

September – 2022



POLITICO ANALYTICS

IGP SPECIAL EDITION

Purna Pariksha Guidance *for*
1000 Marks In UPSC Mains

**Answer Writing Value Addition
and Guidance for IR**



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TABLE OF CONTENTS

1. Suspension Of Mps: The Rules, And The Powers Of Presiding Officers.....	01
2. Election Commission And Disputes Related To Party Symbols	04
3. What Is Sc's 'Kihoto Hollohan' Judgment, And Why Is It Relevant?	07
4. What Are The Speaker's Powers Under Law During A Rebellion, And How Has The Sc Interpreted These?	10
5. Governor's Power To Call For A Floor Test During Political Crisis.....	13
6. What Is The Sedition Law, And Why Supreme Court's Fresh Directive Is Important?	15
7. Hindus As Minority: Govt's Affidavit On The Matter AnD How It Is Consistent With The Constitution.....	19
8. The Legal Aspects Of Uniformcivil Code	23
9. The Bail Law And Supreme Court Call For Reform.....	26
10. Hate Speech, Ipc Sec 295a, And How Courts Have Read The Law	29
11. How Electoral Bonds Work, And Why They Face Criticism.....	32
12. Short Note On Historical Background Of Centre-State Tensions	34
13. Governor's Powers, Friction With States, And Why This Happens Often.....	36
14. What Is The Sixth Schedule, And Can Ladakh Be Included Under It?	39
15. Lower Judiciary And Centralised Recruitment Debate	42
