule of Law, also known as constitutional law.
- The essence of rule of law is the concept of separation of powers between the three organs of the state(Executive, legislature, and judiciary)
- Legislature is responsible for law-making, the executive for its implication, and the judiciary for its interpretations.
- **The sovereignty of citizens:**
- Our entire constitution is based on this concept of the sovereignty of citizens, that is there is no one above the citizens.
- All three organs of the state derive their powers from citizens only.
- These three organs of state are supreme in their own domain but are not sovereign it is a constitution and the people who framed the constitution are sovereign.
- Since we have representative democracy it is the Parliament that exercise this sovereignty on behalf of the people, but at the same time, the parliamentary sovereignty is also not absolute because our constitution also provides for judicial review.
- **Parliamentary democracy:**
- Our constitutional forefathers have opted for parliamentary democracy over a presidential form of democracy.
- They had a choice between the stability offered by the Presidential democracy and accountability which is a measure feature of parliamentary democracy.
- They have opted for accountability over stability.
- In a parliamentary democracy, the executive comes from the legislature and is continuously accountable to the legislature.
- **Independence of Judiciary:**
- Our constitutional forefathers rightly recognized the significance of an independent judiciary to protect and promote the fundamental rights of the citizens from exploitation by other organs of the state.
- Even though it was the Britishers who introduced the judiciary, during those times it was neither independent nor impartial whereas our constitution made sure that it is both independent and impartial.
- **Judicial Review:**
- Our constitutional forefathers have included judicial review as a major feature of our constitution as they felt that the judiciary must be given the power to review the law made by the legislature and implemented by the executive for their constitutional validity, otherwise it can lead to executive dictatorship.
- **Federal Form of government:**
- India is such a vast and diverse country, it was recognized that it can not be governed from a single place.
- From ancient times, India always had a federal form of government.
- GoI Act of 1935, had formally introduced this federal form of government by dividing the subjects between the Union and States.
- After independence, it was continued in our constitution also.
- **Fundamental Rights:**
- If our entire constitution can be described in a single word, it should be the fundamental rights.
- Due to the absence of democracy and also because of colonial exploitation, ordinary citizens were not given basic human rights also.
- Our constitutional forefathers made sure that these fundamental rights are not compromised even during the worst phases of the emergency.
- Even during war or external aggression Articles, 20 and 21 can not be abridged or restricted by our executives.
- Our constitution forefathers have included Gandhian ideals in DPSPs, they focus on the economic, social, and cultural freedoms of the society as a whole.
- **Fundamental Duties:**

- They have been included as a part of the 42nd Constitutional Amendment Act.
- The objective is to make citizens aware of their duties and responsibilities towards their country.
- They also promote a sense of nationalism and patriotism among the citizens of the country.
- **Secularism:**
- The independence of the country unfortunately was also accompanied by the partition of the country on communal lines.
- Our constitutional forefathers have rightly recognized the fact that the country can not remain united unless it is secular in nature.
- The Indian concept of secularism recognizes the existence of all religions by the State and at the same time, the State also treats all religions equally.
- It will not discriminate against people based on their religion.
- **Socialism:**
- Two century of British rule has resulted in widening inequalities in the distribution of income and wealth.
- Inclusive and sustainable growth is possible only when these inequalities are removed.
- The State must take proactive measures to remove these inequalities to establish a socialistic pattern of society.

**Doubts Resolution:(03:44:00 PM to 03:55:00 PM)**

**Criticism of Constitution:(03:56:00 PM)**

- Very lengthy constitution.
- Lawyer's paradise.
- Very complex language.
- Borrowed from many countries.
- Copy of Gol, Act, 1935.
- Etc.
- (Discussion and dictations will be given in the next class)

**Topics for the next class:** Continuation of Criticism of the constitution.

**Polity Class 03**

**A Brief Overview of the Previous Class & Answered Queries:(01:01:00 PM)**

**Criticism of Indian Constitution:(01:15:00 PM)**

- *Longthiest constitution in the World:*
- At present we have 12 schedules, 25 parts, and around 475 Articles.
- It is said that our constitution forefathers have failed to differentiate between what is a constitution and what is a day-to-day administration.
- All those activities of the government which are part of day-to-day administration, have been included in the constitution.
- Our constitutional forefathers have included them as they did not want any ambiguity for future generations in terms of governance.
- **Copy of the Government of India Act, of 1935:**
- Indian Constitution is also criticized as nothing but an extension of the Government of India Act, of 1935, all the major features of our constitution are derived from it including parliamentary democracy, federal form of government, Bicameralism, judiciary, central bank, and so on.
- But to say that our constitution is an extension of the Government of India Act, of 1935 is not right because:
- The Government of India Act, of 1935 was legislation passed by the British Parliament for its colony, whereas our constitution reflects the soul of the country.
- The essence of our constitution lies in fundamental rights(FRs) whereas the Gol Act, of 1935 had no provision for FRs at all.
- Gol Act, of 1935 had provisions for the federal form of government but it was a weak federation with the central government having control over the only defense, currency, etc even this also did not come into effect because of the strong opposition by the Princely states.
- On the other hand, our constitution has strong unitary features.
- India is described as an indestructible Union consisting of Destructible States.
- Gol Act, of 1935 had also provisions for parliamentary democracy but the parliament did not have any real powers because any decision of the parliament could be vetoed by the governor General, whereas in our constitution the President is only a nominal executive with the parliament having sovereignty over its functioning.
- Gol Act, of 1935 established a federal court(Supreme Cort) but the judiciary was neither independent nor impartial whereas our constitution has made the judiciary both independent and impartial.

- In the GoI Act, of 1935 the British crown was sovereign with people being treated as subjects to be ruled, whereas in our constitution it is the sovereignty of the Citizens.
- **Lawyer's Paradise and A common man's Nightmare:**
- This criticism is valid because the maximum number of members in the Constituent assembly had come from the legal profession.
- The language used is too complicated for ordinary citizens to understand the content of the constitution.
- **On Fundamental Rights:**
- They were criticized as "Fundamental restrictions on rights".
- None of the FRs are absolute in nature, on the other hand, too many restrictions are imposed on fundamental rights leading to the criticism that they at best can be described as "Fundamental restrictions on rights".
- **A bag of Borrowed Materials:**
- Many features of our constitution are borrowed from different sources:
- FRs from American Constitution.
- DPSPs from the Irish constitution.
- Emergency Provisions from the German Constitution.
- Fundamental Duties from the USSR constitution, and so on.
- But this criticism is not valid because as pointed out by Dr. Ambedkar, they wanted to give the people of the country, the best constitution, and this is the reason why they had borrowed from various sources.
- **An Un-Indian Constitution:**
- Many critics argued that the Soul of our country is missing in our constitution.
- It reflects mostly only western liberal democratic values than Gandhian ideals.
- This criticism is also fair because most of the makers of the constitution had western education which is reflected in our constitution.
- Towards the end, Gandhian ideology was included as part of DPSPs.

#### **Schedules of Constitution:(02:26:00 PM)**

- The original constitution had 8 Schedules.
- At present, there are 12 schedules in our constitution.
- 1st Schedule: It contains the name of States and Union Territories.
- 2nd Schedule: The provisions about allowances, privileges, and emoluments of Constitutional authorities like the President and Governors, Judges of SC and HCs, CAG, Speakers and Deputy speakers, etc.
- 3rd Schedule: It contains the forms of oath and affirmation for Union Ministers, MPs, Judges, CAG, and others.
- 4th Schedule: It contains the provisions about the allocation of seats for States and Union Territories in the Rajya Sabha(Articles 4 & 80).
- 5th Schedule: It contains provisions about the administration and control of scheduled areas and scheduled tribes(Article 244)
- 6th Schedule: It contains provisions about the administration of tribal areas in the states of Assam, Meghalaya, Tripura, and Mizoram(Articles 244, 275)
- 7th Schedule: This schedule deals with the three legislative lists: Union List – List I (100 subjects), State List – List II (61 subjects), and the Concurrent List – List III (52 subjects).
- 8th Schedule: It deals with the 22 official languages recognized by the Constitution of India:
- Originally 14 languages were there. It includes Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu, Urdu.
- The Sindhi language was added by the 21<sup>st</sup> Amendment Act of 1967.
- Konkani, Manipuri, and Nepali were included by the 71<sup>st</sup> Amendment Act of 1992.
- Bodo, Dogri, Maithili, and Santhali were added by the 92<sup>nd</sup> Amendment Act of 2003 which came into force in 2004.
- 9th Schedule: To exclude laws from judicial scrutiny from violation of FRs(Article 31B).
- 1st Amendment Act 1951 added the Ninth Schedule to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights.
- However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.
- 10th Schedule: It contains provisions relating to the disqualification of the members of Parliament and State Legislatures on the ground of defection.
- This schedule was added by the 52<sup>nd</sup> Amendment Act of 1985, also known as the Anti-defection Law.

- 11th Schedule: It contains the provisions that specify the powers, authority, and responsibilities of Panchayats. It has 29 matters.
- This schedule was added by the 73rd Amendment Act of 1992(Article 243G).
- 12th Schedule: It deals with the provisions that specify the powers, authority, and responsibilities of Municipalities. It has 18 matters.
- This schedule was added by the 74th Amendment Act of 1992(Article 243W).

#### **Preamble:(03:07:00 PM)**

- The preamble of the constitution can be defined as the soul of the constitution.
- It is the introduction or preface to the constitution,
- It is based on the "Objectives Resolution" Pt. J.L. Nehru and adopted by the Constituent Assembly.
- Text of the Preamble:
- *" WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:*
- *JUSTICE, social, economic, and political; LIBERTY of thought, expression, belief, faith, and worship;*
- *EQUALITY of status and of opportunity;*
- *and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;*
- *IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."*
- Note:
- The term 'Socialist', 'Secular', and 'Integrity' was added to the preamble through the 42<sup>nd</sup> Amendment Act, 1976.
- 'Socialist' and 'Secular' were added between 'Sovereign' and 'Democratic'.
- 'Unity of the Nation' was changed to 'Unity and Integrity of the Nation'.

#### **Meanings of terms in Preamble:(03:28:00 PM)**

- **Sovereignty:**
- It has two important dimensions:
- A. *It is about the sovereignty of a country or a nation:*
- After India adopted the Constitution it declared to compete for Sovereignty.
- The country is fully independent and it also has no authority above itself.
- It has absolute power to decide its own future.
- After independence India joined many multilateral institutions like the UN, Commonwealth, WTO, etc.
- Even in the age of globalization sovereignty of the nations can be a reality because the countries can decide their futures in terms of participating in various multilateral organizations.
- They also have the freedom to decide regarding ending their memberships in those organizations.
- They can also decide the policies of those organizations.
- For example, because of India's strong opposition, WTO could not decide on Agricultural Subsidies.
- Similarly, western countries also have agreed to provide financial assistance to developing nations as part of climate negotiations.
- B. *The sovereignty of its citizens:*
- (It is discussed and dictations will be given in the next class)

#### **Topics for the next Class:** Continuation of Preamble.

#### **Polity Class 04**

#### **A Brief Overview of the Previous Class:(01:00:00 PM)**

#### **Sovereignty of Citizens:(01:06:00 PM)**

- In a representative democracy citizens' sovereignty can be seen through the electoral process.
- They can exercise their choices independently without fear or favor.
- If they are not satisfied with the performance of a particular political party then can vote for other political parties.
- For example, after the repeal of the emergency in 1977 people voted for the opposition parties.
- But the criticism is that in representative democracies sovereignty is restricted only to voting in elections.
- Citizens should also be given freedom and opportunities to participate in governance even after the elections are over.

#### **Secularism:(01:13:00 PM)**

- It is said that India has had a secular polity since ancient times.

- Indian civilization is based on the concept of equal respect for all religious faiths and beliefs as rightly pointed out by Swami Vivekananda, there are different paths to reach God, and all of them are equally good.
- Ancient Indian Civilisation is based on tolerance, openness, and respect for diversity.
- The same concepts have been included by our constitutional forefathers in the preamble.
- In the original constitution, the word secularism was not included in the Preamble. When it was pointed out, Dr. Ambedkar replied that the entire constitution is all about secularism only, and it need not be a part of the Preamble.
- Later, in 1976, through the 42nd Constitutional Amendment Secularism was added to the Preamble.
- The Indian concept of secularism is different from the western concept of secularism.
- Western concept of secularism was the outcome of the Renaissance movement, it was a reaction to the dominance of the Christian Catholic Church over the activities of the State.
- That is why, the State does not recognize any religion, not the State gives importance to religious traditions and customs while implementing the laws.
- In recent times, it led to conflict between the State and various religious communities, ultimately resulting in terrorism based on religion.
- In India, the State recognizes all religions and also treats all religions equally. The State shall not discriminate against citizens based on religion.
- Our constitutional forefathers recognized the significance of secularism to keep the country united.
- Articles 25 to 28 provide religious freedom to the citizens and also guarantee the rights of minority communities.
- The country was partitioned on communal lines and since independence, the country also witnessed various acts of communal violence.
- But because of the strong secular fundamentals of our country, the country remains united, on the other hand, Pakistan which had come into existence based on religion had disintegrated within a short period.

#### **Socialism:(01:49:00 PM)**

- In the original constitution word Socialism was not there.
- Ambedkar argued that most of the Articles in the constitution, especially directive principles only spoke about socialistic ideals, the word socialism need not be part of the Preamble of our constitution.
- It was included in the Preamble through the 42nd Amendment.
- Socialism is an economic philosophy that emphasizes the establishment of an egalitarian society- that is equal opportunity society.
- The State must work towards reducing economic inequalities.
- The basic difference between capitalism and socialism lies in the role of the State viz a viz the private sector.
- In capitalism, the private sector plays a significant role in realizing the objectives of economic growth and development.
- Whereas in socialism it is the responsibility of the State to realize those objectives.
- It must be remembered that whatever may be the 'ism', the only way a country can progress is through investment.
- In capitalism, this investment comes from the markets whereas in socialism it is contributed by the State.
- Between 1947 and 1991, India opted for a socialistic economy that was characterized by a centralized planning process, monopoly of public sector enterprises, and control of the private sector through licenses, quotas, and permits.
- It led to the collapse of the Indian economy in 1991, forcing the government to opt for neo-liberal philosophy in the form of Liberalisation, privatization, and globalization.
- The concept of socialism and its relevance was questioned in the age of liberalization and globalization.
- At present socialism is much more significant than in the past due to widening inequalities in the distribution of income and wealth, the State must take proactive measures to reduce these inequalities and realize the objectives of inclusive and equitable growth.

#### **Democracy:(02:21:00 PM)**

- The essence of democracy is the sovereignty of the citizens.
- It is based on the concept of the rule of law.
- The difference between democracy and dictatorship is the concept of the Rule of Law.
- The essence of rule of law is the separation of powers among the three organs of the State.
- In a dictatorship, all these powers are in the hands of a single person(dictator), whereas in a democracy there is a clear-cut separation of these powers and it is also based on the system of checks and balances.
- There are two different types of democracies:



- *1. Direct Democracy:*
- In this people rule themselves without any intermediaries, it is possible when the population is less and the area to be governed is small.
- Gram sabha can be the best example of Direct democracy.
- *2. Indirect or Representative Democracy:*
- Here people elect their representatives and these representatives rule the country on the behalf of the people.
- India has opted for indirect democracy.
- In recent times, efforts are being made to transform our representative democracy into participatory democracy with various governance reforms like Citizen Charters, Social Audits, E-governance, Public-private partnerships, and so on.

#### **Justice:(02:56:00 PM)**

- *Social Justice:*
- Indian society is characterized by inequalities in the form of religion, region, caste, color, race, and gender.
- many communities have been denied basic human rights in the name of traditions and customs, untouchability caste and gender discrimination are an integral part of society for a long period.
- Social justice demands that every person has a right to be treated equally irrespective of the above identities.
- *Economic Justice:*
- At the time of independence, almost 70% of the people were living below the poverty line.
- Citizens can enjoy basic human rights only when economic inequalities are removed.
- It can also help in removing social inequalities also.
- Economic and social justice together are known as distributive justice.
- As rightly pointed out by Ambedkar, political democracy is meaningless unless we realize social and economic democracy.
- *Political Justice:*
- It focuses on providing equal rights to the citizens and equal opportunities for them to reach significant positions in government and other public offices.

#### **Liberty:(03:19:00 PM)**

- Liberty means the absence of restraints on the activities of the individuals and positively it means providing opportunities for people to develop themselves.
- The preamble emphasizes the liberty of thought, expression, belief, faith, and worship.
- *Fraternity:*
- It means creating a sense of brotherhood, and togetherness.
- The concept of the fraternity had its origin in the ancient Indian philosophy of "*Vasudhaiva Kutumbakam*" which means the entire world is part of one family.
- It creates a sense of belongingness and togetherness, overcoming all other identities including religious, linguistic, gender, regional, caste, and so on.
- *Equality:*
- It means the absence of special privileges to any section of society and also the provision of adequate opportunities for all people without any discrimination.
- There are three dimensions of equality- Civic, Political and economic.
- The fundamental rights in our constitution ensure equality for its citizens.

#### **SC Judgement of Preamble:(03:46:00 PM)**

- In the *Berubari Union Case (1960)* The Supreme Court ruled:
- That the Preamble is not a part of the constitution, it shows the general purpose behind the several provision in the constitution.
- It is a key to opening the minds of our constitutional forefathers.
- In *Keshvananda Bharti Case(1973)* The Supreme court ruled that the preamble is a part of the constitution.
- In the *LIC of India, Case(1995)* again ruled that the Preamble is an integral part of the constitution.
- The preamble is neither a source of power to the legislature nor a prohibition upon the powers of the legislature.
- The preamble is non-justiciable- that is its provisions are not enforceable in a court of law.

**Topics for the next class: Constitution-** Union, States, & Territories.

**Polity Class 05**

**A Brief Overview of the Previous Class:(01:00:00 PM)**

**Union & Territories:(01:05:00 PM)**

- *(Dictation from 02:42:00 PM)*
- Part I of our constitution deals with the Union and its territories.
- Articles 1 to 4 deal with the same.
- Article 1 describes India as a Union of States, rather than a federation of states.
- At the time of independence, the country was experiencing many challenges, including the partition of the country on communal lines, successionist movements in different parts of the country, integration of hundreds of the Princely states along with the huge amount of diversity, forced our constitutional forefathers to opt for a strong union.
- India is not a classic federation like the United States of America(USA), there the states had come together voluntarily to create a federation. Whereas in India integration of Princely states was a very difficult task.
- Our constitutional makers did not want any ambiguity regarding the status of the country.
- India is described as an indestructible union consisting of destructible states- that means, states in India are only administrative units, created to improve administrative efficiency.
- States in India do not have any political identity of their own. They also have no right to secede from the Union.
- The country is an integral whole divided into states for administrative convenience.
- Article 1 classifies the territory of India into three categories: Territories of States, Union Territories, and territories that can be acquired by the government at any time.
- The names of states and UTs and their boundaries are mentioned in the 1st Schedule of the constitution.
- At present, there are 28 states and 8 UTs.
- The territory of India is a much wider term than the Union of India.
- The Union of India consists of only the states, whereas the Territory of India consists of States and also the UTs.
- India can also acquire new territories according to the instruments recognized by international laws.
- India has acquired several foreign territories like Dadra & Nagar Haveli, Goa, Daman and Diu, Pondicherry, and Sikkim.
- Article 2:
- It empowers Parliament to admit new states into the Indian Union and also to establish new states.

#### **Procedure to Create a New State:(02:11:00 PM)**

- *(Dictated with the above topic)*
- Article 3: It empowers Parliament to create a new state, increase the area of any state, reduce the area of any state, alter the boundaries of any state, and change the name of any state.
- To conditions must be fulfilled:
- 1. A bill for creating a new state can be introduced only with the prior recommendation of the President.
- 2. Before recommending, the President has to refer the same bill to the concerned state assembly.
- The state assembly must give its opinion within the stipulated period.
- The opinion of the state assembly is not binding on the Parliament.
- The entire process of creating a new state is not called a constitutional amendment under Article 368 of the Constitution.
- It requires only a simple majority in both Lok Sabha and Rajya Sabha.
- For example, the UP State Assembly passed a resolution demanding the division of UP into four parts, but this was rejected by the Union government. On the other hand, the Andhra Pradesh state assembly rejected the Presidential reference regarding the division of Andhra Pradesh and the creation of Telangana, but this was not taken under consideration by the parliament while the creation of Telangana.
- In 1960, Supreme Court ruled in the Berubari Case - when the central government decided to cede part of the territory of West Bengal state to East Pakistan, the SC ruled that ceding territory to a foreign country is not part of the power of parliament and it can only be done by amending the constitution under Article 368. the 9th CAA was passed in 1960 to transfer the territory to Pakistan.
- In 2015, the 100th CAA was passed to give effect to the border agreement signed between India & Bangladesh - Under this 111 enclaves were transferred to Bangladesh, whereas Bangladesh transferred 51 enclaves to India.

#### **History of Evolution of States in India:(03:35:00 PM)**

- At the time of independence, there were 552 princely states along with British India.
- In 1950 constitution contained a four-fold classification of states:
- Part A: It contained the governor's provinces of British India(09).
- Part B: It contained Princely states with state legislatures(09).
- Part C: It consisted of Chief Commissioner's Provinces of British India(10)

- Part D: Andaman & Nicobar Islands.
- In 1948, **Dhar Commission** was appointed by the government of India to look into the feasibility of the linguistic reorganization of the states.
- It rejected the linguistic reorganization of the states.
- **JVP (Jawahar Lal Nehru, Vallabh Bhai Patel, Pattabhi Sitaramayya) Committee** was constituted to look into the same question.
- It also rejected the linguistic reorganization of the states.
- In October 1953, the first state was created on a linguistic basis due to popular agitation. Potti Sreeramulu, a Gandhian went on a hunger strike demanding a separate state for Telugu-speaking people in Madras Presidency.
- The government of India appointed the **Fazl Ali Commission** in December 1953, to suggest the reorganization of states.
- The Commission has suggested a linguistic reorganization of the states as it was felt that it can help in promoting the unity and integrity of the nation.
- Many states had come into existence, after the recommendations of the Fazal Ali Commission.
- States of Madras, Mysore, Andhra Pradesh, Kerala, Madhya Pradesh, Punjab, and Rajasthan were created.
- In 1960, Bombay state was divided into Maharashtra and Gujarat.
- In 1961, Dadra and Nagar Haveli were converted into a union territory.
- Goa, Diu, and Daman were acquired from the Portuguese through police action in 1961.
- In 1987, Goa was converted into a State.
- French government handed over Puducherry to India in 1954. In 1962, it was converted into a UT.
- In 1963, the state of Nagaland was formed.
- In 1966, Punjab was divided into Punjab & Haryana.
- In 1972, Manipur, Tripura, and Meghalaya were created.
- In 1975, by the 36th CAA, Sikkim had come into existence.
- In 1987- three more states were created - Mizoram, Arunachal Pradesh, and Goa.
- In 2000 States of UP, Bihar, and Madhya Pradesh were divided to create Uttarakhand, Jharkhand, and Chhattisgarh respectively.
- In 2014, Andhra Pradesh was divided into Andhra Pradesh and Telangana.
- In 2019, Article 370 was abolished and Jammu and Kashmir reorganization Act was passed, it bifurcated J&K into two separate UT- UT of J&K, and UT of Ladakh.

**Topics for the next class:** Continuation of States and UTs.

## Polity Class 06

### Creation of small states [9.23 am]

- Telangana had come into existence in 2014 creating the 29th state in the Indian federation.
- With the creation of Telangana, there are many demands in the other parts of the country for new states. e.g. Vidarbha in Maharashtra, South Tamilnadu, Hyderabad, and Mysore regions of Karnataka, Gorkhaland in West Bengal, Division of Uttar Pradesh(UP) into 4 states, demand for a separate state in South Bihar, etc
- It has led to such similar demand all over the country raising questions about the need for and effectiveness of new states.
- **Arguments in favor of the creation of new states [9.29 am]**
- **i)Population:** United states of America with a population of 35 Crores has 50 states and it is said that India with a population of 140cr can have a minimum of 100 states.
- **ii)** There are many states in India whose population is more than the population of most of the countries in the world e.g. Uttar Pradesh with a population of 23 crores is the 6th largest country in the world in terms of population.
- Maharashtra, Bihar, Bengal, and Tamilnadu have a huge populations. It is believed that these states over a period of time had become unmanageable due to a very high population. They can be divided.
- **iii)** Creation of more states can also satisfy the emotional needs of people as pointed out by the **First state reorganization commission (Fazl Ali commission )**, creation of more states can strengthen the unity and Integrity of the Country. It can also protect the diversity of the nation.
- **iv)** If these demands are not fulfilled, regionalism can easily transform itself into **secessionism** and terrorism as can be seen in **northeast and Jammu and Kashmir**.
- **v)Governance:** It is believed that small states can be better-governed states. It can provide opportunities for people at the lowest level to participate in governance. Public policies can also reflect the demands and needs of the people.

- vi) For **administrative convenience** also, small states are considered better. **E.g.** there is so much geographical and economic diversity in a state like UP or Maharashtra. Western UP is fairly developed due to the Green revolution and its proximity to the national capital. Similarly, South Maharashtra is relatively underdeveloped due to Nizam's role before independence. A single policy for the entire state may not be effective. On the other hand, smaller states can formulate policies depending on conditions prevailing within their states.
- **Arguments against the creation of small states [09:52 am]**
- i) There is no guarantee that a small state can be a better-governed state **e.g.** In 2000, three states were created Chattisgarh, Jharkhand, and Uttarakhand. Out of these three states, only Uttarakhand could achieve significant progress because of its special Category status and its tourism potential. On the other hand, Chattisgarh and Jharkhand continue to be relatively poor states.
- ii) Small states can also lead to **political instability** with much smaller assemblies, few MLAs changing sides can result in the fall of the government as could be seen in Jharkhand. Political executives would be spending most of their time only on survival. It can also lead to more systematic corruption due to inherent weaknesses in anti-defection laws.
- iii) Creation of more states can also lead to more disputes regarding **sharing of river waters e.g.** the division of Andhra Pradesh into Andhra Pradesh and Telangana led to more conflicts regarding sharing of river waters of Godavari and Krishna. It is said that the 20th century was a century of Oil whereas the 21st century is all about water. The world might face a severe water crisis and with the creation of more states sharing of river water can be more problematic as rightly pointed out by our Prime minister recently. Sharing of river waters can become more problematic as it is part of the State List.
- iv) It can also lead to more **boundary conflicts**. At present, there are unresolved boundary issues between many states including Maharashtra and Karnataka and other southern states and also in the North East. The creation of more states can further complicate the issue.
- **v) Viability:** The creation of more states can also result in the new states becoming financially unviable. For **e.g.** Western UP can sustain itself whereas the rest of the other three states would be struck with huge challenges related to finances. Similarly, Vidhar in Maharashtra would be a poor state only.
- vi) There can be more **demands for special category status(SCS)** as the new states would be financially unviable. At present 11 states have special category status and there are many other states that demand SCS including Bihar, Chhattisgarh, Bengal, Odisha, Jharkhand, Andhra Pradesh, and Madhya Pradesh. It becomes almost impossible for the central govt. to deal with these demands.
- vii) Creation of more states can also result in unnecessary **administrative expenditure**. The new capital will have to be constructed with the secretariat and other administrative departments. Similarly at the district level also more districts will have to be created and it can result in more additional expenditure without improving the overall welfare of citizens
- viii) If the creation of new states still does not fulfill the demands of the people, there can be demands for further regional autonomy which can lead to unwanted consequences like Secession and the **Balkanization of the country**. It can create dual identities which our constitutional forefathers wanted to avoid at any cost.
- **Way forward [10:46 am]**
- There are some states in India that have become too big to administer. The government can appoint a commission - **Second states reorganization commission** to look into all comprehensive issues related to the reorganization of states.
- Linguistically organization of states has proved to be not so successful. Language is no longer considered an issue or a factor that can unite people for longer periods of time. Andhra Pradesh was the first state to be created on a Linguistic basis and the experiment did not last long. It was divided within 60 years.
- The creation of new states should be based only on **administrative efficiency and financial viability**. Emotional factors can only lead to unwanted adverse consequences in the future.
- The creation of new states is necessary but not sufficient. The focus should be on **administrative decentralization**, Political empowerment, and more importantly, on fixing accountability effective implementation of the 73rd and 74th amendments can address many of the issues related to growing inequalities.
- Citizen-centric governance initiatives like **Citizen charters, social audits, Public-Private people panchayat partnerships, and E-governance** can ensure the empowerment of people at the lowest level than the creation of more states.
- Regional autonomous councils can also be created to satisfy the emotional needs of people.
- To conclude, the Creation of new states can only be a means to achieve the objectives of citizen empowerment, it can not become an end in itself.
- **Article 4:**

- It declares that laws made for admission or establishment of new states (Article 2) and formation of new states, changing their boundaries renaming the states (Article 3) will not be considered as amendments under article 368 i.e. it requires only a simple majority and ordinary legislative process.

#### **Citizenship [11:03 am]**

- It is mentioned in Constitution from **articles 5 to 11**.
- India has two types of people - **Citizens and Aliens**.
- Citizens enjoy all the rights that are guaranteed to them by the Constitution whereas Aliens have limited rights e.g. Aliens do not have protection against arrest and detention (Article 22)
- Constitution confers the following **rights to Citizens**:
- Article 15 (Right against discrimination)
- Article 16 (Right to equality of opportunity in public employment)
- Article 19 (Right to Freedom of Speech and expression)
- Articles 29 and 30 (Cultural and Educational Rights)
- Only citizens have the right to vote in elections and only citizens are eligible to hold constitutional offices.
- Part 2 of the constitution has provisions for citizenship.
- Articles 5 to 11 deal with citizenship.
- They empower parliament to frame legislation to decide matters related to citizenship.
- In 1955, the **Citizenship act** was passed by Parliament.
- It has provisions for acquiring citizenship in India.
- **Conditions:**
- i) Persons domiciled in India
- ii) Persons who have migrated from Pakistan,
- ii) Persons who migrated to Pakistan and later returned to India
- iv) Persons of Indian origin residing outside India.
- How to acquire Indian Citizenship
- Citizenship act 1955 prescribes 5 **criteria to acquire Indian citizenship**:
- **i) By birth:**
- A person born in India on or after Jan 1950 but before 1 July 1987 is a citizen of India by Birth irrespective of the nationality of his parents.
- A person born in India after July 1, 1987, is considered a citizen of India only if either of his parents are Indian citizens at the time of his birth.
- Those who took birth in India after Dec 3, 2004, are considered Indian citizens only if both their parents are citizens of India or if one of them is a citizen of India and the other is not an illegal migrant at the time of the birth.
- Children of foreign diplomats and enemy aliens can not acquire Indian citizenship by Birth.

**Next Class: Citizenship will continue.**

#### **Polity Class 07**

##### **A Brief Overview of the Previous Class (09:1:00 AM)**

##### **Citizenship by Descent (09:02:00 AM)**

- A person born outside India on or after 26th January 1950 but before 10th December 1992, is a citizen of India by descent if his father was a citizen of India at the time of his/her birth.
- A person born outside India after 10th December 1992, is a citizen of India if either of his parents is a citizen of India at the time of his/her birth.
- After December 3, 2004, a person born outside India shall not be a citizen of India by descent unless his/her birth is registered at an Indian consulate within one year of the date of birth or after the expiry of one year with the permission of the central government and the parents must give an undertaking that he child does not hold the passport of any other country.
- **Citizenship by Registration:**
- The central government on an application filed by people can register a person as an Indian citizen if he belongs to any of the following categories:
- a. A person of Indian origin who is ordinarily a resident of India for 7 years before making an application.
- b. A person of Indian origin who is an ordinary resident of any other country or place outside undivided India.
- c. A person who is married to a citizen of India and is ordinarily a resident of India for 7 years.
- d. Minor children of persons who are citizens of India.
- e. A person with full age and capacity whose parents are registered as citizens of India.

- f. A person of full age and capacity who has been registered as an overseas citizen of India(OCI) for 5 years and who is an ordinarily resident of India for 12 months.

#### **Citizenship by Naturalisation:(09:28:00 AM)**

- The central government may on an application grant a certificate of naturalization to any person(not an illegal migrant) if he/she possesses the following qualifications:
- a. He/she should not be a citizen of any country which prevent people from becoming citizens of the country by naturalization.
- b. If he/she is a citizen of any other country and undertakes an oath to renounce the citizenship of that country if his application is accepted.
- c. If he has ever resided in India or has been in the service of the government of India for 12 months before making an application.
- d. The person is of good character.
- e. The person has adequate knowledge of a language specified in the 8th Schedule of the Constitution.
- f. During the last 14 years immediately preceding the said period of 12 months, he/she has either resided in India or has been in government service.
- g. The government can wave/remove all these conditions in case the person has rendered distinguished service to science, philosophy, arts, literature, world peace, or human progress.
- **Citizenship by Incorporation of Territory:**
- If any foreign territory becomes part of India the government of India specifies who among the people of the territory shall be the citizens of the country.
- They can become citizens of India from the date notified by the government.
- EExamples Puducherry, Sikkim, Goa, etc.

#### **Loss of Citizenship of India:(09:54:00 AM)**

- **By Renunciation:**
- Any citizen of full age and capacity can make a declaration renouncing his/her Indian citizenship.
- Once it is registered he/she will automatically lose citizenship.
- And if this declaration is made during the war the registration will be withheld by the government till the war is over.
- **By Termination:**
- If any Indian citizen acquires citizenship of any other country then his Indian citizenship is automatically terminated.
- **By Deprivation:**
- The central government can compulsorily terminate citizenship when:
- a. The person has obtained citizenship through fraud.
- b. When the citizen has shown disloyalty to the constitution of the country.
- c. The citizen has unlawfully communicated with the enemy during war.
- d. The citizen within the 5 years after registration or naturalization has been imprisoned in any country for two years.
- e. If the citizen has been ordinarily resident out of India for 7 years continuously.

#### **Fundamental Rights(FRs):(10:14:00 AM)**

- *(Dictations from 11:22 AM)*
- For a very long period, Indian society was characterized by discrimination and exploitation.
- During British rule, people were not given basic human rights also.
- Over constitutional forefathers realized the significance of FRs in protecting and promoting democratic norms and traditions.
- The essence of democracy is the sovereignty of citizens- The citizens must have the right to lead their life on their own without any restrictions or limitations.
- They can do so only when they are guaranteed certain rights.
- Rights may be defined as reasonable claims of people recognized by society and sanctioned by law.
- **Natural Rights:**
- These are those rights that are available to people by their birth as human beings. They are given by nature or God.
- They are not conferred by law but only enforced by law.
- For example, the Right to life.
- **Human Rights:**
- These are those rights that are considered essential to human dignity and well-being. They are plural, universal, and high-priority rights.

- For example, the right to equality, freedom of religion, right to be given fair & free trial, right to education, etc.
- *Legal Rights:*
- These are those rights that are conferred by legislation/law.
- For example, the Right to Information (RTI Act), Right to Property.
- Legal rights are not permanent and can be restricted by the Parliament.
- *Constitutional Rights:*
- Those rights are enshrined/mentioned in the constitution.
- If constitutional rights are violated citizens can approach the judiciary.
- *Civil Rights:*
- They are basic legal rights a person must possess to ensure equal citizenship for all citizens of the country.
- They ensure the orderly functioning of society.
- *Political Rights:*
- Right to express their opinion, and ideology, right to own property, right to worship, and right to make contracts, and enforce those contracts.
- They are given only to the citizens of the country.
- *Fundamental Rights:*
- These are included in Part III of the constitution.
- Article 12 to Article 35 contain FRs.
- FRs are inspired from the American Constitution (Bill of Rights).
- *FRs are categorized into the following groups:*
- 1. Right to Equality- Article 14 to 18.
- 2. Right to Freedom- Articles 19 to 22.
- 3. Right Against Exploitation- Articles 23 & 24.
- 4. Right to Freedom of religion- Articles 25 to 28.
- 5. Cultural & Educational Rights- Articles 29 & 30.
- 7. Right to Constitutional Remedies- Article 32.

#### **Important Features of FRs: (11:52:00 AM)**

- They promote constitutional democracy.
- Some of these FRs are available to only Citizens whereas others are available to foreigners also.
- FRs are called so because they are fundamental to the existence of Human beings.
- They are not absolute, the state can impose reasonable restrictions.
- All these FRs are available against arbitrary actions of the State.
- Some of them are also available against the arbitrary actions of private individuals.
- They are justiciable- If they are violated citizens can approach the judiciary.
- FRs are not permanent- Parliament can restrict the scope of FRs through a constitutional amendment without violating the Basic Structure of the Constitution.
- They can be suspended during the national Emergency except for Articles 20 & 21.
- Their scope of implementation is limited by Article 31A, Article 31B, and Article 31C.
- These FRs do not apply to certain institutions like Army, Paramilitary forces, intelligence agencies, and so on.
- Q: Discuss each adjective attached to the word 'Republic' in the preamble. Are they defensible in the present circumstances? (250 Words/ 15 Marks)

**Topics for the next class:** Continuation of the FRs.

#### **Polity Class 08**

#### **A brief overview of the political history in reference to the constitution:**

- Role of judiciary >> passive and active.
- After independence >>> Executive and legislature were very strong.
- The confrontation between the judiciary, and executive.
- Important cases like Golaknath, and Kesavananda Bharti judgments.
- The conflict between FR and DPSPs.
- Cases of land reforms.
- The extent of articles 19, 20, 21, etc.
- The issue with the Judiciary >> pending cases.
- A brief overview of the political history of the country.
- Role of PMs like Indira Gandhi, Rajiv Gandhi, etc.

- Difference between state, nation, and country.

#### **Article 12:(2:17:21 PM):**

- Defines state from the perspective of FRs for the purpose of part 3 of the constitution.
- State includes the government and Parliament of India i.e. executive and legislative organs of the union government.
- Also includes executive and legislative organs of state governments.
- Includes all local authorities.
- Includes all other authorities statutory and nonstatutory.
- Includes PSUs like ONGC, LIC, etc.
- According to the Supreme court, even a private organization working as an instrument of the state also comes under the scope of the state under art 12 of our constitution.
- Country and state are synonymous terms and both apply to self-governing political entities.
- A nation is a group of people who share the same culture but do not have sovereignty.
- Example-Kurdish the population in Iraq is a nation without a state.
- France, Japan, the US, UK are both nations and states.

#### **Article 13:(2:46:35 PM):**

- Declares that all laws that are inconsistent with any of the FRs shall be void.
- Provides for Judicial review.
- Judiciary has the power to declare any law null and void if it is a contradiction to Fundamental rights.
- **A law may be defined as follows under article 13:**
- **Laws** enacted by Parliament or state legislatures.
- Ordinances issued by the President and state governors.
- Statutory instruments like delegated legislation, order, bylaws, rules, and regulations.
- Nonlegislative sources of law like customs that are having the force of law.
- Article 13 declares that a **constitutional amendment** is not a law and hence can't be challenged.
- But the Supreme court in the **Keshavananada Bharti case** held that a constitutional amendment can also be challenged if it violates the fundamental rights of citizens and if violates the basic structure of the constitution.

#### **Article 14:**

- **Right to Equality;**
- Indian society for a long period of time is characterized by various identities which only resulted in discrimination of people.
- The establishment of an egalitarian society is possible only when the state can ensure equality before the law for all citizens.
- The concept of equality before the law has its origins in **Dicey's concept of rule of law.**
- **3 important features:**
- 1) No person can be declared guilty unless he is proven so by ordinary courts following an ordinary legal manner.
- He can be punished only for a distinct breach of law which is proved in ordinary courts.
- 2) Equality before the law.:
- Howsoever high the person may be in terms of status, money, and popularity, the law is always above that person.
- 3) Fundamental rights are the outcomes of traditions and customs and also of Judicial pronouncements from time to time.
- In India, the source of FRs is the constitution while in the UK, the FRs are the source of the constitution.
- Article 14 says that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.
- **Previous class Question discussion.**
- **Answer writing:**
- Introduction.>>10 percent.
- Explanation.>>80 percent.
- Conclusion.>>10 percent
- Why aspect of the question.
- Since it becomes difficult for ordinary citizens to understand the essence of our constitution because of its complicated language and its length.
- Our constitutional forefathers have included a preamble.
- Adjectives in the front republic are:



- Sovereign, socialist, secular, democratic.
- Define them.
- Are they defensible?
- Since the commencement of the constitution, major changes have taken place that forced analysts to question these adjectives.
- Liberalization, Globalisation, Privatisation.>>changes.
- Arguments in favor and against these adjectives.

**Next class:-Art 14 continuations.**

**Polity Class 09**

**Polity Class 09 [13:00:00]**

**A brief overview of the previous class i.e. Article 14 and Q&A session**

**Article 14 [13:23:00]**

- **The Concept of equality before the law**
- The concept of equality before the law is of British origin. It is a negative concept in the sense that it focuses on preventing the state from providing any special privileges to any section of society
- **The Concept of equal protection of Law**
- It is a feature of the American administration and it is a positive concept. Every citizen should expect the same amount of protection from the law. Equality of treatment both in terms of privileges conferred and liabilities imposed by the laws.
- Equals should be treated equally.
- A person should not be deprived of justice because of illiteracy, backwardness, poverty, or any other reasons

**Exceptions to the concept of Rule of law [13:33:00]**

- **The President and Governor**- They enjoy immunity from the concept of Rule of law
- **Article 361**- The President or the governor is not answerable to any court for their performance and use of their powers
- No criminal proceedings shall be instituted against the President or Governor during their term of office
- No process for the arrest or imprisonment of the president or Governor shall be issued by any court during their term
- No civil proceedings can be instituted against them during their term of office even in their personal capacity also. They can be initiated until after the expiration of two month's notice delivered to them
- **Article 105**- No member of parliament is liable for any proceedings in any court of law in respect of what he said or did on the floor of the house [This is part of parliamentary privileges]
- Foreign embassy officials also enjoy immunity from criminal and civil proceedings

**Comparison between India and USA- Equality [14:01:00]**

- **Explanation**
- Equality has been achieved in only an egalitarian society i.e. no class differences. But there is no society that is egalitarian in nature
- Discrimination for positive purposes or for constructive purposes- **Positive discrimination**
- **Procedural equality v/s substantive equality**
- **Procedural equality**- USA also has racial inequality (Blacks & other communities v/s White community). The backward community does not have access to education, health, and other. In public employment USA does not give any reservation, it is totally based on merit. The government provides free education, free health facilities, and free skill so that they can be empowered and can come at par with the white community. They have to compete with the white community on an equal level playing field.
- **Substantive equality**- In India, we believed that these communities have been deprived of their rights for many years. So the government believed in the concept of Equity (Biased in favor of some communities). So we opted for positive discrimination/ affirmative action. So India focused on outcomes and not only on instruments or procedures. Direct inducements like free education are not sufficient so we are giving them substance as well as procedure. We focused more on substance.
- **Which is a better one?**- In the USA, first economic democracy (Industrial revolution) emerged then social democracy, and then political democracy so they can focus on procedural equality. So the USA can focus on instruments. The conditions of the USA are different from India. In India, the Industrial revolution does not happen thus we have to focus on the substance as well as the procedure

**Article 15 of the Indian constitution [14:14:00]**

- Article 15(1)- It provides that the state shall not **discriminate** against any person on grounds **only** of religion, race, caste, sex, or place of birth

- [\* Discrimination- It means to make an adverse distinction. It also means to distinguish unfavorably from others]
- Article 15(2)- No citizen shall be subjected to any disability, liability, restriction, or condition on grounds only of religion, race, caste, sex, or place of birth with regard to
  - a) Access to shops, public restaurants, hotels, and places of public entertainment
  - b) The use of wells, tanks, bathing ghats, roads, and places of public resorts maintained wholly or partly by state funds
- **Exceptions to Article 15**
- The state is permitted to make special provisions for women and children. Examples- Free and compulsory education for children, Mid-day meal scheme, Women's reservation in local bodies
- The State is also permitted to make special provisions for the advancement of any socially and educationally backward sections of society or for SCs and STs. Example- Reservations
- The State is also empowered to make special provisions for the advancement of socially and educationally backward sections and also for SCs and STs in private educational institutions whether they are aided or unaided except for minority educational institutions
- The state is also empowered to make special provisions for economically weaker sections. They are given reservations for up to 10% of seats in educational institutions including private educational institutions.

#### **Reservations in educational institutions [15:33:00]**

- 93rd CAA has provided reservations for OBCs in central educational institutions including IITs and IIMs
- SC upheld the validity of this amendment in 2008 and directed the exclusion of creamy layer among OBCs
- 103rd CAA has provided for reservations for economically weaker sections, they are available only to those sections that are not covered under existing schemes of reservations for SCs, STs, and OBCs
- Recently SC in one of its landmark judgments has upheld the validity of EWS reservations
- **SC looked into three important aspects of the 103rd CAA**
- 1) In Indra Sawhney v/s UOI case, SC ruled that Reservations cannot exceed 50%
- 2) Article 15 mentions about positive discrimination against socially and educationally backward classes and also for SCs and STs
- 3) Reservations given to EWS- Will they violate the basic structure of the constitution
- **SC ruled that,**
- 50% limit imposed in the Indra Sawhney case is not sacrosanct. It can be changed depending on the circumstances.
- SC also ruled that parliament has the power to provide reservations on economic criteria also.
- Constitution can be amended to include economic criteria also
- It ruled that it does not violate Article 15 and Article 16 of our constitution
- SC also ruled that these reservations do not violate the basic structure of the Indian constitution
- Parliament has the sovereign power to decide the scope of reservations based on socio-economic and educational backwardness prevailing in the country
- Through a majority verdict SC also ruled that the exclusion of SCs, STs, and OBCs from EWS categories does not violate the basic structure of our constitution. It does not violate article 14 of the constitution (equal protection of laws)
- The argument given in favor of the exclusion of socially and educationally backward sections from the EWS category is that they have already been covered under other categories
- 50% limit imposed by SC has already been violated by various state governments

#### **Reservations based on Local domicile [15:50:00]**

- Recently, states like Haryana, Karnataka, Madhya Pradesh, Andhra Pradesh, Maharashtra, and Gujarat demanded 75% reservations for locals in public sector enterprises as well as in the private sector
- **Constitutional provision-** The constitution explicitly mentions that there can not be any discrimination on the basis of domicile by state governments. Under Article 16, only the parliament is authorized to make enabling provisions

#### **Can reservations be solutions to the problems of increasing poverty and unemployment? [15:56:00]**

- In 1991, India had opted for Liberalization, Privatization, and Globalization, the role of state has changed drastically in the age of globalization. At the same time, the country also witnessed competitive populism in elections. India has first past the post electoral system.
- It gives opportunities for political parties to create vote banks through Identity politics i.e. they can easily command the loyalty of different sections of society by promising them benefits in the form of reservations

**The topic for the next class:-** Continuation of the way forward of the reservation provision

**Polity Class 10**

### **Reservations:(Continuation from the previous class):(1:15:45 PM):**

- Initially, the reservations were provided for a period of 10 years for SC and ST only based on their population.
- They are part of affirmative action.
- As pointed out by the Supreme court in NM Thomas judgment 1976, Reservations are part of the idea of substantive equality i.e. actual circumstances of people should be taken into account when determining what constitutes "equal treatment".
- The reason for the emphasis on substantive equality is that groups of people who face structural and institutional barriers for longer periods of time should be able to compete on equal terms.
- Over a period of time, these reservations have been extended as successive governments felt that the objective of an egalitarian society has not been achieved.
- Must be remembered that reservations or any other form of positive discrimination should always remain a "means" to achieve the objective of a classless society. It cannot become an end in itself.
- Inclusive and equitable growth can be achieved only by focusing on infrastructural development and industrialization.
- Emphasis on social infrastructure, efforts to transform demographic bulge into a demographic dividend, focus on creating employers rather than employment, skill development and improvement in quality of education can only empower weaker sections of society in the long term.

### **India Vs USA regarding Right to Equality:(1:46:51 PM):**

- **India**-Constituent Assembly that has included the right to equality in Fundamental rights.
- **USA**-Derived from Bill of rights.
- **India**-Included in the initial stages of the formulation of our constitution in part 3 of the constitution.
- **USA**-Included in the American Constitution through the 14th CAA in 1868.
- **India**- India has both British and American models, Equality before the law and Equal protection of laws.
- **The USA**-Concept of Equal protection of laws is an essential feature of the right to equality under Rule of law.
- **USA**-Emphasis on civil and legal equality. Also focuses on procedural equality.>>Equality of opportunities.
- The original constitution of America did not prevent discrimination.
- **India**-Emphasis on civil, legal, and socio-economic equality.
- India also focussed on substantive equality.>>Equality through equity.>> Equality of outcomes apart from equality of opportunities.
- India's concept of **Rule of law** has a much wider scope as it prevents discrimination and also abolishes untouchability.

### **Article 16:**

- **Equality of Opportunities in Public Employment:**
- Article 16 provides for equality of opportunity for citizens in matters of employment to any office under the state.
- No citizen can be discriminated against on grounds of only religion, caste, sex, descent, place of birth, or residence.
- **4 Exceptions:**
- -Parliament can prescribe residence as a condition for employment in a state or union territory or local authority or any other authority.
- At present this provision is applicable for only states of AP and Telangana under article 371D.
- -The state can provide reservations in favor of any backward class that is not adequately represented in the state services.
- -A law can provide that an incumbent of an office to a religious institution should belong to a particular religious community.
- -State is permitted to make provision for reservation of up to 10 percent of appointments to economically weaker sections of society.
- **Reservations in promotions:(2:18:31 PM):**
- Supreme court has held that articles 16(4) and 16(4)(A) are in the nature of enabling provisions, vesting discretion on the state government to consider providing reservations if the circumstances demand.
- Reservations are not fundamental rights of the citizens.
- The judiciary can issue no mandamus instructions to the state in matters of reservations.
- If the state decides to provide reservations it must collect sufficient quantifiable data to provide reservations.
- Supreme court in the **Indira Sahani case** has ruled that the reservation policy can't be extended to promotions.

- Parliament has enacted the 77th CAA to provide reservations in promotions to SC and STs.
- In 2001, the 85th CAA was passed to introduce promotion with **consequential seniority**.
- This means elevating a person to senior positions consequential to circumstances and not through normal rules.

#### **Article 17:(2:45:30 PM):**

- **Abolition of untouchability:**
- For more than 5000 years, the Indian society has witnessed the practice of untouchability.
- Many lower caste people were not allowed to become part of mainstream life because of their birth.
- **Article 17** abolishes untouchability and forbids its practice in any form.
- In 1976, the untouchability act was amended and renamed the protection of civil rights act.
- Defined civil rights as any right accruing to a person by reason of the abolition of untouchability under article 17 of our constitution.
- Also has made provisions against untouchability much stronger.
- If a person is convicted of the offense of untouchability, then he is disqualified to contest elections to the parliament and state legislature.
- Untouchability is also a cognizable offense. (Arrest without a warrant) and also a non-compoundable offense. (cases cannot be withdrawn even if a compromise is reached between the parties involved in the dispute).
- Supreme court has also held that article 17 is available against private individuals also.
- Responsibility of the state to take necessary action.
- The word untouchability has not been defined in the constitution.
- Mysore High court defined untouchability as the practice as it had developed historically in the country.

#### **Article 18:(3:10:38 PM):**

- **Abolition of Titles:**
- During British rule, Britishers deliberately created differences between people in the form of subjects and masters.
- They conferred titles on Zamindars and the kings like Maharaja, Rai bahadur, Dewan, Raj bahadur, etc.
- Right to equality demands that people should not be discriminated against in any form.
- **Art 18 abolishes all titles:**
- -Prohibits the state from conferring any title except military or academic on anybody whether a citizen or a foreigner.
- -Prohibits Indian citizens from accepting any title from any foreign country.
- -A foreigner holding any office of profit under the state can not accept any title from a foreign country without the consent of the President.
- In 1996, the supreme court ruled the constitutionality validity of Padma awards that they are not titles within the meaning of article 18.
- Also ruled that they cannot be used by the awardees as prefixes or suffixes.

#### **Article 19:**

- **Right to freedom of speech and expression.**
- Long-term sustainable development of civilizations is possible only when they give complete freedom to their citizens.
- For example- Ancient Indian civilization survived for more than 5000 years because of its diversity and tolerance.
- Our constitutional forefathers rightly recognized the value of freedom of speech and expression not only from a political dimension but also from the perspective of the overall development of society.
- It has been included in FR because there is every possibility of the state taking away these rights in the name of the overall welfare of society.
- People can be held for hate speech.
- Stay has been put by the supreme court on section 124A for the present.
- Difficult to ban the documentary in the present times as social media presence is huge.
- But reasonable restrictions are required to have restrictions on absolute speech and expression.
- **Question for mains:**
- **Analyze the distinguishing features of the notion of equality in the constitutions of the USA and India. (15M, 250 words)**

**Next Class-Continuation from article 19, article 20.**

**Polity Class 11**

**A Brief Overview of the Previous Class & Answered Queries:(01:00:00 PM)**

### **Article 19:(01:03:00 PM)**

- Article 19 provides 6 rights to the citizens:
- 1. Right to speech and expression.
- 2. Right to Assemble peacefully and without arms.
- 3. Right to form associations/unions/cooperative societies
- 4. Right to move freely throughout the territory of India.
- 5. Right to reside and settle in any part of the country.
- 6. Right to carry on any trade or profession/occupation.
- Right to Property was originally a fundamental right but was deleted by the 44th CAA.
- At present it is an ordinary legal right available to both citizens and foreigners.

### **Right to Speech and Expression:(01:25:00 PM)**

- It means every citizen has the right to express, opinions, and convictions.
- It also includes:
- The right to propagate one view,
- Freedom of the press, commercial advertisements,
- Right against telephone tapping,
- Right to know about the function of the government,
- Right to be silent
- Right to the demonstration.
- But the State can impose reasonable restrictions on the grounds of sovereignty and integrity of the country, security of the State, Friendly relations with foreign countries, Decency or morality, contempt of court, and defamation.
- These rights are protected only against the State actions and not against Private individuals.
- But, recently Supreme Court has ruled that it can be against both State and Private individuals.
- Supreme court has ruled that statements made by individual ministers can not be extended to the entire CoM.
- The collective responsibility of CoM does not extend to the comments made by the individual ministers.
- It also ruled that the Right to freedom of speech and expression guaranteed by U/A 19(a) can not be curbed by any additional grounds other than those already laid down in U/A 19(2).
- Recent Supreme Court judgments also bring an obligation on the part of the State to ensure that private entities also abide by the constitutional norms. It can potentially expand the scope of the Right to Privacy.
- This judgment also has expanded the vertical application of Rights to the Horizontal application of Rights.
- The Vertical application of Rights means rights can be enforced only against the State, whereas the Horizontal approach means they are enforceable against private citizens also.

### **Sedition Laws:(02:08:00 PM)**

- It is a colonial legacy.
- In 1885 Indian National Congress(INC) was formed and later It became powerful to demand independence.
- The British government wanted to curb these activities.
- Section 124A was included in the Indian Penal Code(IPC).
- It covers sedition charges against the government.
- It includes all those activities that attempt to bring hatred or contempt or to excite disaffection towards the government established by law in India by words, signs, or by any visible representation, or otherwise.
- A person is liable to be punished with imprisonment for life or with imprisonment up to 3 years with a fine.
- After independence many attempts have been made to remove these sedition laws but they have not been successful.
- In 1962, the SC in the Kedar Nath Singh vs State of Bihar case, had upheld the validity of section 124A of the IPC.
- Supreme Court had commented that there must be a 'correct balance' between the fundamental rights of people U/A 19 and the need for public order.
- At the same time it has significantly reduced the scope of the Sedition Law.
- Cases can be filed only when there is incitement to eminent violence toward the overthrow of the State.
- The SC has held that mere criticism of the State can not be the reason for filing sedition charges.

### **Analysis of Sedition Law:(02:27:00 PM)**

- *Argument in favor:*
- After the SC judgments in the Kedar Nath Singh vs the State of Bihar case the number of cases filed had come down drastically.
- Safety, security, unity & integrity of the nation is more important than fundamental rights.

- Article 19(2) has already imposed reasonable restrictions.
- Mere misuse of citizen laws in a few instances can not be the reason for their removal.
- Country is also experiencing many challenges in the form of terrorism, Secessionism, regionalism, and communalism so sedation laws are required to fight these.
- *Arguments against:*
- It is Anti-democratic.
- It takes away the freedom of the people to criticize their government which is the essence of democracy.
- There are a lot of scopes for misuse.
- It is also draconian in nature.
- Once a person is arrested he can be detained for the rest of his life without any inquiry.
- It also restricts the freedom of the press and can lead to electoral dictatorship.
- There are other provisions in IPC to deal with crimes related to national safety and security.
- Recently the government also made amendments to the Unlawful Activities (Prevention) Act UAPA legislation that has conferred a huge amount of powers in the hands of the government to punish terrorism and other related crimes.
- The SC has taken up the PILs demanding the removal of Sedition laws.
- At present the SC has directed the central and the state governments not to proceed with the application of these sections of law till the final judgment is delivered.
- recently the Delhi High court released a student activist arrested under these charges.
- It has been mentioned that dissent is an extension of the invaluable Fundamental right to freedom of speech and expression contained in U/A 19 of the constitution.
- It has also mentioned that prosecutions can not be launched based on conjectures and surmises.

#### **Hate Speech:(02:58:00 PM)**

- The question is what should be considered hate speech without restricting the freedom of speech and expression is a major challenge.
- Law commission defined hate speech as incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious beliefs, and so on.
- The central government has appointed Viswanathan Committee to suggest recommendation to suggest regarding hate speech.
- The committee recommended substantive provisions in IPC to deal with hate speech.
- Section 78 of the IT Act, deals with hate speech- It emphasizes sensitizing officers and also improving their capacity building to deal with hate speech.
- The SC has ruled(In the Shreya Singhal Vs Union of India Case) that hate speech must be viewed through the lens of the right to equality.
- Section 66A of the IT Act also dealt with hate speeches, this provision created lots of controversies because of its ambiguity.
- According to t this section messages which are offensive and menacing in character can attract fines and up to three years of imprisonment.
- However, the terms 'offensive& menacing' have not been defined, which led to misuse and abuse of these provisions.
- The SC has struck down Section 66A of the IT Act as unconstitutional and declared it a draconian law.
- It has restricted the right to freedom of speech and expression and also upsets the balance between fundamental rights and reasonable restrictions.

#### **Right to freedom of Assembly:(03:12:00 PM)**

- It includes the right to hold public meetings and also demonstrations and processions.
- This right also comes with reasonable restrictions, namely:
- Sovereignty & integrity of India.
- Public order.
- ***Right to Freedom to form Associations:***
- All citizens have the right to form associations/unions/cooperative societies.
- It includes the right to form political parties, companies, partnership firms, clubs, trade unions, or any other organization.
- It also includes the negative right of not joining any organization also.
- Reasonable restriction can be imposed by the State on grounds of sovereignty and integrity of India, Public order, and morality.
- ***Right to Freedom of Movement & Right to reside/settle in any part of territory India:***

- Globalisation has resulted in uneven development leading to the creation of islands of prosperity in an ocean of poverty.
- Most of the backward regions of the country could not benefit from globalization due to the absence of infrastructure and industrialization.
- It led to massive migration to other parts of the country.
- Since the country witnessed jobless growth during this period, it resulted in conflict between the locals and the outsiders.
- Many state governments to appease their vote banks had come out "Sons of Soil" argument to protect the interest of the local population.
- They had provided reservations for the locals in public employment.
- As a part of the integration of Kashmir Princely State into the Indian Union, the government included Article 35A and Article 370 in the constitution to protect the interests of local Kashmiris.
- It fulfilled the demands for the secession of Kashmir from India also.
- It was felt by the government that as long as these provisions are part of our constitution, integration of J&K into the Indian Union would be incomplete.
- these provisions were removed to enable the citizens of the country to carry on occupation trade, and business, and also to reside permanently in this region.
- These provisions were included by our constitutional forefathers to promote a sense of togetherness among the citizens of the country.
- They also help in preventing negative emotions like regionalism, linguistic identities, separatism, and secessionism.
- To overcome the problems of uneven growth, the reservation based on a domicile can not be the solution.
- It can result in more unwanted consequences like regionalism, and secessionism.
- the solution lies in a balanced regional development with more focus on equity and inclusiveness.
- Reasonable restrictions are provided are:
  - a. Protection of interests of the general public,
  - b. Protection of interests of any scheduled tribes.
- The entry of outsiders into tribal areas is restricted to protect their distinct culture, language, and customs.
- But at the same time it must also be remembered that inclusive growth demands the development of tribal areas also.
- Globalisation can be successful when the country is in a position to optimize its existing resources.
- Most of the mineral resources are in tribal areas and the tribals alone can't utilize those resources on their own without external assistance.
- The government had come out with a solution in the form of PESA(Panchayat Extension to Scheduled Areas).
- Under this gram Sabahs must permit the use of resources so that development can take place without adversely impacting the tribal customs and culture.

**Topics for the next class:** Article 20 and continuation of FRs.

## **Polity Class 12**

**A Brief Overview of the Previous Class & Answered Queries:(01:03:00 PM)**

**Article 20:(01:14:00 PM)**

- *(Dictations form 02:51:00 PM)*
- Dicey's concept of Rule of law emphasizes the Right to the innocence of people.
- They can be punished only for any distinct breach of law that is proved in any ordinary court through the ordinary legal process.
- Punishment should always align with the crime committed.
- The same provision was included U/A 20 of the Indian constitution.
- It provides protection against arbitrary and excessive punishment of an accused person whether a citizen or a foreigner or a legal person like a company/corporation.
- It provides the Right to Protection in respect of conviction for offenses:
- No Ex-post facto Punishment:
- No person shall be convicted of any offense except for violation of a law in force at the time of the commission of the Act charged as an offense, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offense.
- No-Double jeopardy: No person shall be prosecuted and punished for the same offense more than once.
- No person accused of any offense shall be compelled to be a witness against himself/ no self-incrimination.

- *There are exceptions to this right are:*
- No Ex-post facto Punishment is applicable only in criminal laws but not in civil and tax laws.
- For example, in Vodafone's case, the govt had come out with retrospective legislation to recover tax arrears from Vodafone.
- Finally, the govt had withdrawn this retrospective legislation as it was hurting the image of India at the global level.
- It also had an adverse impact on FDI. The matter was settled out of court.
- Protection against Double Jeopardy is available only in court proceedings or judicial tribunals. It is not available in departmental investigations as they are not judicial in nature.
- Similarly, there are exceptions to self-incrimination also.
- The government can make it mandatory to provide thumb impressions for body scanning and also to produce material evidence.

#### **Article 21:(01:30:00 PM)**

- *(Dictations from 03:06:00 PM)*
- Right to Protection of life and personal liberty:
- No person shall be deprived of his life or personal liberty except according to the procedure established by law.
- Every civilized society must ensure that its citizens enjoy this basic human right.
- When people take birth they are free and they should also have the right to enjoy personal liberty as long as they are alive.
- The most important obligation on the part of the State is to make sure citizens enjoy this basic human right.
- The credibility of any government depends on the ability to protect the lives and freedom of its citizens.
- But at the same time, the government must also focus on the overall welfare of society.
- It can result in conflict between individual FRs of the citizens and DPSPs.
- More often than not both the legislature and executive had given importance to DPSPs and in the process compromised with the FRs of the citizens.
- Judiciary has come to the rescue of ordinary citizens whenever other organs of the State misused their powers and restricted the scope of this very important FR.

#### **Important Cases(02:00:00 PM)**

- *(Dictations from 03:06:00 PM)*
- **Gopalan Case:**
- The parliament has amended the constitution by restricting the scope of FRs including Article 19.
- The SC has pronounced a landmark judgment wherein it has reaffirmed the "Procedure Established by law" in the functioning of our legal system.
- It is a practice followed by the British judiciary.
- Since the British do not have any written constitution the Parliament has the sovereign powers to make any legislation.
- Judiciary would restrict itself only to reviewing executive actions, it does not have the power to question legislative actions.
- SC in this judgment clearly recognized the sovereignty of the Indian parliament to make any legislation as long as it followed the proper procedure.
- It has given complete freedom to the legislature.
- Circumstances also demanded proactive action on part of the legislature to establish egalitarian societies.
- In **the ADM Jabalpur Case**, The SC again reaffirmed its commitment to the "Procedure Established by law".
- MISA was passed during the Emergency which gave unlimited powers to the executives including restricting the scope of Articles 20, & 21.
- But the judiciary still went according to "Procedure Established by law" and did not question legislative competencies.
- **In the Meneka Gandhi Vs Union of India case:**
- The SC overruled its previous judgments and introduced for the first time the concept of "Due Process of Law" in the functioning of our legal system.
- "Due Process of Law" is a feature of the American legal system.
- Here judiciary expands its powers to include legislative action also. It can question the content and intent behind the legislation and also its implementation.
- Judiciary will scrutinize actions based on "Due Process of Law"- Whether the principles of natural justice are duly followed while implementing the legislation.



- The SC further expanded the scope of this article and said it also includes the Right to have a Dignified Existence.
- This landmark judgment of SC has opened floodgates of judicial activism in the country.
- The SC had come out with various judgments to expand the scope of Article 21.
- Important rights expanded by the judiciary under Article 21 include the Right to life with Human dignity, the right to health, Education, the Rights of prisoners, the right to information, the right to privacy, the right to have access to safe drinking water, the right to shelter, right to sleep, right to marry,
- In the landmark case ***the K.S. Puttaswamy v. Union of India(2017)***, The SC ruled that the right to life and personal liberty provided by Article 21 implicitly includes a right to privacy.
- According to the Puttaswamy decision, the right to privacy is safeguarded as a basic constitutional right under Articles 14, 19, and 21 of the Indian Constitution.
- The government had made Adhar mandatory for a maximum number of activities.
- It had provided immense power to the executives to intrude in the personal lives of citizens.
- The SC ruled that making Adhar mandatory is a violation of the Right to Privacy.
- At present Adhar is mandatory only for paying income tax, and also to receive benefits under various welfare schemes. SC ruled that not having Adhar can not be the reason for excluding the beneficiaries.
- In 1993, the SC ruled that the Right to have Primary education is part of the fundamental right Under Article 21.
- Constitution was amended and Article 21A was added to implement SC's judgment.
- Under this, the government must provide free and compulsory education for children between 6 to 14 years.
- **Capital Punishment:**
- Under Section 302 of IPC capital punishment can be awarded in "the rarest of rare cases".
- In recent times the country witnessed debate regarding the continuation of capital punishment in our legal system.
- *Arguments in favor of Capital punishment:*
- National security.
- To act as a deterrent for people from committing crimes.
- Human rights are only for those who are humane, they can not be claimed by terrorists or other criminals.
- If terrorists are given life imprisonment, enemy countries can always use blackmail tactics to release these prisoners.
- For example, the Air India hijacking incident, in 1999.
- If terrorists and criminals are not punished severely it might send the wrong signal to the rest of the countries that India has become a soft state- The state is not in a position to take tough decisions, especially in matters related to national security.
- If the killing of the enemy forces is justified in wars, the same can be true in the case of terrorists also, as they are also fighting a war against the State.
- Unlike, most countries around the world, India is surrounded by hostile neighbors which make national security a non-compromising policy.
- *Arguments against:*
- It is believed that it is unethical and immoral, even though it may be legal, because it is God who gives birth, and only He has the right to take away life.
- Capital punishment has not proved to be a deterrent. For example, crimes against women continue to be committed despite awarding capital punishment to some of the criminals.
- Similarly, anti-national activities also did not come down even after hanging most of the terrorists.
- Justice should focus on reforming people and not on punishing them.
- As Mahatma Gandhi pointed out punish crime and reform the criminal.
- Retributive justice can lead nowhere in terms of dispensing justice. As Gandhiji said an eye for an eye can easily turn the entire world into blindness.
- 'Rarest of Rare cases' doctrine has also not been implemented according to the SC itself. It has been found that at least in 13 cases, this doctrine was not implemented.
- Conclusion- taking into consideration geopolitical, and security-related challenges faced by India, capital punishment still is required.
- There are many safeguards against its misuse. Convicted prisoners can always approach the President by filling mercy petitions.
- Similarly, the SC can also remit the sentence given by High Courts into life imprisonment.
- At present capital punishment is definitely needed from the perspective of national security.

**Topics for the next class:** Continuation of FRs.

**Polity Class 13**

**A Brief Overview of the Previous Class & Resolved Queries:(01:01:00 PM)**

**Article 22: (01:15:00 PM)**

- (Dictation from 01:40:00 PM)
- **Dictation of Article 21 Continues:**
- Supreme court has allowed passive Euthanasia in the Aruna Shanbaugh Case.
- It means ending the life of a person on a life support system.
- SC ruled that the Right to Die with dignity is a fundamental right.
- Any person can make an advanced 'living will' that would authorize passive euthanasia under certain circumstances.
- SC also decriminalized suicide as it felt that suicide victims should be viewed with empathy & compassion.
- **Article 22:**
- It protects against arrest and detention in certain cases.
- It can be broadly divided into:
- **Punitive detention:**
- It means punishing a person for an offense already committed by him, after trial and conviction in a court.
- Rights available to citizens:
- a. The person should be informed of the grounds of his arrest.
- b. He must be given legal assistance- He has the right to consult and be defended by a legal practitioner.
- c. He has the right to be produced before a magistrate within 24 hours excluding travel time.
- d. Right to be released after 24 hours unless the magistrate orders further detention.
- These safeguards are available only to Indian citizens not to enemy aliens and also not available in case of preventive detention.
- **Preventive detention:**
- The second part of Article 22 grants protection to people who are arrested under preventive detention laws.
- It is available to both citizens as well as aliens.
- The detention of the person can not exceed 3 months, if it is to be extended, an advisory board must recommend the extension.
- This board must consist of High Court judges.
- Reasons for detention must be communicated to the person, but facts considered to be against public interest need not be disclosed.
- The person should be given an opportunity to make representation against the detention order.
- **Criticism against Preventive detention:**
- It violates the concept of Rule of law.
- There is a lot of scope for misuse and abuse.
- It can result in the emergence of a police state.
- No other democratic country has this in its constitution.
- It is mostly restricted to emergencies. For example, the UK has preventive detention during World Wars.
- Legislations related to preventive detentions in India:
- Legislations that support detention beyond three months- NSA(National Security Act), Conservation of foreign exchange and prevention of smuggling Act, UAPA.

**Article 23 & 24:(01:29:00 PM)**

- (Dictation from 02:07:00 PM)
- **Article 23:**
- Prohibition of traffic in human beings and forced labor.
- Under this it includes:
- Selling or buying of men, women, children, like goods.
- Immoral trafficking of women and children including prostitution.
- Devadasi system, Slavery.
- The State can impose compulsory services for public purposes and the state is also not bound to pay.
- **Article 24:**
- It talks about the prohibition of the employment of children in factories.
- It says that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

- It does not prohibit the employment of children in harmless works.

#### **Right to Freedom of Religion:(02:26:00 PM)**

- *(Dictations from 03:26:00 PM)*
- **Article 25:**
- Freedom of conscience i.e. freedom of individuals to develop their beliefs and faiths.
- The state cannot interfere with the inner freedom of individuals. An individual can decide his relationship with god, the way he likes.
- **Right to profess-**
- That is the right of the individual to openly profess his individual beliefs. Ex-Sikhs are allowed to carry kirpan as it is considered under the right to profess.
- **Right to practice-**
- People have the right to perform religious rituals, ceremonies, beliefs, and ideas.
- **Right to propagate-**
- It means the transmission and dissemination of one's religious beliefs to others.
- It also means exposition of the tenets of one's religion. But it does not include the right to convert.
- The right to convert is against the right to freedom of conscience.
- All their rights are available to citizens as well as non-citizens, In various judgments, SC ruled that the right to propagate does not include the right to convert.
- Voluntary conversions are allowed. Many states in India have passed legislation banning forced conversions.
- **Article 26:**
- Freedom to manage religious affairs.
- Right to establish and maintain institutions of religious and charitable purposes.
- Right to manage its own affairs in matters of religion.
- Right to own and acquire movable and immovable properties.
- Right to administer the property in accordance with the law.
- Article 25 guarantees individual rights while Article 26 guarantees the rights of religious institutions. These rights are not absolute. The state can impose reasonable restrictions under public order, morality, and health
- **Article 27:**
- No person should be compelled to pay tax for the promotion of any particular religion.
- It prohibits the State from spending public money on the promotion of any particular religion.
- This is essential for secular polity and the State must treat all religions equally.
- It does not prohibit the State from promoting or maintenance of all religions.
- **Article 28:**
- Freedom from attending religious institutions:
- No religious instructions shall be provided in any educational institutions wholly maintained out of State funds.
- It distinguishes 4 different types of educational institutions:
- a. Those institutions which are wholly maintained by the State.
- b. Institutions maintained by the State but established under any trust or endowment.
- c. Institutions recognized by the State.
- d. Institutions receiving aid from the State.
- In the first category religious instructions are completely prohibited.
- In the second category religious instructions are permitted.
- In the third and fourth categories, religious instructions are permitted on a voluntary basis.

**Topics for the next class:** Continuation of FRs.

#### **Polity Class 14**

#### **A Brief Overview of the Previous Class & Answered Queries:(01:01:00 PM)**

#### **Constitutional Morality(CM):(01:21:00 PM)**

- It means adherence to the core principles of constitutional democracy.
- It is regarded as of paramount significance for the constitution.
- It included a pluralistic and inclusive society.
- It also means strict adherence to the principles of constitutionalism,
- According to constitutional forefathers, the Indian constitution is not a static rule book, it is a dynamic living organism that must reflect the means and aspirations of its citizens.

- Interpretation of articles of the constitution must be done from the perspective of democratic principles.
- Constitutional morality can help the judiciary resolve any ethical dilemmas while interpreting the articles of the constitution.
- According to the SC, CM is not limited to only following constitutional provisions literally, but understanding them in their true spirit as envisaged by our constitutional forefathers.
- According to Dr. Ambedkar, CM means effective coordination between conflicting interests of different sections of society.
- It also means ensuring administrative coordination to resolve disputes without resorting to unwanted confrontation.
- The term CM is not defined in the constitution.
- SC in the Sabarimala judgment has used it for the first time.
- According to the SC, "When there is a violation of FRs, the term morality naturally implies CM, and any view taken by the courts must be in conformity with the principles and basic tenets of the concepts of CM."

#### **Criticism of Constitutional Morality:(01:46:00 PM)**

- The term CM is not clearly defined by our judiciary.
- It is highly subjective and can be individualistic also.
- The concept can be used by the judiciary to expand its powers and enter into unknown territories.
- It can also lead to conflicts with democratic and constitutional principles.
- Traditions and customs and their validity can not be decided by a group of un-elected professionals.
- *Conclusion:*
- In case of any conflict between FR and any other aspects of governance including traditions and customs, FRs should always have precedence over them.
- CM can definitely provide the right direction and guidance to the judiciary while analyzing the actions of the State and society.

#### **Cultural and Educational Rights (Articles 29 & 30):(01:58:00 PM)**

- **Article 29:**
- It is about the protection of the interests of minorities.
- It provides that any section of citizens residing in any part of India having a distinct language, script, or culture of its own, shall have the right to conserve the same.
- No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds, on grounds of only religion, race, caste, or language.
- This Article does not use the word 'minority' it only uses the word 'section of citizens'.
- It is applicable to both minorities and majority communities.
- Political speeches promising the protection of language do not amount to corrupt practices under the RPA, 1951.
- Article 15, does not mention language as a ground for discrimination but it is included in Article 29.
- The SC in the Champakam Dorairajan Case ruled that reservations provided to the backward section violated Article 29(2) of our constitution.
- The 1st CAA was passed to overcome the SC judgment and has inserted Article 15(4) providing reservations.

#### **Article 30:(02:22:00 PM)**

- Right of minorities to establish and administer educational institutions.
- As rightly mentioned in our preamble secularism is one of the most important features of our constitution.
- The unity and integrity of our nation depend on the ability of the State to protect and promote the interests of the minority sections of society.
- The State should not discriminate against citizens on the basis of their religion and at the same time it should also provide sufficient measures to protect the interests of minority communities.
- Article 30 provides various rights to minority communities whether they are religious or linguistic in nature:
- They shall have the right to establish and administer the educational institution of their choice.
- In case the State acquires the properties of a minority institution it shall provide adequate compensation for the same.
- The State can not impose any restrictions on the rights of minorities except for making regulations that promote excellence in education
- In granting aid the State shall not discriminate against any educational institutions managed by minorities.
- However, the term minority has not been defined in the constitution.
- Supreme court determined the minority status as follows:

- At the Union level, those groups should have less than 50% of the population and at the State level, they must have less than 50% of the overall population of the State.
- **What are Minority Educational Institutions:**
- The National Commission for Minority Education Act, 2014, is given the power to decide the minority status of educational institutions U/A 30.
- Two conditions must be fulfilled to get minority status:
  - 1. Most of the board or trust members must belong to the minority community.
  - 2. They must declare explicitly that it has been established for the benefit of the minority communities.
- The SC in 2017, had come out with general principles related to the establishment and administration of minority educational institutions:
  - a. Right of minorities U/A 30 is only to ensure equality with the majority and not to place minorities in a more advantageous position vis a vis the majority community.
  - b. There can not be any reverse discrimination in favor of minorities.
  - c. The right to establish and administer educational institutions is not absolute and it also does not include the right to maladminister. The state can always impose regulations to maintain standards and academic excellence.
  - d. State can also impose conditions to ensure proper utilization of aid without diluting the rights of minorities under Article 30(1).
- At present Hindus are minorities in 5 states(J&K, Punjab, Nagaland, Mizoram, and Meghalaya).

#### **Article 31: (03:03:00 PM)**

- *(Dictations from 03:37:00 PM)*
- Article 31 was originally the Right to Property but was repealed in 1978 by the 44th CAA and converted into an ordinary legal right under Article 300A of the Constitution.
- Articles 19 & 31 guaranteed Indian citizens the right to acquire, hold and dispose of property.
- U/A 31 no person can be deprived of his property without the consent of the proper authority.
- This Article was amended multiple times to realize the objectives of socialistic patterns of the society through 1st, 4th, 17th, 25th, and 42nd CAA.
- *1st CAA:*
- It has added Articles 31A and 31B and also the 9th Schedule to our constitution.
- Article 31A included provisions for saving certain laws providing for the acquisition of estates from Articles 14 and 19.
- Article 31B provided that any Act or regulation mentioned in the 9th Schedule is immune from judicial review and can not be nullified on the basis of violation of FRs.
- *4th CAA:*
- It extended the scope of Article 31A by adding a few more categories and they were made immune from 14, 19, and 31.
- *25th CAA:*
- It added Article 31C, which provided for saving of laws giving effect to certain DPSPs(Articles 39b and 39c) were given precedence over Articles 14, 19, and 31.
- *42nd CAA:*
- It amended Article 31C to give precedence to all the DPSPs over Articles 14, 19, and 31. This was struck down by the SC in *the Minerva Mills Case, 1980* to restore the balance between the FRs and DPSPs.
- India after independence has opted for a socialistic pattern of society and the government felt it necessary to give more importance to DPSPs over FRs.
- 1st, 4th, 17th, and 25th CAA were in the same direction.
- As part of the 42nd CAA socialism was included in the preamble, consequently, the scope of Article 31C was expanded to include all the DPSPs.
- DPSPs were given precedence over FRs.
- In 1978, the 44th CAA resolved some of the conflicts by removing the right to property from fundamental rights and was made only an ordinary legal and constitutional right.
- In 1919, the country has opted for LPG reforms due to the failure of the welfare state in a neo-liberal state, the role of the government is mostly restricted to performing only essential regulatory functions.
- The private sector and markets are expected to realize the objectives of rapid economic growth and inclusive development.
- The government has also opted for the privatization of most PSUs to ensure better competition and also to improve the efficiency of the utilization of resources.

- Public Private Partnership (PPP) has been identified by the government as the most important mode of investment in infrastructure.
- Article 39B And 39C and also other DPSPs have remained inactive during this period, since the government is also emphasizing more on foreign investments, the govt has also refrained from acquiring private property, as it could give wrong signals to the global community.
- Land acquisition bills have been passed by various state governments to acquire land for PPP projects. They ensure that landholders are paid fair compensation for land acquisition protecting their individual rights.
- **Article 32:**
- *(Dictations will be given in the next class)*
- Q1: The right to movement and Residence throughout the territory of India are freely available to Indian citizens, but these rights are not absolute. Comment. (150 Words/10 Marks)
- Q2: Constitutional Morality is rooted in the constitution itself and is founded on essential facets. Explain the doctrine of Constitutional morality with the help of relevant judicial decisions. (10 Marks/150 Words)

**Topics for the next class:** DPSPs and Fundamental Duties.

### Polity Class 15

**The class Started with a brief overview of previous class topics (01:00:00 PM)**

#### Article 32 (01:09:00 PM)

- Dictation:
- Our constitution guarantees fundamental rights to citizens but the implementation of these rights is the responsibility of the state.
- There can be always a scope for conflict between the overall freedoms of society and the rights of individuals.
- It is the responsibility of the judiciary to protect the rights of the citizens from exploitation by other organs of the state and by private citizens.
- Our constitutional forefathers have provided remedies to citizens for violation of their fundamental rights and these remedies are included in Article 32 of our constitution.
- The right to move the supreme court by appropriate proceedings for the enforcement of fundamental rights is guaranteed under Article 32 of our constitution.
- SC can issue Orders or directions for the enforcement of any of the fundamental rights or parliament can also empower any other court to issue orders and writs of all other kinds.
- Other courts don't include the High courts because under Article 226 High courts are already empowered to issue directions.
- The right to move the supreme court for violation of fundamental rights can not be suspended except as otherwise provided in the constitution. for example during national Emergency Article 359, It can be suspended.

#### Writs (01:33:00 PM)

- Dictation:
- There are five different types of Writs, such as follows:
- 1) *Habeas Corpus* - It means to have the body of.
- The state has extensive powers to maintain law and order and also to protect the sovereignty and integrity of the nation but there can be instances where the organs of the state might misuse the powers.
- Citizens are given the power to approach the judiciary in case of unlawful detention by the state.
- The judiciary can issue an order to produce the body against both the state and private individuals.
- This is very important to protect the individual liberty of the citizens.
- But at the same time, it can not be issued in certain circumstances as follows:
- In case of detention is lawful
- It is because of the contempt of the legislature or judiciary.
- When detention is ordered by a competent court
- When detention is beyond the jurisdiction of the court.
- 2) *Mandamus*: It means we command, It means a command issued by the court to the public authority asking the concerned person to perform his duties that he has failed to perform. It can be issued against any public body, corporation, inferior court, Tribunal, or government.
- Mandamus can not be issued against the following Points:
- A private individual or body.
- To enforce departmental instructions that do not process statutory force.
- When duty is discretionary and not mandatory

- To enforce contractual obligations
- Against the president of India or the state Governors
- Finally against the Chief justice of the High court, acting in his judicial capacity.
- 3) *Prohibition*: It means to forbid. It is issued by the Higher court to the lower court or to the tribunal preventing them from exceeding their jurisdiction.
- While mandamus is asking people to do, prohibition is about asking them not to do.
- It is not available against administrative authorities, legislatures, private bodies, or Individuals.
- 4) *Certiorari*: It Literally means 'to be certified' or 'to be informed' It is issued by a higher court or lower court or a tribunal either to transfer a case pending with later to itself or to squash the order of the latter in case
- It is issued on grounds of excess jurisdictions or lack of jurisdiction or lack of law.
- While prohibition is preventive, certiorari is both preventive and curative.
- Previously it was only issued against judicial authorities but in 1991 SC ruled that it can be issued against administrative authorities also.
- 5) *Quo Warranto*: It literally means by what authority or warrant.
- It is issued by the court to enquire on the legality of a person to a public office.
- It makes sure that people do not occupy public office illegally.
- It can be issued against only substantive public office created by Law or constitution.
- It can not be issued against ministerial offices or private offices.

#### **Article 33**

- It empowers Parliament to restrict or abrogate the fundamental rights of members of armed forces, paramilitary forces intelligence forces, police forces, and others.
- The powers to make laws under Article 33 is only conferred only on Parliament and can not be given to state legislatures.
- These legislations can not be questioned in the judiciary on the grounds of violation of fundamental rights.

#### **Article 34 (02:49:00 PM)**

- It provides restrictions on fundamental rights when Martial law is enforced in any area, Parliament is empowered to make legislation regarding the same
- The concept of Martial law is borrowed from British legal practices. It has not been defined in our constitution, It means rule by the military.
- It means the civic administration is run by the military authority according to their own rules and regulations. It also means the suspension of ordinary law and the government by military tribunals
- When Martial law is imposed fundamental rights are affected adversely. It is imposed to restore the breakdown of law and order. It is not explicitly mentioned in the constitution.

#### **Article 35 (02:56:00 PM)**

- It lays down that powers to make laws to give effect to fundamental rights shall vest in only Parliament and not with the state legislature.
- It will ensure uniformity throughout the territory of India with regard to the implementation of fundamental rights. for example- Only parliament can define reservations on the basis of residence under Article 16 of the Constitution.
- Only Parliament can confer powers on other courts than SC and HC for the protection of fundamental rights under Article 32 of the Constitution.
- Similarly, only parliament can make legislation for restricting the fundamental rights of armed forces (Article 33) for the imposition of martial law (Article 34)

#### **Criticism against Fundamental rights : (03:01:00 PM)**

- It is said that in reality, FRs are only fundamental restrictions, reasonable restrictions have been used extensively by the legislature to impose unreasonable restrictions on FR of the citizens.
- As pointed out by Dr.Ambedkar Political rights are meaningless unless they are accompanied by economic and social rights.
- Fundamental rights scope can be restricted by the parliament, and they can also be suspended during a national emergency.
- Preventive detention is included in fundamental rights only in the Indian constitution and none of any other democratic constitutions have preventive detention as part of fundamental rights.
- Even the judiciary is given the responsibility of protecting the FR of citizens while in practice it proved to be a failure, As the judicial process in India is extremely costly, time-consuming, and highly complicated.

#### **DPSPs (03:15:00 PM)**

- India opted to be a welfare state immediately after independence, Our constitutional forefathers decided to provide the guidelines to policymakers regarding public policy formulation, known as DPSP.

- DPSP resembles 'The instruments of Instructions enumerated in the Government of India Act, 1935'.
- They come up extensively with socio-economic and political values that would influence the policies of the state.
- Unlike fundamental rights, DPSPs are non-justiciable. i.e They are not legally enforceable by the court, but at the same time, they are fundamental in the governance of the country.
- They also help the judiciary in examining the validity of laws created by parliament. for example- SC ruled that restrictions can be imposed on Article 14 and Article 19 to implement DPSPs
- DPSPs are not legally enforceable because the state does not have enough resources.
- DPSPs can broadly divide into Gandhian, Socialistic, and liberal intellectual categories.
- *Article 36* - It defines the state, The definition of the state is the same as Article 12 in fundamental rights, Part IV of the constitution mentions about DPSPs
- *Article 37*- It says that DPSPs are non-justiciable.
- *Article 38*- The article protects the welfare of people by securing social order permitted by justice (Social, economic, and political) and also minimize inequalities in status, income, facilities, and opportunities.
- *Article 39* - The state shall direct its policy toward securing
  - a) the citizen men and women equally have the right to an adequate means of livelihood
  - b) the ownership and control of material resources of the country are so distributed to subserve the common good
  - c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common determinant
  - d) equal pay for equal work for men and women.
  - e) preservation of the health and strength of workers and children against forceable abuse.
  - f) opportunities for the healthy development of children.
- *Article 40*-states about the Organisation of village panchayat
- *Article 41*-Within the state resources the state requires to undertake welfare programs for the weaker section. They include the right to work, right to education, unemployment pension, taking care of old age people, etc.
- *Article 42* States that the state shall make provisions for ensuring just and humane conditions of work and maternity relief.
- *Article 43*-The state will attempt to secure all workers
  - a) minimum wage,
  - b) better conditions of work
  - c) decent standard of living
  - d) opportunity for the enjoyment of leisure also.
- *Article 43A*- It is inserted by the 42nd Amendment, It is regarding the participation of workers in the management.
- *Article 43B*- It was inserted in the 97th CAA in 2011. It is related to the promotion of co-operatives.
- *Article 44*- Uniform Civil Code

**The topic for the next Class:** DPSPs and Fundamental Duties

**Polity Class 16**

**A Brief Overview of the Previous Class & Resolved Queries:(01:01:00 PM)**

**Uniform Civil Code(UCC):(01:18:00 PM)**

- Article 44 says, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."
- After the transfer of power from the EIC to the British government, the 1860s witnessed efforts made by the British government to mobilize and also to introduce legal, rational, administration in India.
- But these efforts were restricted only to criminal laws and the British administration deliberately decided not to interfere in the civil laws of various religions.
- After independence, the Constituent Assembly (CA) discussed in depth the UCC.
- There was a general consensus among the members that UCC is needed for gender equality and others.
- But finally, they decided to include UCC only in DPSPs.
- The argument was that the country was partitioned on communal lines and if UCC is imposed on minority religions it could result in one more partition.
- In 1950, the then-law minister Dr. BR Ambedkar brought the Hindu Code Bill to reform the civil laws of the Hindu religion.
- This was strongly opposed by conservative sections in the Hindu community, which ultimately led to the resignation of Ambedkar from the Council of Ministers.



- After winning the election in 1952, the government led by Pt. Nehru, introduced many legislations to reform the personal laws of the Hindu religion.
- The PM then promised that UCC will be implemented over a period of time by reaching a consensus.
- But it has become a major issue between the political parties in India.
- In the mid-1980s, in the Shah Bano Case, the SC ruled that in case of any conflicts between the FRs and personal laws of any religion, FRs will be given precedence.
- It has also requested the union government to come out with legislation regarding UCC.
- Recently, some state governments have passed UCC, Goa.
- *What should be done?*
- UCC is opposed because it is only viewed through the prism of religion.
- Secularism in India is defined mostly in terms of the protection rights of minority religions.
- Political parties also used the issue to divide society into communal lines.
- UCC can be implemented only when it is viewed from the perspective of gender.
- Like in the Hindu Civil code, the government can look for consensus on various issues related to gender-related aspects of religions.
- UCC can be divided into multiple pieces of legislation with a focus solely on gender-related problems.
- It would become easier for the government to reach a consensus on gender-related issues.

#### **Article 45: (01:58:00 PM)**

- *Article 45:*
- It talks about the provision of free and compulsory education for children.
- It states that "The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years".
- This is one of the Directive Principles of State Policy to promote social and economic equality in the country.
- 86th CAAA guaranteed free and compulsory education to children from 6 to 14 years of age.
- *Article 46:*
- To promote education and economic interests of SCs, STs, and other weaker sections of society.
- *Article 47:* To prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
- *Article 48:* To prohibit the slaughter of cows, calves, and other cattle to improve their breeds.
- Organize agriculture and animal husbandry on modern and scientific lines.
- *Article 48A:* To protect and improve the environment and to safeguard the forests and wildlife of the country.
- *Article 49:* The State shall protect every monument or place of artistic or historic interest which are declared to be of national importance.
- *Article 50:* The State shall take steps to separate the judiciary from the executive in the public services of the State.
- *Article 51:* It declares that to establish international peace and security the State shall endeavor to:
- Maintain just and honorable relations with the nations to encourage the settlement of international disputes by arbitration.
- Foster respect for international law and treaty obligations.

#### **Fundamental Duties: (02:10:00 PM)**

- The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year.
- It was added in Article 51A.
- It must be remembered that no other democratic constitution in the world has FDs in their constitutions except Japan.
- The Fundamental Duties help to regulate the behavior of the citizens and to bring about excellence in all the spheres of the citizens.
- Enumerated in Part IV(A) and consist of single Art. 51
- The Swaran Singh Committee recommended 10 FDs.
- Some of these duties are moral duties and other are civic duties.
- They are mostly based on Indian value systems and traditions.
- Unlike FRs, FDs are restricted only to Indian Citizens.
- Like DPSPs, FDs are also non-justiciable.

- There is no legal sanction against their violation, but the Parliament can make legislation regarding their enforcement.
- *These include:*
- 1. To abide by the Constitution and respect its ideals and institutions, the National Flag, and the National Anthem.
- 2. To cherish and follow the noble ideals which inspired our national struggle for freedom.
- 3. To uphold and protect the sovereignty, unity, and integrity of India.
- 4. To defend the country and render national service when called upon to do so.
- 5. To promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic, and regional or sectional diversities and to renounce practices derogatory to the dignity of women.
- 6. To value and preserve the rich heritage of our composite culture.
- 7. To protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.
- 8. To develop the scientific temper, humanism, and the spirit of inquiry and reform.
- 9. To safeguard public property and to abjure violence.
- 10. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
- 11. Subsequently, another duty was added by the 86th Constitutional Amendment Act of 2002: for a parent or guardian to provide opportunities for education of the child or ward between the age of six and fourteen (It was added when under Article 21A Right to education was made an FR).

**Shown & discussed PYQs based on FRs, DPSPs, and FDs:(02:44:00 PM)**

- *(Discussed with PPTs)*

**Parliament:(03:18:00 PM)**

- Topics to be covered:
- Reasons for India to choose the parliamentary system.
- Important features of parliamentary democracy.
- Composition of parliament.
- Functions, powers, and Privileges of Parliament.
- Problems & reforms needed.

**Why India Chose Parliamentary Democracy?:(03:23:00 PM)**

- At the time of independence, our constitutional forefathers had decided that there would never be any kind of compromise with the democratic form of governance.
- But the question in their minds was regarding which type of democracy to choose.
- They had two alternatives in front of them: Presidential and Parliamentary forms of democracy.
- The presidential form of democracy is a feature of the US democracy.
- In a presidential democracy, there is a clear-cut distinction between the legislative and the executives.
- The president is not a part of the legislature.
- Similarly, the CoM also need not be part of the legislature.
- The president can select his team of ministers on his own without any conditions.
- Impeachment of the president is also an extremely complicated task till now no president of the US has been impeached.
- It requires a 2/3rd majority in both the Senate and House of Representatives.
- It offers stability.
- A parliamentary form of democracy is a feature of the British Parliamentary System.
- In this executive is a part of the legislature and is accountable to the legislature on a continuous basis.
- It can result in political instability, and also in policy paralysis.
- Our constitutional forefathers had to decide between the stability offered by the Presidential system and the accountability of the parliamentary democracy.
- They have opted for a parliamentary form for the following reasons:
- a. Even though India is an ancient nation, it is still a very young country.
- Indians did not have much experience with democracy. If a charismatic person becomes the president of the country, there is every possibility of him becoming a dictator.
- At the time of independence, it was felt that India must go with a known devil than the unknown angel.
- India already had experience with parliamentary democracy after the implementation of the Govt of India Act of 1935, whereas, India never had any kind of experience with presidential democracy.

- Finally, our constitutional forefathers felt that accountability should be given more importance than stability.
- They have opted for parliamentary democracy.

**Topics for the next class:** Continuation of Parliament.

### **Polity Class 17**

**Class started with a brief overview of previous topics (01:00:00 PM)**

#### **Important features of parliamentary Democracy (01:09:00 PM)**

- *Dictation:*
- In our parliamentary democracy executive is part of the legislature and is also accountable to the legislature.
- Our constitutional forefathers have opted for this arrangement as they felt that there should not be any unnecessary conflict between legislature and executive.
- For example- In American presidential democracy there is a clear-cut separation between the president (Executive and the legislature)
- It is often said that the president proposes and legislature opposes and finally judiciary disposes of.
- The president is a nominal executive and the Prime minister who heads the council of ministers is a Real executive.
- Whereas In the USA the president is both nominal as well a real executive.
- Collective responsibility of council of ministers - Council of ministers is collectively responsible to Lok sabha and individually to the President, since the President is a nominal executive, Individually they are responsible to the prime minister.
- Continuous accountability of the executive towards the legislature- Council of ministers headed by the PM are continuously accountable to Parliament.
- For example members of parliament in Lok sabha can move a confidence motion against the govt after every 6 months.
- Similarly, the passing of the budget also fixes accountability on the part of the executive.
- Parliament in India consists of the Lok sabha, Rajya sabha, and the president.
- Members of Lok sabha are directly elected by the people through First Past the Post System (FPTP). i.e a candidate has to get one vote more than his nearest rival to get elected.
- Lok sabha is the lower house and it is temporary. i.e after 5 years it gets automatically dissolved unless its tenure is extended. It can be dissolved before the expiry of its term due to political circumstances, on the other hand,
- Rajya Sabha is a permanent house and after every 2 years, 1/3 of its members are replaced with a new set of members.
- In our parliamentary democracy, If a person is to be part of the executive, he must be eligible to become part of the legislature. Unlike British parliamentary democracy, the Prime minister can be a member of either Lok sabha or Rajya sabha, The PM would automatically become the leader of that particular house to which he belongs.
- The Council of ministers is part of both legislature and executive unlike American presidential democracy wherein members of the executive need not be part of the legislature

#### **Important Functions to be performed by Legislature in our Parliamentary democracy(02:02:00 PM)**

- Dictation:
- Parliamentary democracy functions based on the separation of functions between three organs of the state.
- The legislature is responsible for Lawmaking, the executive for its implementation, and the judiciary for its interpretation.
- The most important function to be performed by the legislature is law-making.
- They are expected to formulate Laws, Rules, and Regulations for the effective functioning of parliamentary democracy.
- They must discuss and debate those legislations before voting on the floor of the house.
- Accountability of the executive - In a parliamentary democracy like India, the Executive comes from the legislature and is accountable to the legislature.
- Various instruments of accountability include:
  - a) Question Hour,
  - b) Zero hour,
  - c) Short-duration discussion,
  - d) Confidence and a no-confidence motion,

- e) Passing of Budget,
- f) Giving assent to the bills,
- g) Parliamentary committees and so on.
- Parliament must ensure that those who are elected to both houses are people with impeccable honesty and integrity.
- Only those who are selfless and whose only motive is to work for the country should be elected to the houses.
- The quality of the executive i.e council of ministers depends on the quality of the legislature.
- It is the responsibility of parliament to make sure that the quality of MPs would always remain very High.
- India has a representative democracy. People-elected representatives are expected to work for the people and bring to the notice of the house the problems faced by ordinary citizens.
- Parliamentary debates and discussions must reflect the concerns, problems, and hurdles faced by ordinary people. Since ordinary people can't speak on the floor of the house. People elected representatives must make sure that the discussions and debates reflect the day-to-day problems faced by ordinary citizens.
- Power corrupts and absolute powers corrupt absolutely. The executive will be spending huge amounts of taxpayers' money and there is every possibility that it can result in corruption and misuse.
- It is the responsibility of the parliament to make sure that the finances are spent in an efficient, accountable, and transparent manner.
- The passing of the Budget is the most important instrument in the hands of the legislature to fix the accountability of the executive.
- For a country of 1.4 billion people, there are only 800 MPs, They are expected to act as role models for the rest of the people of the country.
- Their actions on the floor of the house along with their behavior influence the attitudes and values of the people of the country.
- They must make sure that they prove to be the right kind of role models for others in the country.

#### **Instruments in the hands of the parliament to fix the accountability of the executives**

- *Question Hour:*
- This practice was taken from British Parliamentary practices.
- There are two types of questions starred and unstarred questions. In case of the starred questions, the concerned Minister needs to give an oral reply and MP can ask supplementary questions.
- While In Unstarred questions the written reply is provided and no supplementary questions were allowed.
- *Zero Hour:*
- It is an Indian innovation in parliamentary practices. Normally Starts at 12 PM
- They can be asked about any ministry or department in it.
- *Short duration Discussion:*
- If members are not satisfied with the replies of the government then short-duration discussion is demanded
- *Adjournment Motion:*
- It is a motion to discuss any urgent public important topics.
- The speaker or Chairman has the authority to decide whether to admit the motion or not.
- The government doesn't need to resign if an adjournment motion is passed.
- *Passing a Budget:*
- The financial year is from 1 April to 31 March.
- The Rule of laps applies to the budget, It means the money after the end of the financial year will not be available to the concerned ministry or department.
- If the budget is not passed in the parliament then the Government needs to resign.
- *No confidence motion:*
- It is moved by opposition parties, and a minimum of members 50 must sign to submit the no-confidence motion to the speaker. The speaker will decide whether to take this motion or not.
- *The passing of bills:*
- There are three types of bills
- Type-1 bills- It requires a simple majority i.e no of members present and voting. if the bill is not passed govt doesn't need to resign
- Type- 2 bills- It requires a special majority, i.e 2/3 majority of present and voting, and for few constitutional amendments, an absolute majority is required
- Type-3 Bills - It requires a special majority i.e 2/3 majority of present and voting and not less than absolute majority and ratification by half of the states.

### A brief historical Analysis of the Parliament-

- 1947-1967 - This is the golden age of parliament. The parliamentarian at this time were first-generation politicians. Parliament used to meet 150-180 days a year. All the bills were used to discuss in a detailed manner. Guillitons means passing budgetary proposals without any discussions. It was not used in the house for passing a budget.
- 1967- 1989 - The second generation of politicians was much more focused on self-interest. Many small regional political parties were becoming popular. This is the period called the criminalization of politics. decline in the standards of the parliament. A lot of Money and Muscle power was used by politicians in the elections
- 1989-2014 - Personality based politics became much more popular. criminalization politics leads to the politicization of crime, and parliament has become nothing but an extension of executive
- The leader of the opposition comes from a party that has at least 10 % of seats in the house.
- *Dictation of this topic will be given in the next class*

**Topics for Next Class:** Continuation Parliament topic.

### Polity Class 18

#### BRIEF REVIEW OF THE PREVIOUS CLASS (1:01 PM)

#### FUNCTIONING OF PARLIAMENT (1:03 PM)

- The functioning of our Parliament since Independence can be described through various phases:

#### Phase 1: 1947-1967: Golden Age of our Parliament

- During this period, the maximum number of members of our Parliament is First generation politicians who had entered into politics with the objective of serving the country.
- Jawaharlal Nehru was the powerful leader in the country and the congress party ruled the country uninterruptedly both at the centre level and as well as in the states.
- Jawahar Lal Nehru was the democratic PM and it reflected in the functioning of our Parliament.
- During this period Parliament use to function for at least 150 days in a year extending up to 180 days also.
- All the bills were discussed and debated on the floor of the house before they were given approval by Parliament.
- For Example, the **First Budget of Independent India** was only around 170 crores but it was discussed for more than 35 days before it was given approval.
- The Question hour was also used by opposition party members to fix accountability on the part of the government.
- For Example, the then Finance Minister was forced to resign because of the questions raised by Opposition party members on the floor of the House.
- Opposition Party members even though were very small in number, they more than made up for their lack of numerical strength with quality, debates and discussion.
- There was also General consensus within the country regarding major policy issues.
- For Example, all political parties had a major agreement regarding socialism, secularism and Parliamentary democracy.
- In order to ensure the impartial Functioning of the Office of the Speaker, the then First Speaker of Lok Sabha-G V Mavlankar resigned from Congress Party.
- Jawahar Lal Nehru will make sure that he would attend each and every session of the house and replied to the questions raised by opposition members by himself.

#### Phase-II: 1967-89

- This Phase has witnessed a Drastic decline in the standards of our Parliamentary democracy.
- Till 1967, Congress Party had an absolute monopoly over Governance both at the central level as well as at the states.
- By 1967, People started losing faith in the congress party resulting in the emergence of Various political parties.
- Suddenly the country witnessed intense competition for Public offices.
- Political Parties realised the fact that they could no longer win elections only on the basis of ideology.
- They started taking the help of criminals to win elections and retain power.
- These criminals provided money and Muscle power to Political Parties.
- They helped Political Parties rig elections. It resulted in the **Criminalisation of Politics**.
- This Period also witnessed the **Emergence of Personality based Politics**.
- The personal Charisma of the leader determines electoral outcomes more than the Political ideology of the respective political parties.
- All these developments ultimately resulted in a drastic decline in the standard of Parliament.

- First, this period witnessed the **Emergence of Ordinance Raj** wherein in order to evade Parliamentary scrutiny, the ruling political Party would request the President to issue ordinances.
- Under **Article 123 of our Constitution**, the President is empowered to issue ordinances when the Parliament is not in Session.
- These **Ordinances** will have the same kind of impact as a law passed by Parliament.
- Both houses of Parliament must ratify these ordinances within a period of 6 months.
- But in spite of the fact that the ruling Political Party had an absolute majority on the floor of the House, Successive Governments never really bothered to introduce these ordinances within the stipulated time period on the Floor of the House.
- The President would re-promulgate these ordinances for years together, defeating the very purpose of the Parliamentary democracy.
- During this period the country also witnessed the politicisation of the office of Speaker.
- Successive Speakers instead of acting as Impartial Presiding officers of the house, Started behaving like extensions of Ruling political party members. This has led to constant conflict between the Speakers and Opposition Party members.
- This Period also witnessed the **Darkest phase of Parliamentary democracy** in the history of our Parliament during the Emergency.
- For 19 Months of Emergency, Lok Sabha functioned without any opposition as all opposition MPs were arrested during this period.
- Parliament also has passed the most controversial constitutional amendments including the **39th and 42nd**.
- Bills were passed without any discussion or debate on the floor of the house.
- A ruling political party has used its Brute majority on the floor of the house to get these bills passed without any discussion or debate.
- Similarly, Budgets were also guillotined i.e. Budgets were also passed without any discussion or debate.
- **Anti Defection law** has come into existence as part of the 52nd Amendment to the constitution that further took away the freedom and Independence of Individual MPs.
- It has made legislature nothing but an extension of the Executive.

#### **Phase-III- 1989-2014 (2:16 PM)**

- This period witnesses the **Emergence of Minority and coalition governments** at the central level.
- No Political Party could get an absolute majority in Lok Sabha.
- Ruling Political Parties have been forced to depend on the support provided by smaller Political Parties and Independents to survive on the floor of the house.
- This period also witnessed further fragmentation of Indian Polity with many regional political parties coming into existence.
- It has led to a situation wherein even a Single MP could decide the fate of the government (In 1999, the NDA Government led by Vajpayee lost the Confidence Motion by a single vote)
- It has provided an opportunity for criminals to directly contest elections rather than supporting political parties.
- Political Parties are more than willing to support these criminals.
- Tickets are given to contest elections on the basis of winnability criteria i.e. the ability to win elections.
- Since criminals have better chances of winning elections, political parties openly welcomed these criminals to be part of political processes.
- If Political Parties refused to give tickets these criminals contested elections on their own as Independents
- Once they win elections political parties took support to form Governments. These criminals automatically become part of the executive house. It resulted in the **Politicisation of Crime**.
- The Criminalisation of Politics has transformed into the politicisation of crime.
- It had a major adverse impact on the functioning of Parliamentary democracy during this period.
- For Example, in 1993 there was a JMM Bribery Scam involving members of Parliament from the Regional Political Party.
- It is alleged that these MPs took Bribes to vote in a particular manner on a floor of the house.
- Similarly, in early 2000, the country also witnessed another scam involving MPs wherein they took cash to ask questions on the floor of the house known as the cash for questions scam.
- In 2009, Many MPs belonging to Opposition Party alleged that they have been offered a huge amount of bribes to vote in favour of the ruling political party during the Confidence Motion.
- The role of the speaker had also become controversial in this period for misuse of the anti-defection law, especially at the State level.

- Lakhs of Crores of Rupees of the Budgetary proposal were given approval by Legislatures without any discussion or debate.
- Similarly, important bills were also passed without any discussion or debate.
- For example, Changes to IT Act were approved by Parliament in exactly 2 minutes which ultimately led to its gross misuse.
- Successive Governments continued with Ordinance Raj during this period as they did not have a majority in the Rajya Sabha.
- For a brief period of time, the country also witnessed policy paralysis the Government could not get most of the bills passed on the floor of the house as it lacked a majority.

#### **Phase IV- 2014-Till now (3:19 PM)**

- When Elections were held for Lok sabha in 2014, For the first time in 30 years the country witnessed a single political party winning an absolute majority in Lok Sabha.
- Between 2014 and 2019 the ruling political party at the centre did not enjoy a majority in the Rajya Sabha.
- Ordinances continued to issue as they could not get these important bills passed in Rajya Sabha.
- After 2019, the ruling Political party got a majority in Rajya Sabha also.
- It has resulted in a situation wherein the legislature has become an **Extension of the executive**.
- Ruling Political Party has used its majority to get bills passed without much discussion and debate.
- It had led to a further decline in the standards of our Parliament.
- Parliament has become nothing but an institution to give approval to the bills introduced by the executive.
- The number of days Parliament has met has also come down drastically during this period. On average Parliament is meeting for less than 60 days in a year compared to more than 115 days in the 1950s and 1960s.

#### **SPEAKER OF THE HOUSE (3:39 PM)**

- **Once a Speaker, Always a Speaker**
- How the Speaker is Elected In India:
- The Speaker has to be a Member of Lok sabha.
- Normally the Speaker is always from the Ruling Political Party
- The Opposition party do not have any role in the appointment of the Speaker.
- This is not the case with the UK.

#### **TOPIC FOR THE NEXT CLASS: WILL CONTINUE WITH THE SPEAKER**

#### **Polity Class 19**

#### **Reforms in the functioning of our parliament ( 1:03 PM )**

- It has been observed that parliamentary democracy in India has not been effective because of various problems faced over a period of time.
- To ensure the effective functioning of parliamentary democracy following reforms need to be implemented

#### **Role of the speaker ( 1:05 PM )**

- The entire functioning of Loksabha depends on the impartial independent functioning of the speaker
- The speaker is **elected by Lok sabha** from its member normally a member of parliament from the ruling political elected as a speaker. The important function performed by the speaker includes:-
- He/she is responsible for the regular **conduct of the business** of the house
- He has the absolute sovereign power to run proceedings of the house
- He is a **final interpreter** of provisions of the constitution, conduct of the business of the house
- He can **adjourn** the house if there is **no quorum**
- The speaker normally **does not vote** on the floor of the house
- He can vote **only in case of a tie** between the ruling and opposition parties
- He also does not participate in discussions and debates
- The speaker also presides over the **joint session** of parliament

- He also decides whether a bill is a money bill or not
- As a part of **anti-defection law**, the speaker also has the power to decide the disqualification of MPs
- In order to ensure his impartial functioning our constitutional forefathers have provided security of the tenure to the office of speaker
- He can be removed only by a resolution passed by Lok sabha with **effective majority** i.e majority of all the then member is Loksabha not by ordinary majority
- The motion for removal can be taken up by the house only when it is supported by at least 50 MPs
- His salaries and allowances are fixed by the parliament and are charged from consolidated funds of India
- His **functioning cannot be questioned** on the floor of the house unless on a substantive motion
- He has absolute freedom to run the house and his conduct inside the house **cannot be questioned by the judiciary**

#### **Removal of the speaker ( 1:19 PM )**

- The speaker can be removed if he is **disqualified** as a member of the Lok sabha
- When he submits his resignation to the **deputy speaker**
- When the dissolution is passed by the parliament with an **effective majority**
- This resolution can be moved to the floor of the house only after giving 14 days' notice to the speaker

#### **About the office of the speaker**

- The office of the speaker is inspired by the **speaker of the house of commons**.
- The first speaker of Lok sabha **G. V Mavlankar** has resigned as a member of the congress party following British traditions and customs
- But since the 1970s onwards, the country witnessed the politicization of the office of the speaker
- Most of the speakers have been criticized by opposition political parties as acting as representatives of the ruling political party on the floor of the house and not as impartial custodians of the house
- Anti-defection law had given more powers to the speakers and it led to much more politicization of this significant constitutional authority
- It has been observed that the effective functioning of the house depends on the impartial and unbiased personality of the speaker

#### **Reforms to ensure the impartial functioning of the speaker ( 1:33 PM )**

- India has adopted British parliamentary democracy but deviated from some of its ethical democratic practices
- In the **UK**, the office of the speaker of the house of commons is **completely a nonpolitical one**.
- For a member to be elected as speaker, he must get the support of at least 12 MPs in the house of commons of which at least 3 of them should be from opposition parties
- Once nominations are done voting will take place on the floor of the house through secret ballot voting will continue till one candidate gets more than 50% of the votes



- Once the member is elected as the speaker, he resigns from the political party to which he belongs as a part of the traditions
- Once the term of the house is over, as part of the tradition, opposition parties would not put up a candidate against him in the elections so that he can be unanimously elected to the house
- In the next house, he can continue to be the speaker, it is popularly known as “Once a speaker always a speaker”
- It is suggested that India also can follow the same tradition to depoliticize the functioning of the speaker

#### **Other reforms - Duration of Parliamentary Session.**

- In the 1950s and 60s which were considered the golden age of the Indian parliament, parliament used to meet for at least between 150 to 180 days in a year
- But later, the number of days has come down drastically and now, the house has to **meet for less than 60 days** also in a year
- If parliament does not meet regularly, it cannot perform any of its functions including **fixing accountability** on the part of the executive
- Parliament must come out with a **schedule to fix the minimum number** of days it has to meet in a year
- For eg both houses must meet for at least 140 days in a year. If for any reason the proceedings are disturbed, it should meet for an additional number of days to compensate for the loss of business of the house

#### **Parliamentary privileges ( 2:09 PM )**

- The members of parliament are expected to perform many critical functions including discussion and debate, law-making ensuring accountability, and so on
- Our constitutional forefathers have recognized the critical nature of the function performed by our parliamentarians and provided them with some special rights known as privileges
- These privileges are available to all members of parliament, the union minister, and the attorney general of India but it must be noted that these privileges are not available to the president of India even though, he is an integral part of the parliament
- Parliamentary privileges can be broadly divided into **2 categories** under article 105 of our constitution: -
  - a) privileges available to all members **collectively**
  - b) those privileges that are enjoyed by **individuals members**

#### **Collective privileges**

- Article 105 mentioned two collective privileges:-
  - a) freedom of **speech in parliament**
  - b) right of **publication** of its proceedings
- **44th amendment** has provided that parliament has the right to publish its report debates and proceedings and also has a right to prohibit others from publishing the same
- Parliament can also hold **secret sittings** and can exclude strangers from its proceedings

- It has the power to make rules and regulations for the conduct of the business of the house
- It can **punish** members as well as outsiders for the **breach of its privileges** by reprimand, admonition, or even imprisonment also
- It can suspend or even expel its own members
- The judiciary is prohibited from inquiring into the proceedings of the house
- It has the right to receive immediate information about the arrest of its members

#### **Individual privileges of MPs ( 02: 20 PM )**

- They cannot be arrested during the **session of the house and 40 days before and 40 days** after the session of the house
- This is applicable **only in civil cases** but not in criminal cases or preventive detention cases
- They have freedom of speech inside the house
- Their **conduct cannot be questioned in a court of law** nor their voting behavior on the floor of the house
- They can refuse to give evidence and appear as a witness in a case pending in a court when parliament is in session
- Our constitutional forefathers wanted future generations to define their privileges
- In 1978, as a part of the 44th amendment, some of these privileges were codified but not all of them over a period of time there were many instances of members of parliament misusing their privileges. For eg in the early 1990s, TN state assembly passed a resolution demanding the imprisonment of the editor of a newspaper for criticizing the functioning of the state assembly
- SC had come to the rescue by declaring that the right to freedom of speech and expression also freedom of the press also
- In 1993, it was proved that Jharkhand Mukti Morcha had taken money to vote in a particular manner during no-confidence motions against the government but they could not be punished because whatever they do on the floor of the house cannot be questioned in a court of law
- A similar situation was repeated in 2009,
- In 2014, a member of parliament used paper spray on others members of parliament to disturb the proceedings of the house but no action could be taken against the members due to the immunity enjoyed by members.

#### **Solution ( 3:27 PM )**

- MPs **must codify** their privileges so that there cannot be any scope for their misuse
- Taking bribes and voting in a particular manner on the floor of the house cannot be part of their privileges
- MPs should be **role models** for others with their actions and behavior inside and outside the parliament by defining their privileges, they can show their true commitment to the ideals of democracy

#### **The passing of the bills ( 3:43 PM )**

- Delegation means a superior authority transferring power to subordinate authorities for a temporary period of time.

- The legislature has delegated the responsibility of law-making to the executives known as delegated legislation.
- The government will introduce the bills on the floor of the parliament. There are two types of bills i.e private member bills and treasury bills.
- The bill is introduced in one house it is discussed, debated, and then goes to other houses after the president gives his assent to the bills then it becomes the act.

## Next class Topic: Continuation of the passage of the bills

### Polity Class 20

#### Brief Review of Previous Class (01:01 PM)

#### The Passing of Bills (01:06 PM)

- In our parliamentary democracy, the parliament has the most important function of discussing, debating, and giving its approval to the bills introduced by executives.
- As part of the separation of powers, the legislature is responsible for law making whereas, the executive for its implementation.
- Over a period of time, it was found that the legislature did not have the necessary competency to formulate legislation as lawmaking is highly **technical** in nature.
- It was then decided that the executive would formulate the legislation on behalf of the legislature, popularly known as **delegated legislation**.
- Here the superior authority-the legislature is delegating its power of law-making to the subordinate authority-executive.

#### Procedure for Passing of Ordinary Bills

- **1. First Reading;**
- Any ordinary bill can be introduced in either house of the parliament. It can be introduced by **either minister or any other member of parliament**.
- Bills introduced by ordinary members of parliament are known as private members' bills.
- The members who want to introduce a bill must ask for leave of the house.
- When the house **grant leaves** the member can introduce the bill by reading its title and objectives.
- No discussion will take place at this stage.
- The bill is published in the **Gazette of India**.
- The introduction of the bill and its publication in the Gazette of India are part of the first reading of the bill.
- If the bill is published in the Gazette of India before its introduction, a leave of the house is not required.

#### Second Reading

- This step is the **detailed scrutiny** of the bill before it is given approval. The bill goes through different stages during this phase.
- (1) Copies of the bill are distributed to all members of the house.
- The house discusses the bill in general terms.
- At this stage the house can take up any of the following actions:
- (a) It can take the bill for immediate discussion or it can fix some other date.
- (b) The house can refer the bill to a select committee of the house
- (c) It can refer the bill to the joint committee of both houses.
- (d) The house can circulate the bill to seek public opinion.
- Normally bills are referred to the **select committee** of the house.
- They can discuss the bill in an in-depth manner.
- They can also come out with their own suggestion regarding the bill.
- (2) Consideration Stage
- The house after receiving the bill from the select committee will have an in-depth discussion regarding **each and every clause** in the bill.
- The members **can move amendments** at this stage. And if they are accepted by the house they become part of the bill.

#### Third Reading of the bill (01:38 PM)

- The house will take up voting on the bill at this stage and it requires only **a simple majority** for the bill to get passed on the floor of the house.
- At this stage also members can move amendments.
- Once the bill is passed it will be sent to the other house.

#### Fourth stage

- The bill will be sent to the other house.

- The other house has **four alternatives**:
- (a) Pass the bill without any amendments
- (b) Pass the bill with amendments and send it to either house for reconsideration
- (c) It can reject the bill altogether.
- (d) It may not take any action and keep the bill pending.

#### Presidents Approval

- If both houses pass the bill it will be sent to the president for his approval.
- Once, the president gives his/her approval it becomes an act.
- If the first house rejects the amendments suggested by the second house.
- The second house rejects the bill altogether or if the second house keeps the bill itself for six months, there is a **deadlock** between both houses.
- The president can summon a joint sitting of the house and if the majority of members give their approval in a **joint sitting** then the bill is deemed to have been passed.

#### Analysis

- In recent times the country has witnessed a situation where bills are getting passed without any discussion or debate.
- For example in 2021, in the monsoon session of the parliament, 20 bills were passed by both houses of parliament in less than 10 minutes time.
- Between 2009 and 2014, more than 70 percent of the bills were referred to the select committee of parliaments. After 2019, it has come down to less than 13 percent.
- Only 14 private member bills were approved by parliament since the beginning of parliamentary democracy in India.
- It clearly shows the drastic decline in the standards of the parliament.
- Our legislature has become, nothing but an **extension of the executive**.
- **Individual MP's** role has come down drastically.
- **Anti-defection law** has further drastically reduced the role of individual MPs.
- The leaders of the political parties in the parliament issue **whip** to their members to be present and vote according to the decision taken by the political parties.
- On the other hand, in the case of British Parliamentary Democracy, individual MPs have the freedom to discuss, debate, and vote according to their conscience.
- Political parties can issue whips to their members but there is no Anti-Defction Law.
- Most of the bills introduced by the government are defeated on the floor of the house mostly by ruling party MPs only.
- It would take on average at least 12-14 months for a bill to become an act in British Parliament.
- India has inherited parliamentary practices from British practices. But the functioning is far from effective.

#### What is to be Done? (02:09 PM)

- It must be realized that the effectiveness of parliament is defined not in terms of the number of bills it has passed but in terms of the quality of discussion and debates.
- **Article 107** of our constitution can be amended.
- **Under Article 107(2)**, a bill shall not be deemed to have been passed by the houses of parliament unless it has been agreed to by both houses.
- The following changes can be made:
- It should be **mandatory** for both houses to **discuss and debate** the bill and also send it to the select committee of the house before voting takes place.
- Individual MPs should be given the freedom to express their opinion on the floor of the house without fear or favor.
- **Anti-defection law** can be **amended** where political parties should be allowed to issue whips only in case of confidence or no-confidence motion, passing of the budget.
- They should not be allowed to issue whips for ordinary bills even if the members vote against their political party, they should not be disqualified under the Anti-Defection law.
- Members of parliament are expected to go back to their constituencies to meet their voters, seek their opinion regarding the contents of the bill, and vote according to the opinion expressed by their voters on the floor of the house. This can help in transforming our representative democracy into a **participative democracy**.
- In the long term, changes should be made to the functioning of political parties so that there will be more inner-party democracy in the functioning of political parties.
- It is possible only when the political culture of the country is determined by **cognitions**.

- It means that people should vote in elections on the basis of the performance of political parties in terms of the promises they made at the time of elections and the promises they have fulfilled.
- At present, they vote mostly on the basis of emotions and sentiments.

#### Anti-Defection Law (02:51 PM)

- In 1985, the then government amended the constitution to bring anti-defection law.
- The 1970s and 80s witnessed a lot of political instability, especially at the state level due to the '**Aaya ram, Gaya ram**' (Ram came, Ram Went) political culture.
- In order to ensure political stability and also to protect morality in politics, anti-defection law has come into existence.
- **52nd Constitutional Amendment act (CAA)** added the **10th schedule** to the constitution in the form of the anti-defection law.
- If less than **one-third** of the member from a political party in either assembly or parliament defect to another political party they can be disqualified by the speaker under the provisions of the anti-defection law.
- A member can also be disqualified if he votes against or abstains from voting on the floor of the house
- political parties can issue whips to their members and if the whip is violated by the members then the political party can request the speaker to disqualify them under the provisions of the anti-defection law.
- An **independent member** can be disqualified if he joins a political party after his election.
- A **nominated member** can be disqualified if he joins a political party after the expiry of six months.
- But, anti-defection law has failed to prevent defection and rather promoted defection.
- It has become much easier to divide the smaller political parties with the one-third rule.
- In order to make the anti-defection law more effective, the **91st CAA** was passed making changes to the anti-defection law.
- It has increased the number to **two-thirds** of political party members on the floor of the house and they must merge themselves with another political party to escape defection.
- Overall it has been observed that anti-defection law has not prevented the defections nor it has improved the credibility of the functioning of our parliamentary democracy.
- 91st CAA has also fixed the strength of the council of ministers to **15 percent** of the strength of the lower house.
- This is done to prevent the political parties from offering cabinet berths to those who have defected.
- But in spite of all these changes anti-defection law proved to be ineffective for the following reasons:
- 1. Speaker has **absolute discretionary powers** to decide on defections.
- There is **no time limit** for the speaker to decide on defections.
- This loophole in the law has been misused by speakers, especially at the state level.
- E.g. In states like Andhra Pradesh and Telangana, speakers have waited for the number of defected MLAs to cross the two-third limit before they are recognized as a split group to overcome defections.
- In some other states, speakers did not take decisions for the entire tenure of the state assembly.
- 2nd ARC in its report on '**Ethics in Governance**' has recommended changes to the anti-defection law to prevent its misuse and abuse.
- It has recommended that the power to decide on defections should be taken away from the presiding officer of the house and should be given to the president and the governor respectively.
- They must take decisions, on the basis of the recommendations made by a committee consisting of **constitutional experts**.
- In recent, times another controversy has emerged regarding the anti-defection law, in the state of Maharashtra.
- The majority of MLAs (other than two-thirds) have been detected from a political party and formed the government with the support of another political party.
- The deputy speaker of the legislative assembly received a complaint regarding the disqualification of MLA under anti-defection law as they did not merge themselves with other political parties.
- But the MLAs have a mood no-confidence motion against the deputy speaker against the assembly.
- The Supreme Court, in one of its judgments, has ruled that when a no-confidence motion is there against the speaker/deputy speaker. They cannot decide on defections.
- It has been observed that MLAs can move a no-confidence motion against the presiding officer of the house to escape the defections.
- At present, the matter is against Supreme Court.

#### Solutions (03:38 PM)

- Those people elected representatives who want to defect **must resign** from the political party to which they belong.

- They can be allowed to contest elections that will be held due to their resignation.
- It can result in more expenditure on by-elections.
- But in the overall content of predicting the parliamentary democracy, this expenditure is justified, as people should be the ultimate decision-makers.

**Next Class: Budget, Passing of the budget, Parliamentary Committee, etc.**

**Polity Class 21**

**Discussion on Previous Class (01:02 PM)**

**Annual Financial Statement/Budget (01:10 PM)**

- The budget is known as **Annual Financial Statement**.
- The budget is an important instrument in the hand of the legislature, to fix the **accountability** of the executive.
- The financial year in India starts on **April 1st** and ends on **31st March**.
- The budget document contains the following:
  1. Estimates of Revenue and Capital Receipts
  2. Estimates of Expenditure.
  3. Details of Actual Receipt and Expenditure of the previous financial year.
  4. Economic and Fiscal Policy for the coming financial year.
  5. Ways and Means to raise revenues.
- In 2017, Important Budgetary Reforms were introduced with the government merging the **Railway Budget** with the General Budget.
- Previously, the government also removed the distinction between **plan and non-plan** expenditures.
- At present, the expenditure is broadly divided into capital and revenue expenditure.

**Stages in the enactment of Budget (02:23 PM)**

- 1. Presentation of Budget
- 2. General Discussion
- 3. Scrutiny on demand for grants by parliamentary committees.
- 4. Voting on demand for grants.
- 5. Voting on Appropriation Bill.
- 6. Voting on Finance Bill

**Presentation of Budget**

- The **finance minister** presents the budget on the floor of the house in Lok Sabha.
- The budget normally was presented on the last working day of the month of February.
- From 2017 onwards, it has been preponed to the **First of February**.
- This important Budgetary reform was introduced to allow ministries and departments to spend their money for an entire year.
- Earlier they could spend monies only for 10 months.
- Previously, the ministries and departments had only 10 months to spend the allocations made to them. It reduces their operational flexibility.
- In order to give complete freedom to ministries and departments to spend their monies for the entire financial year, the budget was preponed to the first of February. It can help the government to pass the entire budget before the end of the financial year.
- So that, ministries have complete freedom to spend their monies.
- At the stage of the presentation of the budget, no discussions are allowed.
- Lok Sabha will be immediately adjourned for the day.
- **Along with the budget, the finance minister presents the following documents: (02:56 PM)**
  1. Budget Speech
  2. Annual Financial Statements
  3. Demand for grants
  4. Appropriation bill
  5. Finance Bill
  5. Statements under FRBM provisions including Macroeconomic Framework Statements; Fiscal Policy Strategy Statements; Medium term fiscal policy statements
  6. Expenditure Budget
  7. Receipts Budget
  8. Budget at a glance
  9. Outcome Budget

- **Rajya Sabha** has only a **limited role** in the entire budgetary process. It can discuss and debate but it cannot vote.

#### General Discussion (03:02 PM)

- General discussion will take place **after the presentation** of the budget.
- It takes place in both Lok Sabha and Rajya Sabha for around four to five days.
- Members of Parliament discuss in general the content of the budget.
- Previously, at the end of the general discussion, Lok Sabha would pass the vote on account budget.
- It would help the government to spend monies for the first two months of the coming financial year.
- When the budget was preponed, to the first of February, the **vote on the account** has been **discontinued**.

#### Scrutiny By departmental Committees

- This departmental committee system was introduced in **1993** to improve parliament's control over finances.
- Initially, there were 17 departmental committees and at present, there are **24 departmental committees**.
- They consist of members from both Lok Sabha and Rajya Sabha.
- They are expected to scrutinize the demand for grants of all the ministries and departments and submit their reports to parliament.
- Recommendations of these committees are only advisory in nature.

#### Voting on Demand for Grants

- At this stage, Lok Sabha will take up the reports submitted by departmental-related committees.
- The speaker allows for discussion and debates during this stage. Each demand is voted on separately by Lok Sabha.
- Members of Parliament can move the cut motions, during this stage.
- There are three different types of cut motion:
  - **1. Policy Cut:** MPs express their disapproval of the policy by demanding that the expenditure should be reduced to rupees one.
  - They can also suggest alternative policies.
  - **2. Economy Cut:** Members can demand a significant reduction in expenditure if they feel the government is spending excessively.
  - **3. Token Cut:** Here, the members can demand that the expenditure be reduced by 100 rupees.

#### Cut Motions must follow the proper procedure for their introduction and passage:

- It should be related to only one **specific** demand.
- It should not contain any arguments or **defamatory statements**.
- It should restrict itself to **one specific matter**.
- It should not raise a question of **privilege**.
- It should not relate to any matter, that is under **adjudication by the court**.
- It should not relate to expenditure related to charged expenditure from the Consolidated fund of India.
- The passage of cut motions amounts to a lack of parliamentary confidence in the government. It will lead to the resignation of the government.
- But normally, these cut motions are not passed because the government will always have a majority on the floor of the house.
- The speaker allows around 10 days for discussion on the demand for grants.
- On the last day, he would put to vote demands for grants of all ministries and departments without any discussion.
- It is known as the **guillotine**.

#### The passing of the Appropriation Bill

- Parliamentary democracy essentially means the continuous control of the executive by the legislature under this **'no money'** shall be withdrawn from the consolidated fund of India except under appropriation made by law.
- An appropriation bill is introduced to seek the approval of parliament.
- It includes **charged expenditures** and **non-charged expenditures**.
- In case of a charged expenditure, parliament can discuss and debate but cannot vote.
- MPs cannot move any cut motion at this stage.
- The passing of the appropriation bill results in it becoming an appropriation act.
- This act, allows the executive to withdraw money from the consolidated fund of India

#### The passing of the Finance Bill (03:25 PM)

- It contains the **taxation proposals** of the government.

- Members can introduce amendments to finance bills including demanding reduction in taxes and abolition of taxes.
- It requires only a **simple majority** in Lok Sabha to pass the budget.
- If the budget is not passed, the government shall **resign**.

#### Supplementary grants

- It is granted when the amount of money given to a particular service is found to be **insufficient** in the current financial year.

#### Additional Grants (03:39 PM)

- It is granted when the government has to incur expenditure for a **new service**, which is not mentioned in the budget.

#### Excess Grant

- It is granted when the money spent on service is more than what the budget has approved for the financial year.
- It is voted by Lok Sabha after the **financial year**.
- Before, the demands for excess grants are approved by Lok Sabha, must get approval from the **public accounts committee**.

#### Vote of credit

- It is granted for meeting an unexpected demand upon the **resources of India**.
- It is like a **blank cheque** given to govt by parliament.
- It is granted when there is no clarity regarding the service to be provided.

#### Exceptional Grants

- It is granted for a **special purpose** and forms no part of the current service of any financial year.

#### Token Grant

- It is granted when the government proposes a **new service** in the current financial year and there is no certainty regarding the amount of money to be spent on this service.
- A token amount of **one rupee** is granted for the new service. The rest of the money will be raised through the transfer of funds from one head to another head.

#### Next Class: Budget Continued; Parliamentary Committees

#### Polity Class 22

#### Discussion on Previous Class (01:01 PM)

#### Parliamentary Committees (01:04 PM)

- The committee system had come into existence to improve **effective control** of the executive by the legislature.
- The parliament can only meet for a few days a year, and it becomes almost impossible to discuss, debate, and scrutinize the performance of the executive.
- This committee system can help in ensuring **continuous accountability** of the executive to the legislature.
- Broadly, these committees are divided into permanent committees and ad-hoc committees.
- Permanent committees are also known as **standing committees** and they are constituted **every year**.
- Adhoc committees come into existence only for a specific purpose and they cease to exist once they submit the recommendations.
- Standing committees of parliament can be divided into **six categories**:
- **1. Financial Committees**
  - (a) Public Accounts Committee
  - (b) Estimates Committee
  - (c) Committee on Public Sector Enterprises
- **2. Departmental Standing Committees:** 24 in total
- **3. Committees to Inquire:**
  - (a) Committee on Petition
  - (b) Committee on Privilege
  - (c) Ethics Committee
- **4. Committee to scrutinize and control:**
  - (a) Committee on subordinate legislation
- **5. Committee related to the day-to-day functioning of the house.**
  - (a) Business Advisory Committee
  - (b) Rules Committee
  - (c) Committee on Private Members Bills and Resolutions
  - (d) House Keeping Committee



- **6. Ad-hoc Committee:** These can be divided into:
- (a) Enquiry Committees: These are constituted from time to time to enquire into a particular case and submit recommendations. E.g. Joint Parliamentary Committee on Bofors; on stock market scams etc.
- (b) Advisory Committees: These include select committees as well as joint parliamentary committees on bills.
- They are expected to look into the content of the bill and submit their report.
- Recommendations are **not binding** on the government.

#### Discussion on the Importance of Answer Writing 02:06 PM to 02:40 PM

##### Public Accounts Committee (02:54 PM)

- It was set up in **1921** as part of the Government of India Act of 1919.
- It has **22 members**: 15 from Lok Sabha and 7 from Rajya Sabha.
- The members are elected every year on the basis of proportional representation.
- A minister cannot be a member of any committee.
- The Chairman of the committee is appointed by the **Speaker**.
- From 1967 onwards a convention was developed where the chairman is from the opposition parties.
- The committee examines annual reports submitted by CAG.
- The committee also evaluates the performance of ministries and departments. on the basis of the reports submitted by CAG.
- CAG acts as a **friend, philosopher, and guide** of the **Public Accounts Committee**.

##### Estimates Committee (02:58 PM)

- It came into existence in **1950** on the basis of recommendations of the then finance minister **John Mathai**.
- Originally, it had **25 members** and in **1956** its membership was increased to **30**.
- All members are from **Lok Sabha only**.
- Members are elected on the basis of **proportional representation**.
- The term of the committee is **1 year**.
- A minister cannot be a member of the committee.
- Chairman is appointed by the speaker.
- The committee is expected to scrutinize the estimates in the budget and suggest the economies in expenditure.
- It is known as the continuous economies committee.

##### Committee on Public Sector Enterprises

- It came into existence in **1964** on the basis of the recommendations of the **Krishna Menon Committee**.
- Originally it had 15 members, and in 1974 the membership was raised to **22**: 15 from Lok Sabha and 7 from Rajya Sabha.
- Members are elected through **proportional representation**.
- The term is 1 year.
- Chairman is appointed by the Speaker and Chairman should be from Lok Sabha only.
- It evaluates the performance of PSEs and submits reports to parliament.

##### Departmental Standing Committees

- They had come into existence in **1993** on the basis of the recommendations of the rules committee of Lok Sabha.
- Initially, there were 17 committees and in 2004, 7 more committees were added.
- The objective is to ensure the accountability of the executive.
- They cover all ministries and departments of the central government.
- Each committee had **31 members**: 21 from Lok Sabha and 10 from Rajya Sabha.
- Lok Sabha members are appointed by the speaker and Rajya Sabha members by the chairman of Rajya Sabha.
- Ministers cannot be members.
- The term of the committee is one year.
- Out of **24** committees, **8** work under **Rajya Sabha** and **16** under **Lok Sabha**.
- The function of these committees includes considering the demand for grants of ministries and departments before they are discussed and voted in Lok Sabha.
- They cannot suggest anything in the form of cut motion.
- To examine bills pertaining to the concerned ministries and departments.
- To consider annual reports of ministries and departments.
- To consider national basic long-term policy documents presented to the house.

#### Reasons for ineffective Functioning of Committee System in India (03:12 PM)

- Recommendations of these committees are only **advisory** in nature.
- The term of the committee is 1 year only. It takes time for MPs to understand the functioning of ministries and departments as administrations are highly technical in nature.
- Once they get familiar with the functioning, they can be replaced by another set of members.
- Members are appointed to these committees mostly on the basis of recommendations of the respective political parties.
- Their academic background or professional experience is not taken into consideration.
- **Conflict of interest** is also not taken into consideration while appointing members to various committees.
- Services of CAG are available only to PAC, not to other financial committees.
- None of these committees can go into questions of policy while evaluating the performance of ministries and departments.
- CAG conducts a job that is post-mortem in nature, it reduces the effectiveness of committees.
- Public Accounts Committee on average evaluates the performance of around 7 to 8 ministries in a year for the same ministries to be evaluated again could take a minimum, of 8 years.
- These committees can summon officials, but if officials do not present themselves, these committees do not have the power to punish them for contempt.
- Only parliament has such powers.
- Using the Official secrets act, the govt. hides the important information from these committees, making them less effective.
- **Politicization:** Since the government has a majority in all these committees it can lead to the politicization of the functioning of these committees.
- Members of these committees have failed to raise petty political interests. Hence, it leads to the ineffectiveness of the committee system.
- These committees can't look into the day-to-day administration of ministries and department
- Reports of these committees are normally not discussed by parliament.
- In recent times, many bills are introduced and passed by parliament without being referred to departmental committees, in the process reducing their effectiveness.

#### **Solution (03:32 PM)**

- The government must submit the **action taken report** regarding the recommendations made by committees.
- This report must contain information about the:
  - Recommendations that are accepted and implemented.
  - Recommendations that are accepted and will be implemented in the future.
  - Recommendations that are rejected provide the reasons for their rejections.
- The term of the committees can be increased to a minimum of **three years**.
- **Conflict of interest** should be taken into consideration while appointing members to these committees.
- Members' academic qualifications and professional experience should be taken into consideration.
- The **scope of CAG** should be extended so that it can perform a concurrent audit (auditing is done as and when monies are spent).
- Services of CAG should be made available to all other financial committees.
- Their powers can be extended to give recommendations related to policy also.
- Reports of these committees should be regularly discussed by both houses of parliament.
- These committees should be given the **power to punish** officials.
- The official secrets act should be repealed so that the committees can have complete access to government information.
- Proceedings of these committees can be made **open for citizens** to evaluate the performance of these committees.
- Speakers can conduct special programs to provide training to members of these committees in the technical aspect of administration so that they can evaluate performance better.

#### **The topic for the next class: Parliament Continued** **Polity Class 23**

#### **Brief Discussion on Previous Class (01:00 PM)**

#### **Parliamentary Democracy in India (01:07 PM)**

#### **Lok Sabha**

- The maximum strength of Lok Sabha is **552**.
- 520 members are from the states and 20 are from Union Territories and two members are nominated from the Anglo-Indian community.

- **104th Constitutional amendment** has removed this provision of Nominated members as there is no sufficient representation of them in India.
- At present, the total strength of Lok Sabha is 543 out of which 524 represent the states, and 19 represent Union Territories.
- **Reservation of seats for SCs and ST:** Initially the reservation was for ten years only. Later it was extended.
- There is **no separate electorate** for SCs and STs.
- After every census, readjustment is made in the allocation of seats in the Lok Sabha to the states.
- 42nd Amendment froze the allocation of seats in Lok Sabha to the states till the year 2000 at the 1971 levels.
- It was extended by the **84th Amendment** for another 25 years till **2026**.
- Lok Sabha has a duration of five years from the date of its first meeting.
- After 5 years it is automatically dissolved unless the term of Lok Sabha is extended during National Emergency by a law of 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 repeal of the emergency.

#### Qualification for MPs (02:14 PM)

- He/she should be a member of Parliament.
- He must not be less than **30 years** of age in the case of **Rajya Sabha** and **25 years** in the case of **Lok Sabha**.
- Representation of People Act, 1951 (RPA) has laid down more qualifications:
  1. He must be registered as an elector to the parliamentary constituency.
  2. He must be a member of SC/ST if he wishes to contest a seat reserved for them.

#### Disqualifications:

- If any member holds the office of profit.
- If any member is of unsound mind as declared by a court.
- If he is not a citizen of India or voluntarily acquires the citizenship of a foreign state.
- If he is disqualified under any law made by the parliament.
- RPA, 1951 had laid down more terms for disqualifications:
  - If he is convicted for a period of **two** or more years.
  - If he is found guilty of certain **election offenses** or certain electoral malpractices. E.g. Indira Gandhi was disqualified for electoral malpractices.
  - If he has failed to lodge an account of his **election expenses**.
  - If he is a director or managing agent or holding any office of profit in a corporation in which the government has at least 25 percent shares.
  - If he is dismissed from government service for corruption or disloyalty to the state.
  - If he is convicted for enmity between different groups or for the offense of bribery.
  - If he is punished for preaching and practicing social crimes such as untouchability, dowry, and Sati.
- The President will decide on Disqualification and his decision is final but the president must seek the opinion of the election commission and act accordingly.

#### Rajya Sabha

- Rajya Sabha has a lot more constitutional significance compared to the House of Lords in Britain.
- It is also known as the **Council of States**.
- It is expected to protect the **interests of the states** in a federal democracy.
- It is also expected to ensure **checks and balances** within our parliamentary democracy.
- The functioning of rajya sabha can be studied from various dimensions:
  - **1. Equal Powers with Lok Sabha:**
    - Our constitutional forefathers made sure that Rajya Sabha is given equal powers with Lok Sabha so that a numerical majority of Lok Sabha does not result in undermining Rajya Sabha.
    - (a) Introduction and passage of ordinary bills.
    - (b) Constitutional Amendments Bill
    - (c) Election and Impeachment of President
    - (d) Making recommendations to the president for the removal of a chief justice and judges of the High Court and Supreme Court and other constitutional authorities.
    - (e) Approval of ordinances issued by the president.
    - (f) Approval of all types of Emergencies
    - (g) Enlarging the jurisdiction of SC and UPSC.
    - (h) Selection of Ministers and Prime Ministers.
    - (i) Considering reports of constitutional bodies like the Finance Commission, UPSC, and CAG.

- (j) Introduction and passage of financial bills involving expenditure from the consolidated fund of India.
- **2. Rajya Sabha has more powers than Lok Sabha:**
- (a) Rajya Sabha can authorize the parliament to make legislation on a subject mentioned in the state list, under Article 249.
- (b) Rajya Sabha can also recommend the creation of a new All India Service under Article 312 of the Constitution.
- (c) Rajya Sabha can initiate a motion for the removal of the Vice-President.
- (d) It can only be introduced in Rajya Sabha.
- (e) If a proclamation is issued for imposing National Emergency, President's rule, etc. at the 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 can remain effective even if it is approved by Rajya Sabha alone.
- **3. Lok Sabha has the upper status:**
- (a) A money bill can only be introduced in Lok Sabha.
- (b) Rajya Sabha cannot amend or reject a money bill.
- (c) It can only come out with recommendations. Lok Sabha can either accept or reject those recommendations.
- (d) The final power to decide whether a bill is a money bill or not lies with the Speaker of Lok Sabha.
- (e) The speaker of Lok Sabha will preside over the joint session of both houses in case of the joint session. Lok Sabha's numerical strength can help it in getting the bills passed.
- (f) Rajya Sabha can only discuss the budget, but it cannot vote.
- (g) Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion.
- (h) A resolution for removal or discontinuation of National Emergency can be passed only by Lok Sabha.

#### **Consolidated Fund of India (Article 266) (03:15 PM)**

- It is a fund to which all the **receipts** are **credited** and all payments are debited.
- It includes **all revenues** received by the government of India.
- It also includes all the loans raised by the government of India through treasury bills, loans, and ways and means advances.
- All money received by the government in repayments of loans.
- All payments on behalf of the government of India are made out of this fund.
- No money can be withdrawn from this fund except in accordance with **parliamentary law**.

#### **Public Account of India**

- All other monies received by the government of India are credited to the Public Account.
- It includes **PF deposits, judicial deposits, savings bank deposits, departmental deposits, remittances**, and so on.
- It can be operated by executive actions without needing parliamentary approval.

#### **The contingency fund of India**

- The constitution has authorized parliament to establish a Contingency fund of India.
- Parliament has enacted the contingency fund of India act.
- It is at the disposal of the **President of India**.
- It is to be spent during times of disaster.
- It is held by the **finance secretary** on behalf of the President.
- Budget 2021-22 has increased the amount to **30,000 crores**.

#### **Money Bills (03:34 PM)**

- **Article 110** of the constitution deals with money bills.
- The speaker of Lok Sabha has the **final authority** to decide whether a particular bill is a money bill or not.
- Rajya Sabha can suggest amendments, but it is for Lok Sabha to accept or reject those amendments.
- If Lok Sabha accepts and passes the bill, it is deemed to be passed by both houses.
- A bill is **deemed to be a money bill** if it only contains a provision dealing with any or all of the following matters:
  1. The imposition, abolition, remission, alteration, or regulation of any tax.
  2. Regulation of borrowings of money by the Union government.
  3. The custody of the consolidated fund of India or the Contingency fund of India.
  4. Payment of money into or withdrawal of money from such funds.
  5. Appropriation of money out of CFI.
  6. Declaration of any expenditure, charged on CFI.
  7. The receipt of money on account of the consolidated fund of India or the public account of India or the custody of such money.

- 8. Any matter incidental to any matter specified above.
- A bill is **not a money bill** by reason only that it provides for :
  - 1. Imposition of fines or any penalties.
  - 2. The demand or payment of fees for licenses or services rendered.
  - 3. Imposition abolition remission alteration or regulation of any tax by the local authority.

**Next Class: Parliament Continued, President.**

**Polity Class 24**

#### **Financial Bills [01:11 pm]**

- Financial bills are those **bills that deal with matters related to Revenue and Expenditure.**
- There are **3 types of Financial Bills:**
  - i) Money Bill (Article 110)
  - ii) Financial Bill-1 (Article 117(1))
  - iii) Financial Bill-2 (Article 117(3))
- **Financial Bills (I)**
- It **contains not only any or all the matters mentioned in Article 110 but also other matters of general legislation.**
- In simple words, It is a combination of a Money Bill and an ordinary bill.
- It is **similar to Money Bill in two aspects:**
  - i) Both of them can be introduced only in Lok Sabha.
  - ii) Both of them can be introduced only on the recommendation of the president.
- In all other aspects, it is governed by a similar procedure that is applicable to ordinary bills.
- **Financial Bill (II)**
- It contains provisions related to expenditure from the Consolidated Fund of India but does not include any of the matters mentioned in Article 110.
- It is treated as an ordinary bill and the same procedure is applicable.
- The only special feature is it can not be passed by either house of the Parliament unless the President recommends to that particular house for the consideration of the Bill.
- Presidential approval is not necessary for its introduction but it is necessary at the consideration stage.

#### **Double Membership [01:32 pm]**

- A person can not be a member of both houses of Parliament at the same time.
- **Under the Representation of the People Act 1951:**
  - i) If a person is elected to both houses of parliament, he must intimate within 10 days in which house he wants to serve.
  - If he does not do so, his Rajya Sabha seat will become vacant.
  - ii) If a sitting member of one house is elected to the other house, his seat in the first house becomes vacant.
  - iii) If a person is elected to two seats in a house, he should exercise his option for one seat, otherwise, he will lose both.
  - iv) A person can not be a member of Parliament as well as the State Legislature at the same time.
  - If a person is so elected then his seat in Parliament becomes vacant if he does not resign his state legislature seat within 14 days.

#### **Sessions of Parliament [01:47 pm]**

- **Summoning**
- President from time to time summons each house of Parliament.
- Parliament should meet at least twice a year and the gap between two sessions of Parliament can not be more than 6 months.
- Normally, Parliament has 3 sessions in a year.
- **i) Budget session**
- It starts from the last week of January and till the end of March.
- **ii) Monsoon Session** - Its period is from July to September.
- **iii) Winter session** - Its period is from November to December.
- **Adjournment**
- Adjournment suspends the work for a particular period of time.
- It can be hours, days, or weeks.
- **Adjournment Sine Die**
- It means terminating the sitting of the house for an indefinite period.
- **Prorogation of House**

- Once the House is adjourned Sine Die, the President issues a notification for the prorogation of the session.
- Prorogation does not affect the bills or any other business pending in the House.

#### **Various types of Motions [02:00 pm]**

- Discussions and Debates on the floor of the House can take matters of urgent public importance only with the approval of the presiding officer of the House.
- Motions are moved by members on the floor of the House.
- They can be moved by either ministers or private members.
- There are **three types of motions-**
- **i) Substantive motion**
- It is a self-contained independent proposal dealing with a very important matter.
- For e.g. No-confidence motions, motions to remove the President or other constitutional bodies.
- **ii) Substitute motion**
- It is a substitute for an original motion and provides an alternative to the original motion.
- **iii) Subsidiary motion**
- It is part of the original motion and by itself, it has no meaning.
- It is **divided into three categories -**
- **a) Ancillary motion**
- It is used for various means to proceed with different kinds of businesses.
- **b) Superseding motion**
- It is moved to supersede the original issue.
- **c) Amendment motion**
- It is moved to modify or substitute part of the original motion.
- **Adjournment motion**
- It requires the support of a minimum of 50 MPs.
- It can be introduced only in Lok Sabha.
- It is introduced to draw the attention of the house to a matter of urgent public importance and Speaker has absolute discretionary powers to admit this motion.
- If it is passed, it means censure of the Govt
- It does not mean that the Govt will have to resign.

#### **Resolutions [02:17 pm]**

- Members can move resolutions to draw the attention of the house or the govt to matters of general public interest.
- A member who has moved a resolution or amendment to a resolution can not withdraw the same without the leave of the House.
- Resolutions are divided into three categories:
- **i) Private member resolution**
- It is discussed only on alternate Fridays and in the afternoon sessions.
- It can be moved only by private members.
- **ii) Government Resolutions**
- It is moved by a minister.
- It can be taken up between Monday and Thursday.
- **iii) Statutory resolutions**
- It can be moved either by a private member or a minister.
- It is called Statutory because it is tabled according to the provisions of the Constitution or according to an act of Parliament.
- **Difference between Resolutions and Motions**
- All resolutions are Substantive motions but not all motions are Substantive in nature.
- Not all motions will be put to vote whereas all resolutions should be voted on.
- **Calling attention motion**
- It is introduced by a member to call the attention of a Minister to a matter of urgent public importance and the minister is expected to reply to the matter raised by the member.

#### **The Motion of Thanks [02:29 pm]**

- The first session after every general election and the first session of every Fiscal year is addressed by the President.
- At the end of the discussion, this motion is put to vote.
- It must be passed by the house.

- Otherwise, it amounts to the defeat of the Government.

#### **President [02:57 pm]**

- All the executive decisions are taken in the name of the President.
- President is the nominal executive.
- The office of the President exists to ensure Constitutionalism, to ensure checks and balances.
- The judiciary can only declare a law unconstitutional only after it is enacted.
- President can exercise his powers before a bill becomes an act.
- President also has much discretionary power.
- President has different kinds of vetoes - Absolute veto Suspensive veto, Pocket veto.
- Parliament includes President, Lok Sabha, and Rajya Sabha.
- President has legislative, executive, Judicial, and other powers.
- Executive powers of the President include the Appointment of the Prime Minister, the Council of ministers, and many Constitutional offices.
- President is also the supreme Commander of the Armed Forces.
- President is indirectly elected in India to avoid conflict between President and the Prime Minister.
- The President's election is held in accordance with the system of Proportional Representation by means of the single transferable vote.
- Voting is by secret ballot.
- During the process of election of the President, voters indicate their preference for the candidates contesting the election.
- The winning candidate needs to get more than 50% of the votes.

**The topic for the next class- Discussion on President will continue.**

#### **Polity Class 25**

#### **Polity Class 25 [13:01:00]**

**A brief overview of the previous class & discussion of the role of the president**

#### **President in Pre-liberalization period[13:05:00]**

#### **Role of the President in holding constitutionalism**

- **Dr. Rajendra Prasad-**
- Wanted to know the exact powers of the president of India
- Used pocket Veto in case of PEPSU Bill.
- Hold reservations against the Hindu Code Bill
- **Radhakrishnan**
- He wanted the resignation of the Defense minister after the Indo-china war
- 1967- elections occurred for Presidents seat
- 1969- Elections again happened as the former president died in office (Zakir Hussain)
- Era of politicization of president began + Parliamentary form of government + Ordinance raj
- **V V Giri (1969-1974)**
- Abolition of Privy purses- Bill was rejected then the ordinance was brought
- Nationalization of PSBs
- 24th and 25th CAA brought by Indira Gandhi
- **Fakhruddin Ali Ahmad (1974-1977)**
- Two presidents died in office- Zakir Hussain and Fakruddin Ali Ahmad
- 1974- Indira Gandhi's government also was facing many challenges. A railway strike was going on which crippled the economy. J P Narayanan started the Anti-Corruption movement
- 12th June 1975- Allahabad HC gave a judgment that disqualified the Indira Gandhi
- 25th June 1975- Declaration of National Emergency
- [\* Emergency declaration- 1962, 1965, 1971- on grounds of war. 1975- on grounds of internal disturbances]
- Role of the President was questioned. The term 'Rubber Stamp' became popular.
- PM did not consult her cabinet
- **Dilution of decision-making powers**
- Democracy (140 crores) > Parliament (800 MPs)> CoM form of government (around 80) > Cabinet(27-36) > Kitchen cabinets (seniormost members)> Prime ministerial form of government (PM takes decision without consulting the seniormost ministers)
- CoM= Cabinet ministers + MoS (independent charge) + MoS
- Cabinet ministers= independent charge of one or more ministries
- Only cabinet ministers will attend the meetings of the cabinet

- **Role of the President was questioned**
- President did not verify whether the decision to impose an emergency has the approval of CoM.
- The president must check that there are inherent checks and balances- The president failed to ensure this.
- There is no scope for the President's rule at the center
- **Why Rubber Stamp? / Politicization of the office of the President**
- President Fakhruddin Ali Ahmad did not apply his mind during the imposition of the Emergency.
- 39th CAA- office of president, PM, and Speaker was beyond judicial review. It was also kept in the IXth schedule
- 42nd CAA- Article 74- The word 'may' was replaced by 'shall'- for giving Assent. It took the independence of the office of the president
- President not following the conventions when the seat of the PM was vacant after the death of PM Indira Gandhi
- President of India showing dedication towards the PM
- **Neelam Sanjeev Reddy (1977-1982)**
- 1979- Janta party lost power. Split in janta party. Charan Singh became PM with the support of Congress. Charan Singh was given one month's time to prove the majority.
- Congress party withdrew support. Charan Singh was dismissed by the president as he refused to resign after losing the confidence of the house. [\* Discretionary power of the president] [\* Charan Singh was the only PM who did not see the parliament once]
- There is no scope for President rules at the center
- 1980- Indira Gandhi returned to power.
- Article 356 was used to dismiss the state governments in 5 states- President did not use discretionary powers [\* Evidence of politicization]
- **Giani Zail Singh (1982-1987)**
- Indira Gandhi envisaged the idea of a Committed president
- 1984- Indira Gandhi was assassinated by a Sikh bodyguard for Operation Bluestar
- Convention was- parliamentary party in LS must meet and select the PM, till then the seniormost member used to be PM [\* Example- Gulzari Lal Nanda became PM after Nehru's death, after Lal bahadur Shastri's death]
- 1984- Anti-Sikh riots
- Giani Zail Singh requested the PM to take action. The inaction by the PM led to the deterioration of relations between the PM and POI
- 1985- Elections held to LS and Rajiv Gandhi returned back to power with Absolute Majority.
- 1987- Swiss Radio came out with an allegation- Bofors company paid the bribe for defense contracts
- President wanted to use Article 75 (PM along with CoM enjoys the pleasure of President) to dismiss the PM. Although President did not use this.
- [\* **Why there is no time period mentioned to give assent by the President?**- Our constitutional forefathers have not fixed any time limit for the president to give approval. President is the highest constitutional dignitary and no one is above him. Fixing the time limit will make the post as post of clerk. Also, President is supposed to analyze the Bill and give assent. ]
- President Giani Zail Singh used the Pocket veto on the Postal Bill brought by the government
- **Venkatraman (1987-1992)- Era of Activist Presidents**
- President using his discretionary powers to ensure constitutionalism
- 1989- V P Singh became PM and requested the President to Reject the Postal Bill
- 1990- Parliament passed a Bill to increase the salaries and allowances of MPs. Venkatraman Rejected this Money Bill as prior approval was not taken
- In 1989, President Venkatraman came up with a convention that- If there is a Hung parliament, then the president should invite the leader of the single largest party to form the government.
- L K Advani's rath yatra- communal conflict started
- 1991- V P Singh decided to implement Mandal Commission recommendations.
- President Venkatraman asked all the political parties to form a National Government- During the 1990s crisis (Increasing communalism, caste-based politics, and Economic crisis)

#### **President in Post liberalization period [14:56:00]**

- 1991- President Venkatraman (1987-92) proposed to form a national government but it was not accepted by the political parties
- 1991- LS elections were held, T N Seshan introduced phase-wise elections
- Congress party emerged as the single largest party but they did not have a majority in LS



- Venkatraman invited the single largest party to form the government
- Congress party elected P V Narasimha Rao for the post of PM (1991-96)
- President Venkatraman said " The POI office is like an Emergency Lamp. It comes on automatically when there is a crisis and goes off automatically when the crisis passes"- He dissolved Lok sabha in 1991+ He used discretionary powers on the money Bill and the Postal Bill
- **Shankar Dayal Sharma (1992-1997)**
- 1996- Elections held in LS- he also invited the single largest party in LS
- BJP did not get the majority because of the 1991 Babri masjid demolition
- New coalition was formed under H D Deve Gowda
- I K Gujral followed H D Deve Gowda as PM. I K Gujral gave the Gujral doctrine
- **K R Narayanan (1997-2002)**
- He was called an activist President
- 1997- United Front government was in power. They recommended dismissing the UP government under Article 356 on grounds of the Breakdown of constitutional machinery
- K R Narayanan sent back the Bill for reconsideration of the Bill (Suspensive Veto)- he said there is no breakdown of constitutional machinery
- The government did not proceed with the Bill
- 1998- Elections held for LS (1989, 1991, 1996, 1997- 4 times elections held in a period of 9 years- an Era of political instability)
- K R Narayan discontinued the convention set by President Venkatraman. He came out with a new convention. He said that any political party that wants to hold the highest position must come out with the letters of support of 273 MPs
- Atal Behari Vajpayee formed the Government
- Jayalalithaa withdrew support from the Government. The government survived with the support of BSP
- Vajpayee government was defeated because of one vote [CM of Orissa being a member of LS was occupying the constitutional post in the State i.e. CM of orissa]
- Elections were held for LS and Vajpayee government came to power
- 1999- Vajpayee government wanted to use Article 356 in Bihar
- K R Narayanan sent back the recommendation and stated that corruption is not a ground to impose Article 356
- But that Bill was sent again for the assent and K R Narayanan gave his assent
- 2002- Godhra riots and K R Narayanan asked the PM to take action.
- K R Narayanan asked the Government to mention the steps taken to protect the interest of minorities
- **A P J Abdul Kalam (2002-2007)- People's President**
- 2004- elections were held- UPA came to power
- 2005- Elections were held to Bihar assembly- Hung assembly.
- The government recommended for President's rule in Bihar. President gave his assent
- SC in the Bihar assembly dissolution case found fault in the imposition of the President's rule and asked for "extreme caution" before imposing Article 356
- President wanted to resign but then agreed to remain in that position
- 2006- President also faced the issue of the Office of Profit, Jaya Bachchan was appointed as chairperson of UPFDC being an RS member. She was disqualified as an RS member
- [\* **Office of Profit**- Executive can be a part of the legislature but the legislature can not be part of the executive except CoM. They have to be completely independent of the executive. The legislature can not hold the office of profit. The only salary can be the salary one is getting for being MP. ]
- [\* 1990- V P Singh government had appointed Ramkrishna Hedge as planning commission deputy chairman. Election commission disqualified him as a Member of RS]
- Sonia Gandhi was holding the position of NAC (National advisory council). Sonia Gandhi resigned as a Member of the LS
- It was found that many members (50% of MLAs + 50% of MPs) were holding the office of profit.

**Question:-** To what extent, in your view, is the parliament able to ensure the accountability of the executive in India (10 marks/ 150 words)

**The Topic for the next class:-** Continuation of President and Office of profit issue.

**Polity Class 26**

**President (09:01 AM)**

- The office of the President of India had come into existence to ensure **constitutionalism** i.e. the President is expected to ensure that the council of ministers headed by the Prime Minister performs their function strictly according to the provision of the constitution.
- It has come into existence to **ensure proper checks and balances** within the system.
- In our parliamentary democracy, if the prime minister has an absolute majority in both houses of the legislature, he can be more powerful than the President of America also, in terms of the power they enjoy.
- The role of the judiciary is post-mortem in nature.
- The president is expected to ensure that the government is run strictly according to the provision of the constitution.
- **Articles 52 to 78** in part V of the constitution deal with the office of the president.
- The President of India is elected by an **electoral college**.
- Our constitutional forefathers have opted for an **indirect election** as they felt a direct election would result in unnecessary conflict between the two highest constitutional dignitaries: The PM and President.
- They have opted for proportional representation as they felt that President must have much wider acceptance within the political system.
- In first past the post system, a candidate can win even with minority votes also.
- Since the president of India is the highest constitutional authority, he should command support from multiple political parties and cannot be a representative of a single party.
- It is possible only with proportional representation.
- The electoral college consists of:
  1. Elected members of **both houses of parliament**.
  2. Elected members of **state legislative assemblies**.
  3. Elected member of legislative assemblies of **Delhi** and **Puducherry**.
- If an assembly is dissolved they cannot participate in the office of the president.
- Nominated members of both the houses of parliament and the state legislature and members of the state legislative council and nominated members of the Delhi and Puducherry assembly do not participate in the election of the President.

#### Qualification for Office of President (10:11 AM)

- He should be a **citizen of India**.
- Must have completed **35** years of age.
- He should be qualified as a member of **Lok Sabha**.
- He should not hold any **office of profit**.
- A sitting president, vice-president, or governor of any state or minister in union or state government is not deemed as the office of profit and they can contest elections.
- A candidate must be subscribed by 50 electors as proposers and 50 electors as seconders.

#### Impeachment of President (10:17 AM)

- The president can be removed from office by the process of impeachment for violation of the constitution but our constitution has not defined "**violation of the constitution**".
- **Procedure:**
  1. Charges to impeach the President can be initiated by either house of Parliament.
  2. The charges should be signed by one-fourth of the member of the house.
  3. The President should be given **14 days' notice**.
- The house must pass the resolution by **two-thirds** of the total membership of the house.
- It should be sent to the other house.
- The other house has to investigate the charges.
- The president has the **right to appear** and to be represented in such investigations.
- If other houses also pass the resolution with **two-thirds members** of the total membership of the house, then the president stands removed.
- Nominated members of either house of parliament can participate in his impeachment process.
- Elected members of the state legislative assemblies and Union territories of Delhi and Puducherry do not participate in the impeachment of the President.

#### Veto Powers of President (10:53 AM)

- The president of India enjoys three different types of veto powers:
- Once a bill is presented to the president under **article 111** of the constitution. The president has three alternatives:
  1. He gives his approval and it becomes an act.
  2. He can withhold his assent.

- 3. He can return the bill for reconsideration.
- **Absolute Veto:** The president enjoys **absolute veto** in case of private members' bills passed by parliament and also in case of bills sent to him by the governor of the state for his approval.
- Similarly, the president can with respect to government bills reject them when the cabinet resigns and the new cabinet advises the president not to give the assent.
- **Suspensive Veto:** The president can send back the bill for reconsideration by the parliament if the parliament passes the same with or without modifications, the president shall give his approval (44th amendment).
- But there is no time limit for the president of India to give his approval.
- **Pocket Veto:** The president can keep the bill pending for an indefinite period of time. The president does not enjoy any veto power in the case of money bills and constitutional amendment bills.

#### Ordinance-making Power of the President

- **Article 123** of the constitution empowers the president to issue ordinances when the house is **not in session**.
- This is needed because governance is a continuous activity and parliament meets only for a limited period of time in a year.
- Ordinances can be issued only when both houses of parliament are not in session or when either of the houses is not in session.
- The president can issue ordinances only when he is satisfied that circumstances exist for immediate action in **Cooper's Case (1970)**, SC ruled that presidential satisfaction can be questioned in a court of law on the grounds of **Malafide**.
- Since the 1970s, the country had witnessed the ordinance raj, due to the fragmentation of Indian Polity, it has become almost impossible for successive governments to get this passed in Rajya Sabha.
- The emergence of a **Prime Ministerial form of government** has also led to the ordinance raj.
- Powerful prime ministers have surpassed parliaments to issue ordinances continuously.
- Ordinances are against the spirit of parliamentary democracy because legislation should be implemented only with proper discussion debate and voting on the floor of the house, but both at the central as well as in the states, governments routinely bypass legislature by issuing ordinances.
- Supreme Court in the **D.C. Wadhwa case** pointed out that between 1967 and 1981, the Bihar state government promulgated 256 ordinances and in some cases, the same ordinance was reissued continuously for a period of two decades also.
- In spite of the fact that the concerned chief ministers had enjoyed the majority on the floor of the house at the union level, some controversial legislations were issued as ordinances like the Abolition of Privy Purses and the recent land acquisition bill.
- Supreme Court has ruled that ordinances can be issued only under exceptional circumstances and it also ruled that promulgation of the same ordinance without legislative approval would amount to a violation of the constitution and they can be struck down by the judiciary.
- The president/governor must fully satisfy themselves regarding the emergency situation before promulgating ordinances.

#### Solution (11:32 AM)

- Once parliament meets after the promulgation of ordinances, there should not be any discretionary power in the hands of the presiding officers regarding the introduction of these ordinances on the floor of the house.
- Then it becomes mandatory for the legislature to give its opinion on the concerned ordinance.

#### Pardoning Powers of the President

- **Article 72** of the constitution, empowers the president to grant pardons to people convicted in the following cases:
  1. Punishment or sentence is for an offense against union law.
  2. Punishment or sentence is by a military court.
  3. Sentence is a death sentence.
- The pardoning power of the president is executive power and is **independent of the judiciary**.
- Pardoning powers include:
  1. **Pardon:** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments, and disqualifications.
  2. **Commutation:** It means the substitution of one form of punishment for a lighter punishment. The death sentence can be commuted to a life sentence.
  3. **Remission:** Reducing the period of a sentence without changing its character. E.g. Reducing rigorous imprisonment from 5 years to 2 years.

- **4. Respite:** Awarding a lesser sentence in place of original punishment due to some special fact like old age, disability, etc.
- **5. Reprieve:** It means giving a stay on a sentence for a temporary period of time to allow the convict to seek order or commutation from the president.

#### **Additional Points (11:52 am)**

- In order to make parliamentary democracy effective it is suggested that the absolute veto power enjoyed by the president in case of private members' bills should be removed.
- It is part of the colonial legacy where the governor-general had enjoyed absolute veto powers over private member bills introduced in the central legislature.
- It is said that the same provision was included in the constitution which ultimately resulted in a drastic decline in the role of individual MPs as part of the separation of powers it is the responsibility of the legislature to make legislation.
- Since the president has absolute veto power with regard to private members' bills, from the 1970s onwards no private member bill has been passed.
- By removing the absolute veto power of the president, individual MPs can be encouraged, to participate more proactively in the legislative process.

#### **Next Class: Vice President and Judiciary**

#### **Polity Class 27**

#### **Vice President(VP) [09:01 am]**

- **Election to the office of VP**
- VP is **elected by an electoral college consisting of both houses of Parliament.**
- It consists of both elected and nominated members of Parliament. (In the Case of the election of the President, it is the only elected members who participate)
- It **does not include members of State Legislative assemblies.**
- In the case of the President of India, the President exercises his powers both against the central and the State governments.
- Whereas in the case of the Vice President, his functions are restricted to managing the council of states.
- He will perform the functions of President only under emergency situations.
- VP is also elected on the basis of proportional representation by means of a Single Transferable vote.
- **Qualifications**
- 1) The person should be a citizen of India.
- 2) He must be above 35 years old.
- 3) he must be eligible to become a member of the Rajya Sabha.
- 4) He should not hold any office of Profit.
- 5) A sitting president or VP, governor, Union Cabinet Minister, or State Cabinet Minister are not considered the office of Profit positions.
- 6) Minimum 20 electors as proposers and 20 as seconders.
- The **term of office is 5 years** and he can also resign before the end of his term.
- He can also be impeached.
- he can be removed by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha i.e. Rajya Sabha should pass the resolution with an effective majority and Lok Sabha with a simple majority.
- The resolution can be moved only in the Rajya Sabha and no need to mention the grounds for his removal.
- 14 days advance notice should be given to VP.
- He acts as **ex officio chairman of the Rajya Sabha.**
- He has all the powers as the speaker of the Lok Sabha.
- He also acts as President when there is a vacancy.
- **Following VPs became President-**
- S Radhakrishnan
- Zakir Hussain
- V V Giri
- R. Venkataraman
- Shankar Dayal Sharma
- K R Narayanan

#### **Prime Minister and Council of Ministers [09:19 am]**

#### **Prime Minister**

- In a parliamentary democracy, the **President is the head of the state and the PM is the head of the Govt**

- **PM is the real executive** even though the entire administration is carried out in the name of the President.
- The leader of the Political Party which enjoys a majority on the floor of the house in Lok Sabha is normally invited by the President to form the Govt.
- In the case of hung Parliaments, the President has the discretionary power to appoint the PM.
- **Charan Singh** was the first PM appointed by President using his discretionary powers.
- PM is the **head of the Council of Ministers (CoM)**.
- He has the **power to select the CoM and also to allocate the Portfolios to them**.
- he also has the power to remove them from the Council of Ministers.
- As the leader of the house, the PM has the responsibility to ensure the smooth functioning of the house.
- he also takes major policy decisions.
- Since independence, successive PMs have also taken responsibility for foreign policy formulation.
- Finance Minister (FM) formulates the budget in consultation with the PM.
- Once Budgetary proposals are ratified by the Cabinet, only the PM has the power to change them.
- In a Federal Polity, the PM also has the responsibility to ensure better coordination between Union and States.
- Emergency provisions in a constitution are exercised by the President on the basis of the decisions taken by the PM.
- As the leader of the country, the PM represents the country abroad.
- In British Parliamentary democracy, it is said that the PM is **Primus inter Parus** which means the PM is the first among the equals.
- In Indian Political Systems, PM is the leader of the Govt and the Country.
- With the emergence of a coalition govt, the power and prestige enjoyed by the PM have declined considerably.
- However, in a single-party rule, the PM enjoys absolute power.
- PM can be removed through a no-confidence motion passed in Lok Sabha.
- He would also lose his seat if the person is disqualified under RPA 1951.

#### **Council of Ministers(CoM) [09:33 am]**

- **Council of Ministers include**
- 1) Cabinet ministers
- 2) Minister of State (Independent)
- 3) MoS
- Parliamentary democracy functions on the basis of the separation of powers.
- The legislature is responsible for law-making, the Executive for implementation, and Judiciary for its interpretation.
- Over a period of time, Legislature has delegated the function of law-making to the Council of Ministers.
- Since the Council of Ministers is a much larger body, the same power was given to Cabinet.
- The Cabinet consists of the Senior ministers in the Council of Ministers.
- They are given independent charge of their ministries and departments.
- A single cabinet minister can be in charge of more than one ministry.
- Cabinet meetings are held in a highly secretive manner.
- Apart from Cabinet Ministers, only the Cabinet Secretary is allowed to attend the meetings of the cabinet.
- MoS (independent) is allowed to attend the meeting only at the invitation of the Cabinet Secretary.
- He can attend only when Cabinet discusses the policies of his ministry.
- The cabinet takes decisions on behalf of the entire CoM.
- Over a period of time, even Cabinet was found to be a much bigger body leading to the emergence of Kitchen Cabinets.
- Senior members of the cabinet including the Home Minister, Finance, External, and Defense would take decisions on behalf of the cabinet.
- Kitchen Cabinets had become popular during the tenure of the later PM, Indira Gandhi.
- By the mid-1970s, with the dominance of charismatic personalities in Indian Politics, the country witnessed the Prime Ministerial form of Govt wherein the entire power is concentrated in hands of the PM and the decision-making process is centralized in the office of the PM.
- For Example, the decision to impose an emergency was taken by the PM without involving CoM.
- It led to the **44th constitutional amendment**, it was made mandatory that imposition or emergency must have the prior approval of the Cabinet.
- Ministers of State is the lowest rank in the CoM. They work under Cabinet ministers.

#### **Judiciary [09:55 am]**

- **Phase I: The phase of Passive Judiciary (1947-1967)**
- During this phase, the judiciary is passive. It had given maximum freedom to Legislature & Executive in their functioning.
- **Why was the judiciary passive?**
- During this period, Judiciary remained passive because the political leadership of the country was committed to the ideology of socialism and it was felt that Fundamental Rights can be given more importance DPSPs.
- **A.K. Gopalan v. State of Madras** case was a landmark decision of the Supreme Court of India in which the Court ruled that Article 21 of the Constitution did not require Indian courts to apply the due process of law.
- Supreme Court upheld the procedure established by law in the A.K Gopalan case.
- For example, it recognized the power of the Legislature to legislate on any item as long as proper procedure is followed.
- Judiciary did not question the content of the Legislation.
- This procedure established by law is a feature of British parliamentary democracy where parliament is supreme as well as sovereign.
- **PHASE II: Confrontation between Judiciary and Executive (1967- 1975)**
- The Golaknath case was a 1967 Indian Supreme Court case, in which the Court ruled that Parliament could not curtail any of the Fundamental Rights in the Constitution.
- **The State of Uttar Pradesh v. Raj Narain Case**
- It was a 1975 case heard by the Allahabad High Court that found the Prime Minister of India Indira Gandhi guilty of electoral malpractices.
- Ruling on the case that had been filed by the defeated opposition candidate, Raj Narain, Justice Jagmohanlal Sinha invalidated Gandhi's win and barred her from holding elected office for six years.
- The decision caused a political crisis in India that led to the imposition of a state of emergency by Gandhi's government from 1975 to 1977.
- In 1973, the Supreme Court had come out with a landmark judgment in the Keshavnanda Bharati case to put an end to the conflict between Legislature & Judiciary.
- The Supreme Court ruled that the Parliament has absolute power to amend any part of the constitution but at the same time, it limited the power of Parliament by taking away its power to amend the basic structure of the constitution.
- **PHASE III: Darkest phase of Judiciary (1975-77)**
- In 1975 emergency was imposed due to internal disturbances. Parliament came up with radical amendments after that. 39th Constitutional Amendment Act prohibited Judiciary from questioning the validity of an election to higher constitutional offices like the President, Vice-President, Prime Minister, and Speaker of Lok sabha.
- Judiciary did not interfere; Indira Gandhi gave a call for a committed Judiciary that led to the politicization of the Judiciary.
- Judiciary lost credibility in the eyes of the people.
- All opposition party leaders were arrested. Family members filed habeas corpus. The Supreme Court ruled in favor of the government.
- **ADM Jabalpur case** is a landmark judgment pertaining to the Habeas corpus case.
- This controversial judgment of P.N. Bhagwati was decreed during the Emergency of 1975 to 1977, a person's right to not be unlawfully detained (i.e. habeas corpus) can be suspended.
- This judgment received a lot of criticism since it reduced the importance attached to Fundamental Rights under the Indian Constitution.
- **PHASE IV: Revival of credibility of the judiciary (1977-1980)**
- Janata Party came to power after elections were held in 1977.
- **Maneka Gandhi v. Union of India**, AIR 1978 SC 597, was a landmark decision of the Supreme Court of India in which the Court significantly expanded the interpretation of Article 21 of the Constitution of India. It overruled the A. K. Gopalan v. State of Madras case judgment.
- The case established a relationship between Articles 14, 19, and 21 of the Constitution (known as the 'golden triangle' or 'trinity'), holding that a law depriving a person of 'personal liberty' must not violate any of them.
- The decision also held, once again overruling A. K. Gopalan that a 'procedure' under Article 21 of the Constitution cannot be arbitrary, unfair, oppressive, or unreasonable.
- **Minerva Mills Ltd. and Ors. v. Union Of India and Ors** is a landmark decision of the Supreme Court of India that applied and evolved the basic structure doctrine of the Constitution of India.
- The Supreme Court introduced the due process of law.

- The Judiciary not only looks into the procedure and legal aspects but also has the power to question the spirit behind the law.
- If the intention behind the law is wrong, the Judiciary can strike down a particular act of government that gives the Judiciary extraordinary powers.
- The Supreme Court also expanded the scope of Article 21.
- The right to life and liberty includes the right to have a dignified existence also from these cases onwards Supreme Court literally interpreted Article 21.
- In the Minerva Mills case, the Supreme Court provided key clarifications on the interpretation of the basic structure doctrine. The court ruled that the power of the parliament to amend the constitution is limited by the constitution.
- Hence the parliament cannot exercise this limited power to grant itself unlimited power. In addition, a majority of the court also held that the parliament's power to amend is not a power to destroy.
- Hence the parliament cannot emasculate the fundamental rights of individuals.
- **PHASE V: Judicial Activism (1980-Till Now)**
- In a parliamentary democracy, the three organs of the State are expected to perform their functions efficiently with the objective of realizing the ideals of the Constitution.
- With the help of PIL and more importantly by introducing the due process of law, Judiciary expanded its scope rapidly and in the process erased the delicate balance of power between the three organs of the State. It has become proactive in protecting and promoting the interests of citizens.
- It was Justice P N Bhagwati and Justice V R Krishna Iyer who introduced this in the functioning of the Indian Judiciary in the early 1980s.
- In the 1980s, PIL most focussed on protecting the individual political freedoms of citizens from exploitation by the organs of the State.
- By the 1990s, the scope of PIL was expanded to include the social, economic, and cultural freedoms of the society as a whole.
- India opted for liberalization, privatization, and globalization during this period.
- Issues related protection of the environment, labor rights, rights of small and marginal farmers, tribal rights, and rights of other vulnerable sections of society had become the central focus of PIL during this period.

#### **The topic for Next Class- Judicial Activism Polity Class 28**

#### **Brief Review of Previous Class (09:00 AM)**

#### **Discussion on Public Interest Litigations (PILs) and Issues with Judiciary (09:07 AM)**

- Chief Justice, Justice **P.N. Bhagwati** introduced the concept of 'Public Interest Litigation'.
- PIL has substituted the concept of **Locus Standi** in which only the aggrieved party can go to court.
- A simple letter written to the court can be treated as PIL.
- Many issues related to the rights of people were resolved by using PILs like the right to shelter of the workers in the Asian Games held in Delhi.
- However, PIL has been used for personal gains and ulterior motives.
- It has been termed as **Personal Interest Litigation or Publicity Interest Litigation**.
- Supreme court has said that High Courts should not accept frivolous PILs.
- **Issues related to Judiciary**
- **Appointment-related issues:** India is the only country where a judge appoints judges.
- Allegations of Corruption and Nepotism
- Huge Pendency of Cases
- **Judicial Activism:**
- The reason behind the unwillingness of the **legislature and executive** to take action.
- It is good as well as bad. Sometimes judiciary has interfered in the day-to-day functioning of the executive and legislature.
- **Reforms:**
- **Post-retirement positions** should be prevented for Supreme Court Judges.
- Make the Supreme Court the **Constitutional Court** of India dealing only with issues related to Constitutions.
- The **technical nature** of the judiciary is increasing with the emergence of new fields like cyber security and AI.

#### **Judiciary in India (11:00 AM)**

- Our constitutional forefathers had given a pre-eminent position to the judiciary as it was expected to perform the most critical functions:
- To protect the fundamental rights of citizens from exploitation by other organs of the state and by private individuals.
- To ensure constitutional governance i.e. to make sure that both legislature and executive perform their functions within the limitations imposed by the constitution.
- Judiciary has been given certain powers to perform these functions.
- **Article 124:** Establishment of the Supreme Court.
- **Article 131:** Original jurisdiction of the Supreme Court that includes settling disputes between the Union and State Governments, between union government or two or more state governments or two or more state governments also.
- **Article 141:** Laws declared supreme court to be binding on all courts.
- **Article 142:** Enforcement of decrees and orders of the Supreme Court.
- **Article 136:** Special leave to appeal by the Supreme Court.
- **Article 143:** Power of President to consult the Supreme Court.
- **Article 132:** Appellate Jurisdiction of the Supreme Court in Constitutional Cases.
- **Article 13:** Power of the supreme court to declare all the laws that are inconsistent with fundamental rights as null and void.
- **Article 32:** Right to move Supreme Court for the enforcement of fundamental rights and the power of the Supreme Court to issue directions, and writs for that purpose.
- **Article 226:** Empowers the high court to issue directions for the enforcement of fundamental rights.

#### Composition of Supreme Court

- In 2019, the strength of the Supreme Court was increased from **31 to 34** including the Chief Justice.
- The judges of the Supreme Court are appointed by the **President of India**.
- **Controversy related to the Appointment of Judges:**
- A tradition was developed in the Supreme Court where the **senior judge** normally was appointed as the Chief Justice.
- But during the emergency, three senior judges were superseded. The then government had appointed another judge as **Chief Justice**.
- SC has given different interpretations of the word consultation in the appointment of the judges.
- In the **first judge's case in 1982**, the court held that consultation does not mean concurrence and it only means exchange of views.
- But in the **Second Judges Case 1993**, the court changed the meaning of the words '**consultation**' to '**concurrence**'.
- It ruled that advice tendered by the Chief Justice is binding on the President in the matters of appointment of Judges of the SC. But the chief justice must consult with senior colleagues.
- It has introduced collegium for the first time.
- In the **third judge's case (1998)**, SC expanded the size of the collegium to **5 members** including the chief justice.
- It also held that even if two judges give an adverse opinion. That name should not be recommended to the government.
- The court also held that the recommendations made by Chief Justice without complying with these norms are not binding on the government. In order to overcome the inherent weaknesses in the appointment of judges.
- Constitution was amended in 2014 and **National Judicial Appointments Commission (NJAC)** was established for the appointment of Judges (99th Constitutional Amendment Act).
- In 2015, SC held **99th CAA and NJAC** as unconstitutional in this Fourth Judges Case.
- SC ruled that NJAC is against the basic structure of our constitution. It violates the independence of the Judiciary.
- From then onwards, SC has devised a new mechanism known as the memorandum of procedure for the appointment of judges under this, the collegium will make recommendations and the executive has the power to send back these recommendations once.
- And if the collegium recommends the same the executive shall accept those recommendations.
- There are instances where in executive sat on the recommendations made by the collegium, without giving its opinion forcing the SC to interfere and order the executive to take decisions regarding the names recommended by the collegium.

**Solutions (11:37 AM)**



- As pointed out by the Chief Justice of India, the judiciary is finding it **difficult to get the best legal brains** in the country to be appointed as judges.
- Judicial infrastructure should be developed from the lowest level.
- It is recommended that every district in the country can have a law college.
- Reservations can be given to ensure adequate representation of weaker sections in these institutions.
- There can be an All India Judicial Service on the lines of the IAS, IFS, and IPS as recommended by **MM Punchhi Commission** on the center states relation.
- An open competitive examination can be conducted for these judicial services by the Supreme Court secretariat with the help of UPSC.

#### **Problems related to All India Judicial Services**

- **Regarding syllabus:** Every state has its own legal provisions, especially at the lowest level. It becomes difficult to frame a common syllabus for the entire country.
- **Reservations:** Reservations are provided in the All India Services, should reservations be provided for all India Judicial Services also.
- At present, recruitment is done purely on the basis of merit to the higher-level judiciary.
- **Language:** The language used for conducting examinations: If English is the only language it can result in most of the candidates losing out on their inability to write in English. If vernacular is used, it becomes difficult to transfer judges from one HC to another
- **Transfer of Judges** from one HC to another HC can become difficult and even their promotion to SC can create hurdles because the language used in HC and SC is English.
- Once the district judges are recruited through the All India Judicial Services, their performance can be evaluated by Social Audit Committees, consisting of lawyers, clients, media, and other prominent citizens.
- The reports submitted by these social audit committees can be the basis of their career advancement. SC can have a separate secretariat to maintain the performance records of all these judges.
- They can be in the public domain also to ensure complete transparency.
- On the basis of these performance records recruitment can be done to High courts and also to SC.
- **Other Reforms (11:56 AM)**
- At present more than **4.8 crore cases** are pending with our judiciary at all levels, and more than 65,000 cases are pending with Supreme Court including extremely sensitive Constitutional Cases.
- It is said that it would take our judiciary another 300 years to come out with judgments in all these pending cases provided no fresh cases are filed during this period.
- This is due to the fact that the **judge: population ratio** in India is one of the lowest in the world.

**Next Class: Judicial Reforms, State Government.**

**Polity Class 29**

#### **JUDICIAL REFORMS:**

- There are some cases that are pending for more than 30 years also with the judiciary.
- Justice delayed is justice denied.
- There should be a time limit for the judiciary to come up with judgments in all cases pending before them as rightly pointed out by the Economic Survey, India's ability to achieve a 9% growth rate consistently depends upon this most important governance reform.
- In countries like the UK, even the most complicated cases involving issues related to the constitution are decided in a specific period.
- There are other reforms to reduce the pendency of the cases.
- It is suggested that Supreme Court can be designated as a **Constitutional court**, restricting itself only to constitutional disputes.
- There can be other institutions for all normal disputes.
- Another suggestion is **Supreme Court benches** can be set up in different parts of the country to reduce the overall burden of the judiciary.
- The overall strength of SC judges can be increased from the present 34 to reflect the growing size of our population and also the increasing complexity in governance.
- It is also argued that the judges had legal and constitutional knowledge but do not have in-depth domain expertise.
- For example in the age of globalization and liberalization, knowledge of trade, commerce, and business is necessary.
- Similarly, they also must have in-depth knowledge about environmental loss, human rights, labor laws, IT information technology, and so on.
- Specialization can be encouraged within the judiciary to improve their performance.

- Colonial practices in the functioning of the judiciary.
- According to an Economic survey, SC functions for less than 180 days in a year.
- We are still continuing with the colonial practice of SC taking holidays during the summer season.
- Similarly, judges are also addressed as -'My Lord'.
- During British time, this practice was developed to prevent criticism of judgment given by British and European judges known as contempt of court.
- In other countries in the world these practices had ceased to exist as a democracy demands, freedom of speech and expression.
- India still continues with these colonial practices.
- It is suggested that it should be made mandatory for the judiciary to meet at least 240 days a year.
- Contempt of court can be removed and other colonial practices should also come to an end.

#### **Judicial Activism (JA) and PIL: (09:19 PM)**

- By the 1980s, both legislature and executive had failed to realize the expectations of the people due to the criminalization of politics, drastic decline in the standards of parliament and executive dictatorship, and failure of both legislature and executive created a vacuum at the top.
- People were looking for the judiciary to fill in the vacuum created by the non-performance of the legislature and executive, resulting in Judicial Activism.
- **Judicial Activism** means, the judiciary being proactive to protect and promote the interests and the rights of the citizens and also depicts accountability on the part of the state.
- Through JA, the judiciary has entered into the domains of both legislature and executive.
- With the emergence of coalition governments, the country witnessed policy paralysis in administration, i.e, unwillingness on the part of the executive to take tough decisions.
- It has forced the judiciary to enter into the domains of legislature and executive, resulting in a judicial legislature.
- It must be remembered that India has only a separation of functions, but not of powers at our constitutional level of things.
- In a parliamentary democracy, the executive is part of the legislature and is accountable to the legislature unlike in American Presidential democracy wherein there is a clear-cut separation of powers between the three organs of the state.
- Article 13, 32, 141, and 142 gives powers to the judiciary to review the laws, come out with judgment, pronounce orders, and ensure overall constitutional governance.
- This power of judicial review was further extended by the judiciary by including due process of law in the **Maneka Gandhi case**, resulting in Judicial activism.
- PIL has been used by the judiciary to expand the scope of Judicial Review (JR).
- Through various judgments, SC entered into domains of legislature and executive.
- It is said that PIL has literally opened the floodgates of JA in the country.
- The tendency of central and state governments to approach the Judiciary even for normal disputes also led to JA.

#### **Few instances of Judicial Activism(JA):**

- Border disputes between the states, interstate river water disputes, misuse of article 356, discretionary powers of the governor, and disputes related to financial relations.
- Alleged misuse of central agencies like NIA, CBI, and ED, misuse of anti-defection law by the presiding officer of the house, and disputes related to violation of human rights by law enforcement agencies.
- Environmental problems, the appointment of members to constitutional authorities (Election Commission to statutory bodies (CVC)), and policy-related issues (allocation of spectrum, coal mines).
- Issues related to reservations, misuse of the 9th schedule, interlinking of river waters, the appointment of special police officers (Salwa Judum by CG state government), and conducting of assembly session (Jharkhand state assembly).
- Discretionary powers of governors in giving assent to the bills passed by state legislative assemblies (Telangana), and pollution of rivers are some of the instances of JA in the country.

#### **Criticism of JA:**

- JA has been criticized as **Judicial Overreach**, as **Judicial adventurism**.
- It is said that the judiciary has deliberately overstepped its domain and crossed the rubicon.
- PIL has also been criticized as Private Interest Litigation, publicity interest litigation, profit, personnel, and personality interest litigation.
- It is criticized that with a huge number of PILs, the normal functioning of the judiciary is getting adversely affected.

#### **Future of JA in India: (09:44 AM)**

- In a parliamentary democracy accountability of the executive can be evaluated only in terms of the electoral process.
- If a political party has an absolute majority on the floor of the house, it can dominate the functioning of the legislature.
- PIL and JA are effective instruments in the hands of the citizens to continuously make the executive accountable for its performance.
- Since parliamentary democracy in India is not fully developed, the judiciary can act as proper checks and balance within the system.
- SC has also recognized the misuse of the PIL and directed high courts to exercise extreme caution while accepting PILs.
- It is found that these PILs are filed with a vested interest, and courts are also empowered to impose fines for wasting the time of the judiciary.
- Since no institution is perfect, as envisaged by our constitutional forefathers there should be inherited checks and balances within the system.
- JA is accepted by citizens, as it helps them to address their grievances more effectively.
- For example, when the central government made Aadhar mandatory for all services, the judiciary had come out with a landmark judgment in the **Puttaswamy case**, where it ruled that the **right to privacy** is part of the right to life and personal liberty.
- Similarly, when the 9th schedule was misused SC have come out with a sensational judgment wherein it ruled that all those legislations which are part of the 9th schedule after it have come out with the **Basic structure doctrine** in **Kesavananda Bharti case** are subjected to JR.
- In recent times there are allegations of politicization of constitutional bodies like the Election Commission.
- The SC has come out with a judgment that members of the EC shall be appointed by a collegium consisting of the PM, Leader of Opposition in Lok Sabha or leader of the single largest opposition party in Lok Sabha, and the Chief Justice of the SC.
- JA has been criticized as anti-democracy in nature because members of the judiciary are not chosen by the people, but this criticism is not valid because majoritarian democracy can result in an electoral dictatorship.
- Our constitutional forefathers could rightly recognize the dangers of majoritarian democracy and has given sufficient powers to the judiciary to ensure proper check and balances within the system.
- To conclude, JA is necessary due to the lack of awareness among the citizens of their rights, the failure to develop a credible institution, the tendency of the executive to usurp power, and still very high levels of illiteracy and backwardness in society.
- Judiciary must also remember that JA can retain credibility only when the judiciary is willing to reform itself.
- There must be transparency in the appointment of judges and accountability in terms of their performance.

#### **Qualification of SC Judges: (10:26 AM)**

- He should be a citizen of India.
- He should have been a judge of the high court for 5 years.
- He should have been an advocate of the high court for 10 years.
- Or he should be a distinguished jurist in the opinion of the President.
- Constitution has not prescribed any minimum age for the appointment of the judge.

#### **Tenure of SC judge:**

- Constitution has not fixed any tenure but it has laid down some provisions:
- He holds office till he attains the age of 65.
- He can resign by writing to the President.
- He can be removed by the President on the recommendation of the parliament.

#### **Procedure for Removal: (10:30 AM)**

- It must be supported by a special majority of both the house of the parliament.
- **The grounds for removal are:**
- Proved misbehavior.
- Incapacity.
- **Judges Enquiry Act 1968**, has laid down the procedure for the removal of judges through the process of impeachment.
- First, a removal motion is signed by 100 members/ MP (Lok Sabha) or 50 MP(Rajya Sabha), which should be given to the speaker or chairman.
- The speaker or Chairman may admit the motion or refuse to admit it.

- If it is admitted, a three-member committee must be constituted to investigate the charges.
- The committee should consist of the Chief Justice or judge of SC, the Chief justice of HC, and a distinguished jurist.
- If the committee finds the judge to be guilty, the house can take up the consideration of the motion.
- After the motion is passed, by each house of the Parliament, it is presented to the President for the removal of the judges.
- As a last step, the president passes an order for removing the judge.
- Till now no judge of the SC has been removed.
- In 1993, Ramaswamy, an SC judge was found guilty of misbehavior but the motion was defeated in the Lok Sabha.
- The ruling political party abstained from voting.
- Recently a motion was moved in Rajya Sabha for the impeachment of Chief justice but the Rajya Sabha chairman has rejected the motion.

#### **JURISDICTION OF SUPREME COURT: (10:56 AM)**

##### **Original Jurisdiction:**

- It includes disputes:
- Between the center and one or more states.
- Between the center and any state, or states on one side and one or more states on the other side.
- Between two or more states.
- And at the same time, any dispute wherein was brought before the SC by a private citizen against the center or a state cannot be entertained under the original jurisdiction of the SC.
- **The jurisdiction of SC does not extend to the following:**
- A dispute arising out of any pre-constitution treaty or agreement or covenant.
- Any dispute arising out of any treaty, which specifically provides that the said jurisdiction does not extend to such a dispute.
- Inter-state river water disputes, matters referred to the finance commission, adjustment of certain expenses and pensions between center and states, ordinary disputes of commercial nature between the centers and the states, and recovery of damages by a state against the center.

##### **Writ Jurisdiction: (11:04 AM)**

- SC is the defender of the FR of the citizens.
- If their FR is violated they can directly approach SC, which means it is part of the original jurisdiction of SC.
- But it is not exclusive as the High court (HC) is also empowered to issue writs.
- And there is a difference between the jurisdiction of the SC and the high court in this regard.
- SC can write only for the enforcement of FR, whereas the HC can ensure writs for other purposes also.

##### **Appellate Jurisdiction: (11:08 AM)**

- **In appellate jurisdiction of SC can be divided into:**
- Constitutional matters
- Civil matters
- Criminal matters
- By Special leave.
- **Constitutional matters-** in constitutional cases an appeal can be made to the SC against the judgment of the High Court.
- If the High court certifies that the case involves a substantial question of law that requires the interpretation of the constitution.
- **Civil matters-** in civil matters, an appeal can be made to the SC if the HC certifies that the case involves a substantial question of law and the question needs to be addressed by the SC.
- Originally civil cases that involved a sum of 30,000 rupees could be appealed before the SC.
- But this limit was removed by the 30th Constitutional Amendment.
- **Criminal matter-** SC can hear appeals against the judgment of the HC if the HC has reversed an order of acquittal of an accused person and sentenced him to death.
- If the HC has taken up any case from any subordinate court and sentenced the person to death or if the HC certifies that the case is fit for appeal to the SC.
- **Appeal by Special Leave-** SC is authorized to grant special leave to appeal from any judgment in any manner passed by any court or tribunal in the country except military tribunals.
- It is only a discretionary power and cannot be claimed as a matter of right.
- It can be granted in any judgment, whether the judgment is final or not.
- It can be related to any matters, including- civil, criminal, constitutional, and so on.

- It can be granted against any court of the tribunal and need not be only HC.

#### **Advisory Jurisdiction: (11:25 AM)**

- **Article 143** authorizes the President of India, to seek the opinion of the SC on **two matters**:
- On any question of law or fact of public importance, which has arisen or which is likely to arise.
- On any dispute arising out of any pre-constitutional treaty or agreement or covenant or any other similar instrument.
- In the first category, the SC may refuse to tender its opinion.
- In the second category, the SC must tender its opinion.
- In both instances the opinion of the SC is only advisory, that is it is not binding on the President.
- So far, 15 Presidential references were made to the SC.

#### **Advocates of SC: (11:31 AM)**

- Three categories of advocates can practice law before SC:
- **Senior advocates**- they are those advocates who are designated as senior advocates by the SC of India, or any HC.
- It is decided based on his ability, his standing at the bar or experience in law, or his special knowledge.
- **Advocates on record**- only those advocates are entitled to fight any matter or document before the SC.
- **Other advocates**- they are those advocates, whose names are entered in the role of any state bar council maintained under Advocates Act 1961.
- They can appear and argue on any matter on behalf of their clients in the SC, but they cannot file any documents.
- Discuss the desirability of greater representation of women in the higher judiciary to ensure diversity, equity, and inclusiveness. (10 Marks)

#### **Next Class Topic: Center-State Relation (Federalism).**

#### **Polity Class 30**

#### **[1:00 PM] Center-State Relations:**

- Legislative relations
- Executive and administrative relations
- Financial relations
- Subsidiarity principle -
- **Phases of federalism -**
- **1st period - 1847-67 - Unitary form of govt** - congress ruled in all states, governor and CM were appointed by the congress working committee, therefore no conflicts
- **[1:35 PM] 2nd period - 1967-1990 - Confrontational federalism** - in 9 states opposition party came to power, and for the first time country witnessed the federalism in a true sense,
- Appointment, removal, qualification, and powers of the Governor,
- Powers of the governor with respect to an ordinary bill
- Discretionary Powers of Governor
- President's power with respect to a bill reserved for him by the governor of the state
- Misuse of Article 356 - during the Indira Gandhi Govt and the Janata party govt
- SR Bommai vs UOI case 1994
- Findings and Recommendations of the Sarkaria Commission on Center-State Relations
- The role of the Planning Commission during this period as it is governed by the govt and dismantling of the same has been demanded
- Opposition against All India Services from states.

#### **[3:07 PM] Dictation:**

- **Union-State Relations:**
- At the time of independence, our constitutional forefathers had opted for a federal arrangement that was hugely in favour of the Union govt.
- Indian constitution can be best described as federal in form and unitary in spirit.
- It can also be described as **quasi-federal** in nature
- **Unitary Features of the Constitution:**
- 1. Article 1 - describes India as a Union of states and not a federation
- 2. Articles 3 and 4 - gives absolute power to Parliament to create states, destroy existing states, rename states, alter the boundaries, and convert states into UTs and UTs into states.
- 3. States in India are only administrative entities without any political identity
- 4. India has only single citizenship

- 5. Emergency provisions (articles 352, 356, 360)
- 6. Office of Governor
- 7. Discretionary powers of the Governor
- 8. The president enjoys absolute veto on the bills reserved for his approval by the governor
- 9. Single Election Commission and also single CAG
- 10. Composition of Rajya Sabha (states are not equally represented)
- 11. Finance Commission (states are not represented in FC)
- 12. All India Services
- 13. Residual powers (those which are not mentioned in either of the three lists - Union, state, and Concurrent) are with parliament only.
- **Federal Features:**
  - 1. Written Constitution
  - 2. Division of powers between the Union and the state govt
  - 3. Independent Judiciary whose original jurisdiction includes settling disputes between Union and the states.
  - 4. Only the Rajya Sabha can pass a resolution for the creation of a new All India Services, to shift items from the state list to a union or concurrent list,
  - 5. GST Council
- **Union-State relations can be broadly divided into -**
  - a) Legislative relations
  - b) Administrative relations
  - c) Financial relations
- Our Constitutional forefathers had followed the **Principle of Subsidiarity** while dividing subjects between the Union and the states.
- **Principle of Subsidiarity** - those activities that can best be performed at the local level are included in the state list for eg. agriculture, law and order, local self-govt, minor forest produce, sanitation, health, and education. Later education was transferred to the concurrent list by the 42nd Amendment of the constitution.

#### [3:28 PM] Legislative Relations:

- **Articles 245 to 255 in Part XI** of the constitution deal with legislative relations.
- Parliament can make laws for the whole or any part of the country whereas the state legislature can make laws for the whole or any part of the state.
- Laws made by the state legislature are not applicable outside the states except under exceptional circumstances (when there is sufficient nexus between the state and the object)
- Parliament alone can make extra-territorial legislation (laws of parliament are also applicable to Indian citizens and their property in any part of the world)
- The distribution of **Legislative Subjects is broadly divided into three categories -**
  - a) Union List (originally it had 97 subjects)
  - b) State List (originally it had 66 subjects)
  - c) Concurrent List (originally it had 47 subjects, now it has 52 subjects)
- **Parliament can pass legislation for items in the state list only under exceptional circumstances -**
  - 1. When Rajya Sabha passes a resolution then Parliament can make laws on state list subject
  - 2. During the time of National Emergency (they will be operated as long as a national emergency is in operation and they cease to operate 6 months after the expiry of the national emergency)
  - 3. When two or more states pass a resolution requesting the parliament to make laws, then the parliament can make laws only for those two or more states.
  - 4. To implement international agreements parliament can make laws for items in the state list.
  - 5. During the time of the President's rule, when a state is under the President's rule parliament can make legislation for that particular state, a law made by the parliament continues to be operative even after the president's rule till that time period when state legislature decides to repeal or alter that particular legislation.
- Our constitution makes sure that there will be a predominance of union lists over state and concurrent lists. In case of overlapping between the Union list and the state list, the union list should prevail, between the union list and the concurrent list, the union list should prevail, between the concurrent and state list, the concurrent list should prevail.

- In case of a conflict between union law and state law for a subject in the concurrent list, Union law shall prevail, except the state law has received presidential consent. But still, parliament can make new legislation on the same law to override state law.

#### [3:52 PM] Administrative Relationship:

- **Articles 256 - 263 in Part IX** of the constitution
- Constitution has imposed obligations on states even in administrative relations also.
- **It has imposed two restrictions -**
- 1. The executive power of every state is to be exercised in such a way as to ensure compliance with the laws made by the parliament and any existing law which is applied in the state
- 2. It should be exercised in such a way, so as not to impede or prejudice the exercise of executive power of the centre in the state.
- The central govt can issue directions to states in this regard (**Article 257(1)** - it is the responsibility of the states to comply with the directions issued by the central govt if any state fails to comply with the directions the central govt can impose president's rule in the state under Article 356.)

#### Next Class Topics -Center-State Relations Continues...

#### Polity Class 31

#### Center-state Relations (09:03 AM)

- **Important Articles in Center-State Relations:**
- **Legislative Relations**
- Article 245: It deals with the territorial extent of laws made by parliament and the state legislature.
- Article 246A: Special Provisions w.r.t. GST.
- Article 249: Power of Parliament to legislate matters in state list in National Interest.
- Article 250: In case of Emergency, Parliament has the power to make legislation for subjects in the state list.
- Article 251: If there are inconsistencies in the laws made by parliament and state legislature, the central law will prevail.
- Article 252: The power of parliament to legislate when two or more states demand the same.
- Article 253 To give effect to International Agreements.
- **Administrative Relations**
- Article 256: Obligations of the state and the union
- Article 257: Control of the union over the states in certain cases.
- Article 258: Power of Union to confer powers on the state in certain cases.
- Article 260: Jurisdiction of the Union Government in relation to territories outside India.
- Article 262: Interstate River Water Dispute
- Article 263: Interstate Council
- **Financial Relations**
- Article 275: Grants from union to certain states.
- Article 279A: GST council
- Article 280: Finance Commission
- Article 281: Recommendations of Finance Commission
- Article 292: Borrowings by the union government
- Article 293: Borrowings by the state governments

#### Major Issues in Center-State Relations (09:16 AM)

- The tendency of the Union government to transfer subjects from the state list to the union and concurrent list.
- The tendency of the Union government to make legislation for items in the state list.
- The office of the governor.
- Discretionary power of the governor.
- Article 356.
- Emergency Provision.
- Articles 200 and 201 wherein the governor can reserve the bills for presidential consent.
- All India Services.
- Provisions in NDMA Act, and Epidemics Act provides extraordinary powers to the Union Government emergencies.
- Discretionary power of the governor to appoint and remove Chief Ministers.
- **The issue in center-state financial relations.**

- Terms of Reference of Finance Commission
- Appointment of members to the finance commission
- Vertical and Horizontal distribution of tax revenue between the center and states.
- Grants in aid given to the states by the Union government
- Problems related to the functioning of the GST Council
- Sharing of auctioning of resources revenues
- The tendency of the Union govt. to impose cess and surcharge to avoid sharing tax revenues with the state governments
- Borrowing capability of center vis-a-vis the state
- FRBM legislations
- Sharing of dividends from a profit of CPSE
- Controversy related to recommendations of the 15th Finance Commission.
- **Other Issues:**
- Role of Niti Aayog
- Sharing of Inter-State River Waters
- Creation of small states
- Issues related to regionalism

#### Evolution of center-state relations (09:33 AM)

- Even though our constitution has opted for a strong center and much weaker states, in reality, the Union-State's relations are influenced more by political circumstances than by constitutional provisions.
- Union state relations can be divided into various periods:
- **1. 1947 to 1967:** Unitary State
- Single-party rule led by congress
- **2. 1967 to 1990:** Phase of Confrontational Federalism
- Issues due to emergency imposition and use of President's rule.
- **3. 1990 to 2019:** Cooperative and Competitive Federalism
- The coalition government weakened the central government.
- Regional Parties became part of the government for the first time.
- Regional parties brought different perspectives at the central level.
- **Demand by regional parties:**
- Abolition of Article 356
- Dissolution of Planning Commission
- Issues related to All India Services
- Reform office of the Governor
- The futility of these demands led to the birth of **Cooperative Federalism**.
- Survival of the Central government starts depending on the state-level political parties.
- This led to a shift of balance of power in favor of states.
- The central government was forced to cooperate with states for its survival.
- MM Punchi commission said that India has moved towards a phase of **Collaborative Federalism**.
- Cooperation is voluntary whereas Collaboration is mandatory.
- Good Governance was also necessary to attract foreign investment as a result of LPG reforms.
- Competitive Federalism can be seen as efforts by states to attract FDI.
- Globalization is a major factor pushing India towards Cooperative federalism.
- Other **reasons for Cooperative federalism** include:
- Presidential Activism: It has reduced the scope of misuse of Article 356.
- Judicial Activism especially after SR Bommai Case
- Role of Media and Civil Society
- A new level of Federalism was added called Local Self Government.
- Increasing awareness among the people
- **4. 2019- Now:** Dominance of Union Government.

#### Issue related to Article 356 and Office of Governor (11:29 AM)

- **1. SR Bommai Case (1994)**
- Decisions made by the Governor for Article 356 imposition are under Judicial Review
- When Article 356 is imposed, the assembly should be kept in a suspended form, so that it can be revived later.
- Assembly dissolution should take place only after both houses of parliament give their approval.



- Governor must explore all possibilities of forming a new government within existing assemblies.
- Assembly should be dissolved only when there is no possibility of forming a new government.
- IF CM loses the majority, the strength of the government should be tested only on the floor of the house.
- The legislative assembly is the right forum to decide the majority of the government.
- Chief Minister should be given a reasonable amount of time to prove his majority on the floor of the house.
- **Solutions:**
- Recommendations of the Sarkaria Commission shall be considered while appointing Governors. These recommendations include:
  - 1. Person should be non-political.
  - 2. He should not have participated in active politics in recent times.
  - 3. A person to be appointed governor should not be from the same state.
  - 4. Person should be from an eminent in any walk of life.
  - 5. Once the term is over, the person should not enter into active politics.
  - 6. He should be eligible only for being reappointed as governor or nominated as Vice-President or President.
- **2. Bihar Assembly Dissolution Case (2006)**
- **3. Uttarakhand Case**
- **4. Arunachal Pradesh Case**
- **5. Issues in Karnataka, Goa, etc.**

**Next Class: Article 356 and Office of Governor Issue Continued; center-state Financial Relations.**  
**Polity Class 32**

**A brief overview of the previous class- (9:00 AM)**

- **Important chapters for material-**
- Page number (16-33)- Philosophical and constitution framework
- Page number (63-144)- Union government and administration
- Page number (115-129)- Plans and priorities
- Page number (130-142)- State government and administration
- Page number (299-316)- Rural development
- Page number (317-353)- Urban Local government
- Page number (384-418)- Issue areas

**Article 356- (9:16 AM)**

- **Bihar assembly dissolution case-**
- Supreme Court declared the imposition of **Article 356** as unconstitutional.
- Repeal article 356 and restore the State assembly.
- Supreme court also said that the constitutional authorities like the **Governor, PM, Council of the minister, and President** shall take the decisions cautiously using their discretionary power.
- Governor report is not the only basis for imposing article 356, the contents of the reports must be verified by the council of ministers.
- Court also criticized the government and said that the government did not follow **S.R Bommai's case**.
- The court said that the office of the Governor has been politicized and its recommendations in the S.R Bommai case must be followed with respect to the appointment of the Governor.

**Recent cases - Centre-State relations issues- (10:13 AM)**

- **Uttarakhand case-**
- Political instability and misuse of power by the speaker.
- Imposition of **Article 356**.
- Supreme court said that corruption cannot be the reason for imposing **Article 356** as it does not lead to the breakdown of the constitutional machinery.
- In case of corruption, due process of law must be followed with an investigation.
- Discussion of the cases of Bihar, Maharashtra, Rajasthan, Madhya Pradesh, and Karnataka assembly and their dissolutions.
- All the above-mentioned cases can be used as an example.

**Appointment and removal of the Governor- (10:56 AM)**

- There are **no provisions** in the constitution.
- Supreme Court on the appointment of Governors.
- Governors are the highest **constitutional authority**.

- They are not the representative of the ruling party therefore they should not be removed once the government changes in the Central.
- The Council of ministers **must specify** the reasons for removal in writing the removal of the governor and the report should be submitted to the President.
- President must get satisfied with the **report and take decisions** and the report can be kept confidential.
- The President must satisfy himself/herself with the contents of the report to take decisions on the removal of the governor.
- Court also said that the governor post is being politicized as there are no post-retirement benefits such as Pensions etc.
- **Center-state administrative issues and solutions- MM Punchi Commission recommendations-**
- **In case of a hung assembly-**
- Governor can invite the **single largest party**.
- Any pre-poll alliance which has a majority
- If there is any **post-poll alliance** can be called to form the government.
- Any arrangement where there is outside support to the part.
- If there is no scope for forming the government in the assembly then assembly dissolution by the Governor.
- The chief minister should prove **confidence motion** on the floor of the house.
- Should prove the majority in the given period of time.
- If the chief minister does not resign or the chief minister fails to prove his majority on the floor then Governor can dismiss the chief minister.
- **Punchi commission recommendations with respect to passing of bills-**
- **Assent to bills-** Governor has **discretionary power**.
- As long as the chief minister enjoys the majority on the floor of the house the Governor should always give his approval.
- If the Governor has issues with the bills it should be **communicated to the State government** using suspension Veto.
- If the bill has provisions related to the Union list or any other issue governor can reserve the bill for President's approval under Articles 200 & 201.
- In the true spirit of **cooperative Federalism**, the President can take a decision in three months.
- The President has absolute power to give or not to give assent.
- **Recent issues with respect to the powers of the Governor** - Tamil Nadu Neet bill, Kerala and Tamil Nadu speech bill, University chancellor issues in Bengal and Kerala, Punjab issue of convening the budget session, etc.
- Governor is a **representative of the Union** in the State and he/she is also the **Nominal head** of the State.
- The Union government must refrain from making legislation on the State list.
- The State government must refrain from making laws on items given in the Centre and concurrent list.
- **Punchi Commission recommendations with respect to All India Service-**
- It has played a spectacular role in Unity and holding the country together.
- We must retain the three All India Services **and more such services** like-
- All India health services, Judicial service, Education service, etc.

#### **Centre -State Finance relation- (11:50 AM)**

- **Finance Commission (Article 280)-** There shall be a finance commission appointed by the President after every five years.
- It is a constitutional body.
- Members of the finance commission appointed by the Central government.
- **Functions-**
- Devolution of tax revenues (net tax proceeds) between the Union and States.
- Vertical (between the Union and State ) and Horizontal (among States).

**Topic for the next class- Continuation of the topic 'Centre-State Finance relations'**

**Polity Class 33**

#### **FINANCE COMMISSION (FC) (01:03 PM)**

- The states are in a weaker position when it comes to Finances.
- States are plagued with Financial Deficits.
- **Grants-in-aid** are given to the state governments to cover their revenue deficit.
- Finance Commission decides the amount of Grants-in-aid to be shared with states.

- FC also recommends ways to augment the Consolidated Fund of State, so that money is available for urban and rural local bodies.

#### CRITICISMS OF FC (01:20 PM)

- **Appointment:**
- Members of FC are appointed by Union Government without the involvement of States.
- Punchhi Commission has recommended that State Government must be consulted while appointing the members of the Finance Commission.
- **Terms of Reference:**
- The union government decides the terms of reference of the Finance Commission on its own without consulting the state government.
- Punchhi Commission has recommended that TOR should be formulated in consultation with the States.
- **Issue related to Vertical and Horizontal distribution:**
- States perform 70 percent of functions of governance but their share is only 30 percent in vertical devolution of tax revenue, the rest 70 percent goes to the Union.
- **Punchhi Commission has** recommended that the share of states be increased to 50 percent.
- **Horizontal Distribution:**
- How the 41 percent share given by Union Govt. be shared between 28 states?
- The criteria are based on **Efficiency** (GDP, the status of living standard, etc.) and **Equity** (Poverty, Unemployment, etc.)

#### TERMS OF REFERENCE OF 15th FC (01:48 PM)

- Terms of Reference of the 15th Finance Commission were unilaterally decided by the Central Government without state consultation.
- The 15<sup>th</sup> Finance Commission (**Chaired by N. K. Singh**) submitted two reports.
- The first report consists of recommendations for the financial year 2020-21.
- The final report with recommendations for the 2021-26 period was tabled in Parliament on February 1, 2021.
- **Share of states in central taxes**
- The share of states in the central taxes for the 2021-26 period is recommended to be 41%, the same as that for 2020-21.
- The adjustment of 1% is to provide for the newly formed union territories of Jammu and Kashmir, and Ladakh from the resources of the center.
- **Comparison of Criteria for devolution**

Criteria	14 <sup>th</sup> FC (%)	15 <sup>th</sup> FC (%)
Income Distance	50.0	45.0
Area	15.0	15.0
Population (1971)	17.5	-
Population (2011)	10.0	15.0

Demographic Performance	-	12.5
Forest Cover	7.5	-
Forest and Ecology	-	10.0
Tax and fiscal efforts*	-	2.5
<b>Total</b>	<b>100</b>	<b>100</b>

- **Income distance:** Income distance is the distance of a state's income from the state with the highest income.
- **Demographic performance:** The demographic performance criterion has been used to reward efforts made by states in controlling their population.
- **Forest and ecology:** This criterion has been arrived at by calculating the share of the dense forest of each state in the total dense forest of all the states.
- **Tax and fiscal efforts:** This criterion has been used to reward states with higher tax collection efficiency.

#### OTHER ISSUES WITH FC RECOMMENDATIONS (02:13 PM)

- The Finance Commission has attached the grants to the flagship schemes like **Right to Food, PM Garib Kalyan Yojana, etc.**
- The states have opposed such provisions that made the grants conditional.
- States have opposed the formation of the **National Defence Fund (NDF).**
- States have been asked to contribute to NDF and states have opposed it as Defence is a Union subject.
- Issues due to **digital governance:** States who will perform well on digitization will be given more funds.
- The states have said that they will adopt digitalization at their own pace.

#### GOODS AND SERVICES TAX (02:48 PM)

- In 1991, economic reforms were introduced to make Indian products competitive in the global markets.
- As part of these reforms, tax reforms were implemented by the Government to **rationalize the taxation regimes.**
- Finally, all these indirect tax reforms culminated in the implementation of Goods and Service Tax (GST).
- In 2017, a constitutional amendment (101st CAA) was passed by union and state governments, to implement GST.
- State Governments initially objected to the implementation of GST as they would be losing their major source of revenue, which is **sales tax.**
- **Challenges in the implementation of GST:**
- **Decision-making in the GST council:** There were conflicts between the opposition-ruled states and the Union Government.
- Under the existing rules, in case of any conflict decisions should be taken with a **75%** majority.
- All states combined have **66%** of the votes which means that even if all States come together, they can't get their decision implemented.
- The objective of one country tax has not been realized because the present GST has 6 different slabs with the highest being 28%.
- Many items were kept out of GST like **petroleum products, liquor, electricity charges, and registration fee.**
- The combined tax imposed by the central & states together on petroleum products is more than 65% of the cost of production.
- Liquor and tobacco are not part of GST taxes, and these products are highly taxed by states.
- It was agreed that the State Governments will be paid for any loss of revenues for 5 years.

- It was calculated that the nominal increase in tax revenues per year would be 14%. (**8% GDP growth and 6% inflation**).
- But from 2017 onwards, the country went into recession due to demonetization and implementation of GST. The Union Government was forced to pay compensation to the States.
- The **COVID-19 crisis** has also led to conflict between the Union and State governments regarding compensation to be paid to the States.
- The Union government had asked the State Government to **take loans** to compensate for the loss of revenue.
- Finally, the **Reserve Bank of India** provided loans to the Central Government to compensate the State Governments for the loss of revenues.
- The Central government in turn will impose a cess on products to repay the loan at the rate of interest.
- This loan will not become part of the fiscal deficit of the Government.

#### **NITI AAYOG (03:53 PM)**

- India earlier had a centralized planning process, where Planning Commission decided the investments and expenditures.
- India adopted Indicative Planning.
- In Indicative planning, the focus was only on outlays.

**The topic for the Next Class: NITI Aayog's role in Central-State Relations (Continued).**  
**Polity Class 34**

#### **CENTRE-STATE FINANCIAL RELATIONS CONTINUED**

##### **NITI AAYOG (01:14 PM)**

- **Reason for discontinuing Planning Commission:**
- In the age of globalization, medium and long-term planning had become irrelevant, due to the fast-changing **global economic scenario**.
- The planning commission has become a major **bone of contention** between the Union and State governments.
- A centralized **top-down model** of development has failed.
- State governments do not have any **financial autonomy** or functional independence to decide their own developmental agenda.
- There is no scope for decentralized, **participative development**.
- **NITI Aayog:** It is neither a statutory nor constitutional body.
- It has been established by **executive order**.
- NITI Aayog does not formulate any plans.
- NITI Aayog does not have any financial powers.
- The composition of NITI Aayog is an example of cooperative federalism.
- It includes the PM (chairman), Union Ministers, State Chief Ministers, etc.
- NITI Aayog acts as a **think tank** for the government.
- It provides policy assistance to the states.
- It conducts research regarding the implementation of policies and provides solutions.
- It promotes **cooperative as well as competitive federalism**, by ranking states on different parameters like ease of doing business.
- NITI Aayog is also ranking Urban areas and also have aspirational district programs for backward areas.
- Provide input and reports to government ministries and departments to assist them in policy formulation.
- As NITI Aayog does not have any financial powers, the role of NITI Aayog is not controversial when it comes to center-state relations.

##### **CESS & SURCHARGES ISSUE (01:53 PM)**

- Cess and surcharges are imposed by the **central government**, but the proceeds are not shared with the states.
- Cess is the tax imposed for a **specific purpose** and the revenue collected is used for that purpose only.
- MM Punchhi Commission has said that in the true spirit of cooperative federalism, the cess and surcharges should be completely removed.

##### **REVENUE FROM SALE OF RESOURCES (02:08 PM)**

- After liberalization, the Central Government is earning huge amounts of money through the sale of natural resources like **coal, electromagnetic spectrums**, etc.
- State Governments are demanding that they should be given a share in this revenue also.
- The Central Government rejected the demand of State Governments as it is **not** part of the **Finance Commission's recommendation**.

- Recently, the Central Government has agreed to share the revenues from auctioning of coal mines.
- Punchhi Commission on center-state Relations recommended that the Central Government should share these revenues with the State Governments.

#### SHARING THE DIVIDEND FROM CPSEs

- States are demanding that half of the profit of CPSE must be shared with the states.
- However, the central government has asked that in case of loss, the state will also have to contribute.

#### FRBM LEGISLATION & BORROWING POWER OF THE STATE (02:16 PM)

- In order to control the rising fiscal and revenue deficit, the Central Government introduced FRBM legislation on the floor of the house in 2003.
- FRBM has imposed **revenue and fiscal deficit targets** for state and central governments.
- Under **Article 292**, parliament can impose restrictions on borrowings of the Central Government.
- Similarly, under **Article 293**, the Central Government can impose restrictions on the borrowings of State Governments.
- Even though it was passed, it was not implemented. The revenue deficit is very high; fiscal deficit targets remained unachieved.
- At the central level, the target could not be achieved due to various factors:
- As part of **political populism after 2005**, many flagship schemes were introduced by the Central Government including the food security act, the Right to Work in MGNREGA, etc.
- After the **2008 global financial crisis**, as part of the revival of the economic system the Central Government, had come out with stimulus packages.
- It **reduced the tax rates** and increased spending on welfare schemes to revive the economy, resulting in increased deficits.
- State Governments cannot raise loans without the **permission of RBI** if they have an outstanding debt with RBI. Whereas, the Central Government can raise any amount of loan.
- In the 1950s in the overall public debt, the ratio of Central Government & State Governments was 50-50%. At present, the ratio is 80-20%.

#### RESOLUTION OF FRBM & BORROWING ISSUE (02:51 PM)

- The fiscal deficit target can be increased to **3.5 percent**, with no conditions attached.
- The conditionalities have been imposed for increasing it to 3.5 percent to 5 percent.
- The rest 1.5 percent can be borrowed by the states.
- **Conditionalities include:**
- The state should implement **power sector reforms** by using digital meters.
- Implement **One Nation-One Ration Card** Scheme.
- Implement **Digital Governance** Initiatives like Bharat NET project.
- Devolutions of funds and functions to **local self-government**.

#### SPECIAL CATEGORY STATUS (03:06 PM)

- The **5th Finance Commission** has recommended that special financial assistance, in addition to financial commission recommendation, should be given to those State Governments which are economically backward, based on the particular conditions prevailing in those states.
- The Planning Commission had come out with criteria regarding a state to be recognized as Special Category Status.
- Those states where **tribal population** is very high in terms of the total population of states.
- Hilly states and those with **difficult terrain**.
- Those states share an **international border**.
- Those states which are **economically unviable**, have very high fiscal and revenue deficits.
- Initially, **7 North-Eastern states and Sikkim** were given Special Category Status. Later, it was extended to other states like HP, J&K & Uttarakhand.
- **Benefits for Special Category Status:**
- For normal states, financing of centrally sponsored schemes would be 70:30.
- For Special Category Status states, it is **90:10**. Special Category Status states are given **soft loans** by the Central Government.
- They are given loans with a very nominal rate of interest in comparison to other state governments.
- The gestation period is also very long in comparison to other states.
- In order to attract investments, Special Category Status states are given **tax incentives**.
- The central government also write-off loans of special category status.
- Special Category Status has become a controversial issue in recent times with many states demanding Special Category Status.

- In 2014, during the formation of the separate state of Telangana, it was promised to provide AP with Special Category Status for a period of 5 years.
- It has led to demands from other states for Special Category Status like Odisha, West Bengal, Bihar, etc. have also demanded Special Category Status.
- The Central Government refused the demand of the AP State government as the 14th Finance Commission removed Special Category Status.
- The 14th Finance Commission recommended that since state governments are given 42% of overall tax revenues, it is not necessary to provide Special Category Status to them in 2017.
- The Central Government extended Special Category Status to the existing 11 states for a period of 10 years.
- **Recommendations for state demanding special category status**
- Increase tax base to increase tax revenues.
- States must become financially independent.

#### OTHER ISSUES (03:36 PM)

- **Disaster Relief:**
- States government has said that there is discrimination in granting disaster relief funds.
- There is also an issue with declaring the disaster a National calamity. As if declares as such, states get more funding.
- **Pay Commission Issue:**
- Pay commission led to an increase in the salary of central government employees, which led to similar demands at the state level by state government employees.
- States are asking for financial support from Union to implement pay commission recommendations.

#### CONCLUSION (03:41 PM)

- Union and state relations have witnessed radical changes over a period of time.
- From the 'unitary state' in the 1950s to the present day age of **collaborative federalism**. Initially, it was a vertical relationship with the Union government at the top and states at the bottom.
- This period witnessed confrontational federalism and also bargaining federalism.
- With the advent of LPG and also the emergence of third-tier governance in the form of local-self government, the country has moved towards the phase of collaborative federalism.
- As pointed out by the Punchhi commission, it has changed towards a **horizontal relationship** where both union and state now are considered equal partners in process of development.
- But in recent times with the emergence of single-party rule at the center, the country is again witnessing a strong and powerful central government trying to dominate the states.
- Some of the policy measures have become controversial such as demonetization, GST issue, imposition of strict lockdown, and the tendency of parliament to pass bills on items in the state list.
- The office of the **governor** had also become controversial as many oppositions ruled states have openly criticized the politically partisan role played by governors.
- There are controversies related to **centrally sponsored schemes** as they take away the financial independence of states.
- To conclude, union and state governments must **come together** to realize the objectives of rapid economic growth and development.
- In the true spirit of **cooperative federalism**, the union government must provide functional and financial autonomy to states, and states government must do the same with the local self-government.

#### DISCUSSION ON PREVIOUS YEAR QUESTIONS (03:53 PM)

- The constitutional Amendment bill does not require the prior recommendation of the President of India. However, the president must give his assent to a constitutional amendment bill.
- The constitution only mentions the council of ministers only. There is no mention of a minister of state, the cabinet minister term was mentioned by the 44th amendment act.
- A nominated legislator cannot join any political party after six months of being appointed to the house.
- To pass a no-confidence motion against the council of Ministers is an exclusive power of the Lok Sabha.

#### The topic for Next Class: Inter-State River Water Disputes Polity Class 35

#### Inter-State River Water Disputes( 1:04 PM )

- Economic - The majority of the states are Agrarian in nature and most of the states are dependent on irrigation.
- Political - River disputes have been politicised to gain more votes.
- Geographical - River in south India flow from North to South hence it is easy to construct the dam. This resulted in an increase in disputes.

- Historical - Colonial legacy, & later division of states results in the division of water for eg Mulla Periyar dam, Satluj disputes etc
- Administrative issue - Indian state water disputes act and other provisions failed to resolve such issues and there is the frequent use of article 365 to bypass tribunal awards

#### **Solution ( 1:37 PM )**

- Mihir Shah Committee Observation: India uses only 7% of Rainwater while a country like Israel uses 110% of Rainwater. Hence, effective usage of river water is needed.
- Construction of small canals & water bodies across rivers and then to connect to Dams so that, it can increase the water storage capacities.
- A shift in cropping pattern is needed: from foodgrains to less water-intensive crops. As water-intensive crops ( Paddy crops ) are given priority even in rain-fed or arid regions. The focus should be on drylands farming
- comprehensive MSP policy should be constituted so that all other crops other than foodgrains should be given equal importance.
- There should be improvements in agricultural extension services which can be used effectively for the proper dissemination of information.
- Government should impose water charges, electricity charges etc and subsidies should be given to DBT
- Micro Irrigation should be incentivised and promoted
- Government should aim to reduce the dependence on agriculture i.e rainbow revolution should be promoted
- Interlinking of river water from surplus to deficit regions.

#### **Emergency Provision ( 2:20 PM )**

##### **Article 352( National Emergency)**

- When the security of India is threatened by war or external aggression or by armed rebellion
- 44 amendment replaced internal disturbance with armed rebellion
- An emergency can be imposed for both internal and external reasons
- For the first time, it was imposed in 1962 & then in 1965, 1971 & so on
- In 1975 emergency was imposed due to internal disturbances
- In the Minerva mill case, SC held that a proclamation of national emergency can be challenged in courts on malafide grounds
- The proclamation of National emergency must be approved by both houses of parliament within a month from the date of the issues. earlier it was 2 months and the 44th Amendment reduced it to one month
- If the Loksabha is dissolved before the one-month period without approving the emergency, then the proclamation survives until 30 days from the first sitting of the Lok sabha after its reconstitutions provided Rajyasabha has given its approval.
- The emergency will be continued to be in operation for a period of six months and it can be extended indifferently with the approval of parliament after every six months.
- Emergency should be approved by either house of parliament by a special majority.

#### **Revocation ( 2:31 PM )**

- It can be revoked by the president at any point in time after the proclamation. It does not require parliamentary approval
- If Loksabha passes a resolution disapproving the continuation of the emergency then the president must revoke
- Lok Sabha needs to pass a resolution only with a simple majority.

#### **Effect of emergency**

- When an emergency is imposed centre - state relations are suspended in favour of the central government.
- The state government is under complete control of the central government.
- Parliament can make legislation at any time in the state list
- The legislative power of the state is not suspended but parliament can override state legislation
- Laws made by the parliament for items in the state list would become inoperative after six months of the repeal of the emergency.

#### **Effect on FR**

- Under article 358 during an emergency, suspension of Fundamental r is guaranteed by Article 19
- Under Article 359 suspension of other Fundamental rights except 20, 21.
- During times of War or External aggression government can suspend article 19 whereas if an emergency for armed rebellion then the government can suspend other fundamental rights another Articles 20 & 21

#### **Article 356**



- Under article 355, the central government has a duty to ensure that the state government is carried in accordance with the provision of the constitution
- Central government imposed presidential rule in case of failure of constitutional machinery in a state under article 356.
- President rules can be imposed under article 356 on two different grounds :
- a) If there is a breakdown of constitutional machinery the governor of the state can send a report and a president can proclaim a president's rule. It can be imposed without the governor's report also.
- b) Under Article 365, whenever a state fails to comply with any direction from the centre, then the president can impose presidential rule
- The Proclamation of the president must be approved by both houses of parliament within two months from the date of its issues
- If Lok Sabha is dissolved before a period of two months then the proclamation survives until 30 days from the first sitting of the new Lok Sabha provided Rajya Sabha has only given its approval.
- It continues for a period of six months and it can be extended for a maximum period of 3 years with the approval of the parliament after every six months.
- It requires only a simple majority.
- There is no joint sitting
- No state approval is needed for the imposition of article 356.
- A proclamation can be revoked by the president at any point in time and it does not require parliamentary approval.

#### **consequences**

- Governor becomes the real executive & the state council of ministers will be dissolved and the state legislature can either be suspended or dissolved.
- First-time Presidential rule was imposed in Punjab.
- Judiciary can review the Imposition of presidential rule

#### **Financial emergency ( 3:08 PM )**

- Article 360 empowers the president to impose a financial emergency if there is a threat to the financial stability or credit of India or any part of the territories
- The imposition of a financial emergency can be reviewed by the judiciary.
- Parliament must approve a financial emergency within two months with a simple majority.
- There is no scope for joint sittings
- It will be in operation for an indefinite period of time till the president revokes the imposition of a financial emergency
- Parliamentary approval is not required for its impositions

#### **Consequences**

- Union government can give direction to any state to observe Financial propriety & can also give any other direction to any state as the president thinks deemed necessary for the purpose
- Union can also give directions for reductions in salaries of all or any class of persons serving in the states.
- All Money Bills and other financial bills of states require presidential approval.
- President can also issue directions for the reduction of salary or allowances of all or any class of the people serving in the union and the judges of SC and HC also.

#### **Provision related to Governor and the state legislature ( 3:28 PM )**

- Articles 168 to 212 deal with aspects related to the state legislature in part six of our constitution
- Some states have a Bicameral legislature, presently there are 6th states that have a bicameral legislature.
- 22 states have a unicameral legislature then constitutions provide for the abolition or creation of legislative councils.
- Parliament can abolish or create new legislative councils, for this state legislative must be passed a resolution & it must be passed by a special majority by the state legislative assembly and it is not considered as a constitutional amendment.
- It requires only a simple majority.
- The resolution of the state legislative assembly is not binding on the central government.
- There is no scope for any joint sitting in case of deadlock between the houses of the parliament.

#### **Composition of state legislative assembly ( 3:36 PM )**

- The maximum strength of state assembly is 500 & minimum is 60.
- In the case of a small state like Arunachal Pradesh, Sikkim and Goa are 30 while for Mizoram and Nagaland, it is 40 & 46 respectively
- In Sikkim and Nagaland, some members are elected indirectly also

- The Government can nominate one member from the Anglo-Indian community but this provision was removed.

### **Legislative Council**

- The members of legislative councils are indirectly elected
- The maximum strength of the legislative council is one-third of the total strength of the assembly and the minimum strength is 40.
- Members are indirectly elected:
- a) one-third are elected by the members of the legislative assembly, those who are not members of the assembly
- b) one-third are elected by the members of local bodies
- c) one-twelfth are elected by the graduate
- d) one-twelfth are elected by the teachers ( should be the teacher for a period of 3 years and not lower than secondary schools)
- e) The remaining members are nominated by a governor who has special knowledge or practical experience of literature, science , arts or cooperative movements or social services.
- The duration of the legislative council is of 6 years
- One-third of the members retired after every two years.

### **Powers of councils ( 3:49 PM )**

#### **Equal power with state legislative assembly**

- Introduction and passage of ordinary bills
- In case of a deadlock, assembly prevails over the councils
- Approvals of ordinances issued by the governor
- selection of ministers and chief ministers but they are responsible only to the state legislative assembly
- consideration of the reports of constitutional bodies state finance commission, state PSC and CAG
- Enlargement of the jurisdiction of states and public services commission

#### **State legislative assembly has more power compared to councils**

- Money bills can be introduced only in Assembly
- The council cannot amend or reject a money bill and it should return a bill within a period of 14 days
- If the council suggest an amendment then the state assembly can accept or reject that recommendation
- It is the speaker of the assembly who decides whether a bill is a money bill or not
- The council can discuss the budget but it cannot vote on demands for grants
- Council cannot revoke the chief minister and council of ministers by passing a no-confidence motion
- In case of disagreement, assembly prevails
- Council does not participate in the election of the president also in the election of Rajya sabha members
- Council can also have no power in the ratification of constitutional amendment bills.
- The existence of council demands on State legislative assembly

### **Next Class Topic: Local Self Governments.**

### **Polity Class 36**

### **RURAL DEVELOPMENT (09:03 AM)**

- **Importance of Rural Areas**
- Large populations reside in these areas.
- Economic importance as they provide resilient supply-side support.
- Food Security as a large population is engaged in agriculture.
- **History of Rural Development**
- During medieval times, villages were mostly isolated from urban centers and were **self-sufficient**.
- Villages were headed mostly by traditional authority.
- During the British times, there was a drastic change in government at the local level with district administrations headed by Collectors.
- The powers of the village heads were taken away and vested in the hands of the **district Collector**.
- The British made the district the basic unit of administration. It continued till independence.
- The primary objective of British rule was to **exploit India**, economically. They did not focus much on development.
- After Independence, the government realized that the development of villages and rural areas is a must for the overall growth and development of the country.
- The government came up with some **flagship schemes** like Community Development Program, and National Extension Services targeting rural areas.

- **Balwant Rai Mehta Committee** was appointed to look into the failure of the schemes and development reaching ground level.

#### **BALWANT RAI MEHTA COMMITTEE (09:44 AM)**

- **The committee found that:**
- No participation of local people.
- No accountability mechanism.
- Bureaucracy-centric schemes.
- Huge Corruption.
- **Committee Recommendations:**
- Representation at the local level through three-tier governance.
- Participation of local people.
- Accountability.
- The elections should be held regularly.
- For the first time, Rajasthan implemented the recommendations in some districts. It was followed by Andhra Pradesh.
- However, the implementation of the Panchayati Raj system failed as there was no devolution of power and elections were not regular in nature.

#### **POST-1970s APPROACH (10:05 AM)**

- During the tenure of Indira Gandhi as Prime Minister, there was a change in the approach.
- **Target Based Approach** schemes were launched like the Development of Women and Children in Rural Areas, and Training of Rural Youth for Self Employment (TRYSEM).
- **Area-based Approach** schemes were launched like Desert Area Development Program, Drought prone Area Development Program.
- However, such schemes failed due to the failure of bureaucracy in implementing schemes.
- In 1977, Janta Party came to power with the aim of implementing Gandhian Socialism.
- Janta Party appointed Ashok Mehta Committee.

#### **ASHOK MEHTA COMMITTEE (10:15 AM)**

- It recommended two-tier governance: Zila Panchayat and Mandal Panchayat.
- It was also a failure as no real devolution took place.

#### **73RD CONSTITUTIONAL AMENDMENT ACT 1992 (10:20 AM)**

- Three-tier governance at the local level.
- **Gram Sabha** should be the basic unit of administration.
- Gram Sabha consists of all the elders of the village.
- All those whose names are on the electoral roll are part of Gram Sabha.
- Along with Gram-Sabha, we have **Gram-Panchayat**. It is a body of elected members.
- Above it, there is Mandal or Block-Panchayat. It consists of a group of villages.
- Above Block Panchayat there is **Zila Panchayat**.
- Establishment of **State Election Commission**.
- The election should be held every five years.
- The election to gram-panchayat should be held on a non-party basis to avoid politicization
- There is a provision for the reservation of seats for **SCs and STs** at every level of Panchayat.
- Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for **women**.
- **11th Schedule** added to the constitution: 29 Subjects were transferred to local bodies.
- Establishment of the **State Finance Commission**.
- **Analysis of 73rd CAA**
- Various committees like a Second ARC and Punchhi commission discussed the functioning of the local-self governments
- Second ARC has said that the Local self-government in India re local in form but state and central in content.

#### **ISSUES WITH PANCHAYATI RAJ (11:00 AM)**

- **Gram Sabha:**
- **Size of Gram Sabha:** In some states, the size of gram sabha runs in the thousands making it impossible to hold Gram Sabha Meetings.
- It was recommended that Gram Sabha can be divided into **Ward Sabhas**. Decisions taken by wards can be aggregated in Gram Sabha.
- **Women Participation:** Women were not able to participate. **Mahila Sabha** to ensure the participation of women.

- **No regular meetings:** Meetings can be held on national holidays. Proper advertisement and announcement should be done regarding the meetings.
- It can be made mandatory that Gram Panchayat should not be allowed to implement any decision without Gram Sabha's approval.
- **Role of Women:**
- 33 percent reservation has not resulted in actual women empowerment. It resulted in "**Pati-Panchayats**".
- Factors behind this are cultural and traditional issues, patriarchy, etc.
- Women also face issues like low literacy levels, lack of administrative experience, etc.
- **3F's: Finance, Functions, and Functionaries**
- Identified in the Chief Minister Conference.
- Now, the **4th F** is also there standing for **Functionality**.
- IIPA came up with **Devolution Index (DI)** and **Activity Mapping (AM)**.
- DI calculated the actual number of functions, functionaries, etc transferred by state.
- AM analyzed the functions getting performed at ground level by local bodies.

**The topic for Next Class: Local-Self Government (Continued)**

**Polity Class 37**

**REVIEW OF THE PREVIOUS CLASS (09:01 AM)**

**ISSUES WITH LOCAL BODIES (09:08 AM)**

- **Sources of Finances for Local Bodies:**
- Recommendations of the **state finance commission**.
- Impose certain taxes and user charges.
- Funds for implementation of Central Sector Schemes.
- Recommendations of the Central Finance Commission.
- **Other Issues**
- No regular **election**.
- **Infrastructure** issues: No designated office and related infrastructure
- The issue with the Elected Representatives as they lack administrative experience and face social discrimination.
- Huge amount of **corruption**: 73rd and 74th CAA has resulted in democratization and decentralization of corruption.
- They became agencies to implement state and central schemes only.

**Evolution in rural areas since 1991:**

- Digital Governance has been brought to the rural areas.
- A rights-based approach to development has been adopted by various state governments.
- Concerns regarding Environmental Degradation: Use of groundwater, use of pesticides and chemicals.
- There is awareness among weaker sections of society.
- Industrialization has been focused on villages in the form of a Special Economic Zone
- People Participation in Governance through RTI and Civil Society Organisations.
- Implementation of Citizen Charter and Social Audit Committee

**SOLUTIONS (09:55 AM)**

- It should be made mandatory for the state government to **conduct elections**.
- **Educational Qualifications** criteria for election to local bodies.
- Conduct training of elected representatives in aspects of governance and administration.
- Development of infrastructure for local bodies: **BHARAT NET project**, etc.
- Local Bodies should be given freedom regarding scheme implementation.
- Distinct bureaucracy for local self-government. State Civil Services can be transferred to local bodies.
- Public-Private Partnership for increasing the efficiency of the local self-government.
- 3Ps can be extended to **5Ps: Public-Private-Panchayat-People Partnership**.
- Proper **accountability mechanisms** through mechanisms like Citizen Charters.
- **Outcome Budgets** at the Panchayat level.
- They must focus on becoming financially independent.

**IMPORTANT POINTS ABOUT LOCAL-SELF GOVERNMENT (11:09 AM)**

- In 1952, **Community Development Program** was implemented and National Extension Service was implemented in 1953 but both these programs failed to raise desired objectives.
- In 1957, **Balwant Rai Mehta** Committee was appointed to look into the reasons for the failure of these schemes and it suggested democratic governance at the local level.
- In December 1977, **Ashok Mehta Committee** was appointed to suggest reforms in local governance.
- Balwant Rai Mehta suggested three-tier governance at the local level (Gram Sabha or Panchayat, Mandal Panchayat or Zila Panchayat).
- Ashok Mehta Committee has suggested two-tier governance with Zila Parishad at the top and Mandal Panchayat at the lowest level.
- **Rajasthan** was the first state to implement Balwant Rai Mehta Committee recommendations to be followed by Andhra Pradesh.
- While Karnataka, West Bengal, and Andhra Pradesh took steps to revive panchayat bodies on the basis of recommendations of the Ashok Mehta committee.
- In 1985, the **GVK Rao committee** was appointed and it suggested the revival of Panchayati Raj Institutions.
- In 1986, the **LM Singhvi committee** was appointed by the central government and it recommended providing constitutional status to Panchayat Bodies.
- In 1988, another committee headed by **PK Thungan** also suggested constitutional status to panchayat bodies.
- In 1989, the **64th Constitutional amendment** was brought to provide constitutional status but it was defeated because of strong opposition by state governments ruled by opposition parties.

#### **PANCHAYAT (EXTENSION TO SCHEDULED AREAS), ACT (PESA), 1996 (11:20 AM)**

- 73rd amendment was applicable to normal states. The act does not apply to the states of **Nagaland, Meghalaya, Mizoram, and certain other areas.**
- These areas include scheduled areas and tribal areas in the states, hill areas of Manipur for which the district council exists, and the Darjeeling district of West Bengal for which the Darjeeling Gorkha Hill Council exists.
- Parliament can extend provisions of this act to the scheduled areas and the tribal areas.
- In 1996, parliament has passed PESA Act.
- **Important features of PESA:**
- State governments are expected to enact legislation in scheduled areas in consonance with the **traditions and customs** of tribal people.
- Every village shall have a **Gram Sabha**, and every gram sabha is given the authority to safeguard and preserve the traditions and customs of people.
- Every Panchayat shall be required to obtain a certification on the utilization of funds from Gram Sabha.
- **Reservation of seats** shall be in proportion to the communities present within the village and reservation for scheduled tribes shall not be less than half of the total number of seats.
- All the seats of the chairperson shall be reserved for scheduled tribes.
- Planning and management of waterbodies shall be entrusted to panchayats.
- Gram Sabha and Gram Panchayats must give their approval to grant licenses for the exploitation of minor minerals.
- **State legislation** must ensure that panchayats at the higher level do not take away the powers of gram sabha or the panchayats at the local level.
- Panchayat also has the power to manage the village market to enforce prohibition, own minor forest produces, prevent alienation of land in scheduled areas, control money lending to the scheduled tribes, to conclude local plans and resources including the Tribal Sub plan.

#### **MAJOR PROBLEMS IN PESA (11:40 AM)**

- According to a study that was conducted recently it was found that most of the states have **failed to implement** this landmark legislation.
- E.g. Utilisation certificates have been given by panchayats without involving gram sabhas.
- The **sale of MFP** and utilization of minor water bodies are done without involving stakeholders at the lowest level.
- State legislation has not clearly defined the powers of Gram Sabha.
- Welfare and Development schemes were approved on paper by Gram Sabhas without meeting in reality.
- The **absence of a political will**, lack of clarity, lack of awareness among tribals bureaucratic apathy and resistance to change are the reasons for the failure of PESA.
- In states like Jharkhand precious resources of tribal communities are given away by the state government to private contractors without involving stakeholders at the lowest level.

- The **unholy nexus** between state politicians and distinct administrations made sure that this landmark legislation remained only on paper.

### The topic for Next Class: Urban Development

#### Polity Class 38

#### 74th CONSTITUTIONAL AMENDMENT ACT (CAA), 1992 (09:01 AM)

- The 74th Constitutional Amendment was enacted in 1992 to provide **constitutional status** to urban local bodies.
- Urban Local government is under **three different ministries** at the central level:
  1. Ministry of Housing and Urban Affairs
  2. Ministry of Defence in case of Cantonment Board
  3. Ministry of Home Affairs in the case of Union Territories.

#### EVOLUTION OF URBAN DEVELOPMENT IN INDIA (09:18 AM)

- In **1688**, the first municipal corporation was set up in Madras.
- In **1726**, the municipal corporation came up in Bombay and Kolkata.
- In **1870**, Lord Mayo's Resolution emphasized the financial decentralization of urban bodies.
- In **1882**, Lord Ripon's resolution on Local Self government. It is also known as the **Magna Carta** of Local Self Government.
- He is also known as the father of local self-government in India.
- In **1919**, the Government of India Act introduces Dyarchy in provinces where Local self-government has been transferred to Indian ministers.
- In **1935**, the Government of India Act has made local self-government a provincial subject.
- 65th Constitutional Amendment bill 1989, provided constitutional status to urban local bodies. But it was defeated.
- Finally, the 74th CAA 1992 granted constitutional status to urban local bodies.
- It has added Part IX(A) to the constitution and it consisted of Articles from 243 (P) to 243 (ZG).
- It has added the **12th Schedule** to our constitution.
- 18 subjects are transferred to urban local bodies.
- The act has envisaged three types of Municipalities:
  1. **Nagar Panchayats:** Nagar Panchayat is an area that is in the process of transformation from rural to urban.
  2. **Municipal Council:** For smaller urban areas
  3. **Municipal Corporation:** For bigger urban areas.
- **Definition of Urban Area:** The governor of the state is given the power to define a particular area as a Municipal Council or Municipal Corporation. The criteria are:
  1. Population
  2. Density of Population
  3. Revenue generated for local governments
  4. Percentage of people employed in non-agricultural activities
  5. Economic Importance
  6. Any other criteria decided by the governor.

#### IMPORTANT FEATURES OF THE 74TH AMENDMENT (09:36 AM)

- All members of the municipality should be directly elected by the people and municipal areas are divided into territorial constituencies known as wards.
- There should be ward committees in a municipality having a population of 300,000 or more.
- **Reservation of seats** for SCs and STs and one-third reservation for women.
- The tenure of the municipality is 5 years.
- **State Election Commission** has been given the responsibility to conduct the election.
- Municipality has the power to formulate and implement plans.
- The state finance commission has been given the responsibility regarding the devolution of net tax proceeds.
- It should also give recommendations regarding Grants-in-aid under the consolidated fund of the state.
- Municipalities can also raise revenues by imposing certain taxes, and user charges and also raising money through municipal bonds.
- Every state must constitute a District Planning Committee.
- It is given the responsibility for formulating plans for the entire district as part of the decentralized and bottom-up planning process.

#### DISTRICT PLANNING COMMITTEES (09:49 AM)

- **Article 243ZD** of the Constitution requires the formation of District Planning Committees to consolidate plans prepared by both rural and urban local bodies.
- **Experiment with DPC has not been a significant success due to the following reasons:**
- 1. Less than half of the state has constituted DPCs.
- 2. **Elections** are not held regularly for local self-government both rural and urban.
- 3. Non-constitution of **State Finance Commission**.
- 4. Without the knowledge of finances it becomes impossible to formulate plans.
- 5. Unwillingness on part of state government to transfer finances, functions, and functionaries to local bodies.
- 6. Most of the members of DPC are from very poor backgrounds and also belong to backward sections of society.
- 7. Planning is a technical activity and the **lack of knowledge** about administration comes in the way of their active participation.
- 8. **Domination of bureaucracy** over the local self-government.
- 9. Colonial attitudes of bureaucracy
- 10. Civil servants could not understand the essence of democratic decentralization and are not willing to empower these bodies.
- 11. Dominance of central and state government schemes.
- 12. Local self-government had become the only agency responsible for **implementation** and not the true institution of self-governance.
- 13. DPC does **not have any real power** to formulate plans as they are only expected to implement the schemes of central and state governments.

#### METROPOLITAN PLANNING COMMITTEES (10:54 AM)

- Every metropolitan area will have an MPC to prepare a draft development plan.
- **Two-thirds** of the members should be elected by elected members of the municipality and panchayats, rest are nominated by state governments.
- **Different types of Urban Local Government:**
- **Municipal Corporation:**
- They are established by the state legislature and in Union territories by Parliament.
- It has three authorities:
- **i. Municipal Council:** Legislative Wing of the Corporation. Members are directly elected and some are nominated.
- It is headed by a mayor.
- **ii. Standing Committee:** It is like the Council of Ministers. It deals with subjects like Public Works, Health and Education, etc.
- **iii. Municipal Commissioner:** He is responsible for implementation.
- **Municipality:**
- It also has three authorities: a Council; Standing Committee and a CEO.
- **Notified Area Committees**
- It is created in two different types of areas.
- i. Fast developing town due to industrialization.
- ii. A town that is in the process of becoming a municipality.
- The state government issues a notification.
- It is established under State Municipal Act.
- It is a completely nominated body.
- Its functions are defined in the notifications.
- **Town Area Committee**
- It is set up for the administration of the small town.
- It is a semi-municipal authority and performs limited functions like roads, street lighting, drainage, etc.
- It is created by an act of state legislature.
- Members are either nominated or elected.
- **Cantonment Board:**
- They are established for the civilian population in the cantonment area. They are established under the provisions of the Cantonment Act, 2006, legislation by the central government.
- It works under the direct control of the Ministry of Defence.
- At present, there are 62 cantonment boards.

- Members are both elected and nominated for 5 years.
- The military officer is the ex-officio chairman of the board and functions are similar to the municipality.
- **Township**
- It is established by large public sector enterprises to provide civic amenities to their workers and staff.
- It is an extension of the public sector enterprises.
- **Port Trust**
- They are established in Port Areas.
- They protect the ports and also provide civic amenities to the people.
- They are created by an act of parliament.
- They have both elected and nominated members.
- **Special Purpose Agencies**
- They are unique purpose agencies created by an act of state legislature or department by an executive resolution.
- They function as autonomous bodies independently of local self-government.
- **Important Subjects:** Public Health and Sanitation, Water Supplies, Urban Planning, Fire Services, Urban Forestry, Regulation of Land use, and urban poverty alleviation, etc.

#### **ARTICLE 239 & 239 AA (11:28 AM)**

- This has resulted in jurisdictional conflicts between the government of NCT and the union government.
- **69th CAA** gives NCT special status with the legislative assembly and the elected government.
- Under articles **239AA and 239AB**, the state legislative assembly has the power to legislate for items in the state list or concurrent list.
- Public Order, Police, and Land are with the union government.
- Supreme Court in 2018 ruled that Parliament can legislate for Delhi on any matter in the state list and concurrent list. But executive power vests with only the state government except for Police, Land, and Public Order.
- Supreme Court also ruled that the executive power of the Union Government does not extend to any of the matters which come within the jurisdiction of the Delhi Assembly.
- SC also ruled that LG shall act on the aid and advice given by the CM and the council of ministers.
- In case of any conflict between LG and the CM of Delhi, it can be referred to the President.
- SC also ruled that any matter does not mean every matter. Only conflicts should be referred to the President.
- **In 2021, the Government of NCT Delhi Amendment act** was passed. The term "government" in any law made by the legislative assembly shall mean the LG.
- LG's opinion shall be obtained before the government takes any executive action based on decisions taken by the cabinet.
- LG has the power not to give his assent and also to refer any bills for presidential consideration which fall outside the scope of powers conferred on the legislative assemblies.
- **Issues in Delhi:**
- No accountability of LG.
- LG is under no obligation to implement any law passed by the assembly as he is not responsible to the assembly.
- After the 2021 amendment, the complete concentration of power was in the hand of LG.
- Under article 239AB, there is a provision for President's rule in Delhi.
- President's rule is imposed on reports from LG. But the government in Delhi means LG.
- The 2021 amendment is also against cooperative federalism. LG can change any of the decisions of the state council of ministers.
- **Solution:**
- As pointed out by SC, both constitutional dignitaries must come together and work together.
- LG must take into consideration the principles of collaborative federalism, constitutional balance, and the concept of constitutional governance.
- India can also adopt American Model.
- In Washington D.C. strategic areas and buildings are under the control of the central government and the rest of them are given to the state.

**The topic for Next Class: Constitutional and Non-Constitutional Bodies.**

**Polity Class 39**

**CONSTITUTIONAL BODIES**

**ELECTION COMMISSION (EC) (01:04 PM)**



- **Article 324** of the Constitution provides that the power of conducting elections to the office of President, Vice-President, Parliament, and State Legislatures shall be vested in the Election Commission.
- Election Commission shall consist of the **Chief Election Commissioner and such number of other election commissioners** as the President may from time to time fix.
- Appointment of CEC shall be made by President.
- From 1950 till 1989, the Election commission was a single-member body and it was made a **multi-member body in 1989**.
- But in 1990, again it was made a single-member body.
- In 1993, two more Election Commissioners were appointed and from then onwards, it continues to be a multi-member body.
- The Independence of the EC is ensured by providing **security of tenure to CEC**.
- He can be **removed on the same grounds as the judge of a Supreme Court**.
- **Service conditions** of CEC can not be varied to his disadvantage after his appointment.
- Any other Election Commissioner can not be removed except on the recommendation of the CEC.
- Constitution has not prescribed any qualifications for the members of the EC.
- It has also not specified the term of the members of the EC.
- Constitution has also not prohibited retired EC from taking up positions within the government.

#### **REPRESENTATION OF PEOPLE ACT, 1950 and 1951 (01.23 PM)**

- **Articles 81 and 170** of the constitution laid out the maximum number of seats in Parliament and State legislative assemblies.
- The actual allocation of seats is decided by a law.
- Parliament has enacted RPA 1950 regarding the allocation of seats in Lok Sabha and also in State Legislative assemblies and State Legislative Councils.
- RPA 1950 also includes **delimitation** of constituencies, powers of Election officers, preparation of electoral rolls, and so on.
- RPA 1950 had provisions relating to only the allocation of seats and delimitation apart from the preparation of electoral rolls.
- Provisions for the actual conduct of elections were included in **RPA 1951**.
- It includes **qualifications and disqualifications** for Parliament and State Legislative Assemblies, Registration and deregistration of Political Parties, the conduct of elections, powers of EC concerning disqualification of Political Parties, Electoral offenses, corrupt practices, and so on.
- **Articles 82** provide for the readjustment of territorial constituencies.
- **Delimitation act 2002** was passed in this regard by changing the base year to the 2001 census.
- It was given the responsibility of refixing the number of seats for SC&ST based on the 2001 census without affecting the total number of seats.

#### **ISSUES IN ELECTIONS IN INDIA (01:40 PM)**

- Independence of EC.
- The increasing role of religion and caste in politics.
- Money power in elections.
- Recognition of political parties.
- Model Code of Conduct.
- Opinions related to exit polls.
- Disqualification of members.
- Electoral bonds.
- Freebies or Premises made by Political parties.
- Simultaneous conduct of elections.

#### **INDEPENDENCE OF ELECTION COMMISSION (01:42 PM)**

- EC is given the most important function of conducting free and fair elections.
- Independence of the EC is necessary to ensure the effective functioning of democracy due to the huge amount of power enjoyed by the EC.
- In recent times, there were allegations of nepotism and favoritism in the functioning of EC.
- **Madras High Court** severely criticized the role of EC during the 2nd of Corona.
- Recently, **Supreme Court also criticized the process of appointing members to EC** and gave **the** following suggestions regarding the appointment of members-
- a) Appointment of members to EC should not be restricted only to civil servants.

- b) Persons with impeccable honesty and integrity should be appointed to EC as recently ruled by the Supreme Court, the appointment of members to the EC should be done by a committee consisting of the PM, the Leader of Opposition in Lok Sabha, and the Chief Justice of Supreme Court.
- c) If there is no leader of the opposition of Lok Sabha, the leader of the single largest opposition party in Lok Sabha should be included.
- d) Members should be appointed unanimously.
- e) Supreme Court also suggested delinking the appointment of CEC from other EC members.
- At present, **Senior most EC member is appointed as CEC.**
- Other EC members should also be given the **security of tenure** like that of the CEC.
- Once their term is over, they should not be eligible to hold public employment including joining politics to ensure their impartial functioning.

#### INCREASING ROLE OF RELIGION AND CASTE IN POLITICS IN INDIA (02:05 PM)

- India has **first passed the post-election** system in which a candidate with minority votes can easily win elections E.g. since independence no political party in India got 50% of votes.
- Political Parties would divide the society in name of religion, caste, ethnicity, race, gender, language, and so on to create vote banks.
- The use of religious symbols is banned during elections.
- Supreme Court also ruled that Political parties should not use religion to win elections but political parties are often seen using these emotional factors to win elections.
- **Solutions-**
- It is suggested that India can shift to a **proportional representation system** at the constituency level to overcome divisive politics.
- Conducting elections can be a complicated process because voters are expected to give their preferences also.
- It can also result in the elimination of independents and smaller political parties.
- Unlike in the West, India has a multi-party democracy.
- But this system can ultimately overcome the majority of the weaknesses.
- Media, Civil Society organizations should create **awareness** among the voters regarding the value of their vote.
- Political culture ultimately should move towards **cognitions** i.e. there must be increasing awareness among voters about their rights and they should vote only based on the performance of the Political parties and not on any other emotional factors like Religion, Caste, and so on.

#### ROLE OF MONEY POWER (02:29 PM)

- According to Association for democratic reforms (ADR), **in the 2019 elections, all political parties combined had spent around 60,000 crores.**
- On average, a candidate contesting elections to Lok Sabha spent around 35 crores.
- Election Commission also from time to time has spoken about the increasing influence of money power in elections.
- Under the existing electoral laws, a **candidate contesting elections to Lok Sabha can spend up to 95 Lakhs.**
- Black money or unaccounted money is spent during elections.
- In the late 1960s, the then govt had come out with legislation banning corporates from donating to political parties.
- Later, this ban was reversed but most corporates prefer to donate money in form of cash only as it ensures complete secrecy.
- To improve transparency in election funding, in 2017 the govt introduced the **Electoral bond scheme.**
- Under the **RPA 1951, section 29(3)** the amount of money that can be received by political parties in the form of cash has been reduced from RS 20,000 to RS 2000 to reduce black money in elections.
- As part of the electoral bond scheme, individuals and companies can buy electoral bonds within the range of RS 1000 to RS 1 crore.
- Later they can donate these bonds to political parties.
- Political parties have to encash these bonds within 15 days.
- Political parties do not have any details about donors to maintain secrecy.
- But this electoral bond scheme was severely **criticized by various NGOs and also by Election Commission.**
- It is said that foreign companies and shell companies can easily **influence electoral outcomes** by using the anonymity clause.

- It can also result in a **violation of FCRA norms**.
- It can be a **threat to national security** also.
- It can also result in a situation wherein big corporate houses have undue influence over the functioning of political parties.
- It also results in a **reduction in the EC's control** over donations to political parties under **section 29(b) of RPA 1951**.
- It can also lead to a situation wherein maximum donations can go to the ruling political party.
- According to ADR, recently more than 70% of funds were received by a single political party.
- SBI has complete information about the donors and SBI works under Finance Ministry, the Ruling political party at the center will have complete information about the donors also. It can lead to a **witch hunt**.
- **Solutions**
- **Section 29(3) of RPA 1951** should be amended wherein political parties should not be allowed to receive even a single rupee in form of cash.
- Names of donors to political parties should be made public to ensure complete transparency. People have the right to know the link between political donations and policies formulated by the govt.
- The **political parties should be brought under the scope of RTI** to ensure complete transparency in the functioning of political parties.
- In terms of expenditures also, it should be done only through **online transactions**.
- It should be made mandatory for every political party to spend every single rupee only through online transactions.
- Political parties are misusing the loopholes in RPA 1951, wherein only the amount of money spent by the candidate is included in election expenses.
- The **amount of money spent by the political party should also be included in the election expenses** to ensure more transparency.
- Election expenditure limits can be increased also.

#### **ISSUES RELATED TO MODEL CODE OF CONDUCT (MCC) (03:35 PM)**

- MCC is a **set of guidelines issued by the Election Commission for the candidates and political parties at the time of elections**.
- These guidelines include speeches, Polling both management, Polling day conduct, election manifesto, processions, public meetings, and so on.
- It is necessary to ensure a level playing field in the conduct of elections.
- Ruling political parties should not be allowed to use their power to influence electoral outcomes. It prohibits the govt from announcing new projects also from recruiting new personnel also.
- Campaigning should be done in such a manner that it does not result in hurting religious sentiments.
- Places of worship can not be used for election propaganda.
- MCC is moral and ethical.
- It **does not have legal status** but EC has been given sufficient powers to implement MCC.
- EC can ban campaigning by leaders and candidates violating MCC.
- IN 2013, the **parliamentary standing committee** on personnel and public grievances, law, and justice **recommended making MCC legally enforceable**.
- But EC has opposed making MCC legal because the entire electoral process will be completed within 45 days and the judicial process can be very long and complicated.
- Effective implementation of MCC depends on the credibility of EC. Recently there were allegations of prejudices and biases in the implementation of MCC by EC.
- Reforms should be implemented in the appointment of members to EC so that MCC can be effective.

#### **SIMULTANEOUS CONDUCT OF ELECTIONS TO LOK SABHA AND STATE LEGISLATIVE ASSEMBLIES (03:50 PM)**

- **Till 1967, elections were held simultaneously** to both Lok Sabha and all state Legislative assemblies but due to the rapidly changing political scenario (use of Article 356 at the state level and premature dissolution of Lok Sabha), simultaneous elections could not be held.
- In recent times, the central govt has come out with the idea of simultaneous elections to both Lok Sabha and all state legislative assemblies.

**The topic for the next class- Discussion on constitutional bodies (Continue..)**

**Polity Class 40**

#### **SIMULTANEOUS CONDUCT OF ELECTION (9:10 AM)**

- **Arguments in Favour :**
- It is said that the simultaneous conduct of elections can **save huge amounts of money** at least around fifteen thousand crores.

- It can also ensure much-needed **political stability**.
- It can **prevent policy paralysis** in policy formulation and implementation. **For example**, during the period of model code conduct of around 45 days, the government are not allowed to enhance any major policies.
- Every year, the country witnesses elections for at least 5 state assemblies. It becomes very difficult for political parties to take tough policy measures as they always **fear losing elections**.
- It can also lead to **political populism** dominating policy formulation.
- Political parties will focus more on **short-term political gains** rather than long-term sustainable policies.
- The country will **always be in election mode** and there will be less emphasis on governance-related issues.
- It can also result in **instability** both political and administrative, in the age of globalisation political stability and governance certainty are prerequisites for attracting investments.
- Political parties tend to **change policies** frequently to attract the attention of voters.
- Political parties are also likely to indulge in **competitive populism** to win elections which can ultimately result in a serious economic crisis. Simultaneous conduct of elections can prevent the above weakness in the functioning of our federal polity.
- Once elections are over political parties can **focus on governance** for the next five years
- **Argument against:**
- India has a **federal polity** with national and regional political parties participating in the electoral process while national political parties always prefer centralization of power in the hands of the union government, some regional political parties demand **decentralization** and **more regional autonomy**.
- With the simultaneous conduct of elections, there is every possibility of **national political parties dominating** even state elections also.
- If elections are held separately, at the state level regional issues and problems **can determine the electoral outcome** on the other hand, if simultaneous elections are held there is every possibility of national issues dominating electoral outcomes even at the state level also.
- It can go against the **federal spirits** envisaged by our constitutional forefathers.
- The essence of democracy is the continuous **accountability of rulers** towards citizens if elections are held separately it can result in continuous accountability.
- It can also force governments to change their policies, **for example**, in 2017 GST was introduced there were many problems in the implementation of the GST, the government was forced to make changes to GST as the election was to be held in many states including Gujarat. If there were no state elections, the government would not have brought about those changes.
- Similarly, the government was forced to take back and withdraw the three **farm bills** because of the elections to various state assemblies including Uttar Pradesh.
- Conducting elections separately to parliament and state assemblies **can ensure continuous accountability**, which is the essence of our parliamentary democracy.
- India is the fifth largest country in the world in terms of GDP and the third largest in terms of PPP. The country **can afford to spend a few** thousand crores to keep its democracy alive and dynamic
- Simultaneous conduct of election can also **lead to constitutional problems** if a state assembly is dissolved before the expiration of its terms, should the state be put under the president's rules for the rest of its terms? But the major problem is what happens when the premature dissolution of Lok Sabha takes place.
- **For example**, the country witnessed five elections to Lok Sabha in the period of 10 years between 1989 and 1999. It means elections should be held simultaneously in all the state assemblies also which can result in more instability.
- **Way forward:**
- The model code of conduct can be changed to allow the ruling political party at the centre to carry on with governance, without major limitations. It can prevent policy paralysis
- An election can be held in half of the state along with Lok Sabha and the remaining states can be conducted after two and a half years so that there can be political stability.

#### **PROMISES MADE BY POLITICAL PARTIES AT THE TIME OF ELECTIONS ( 9:47 AM)**

- In recent times the country has witnessed a situation where political parties started **making impossible promises to win** elections like providing free subsidies, promising employment to millions of people and other unrealistic promises.
- Once they come to power either they ignore those promises or use the limited resources of a country to **finance those unsustainable subsidies**.

- Recently, **ECI** has come out with the idea of ensuring more responsibility in terms of promises made by political parties. It is suggested that 'political parties must explain to the people how those promises are going to be fulfilled with available resources'.
- But this idea of ECI was **rejected by political parties** as they believe that the election commission does not have the mandate to impose these restrictions.
- The solution to this problem does not lie in legislation or in giving more powers to ECI. It lies in **creating awareness** among citizens about the dangers of competitive populism.

#### REMOTE VOTING MEASURES (10:00 AM)

- According to the election commission voting percentage in India has stagnated has **around 67%**. It means that more than 30% of the eligible voters could not vote in elections. One of the important reasons for the migration of people
- According to the **2011 census**, **30%** of our population are **migrants**, most could not vote as their votes are in other states.
- Another issue is internal migration also i.e within the state people are migrating from rural areas to state capitals for livelihood.
- In order to improve voting percentages also to provide opportunities for migrants, recently ECI has mooted the idea of remote voting measures.
- This remote measure was developed by ECIL, a public service enterprise, it has a facility for voting in 72 constituencies in a single remote polling booth.
- Special remote polling booths would be set up in different states when elections are on in the home states of migrants. The remote voter has to register himself for voting there is a VVPAT facility also to ensure that voters can verify their vote.
- This idea has been opposed by many political parties as there can be an issue related to the registration of voters and also problems regarding the model code of conduct.

#### STATE FUNDING OF ELECTION (10:23 AM)

- It means the government financing political parties in terms of electioneering. It can lead to a level playing field
- It does not mean transferring money to the account of political parties
- Financing in terms of printing election propaganda materials, providing opportunities on national TV to political parties and providing public places to political parties for election campaigns and so on
- State funding of elections in India can be problematic because of multiple political parties, contesting elections along with independence.

#### EXIT POLL and OPINION POLL (10:31 AM)

- At present, political parties are given some facilities like conducting rallies and public meetings in the spaces owned by the government.
- It can work in a two-party system like in most the western countries
- As part of the Model Code of Conduct, ECI has prohibited the publication of the results of exits pole till the final phase of elections is over so that they would not influence the electoral outcome
- Publication of opinion of exit polls is part of the right to freedom of speech and expression under article 19
- they can be published till the model code of conduct comes into operation
- It is also said that they do not influence electoral outcomes because of a lack of credibility

#### COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG) ( 10:35 AM)

- **Articles 148 to 151** determine the power, responsibility and function of CAG
- CAG is responsible to **audit** the functioning of all **ministries and departments** and also of select public sector enterprises
- He can also **audit local bodies** if requested by the president or governor
- The **independence of the office** is ensured through the security of tenure.
- He can be **removed** in the same manner and on the same grounds **as the judge** of the supreme court
- His **salaries and other conditions** are determined by the **parliament** and cannot be varied to his disadvantages.
- He is **not eligible** for **further office** under state and central government after his tenure is over
- The entire expense of CAG including Salaries, allowances and pensions are **charged from the consolidated fund of India**.
- He holds office for a period of **6 years or up to the age of 65 years** whichever is earlier

#### ISSUES IN THE FUNCTIONING OF CAG (11:06 AM)

- CAG conducts an audit which is **postmortem** in nature, i.e the performance is evaluated only after money is spent
- It becomes almost impossible for the government to **recover losses**

- It also reduces the **effectiveness** of CAG
- CAG should be allowed **to conduct concurrent audits** i.e auditing is done simultaneously as in when money is spent
- It can help CAG in **finding out misuse** use of finances and Fix accountability.
- CAG submits his reports to the president of India and the **recommendation** of CAG are **only advisory** in nature
- Since they are only advisory in nature, successive did not pay much attention to the recommendations made by CAG
- **Suggestions :**
- The government must submit an action-taken report regarding the recommendations of CAG. So that CAG become more effective in ensuring financial accountability within administrations.
- 1971 CAG act, did not give power to CAG to conduct a performance audit of public-private partnerships(PPP).
- After 1991, the government identified public-private partnerships as the most important mode of investment in infrastructure and industrialisation.
- It has resulted in systematic corruption with nexus between politicians, bureaucrats and businessmen.
- As pointed out by former CAG Vinod Rai, in every PPP deal it was the government that was the ultimate loser.
- SC had come out with judgments that CAG has the power to conduct performance audit in PPP in the reliance case

#### **SOLUTIONS (11:21 AM)**

- 1971 **CAG must be amended** to give power to CAG to conduct a performance audit of PPP
- Since 1991 due to an increase in tax revenues, the amount of money spent by the government on welfare schemes has also increased drastically.
- For example, in 1991 the government was spending only around 9000 crores but now the amount has increased to lakhs of crores of rupees, such large amounts of taxpayers are spent without any accountability.
- As CAG does not have the mandate to audit the performance of the welfare development scheme.
- SC had specifically asked CAG to conduct an audit of NREGA. CAG act 1971 should be amended to give powers to CAG to conduct audits of **welfare and developmental schemes.**
- India has only a light kind of budget wherein the budget mentions only the **amount of expenditure spent.** It reduces the effectiveness of CAG because CAG cannot conduct a performance audit.
- **For example,** If 18000 crores of rupees are spent on NREGA, CAG would see only, whether the money is spent according to rules and regulations or not ( regulatory audit ) and whether the person who is spending the money has the necessary legal authority or not (legal audit )
- We must move towards **performance budgeting** so that CAG can conduct a performance audit of developmental welfare schemes.
- The functioning of CAG is also impacted by the attitude of the government, most of the government departments and ministries take shelter under an **official secret act to hide information from CAG.**
- As recommended by **2ARC**, the **official secret act should be repealed** and must be replaced with the national security act, so that CAG can have complete access to all information
- Indian CAG is **inspired by British CAG**, in Britain CAG performs comptrolling action also, apart from comptrolling, in UK CAG has the power to authorise allocation for various ministries and departments i.e the budget has to be ratified by CAG before the money can be spent by the ministries departments, he can control public expenditure
- On the other hand, **CAG in India is only a comptroller** i.e he can audit the performance only after money is spent. he does not have the power to decide allocation, which reduces his effectiveness
- CAG should be given **powers of Pre-audit**, like in the UK, it can ensure financial discipline within governments.

#### **ATTORNEY GENERAL (11:50 AM)**

- **Article 76** of the constitution has a provision for an attorney general.
- He is the highest law officer in the government.
- He is **appointed** by the **president.**
- He must be a person **qualified** to be appointed as the judge of the supreme court.
- **Functions:**
- To give **advice** to the government of India on **all legal matters.**
- He has to **appear** on behalf of the government of India in all cases in the supreme court wherein, GoI is the main litigant.

- He has to **represent** Gol in any reference made by the president to the SC under article 143
- He has also **appeared** in any high court in any case in which Gol is the litigant.
- He also has the **right to an audience** in all the courts within the territory of India.
- He also has the right to speak and take part in the proceeding of both houses of parliament, the joint session of the parliament or any committee meeting in which he is a member but he cannot be on the floor of the limitations of the house:
- He **cannot advise** or hold a brief against the Gol.
- He should not defend the **accused in criminal prosecutions** without the permission of the Gol.
- He should **not accept any positions as a director** in any company or corporation without the permission of Gol.
- He should **not advise any ministry or department** unless the proposal is received through the law ministry.
- He is **not a full-time counsel** for the government and he is also not provided by private legal practice.
- Apart from the attorney general, there are **other law officers** of the government i.e **solicitor** general of India and **additional** solicitor general of India.
- They **assist** the attorney general and they are not constitutional positions.

**The Topic for the Next Class:- Continuation of Constitutional bodies.**

**Polity Class 41**

#### **A BRIEF DISCUSSION OF THE PREVIOUS CLASS (9:00 AM)**

- **Controversy related to AGI**
- Additional District Magistrate (ADM) Jabalpur Case, 1976: Attorney General had argued that illegal detention cannot be questioned in a court of law under MISA (Maintenance of Internal Security Act)
- Ram Jethmalani (the then Law Minister, in NDA 1998-2004) vs Soli Sorabji (AGI at that time) controversy regarding the Sri Krishna Committee report in the Supreme Court because of the conflicting statement made by the law minister
- This led to the resignation of the Law Minister Ram Jethmalani
- Mukul Rohtagi: Controversial statement in SC for NJAC (National Judicial Appointment Commission) for which Supreme Court expressed its displeasure
- Wahan Wati was the first attorney general to appear as a prosecution witness in the 2G spectrum scam, which almost led to his censure by the Supreme Court
- AGI, Venu Gopal commented about the stolen documents from the defense ministry regarding the Rafale case

#### **CENTRAL ADMINISTRATIVE TRIBUNALS, CATs (9:11 AM)**

- **Need for CATs**
- Our judiciary is burdened with too many cases
- More than 48 million cases are pending with our judiciary
- Our Judges have knowledge about legal and constitutional aspects but have little administrative experience
- Administrators face many challenges due to the politicization of civil services and also because of complex rules and regulations
- Their grievances include aspects related to recruitment, transfers, cadre allocation, promotion, postings, suspensions, and removals
- When they approach the judiciary, it would take a very long period of time for them to get justice
- In order to overcome these problems, administrative tribunals have come into existence
- The CATs have been established under Article 323A of our constitution for adjudication of disputes with respect to recruitment and service conditions, under the union government and other authorities under the control of the union government
- It has come into existence under the Administrative Tribunal Act of 1985
- It has nineteen branches and nineteen circuit branches all over the country
- CAT has sixty-nine members, of which thirty-four are judicial members and the rest are from civil services
- A bench of CAT consists of one judicial and one administrative member
- Since 1985, it has received 13,350 pending cases on transfer from the High Courts and subordinate Courts
- From 1985, till 30th Jun 2022, 882085 cases were received by the tribunal, out of which 804272 cases were disposed of by the tribunal
- It has a disposal rate of 91.18%
- **Features of CATs**
- It is distinguishable from the ordinary courts, with regard to its jurisdiction and its procedures

- Its jurisdiction is restricted only to service matters
- It need not follow the technical procedures of an ordinary court
- Aggrieved employees can directly appear in front of the Tribunal
- It is guided by the principles of natural justice and is not bound by the Civil Procedure Code (CPC)
- Initially, the decision of the tribunals could be challenged only before the Supreme Court by filing SLP (Special Leave Petition)
- But in the Chandra Kumar case, Supreme Court ruled that orders of Tribunals can be challenged by way of a writ petition under Article 226 and Article 227 before the respective High Courts

#### **NATIONAL COMMISSION FOR SCHEDULED CASTE, NCSC (9:37 AM)**

- It is a constitutional body established under Article 338 of the Constitution
- The 65th constitutional amendment act provided for the establishment of a high-level, multi-member, National Commission for SCs and STs
- The 89th constitutional amendment act bifurcated it into two separate bodies i.e. NCSC under Article 338 and NCST under Article 338A
- NCST came into existence in 2004
- The respective bodies have a chairperson, vice-chairperson, and three other members
- They are appointed by the President
- Their condition of service and tenure is determined by the President
- **Functions**
- To investigate and monitor all the matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their functioning
- To inquire into specific compliance with respect to the deprivation of rights and safeguards of SCs
- To participate and advise the planning process of socio-economic development of the SCs and evaluate its performance
- To present to the President annually the reports regarding the working of those safeguards
- To make recommendations regarding measures to be taken by the union or the state government about the socio-economic development of SCs
- To discharge other such functions in relation to the protection, welfare, development, and advancement of SCs
- The commission submits its annual report to the President
- It can also present a report as and when it thinks necessary
- The President tables these reports along with a memorandum explaining the actions taken on the recommendations made by the commission
- **Powers**
- It has the power to regulate its own procedures
- It has the power to investigate any matter related to SCs
- It has the power of a civil court
- It can summon any person from any part of India and examine him on oath
- It can demand any document
- It can receive evidence from affidavits
- It can request any public record from any Court or office
- It can issue summon for the examination of witnesses and documents

#### **COOPERATIVE SOCIETIES (9:59 AM)**

- Mahatma Gandhi strongly believed in the cooperative movement and his ultimate dream was to transform our villages into a self-sufficient and independent republic
- In spite of the fact that Land Ceiling legislation was passed and was included in Schedule IX, land reform implementation has been far from effective
- 10:17-19
- He said that agriculture should be converted into industries
- It should enjoy the same benefits as industries have in the age of globalization
- In order to realize these objectives 97th Constitutional Amendment Act was passed to give constitutional recognition to cooperatives in 2011
- It made the right to form cooperative societies, a fundamental right under Article 19(1) of the constitution
- It also included a new DPSP on the promotion of cooperative societies under Article 43B
- It also added a new Part IX B in the constitution (Article 243ZH to Article 2ZT)
- The Cooperative Societies Act is a central legislation, whereas cooperative societies are a state subject under entry 32 in the Schedule VII of our constitution



- In recent times, the country has witnessed rapid expansion in the cooperative movement
- It was necessary because rapid expansion in cooperative societies has resulted in the emergence of multi-state cooperatives where the members and their area of operation have spread across more than one state
- For example, there are many sugar cooperatives that have a presence in the states of Maharashtra and Karnataka
- They are registered under Multi-State Cooperative Societies Act, 2002

#### **SPECIAL PROVISIONS OF SOME STATES (10:54 AM)**

- These are given to satisfy the aspiration of the people of backward regions and also to protect their cultural and economic interests, especially of tribal peoples
- They also deal with law and order issues in some states
- **Article 371**
- Under Article 371, the President is authorized to provide that the Governors of Maharashtra and Gujarat would have the special responsibility for the establishment of separate development boards for Vidharba, Marathwada, and the rest of Maharashtra
- Similarly in Gujarat, the Governor has special responsibility for the establishment of a development board for Saurashtra, Kutch, and the rest of Gujarat
- They must prepare a report and it should be placed before the state legislative assembly every year
- They must ensure equitable allocation of funds for development expenditure
- They must also ensure equitable arrangements for providing technical education and vocational training and also to improve employment opportunities in state services
- **Article 371A**
- It has special provisions relating to the state of Nagaland
- Act of Parliament relating to the following matters would not apply to Nagaland unless the state legislative assembly approves them
  1. Religious and social practices of Nagas
  2. Naga customary law and procedure
  3. Administration of civil and criminal justice involving decisions according to Naga Customary laws
  4. Ownership and transfer of land and its resources
- The Governor of Nagaland has special responsibility for the maintenance of law and order
- The Governor consults the Council of Ministers but takes his own decision and his decisions are final
- The Governor has to ensure that the money provided by the central government for a specific purpose is included in the demand for grants for the same purpose by the state legislative assembly
- There shall be a regional council for the district of Teunsang consisting of 35 members and administration of the district is the responsibility of the Governor and the Governor shall be guided by the council
- **Article 371B**
- It is related to the state of Assam
- The President is empowered to provide for the creation of the committees of the state legislative assembly consisting of members from tribal areas
- **Article 371C**
- It is related to the state of Manipur
- President is authorized to provide for the creation of a committee in the Manipur state legislative assembly consisting of the members elected from the hill areas of the state
- The Governor has a special responsibility to ensure the proper function of the committees
- Governor also must submit an annual report to the President regarding the administration of hill areas
- The central government can give direction to the state regarding the administration of hill areas
- **Article 371D & Article 371E**
- It concerns the states of Andhra Pradesh and Telangana
- Initially, these articles were for the united state of Andhra Pradesh and later as per Andhra Pradesh State Reorganisation Act 2014, it was extended to Telangana as well
- Under this, the President is empowered to provide equitable opportunities for people belonging to different parts of the state in matters of public employment and education
- Reservation can be provided in this regard
- **Article 371F**
- It concerns Sikkim
- The 36th Constitutional Amendment Act 1975 made Sikkim a full-fledged state of India
- It included Article 371F
- The assembly has to consist of not less than 30 members

- One seat is allocated to Sikkim in the Lok Sabha
- Seats in the assembly are reserved for different sections of society depending on their population
- The Governor has a special responsibility for peace and equitable development of different sections of Sikkim's population
- The Governor can act according to his discretion
- President can extend to Sikkim any law which is enforced in the state of the Indian Union
- **Article 371J**
- It concerns the state of Mizoram
- The acts of Parliament relating to matters similar to that of Nagaland would not apply to Mizoram unless the state legislative assembly approves them
- Mizoram legislative assembly must consist of not less than 40 members
- **Article 371H**
- It concerns the state of Arunachal Pradesh
- The Governor of Arunachal Pradesh shall have a special responsibility regarding law and order in the state
- The Governor can exercise his individual judgment and his judgment is final
- Arunachal Pradesh assembly shall consist of not less than 30 members
- **Article 371I**
- It concerns the state of Goa
- Goa legislative assembly shall consist of not less than 30 members
- **Article 371J**
- It concerns the state of Karnataka
- It was inserted by the 98th Constitutional Amendment Act of 2012
- There shall be the establishment of a separate development board for the Hyderabad and Karnataka region
- It must ensure equitable allocation of funds for the development of the region
- There would be reservation of seats in educational and vocational training institutions for the students belonging to such region
- Reservation in government posts for people belonging to the region
- This board must prepare a report and this report shall be placed before the state legislative assembly

#### COMPARISON OF CONSTITUTIONS (11:47 AM)

- **Britain**
- It has an unwritten and flexible constitution
- The nature of the state is unitary and monarchy
- It has a parliamentary democracy and bicameral legislature
- It has a procedure established by law
- It has a Weberian bureaucracy
- Its grievance redressal mechanism is the parliamentary commissioner (in the case of India it is Lokpal)
- Local Self-Government in the UK has less autonomy
- The political rights of civil servants are restricted
- It has a single budget
- Their auditing agency is CAG
- They have capitalism
- Judicial review is absent and has parliamentary sovereignty
- It has single citizenship
- It has a rank classification in civil services
- The basic unit of administration is a ministry
- The head of the state is King or Queen
- The more powerful House is the House of Commons
- Local self-government is the county

**Topics for the next class: Continuation of the comparison of constitutions of different countries, types of doctrines, defamation, disqualification**

**Polity Class 42**

#### CONSTITUTION OF UNITED STATES OF AMERICA (09:01 AM)

- The USA has a **written and rigid** constitution it has a federal polity and it is a Republic.
- It has a **presidential form** of democracy.
- It also has a bicameral legislature: **Senate and House of Representatives.**

- It also has **Weberian** Bureaucracy.
- The USA has the **due process of Law** in the functioning of its judiciary.
- The USA has **equal protection of laws** as part of the concept of equality before the law.
- The USA has a clear-cut separation of powers between the three organs of the state: Legislature, Executive, and Judiciary.
- The president need not be part of the legislature.
- Impeachment of the President is a very difficult task that requires a two-thirds majority in both the Senate and the house of representatives.
- The USA is also a **classic federation** wherein the states have more powers compared to other countries in the world.
- USA has a **Council-Manager form** of government for its local self-government
- The USA also has **dual citizenship**.
- The political rights of civil servants are restricted. Senate is the most powerful house.
- The USA has a capitalist economy.
- The central auditing agency is **Controller General**.
- The USA has an independent judiciary.
- Recruitment is through both merit and **spoils systems**.
- **Similarities between India and the USA Constitution:**
  - Written Constitution
  - Republic
  - The due process of law
  - Weberian bureaucracy
  - Federal form of government
  - Bicameral legislature, etc.
- **Difference between India and the USA Constitution:**
  - Presidential Form of government
  - Separation of functions
  - Integrated judiciary
  - Residual powers to Union
  - Single Citizenship, etc.

#### CONSTITUTION OF FRANCE (09:22 AM)

- It has a **written and rigid constitution**.
- France is a **unitary state** and republic.
- France also has a **semi-presidential** form of government.
- Bicameral legislature: **Senate and National Assembly**.
- France has administrative law: **droit administratif**.
- Local self-government does not have any autonomy.
- The financial year is from January to December.
- For citizen grievances, France has administrative courts.
- France also has a Weberian bureaucracy.
- France also has **indicative planning**.
- In France, Judicial review is absent.
- Local self-government in France is called **prefets**.
- The head of the state is the president.
- The more powerful house is the lower house.
- The auditing agency is the Court of Accounts.
- France has a **unitary state**.
- **Similarities:**
  - Written Constitution
  - The lower house is powerful
  - Election to the president, etc.
- **Differences:**
  - Nature of Secularism
  - Unitary Nature, etc.

#### CONSTITUTION OF JAPAN (09:47 AM)

- Japan has a **rigid and written** constitution.

- It has a **unitary state and monarchy**.
- Japan has a parliamentary democracy and a bicameral legislature: Diet (House of Councillors) and House of Representatives.
- In Japan, local self-government enjoys more autonomy. The political rights of civil servants are restricted.
- The central audit agency is the **Board of Audit**.
- Judicial review is present.
- They have **single citizenship**.
- The head of the state is an emperor.
- They also have **weberian bureaucracy**.
- It also has a capitalist economy and indicative planning.
- The local self-government is called a **Prefectures**.
- The more powerful house is the lower house.

#### **STATUTORY BODIES (09:58 AM)**

- **Examples:** SEBI, NHRC, TRAI, etc.
- It is an institution created by an **act of parliament**.
- Parliament defines its functions, responsibilities, powers, privileges, and so on.
- Most of these organizations have quasi: legislative, executive, and judicial powers.
- Parliaments also provide their mode of appointment and their service conditions.
- These authorities have come into existence to reduce the burden on the judiciary.

#### **NATIONAL HUMAN RIGHTS COMMISSION (NHRC) (10:03 AM)**

- NHRC had come into existence as part of **global constitutionalism**.
- United Nations Human Rights Commission had recommended that the member of the UN can come up with Human Rights Commission in their own countries to protect the right to life and liberty, equality, and dignity guaranteed by their constitutions.
- NHRC has come into existence in **1993** through legislation passed by parliament, i.e. the **Protection of Human Rights Act, of 1993**.
- Objectives of NHRC include strengthening the institutional arrangements through which human rights issues could be addressed in a more focused manner.
- To look into excesses committed independently of the government to protect human rights.
- To complement and strengthen the efforts that have already been made in this direction.
- **Composition of NHRC:**
- It is a **multi-member body** consisting of a chairperson and five members.
- Chairperson should be a retired Chief Justice or a judge of the supreme court and members should be serving or retired judges of the supreme court, serving or retired chief justice of a high court, and three people knowing the field of human rights.
- Apart from this commission also has seven ex-official members:
- Chairpersons of NCM, NCSC, NCST, NCW, NCBC, NCPCR, and CCPD.
- **Appointment of Members:**
- They are appointed by the **President** on the recommendations of the **six-member committee**, consisting of the PM (as its head), the speaker of Lok Sabha, the deputy chairman of Rajya Sabha, leaders of opposition in both Lok Sabha and Rajya Sabha, and Union Home Minister.
- A sitting judge of the Supreme Court or A sitting Chief justice of the high court can be appointed only after consultation with the chief justice.
- **Tenure:**
- The term is for **three years** or until they attain the age of 70 years whichever is earlier.
- They are eligible for reappointment.
- After their tenure, they are not eligible for further employment under the central or state governments.
- **Functions:**
- **To enquire into** any violation of human rights by a public servant.
- NHRC can take up cases **on its own** or a petition presented before them.
- To intervene in any proceedings involving allegations of violation of Human Rights pending before a court.
- To **visit jails** to study the living conditions of prisoners and give suggestions to improve their functioning.
- To review **constitutional and other legal safeguards** for the protection of human rights and also to encourage the efforts of NGOs working in the field of Human rights.
- **Violation of Human rights:**
- Child labor
- Custodial torture

- Violence against women and children
- Extra-judicial killings, etc.

#### **LIMITATIONS OF NHRC (10:33 AM)**

- Recommendations are **only advisory**.
- It has no power to **punish violators** of human rights.
- It cannot award any monetary compensation.
- It cannot look into the violation of human rights by **armed forces**.
- It does not have any separate **investigative mechanism** of its own.
- It can summon officials, but if they do not present themselves, it does not have the power to punish them.
- It cannot investigate cases that are more than **1 year old**, etc.
- **What should be done?**
- Government must submit an action-taken report based on recommendations made by NHRC. The recommendations can be mandatory.
- The government must mention the time limit during which the recommendations are implemented.
- It must have a separate investigative mechanism of its own.
- The appointment of members should be based on **merit**.
- Those who are working in the field of human rights should be appointed as members.
- NHRC should be given more powers to punish officials if they do not present themselves before NHRC.
- The **1-year condition** should be removed.
- The jurisdiction of NHRC must be extended to include atrocities committed by **armed forces** also.

#### **DISCUSSION ON ED, CBI & LOKPAL (11:07 AM)**

- **Enforcement Directorate and CBI:**
- Huge politicization of agencies.
- Internal issues between director and joint directors.
- SC called CBI a caged parrot.
- ED became powerful after the recent amendment in PMLA.
- The very low success rate of cases investigated by ED.
- ED is being used to target opposition party members.
- **Lokpal and Lokayukta:**
- Huge politicization issue.
- Lack of any real powers.
- Attempts by executives to undermine them.
- Appointment-related issues.

#### **DEFAMATION (11:23 AM)**

- **Sections 499 and 500** of the IPC criminalize any expression either through speech or any visible representation intended to harm the reputation of any person.
- It also criminalizes defaming a deceased person, intending it to be hurtful to the feeling of his family.
- An imputation '**expressed ironically**' can also attract criminal liability under this provision.
- The law completely fails to clarify what harm to a person's reputation means.
- It means lowering moral or intellectual character again which is not defined.
- It was enacted in **1860** to protect **colonial interests**.
- It was derived from British Law but had significant differences.
- Indian law is more **ambiguous** and more stringent than British Law to protect colonial interests.
- Under IPC, both **written and spoken defamation** are categorized as crimes, whereas in English law only written form is categorized as defamation.
- In India, defamation is made an offense without any reference to its tendency to cause a breach of peace or violence whereas the term is included in British Law.
- Another major difference is the **truth is an absolute defense** in criminal proceedings for defamation under English law but it is not so under Indian law.
- Defamation law was challenged in the supreme court in **Subramanian Swamy vs the Union of India** for being excessive and for imposing arbitrary restrictions on freedom of speech.
- SC has upheld the constitutional validity of this provision and SC has held that **reputation** is an inherent component of the **Right to Life** and Personal Liberty.
- It should not be allowed to be sullied solely because another individual can have his freedom, but SC has failed to look into the criminalized response to a private wrong.
- It however has said that it should not be misused for personal vengeance.

- Despite SC's remarks, the law has been misused recently in the #Metoo movement, wherein defamation cases have been filed for sexual harassment allegations.
- Similarly, it is also used to stifle dissent.
- In most cases punishment is not the goal, the process itself is the punishment.

#### **SOLUTIONS (11:41 AM)**

- Ambiguity should be removed from defamation law.
- Only **written communication** should be part of the defamation
- Cases can be filed only when there is clear-cut evidence to cause a breach of peace or violence.
- It should be made a **civil crime**.
- Defamation cases should be taken by the high-level judiciary.

#### **The topic for Next Class: Various Legal Doctrines**

#### **Polity Class 43**

#### **VARIOUS LEGAL DOCTRINES (01:02 pm)**

- **The Doctrine of Pith and Substance:**
- Pith means true nature and subsistence means the most essential part.
- It has been taken from Canada's constitution.
- It was a part of the Government of India Act, of 1935.
- It is usually applied to resolve the conflict between the Union and the States.
- **The Doctrine of Incidental and Ancillary Powers:**
- It is an addition to the doctrine of pith and substance.
- The pith and substance only deal with the subject whereas this doctrine deals with the power to legislate on those subjects.
- It had its origin in the United Kingdom.
- E.g. Article 4 deals with the procedure to create new states and Article 169 talks about the creation and abolition of a state legislative council.
- **The Doctrine of Eclipse:**
- It is applied when any law or act violated Fundamental Rights.
- That portion of the law that violates fundamental rights cannot be enforced.
- It can be enforced only when the restrictions are removed.
- **The Doctrine of Severability**
- It is also known as the Doctrine of Separability.
- Its basic objective is to protect the fundamental rights of the citizens. E.g. Under Article 13(1) of the Indian Constitution, if any portion of the law restricts the scope of Fundamental Rights, that portion can be struck down.
- And if it is not possible to separate that portion from the rest of the law then the entire law can be struck down.
- This has been taken from British Legal System.
- **The Doctrine of Territorial Nexus**
- It says that the laws made by the state legislature are not applicable outside the state except when there is sufficient nexus between the state and the object
- Under Article 245(2), of our constitution, No law made by the parliament would be invalid on the ground that it would have extra-territorial operation. E.g. Income Tax.
- **The Doctrine of Colourable Legislation:**
- It is called a fraud on the Constitution.
- It comes into the application when the legislature does not possess the power to make legislation but indirectly makes legislation.
- It is based on the assumption that whatever legislature cannot do directly, it cannot do indirectly also.
- E.g. Three Farm Laws
- **The doctrine of Pleasure:**
- It has its origin in British Law.
- Under Article 155, the governor of a state holds office at the pleasure of the President.
- Under Article 310, civil servants also hold their office at the pleasure of the President.
- **The Doctrine of Harmonious Construction.**
- SC has defined this doctrine in the Minerva Mills Case.
- SC has said that FR and DPSP can co-exist together.
- **The Doctrine of Latches**

- Judiciary can reject any cases if there is any time delay in the filing of cases.
- The court will assist only those people who are vigilant about their rights.
- **The Doctrine of Prospective Over-Ruling**
- This has been taken from American Legal System. SC has used it in Gilanath Case.
- It has overruled its previous judgment.
- In case of conflict between FRs and DPSPs, FRs will be given precedence over DPSPs.

#### **IMPORTANT TOPICS FOR PRELIMS 2023 (01:51 PM)**

- Constitutional Development
- Constitutionalism
- Fundamental Rights
- Fundamental Duties
- DPSPs
- Parliament
- Union and State Relations
- Constitutional and Statutory Bodies
- Judiciary
- Governance-related questions on Democracy, Auditing, etc.

#### **DISCUSSION ON POLITY PREVIOUS YEAR QUESTIONS OF PRELIMS (2013-2023) (02:29 PM)**

#### **DISCUSSION ON POLITY PREVIOUS YEAR QUESTIONS OF MAINS (03:42 PM)**

- **Question: “While the national political parties in India favor centralization, the regional parties are in favor of state autonomy.” Comment. (250 words/15 Marks) [2022]**
- **Major Points in Answer:** In a Federal Polity, elections are held separately to Lok Sabha and State Legislative Assemblies.
- Regional Political Parties contest elections mostly to state legislative assemblies whereas, National Political Parties focus more on Parliament.
- To win the confidence of the people, political parties make promises and they require a huge amount of financial resources. They can have these financial resources only if there is centralization of power (National Parties).
- Whereas, regional political parties can fulfill the promises only when they have the financial autonomy
- Since Independence, whenever the country witnessed single-party rule at the center (National Parties). It resulted in the centralization of power.
- On the other hand, the coalition government has always resulted in more centered power to the state as regional political parties influence the functioning of the government.
- Conclusion: As suggested by MM Punchhi Commission on center-state relations, irrespective of political parties there should be a horizontal relationship, between the center and states with both of them acting as equal partners in the process of development.
- **Question: The Indian party system is passing through a phase of transition that looks to be full of contradictions and paradoxes.”Discuss (150 Words/10 Marks) [2016]**
- **Major Points in Answer:** Lack of inner-party democracy in political parties.
- Committed to Socialism but practicing Crony Capitalism
- Committed to Secularism but practicing Appeasement
- Respect the Sovereignty of the country however escalate issues based on region and language.

**The Syllabus of Polity For 2023\_RB13 is complete.**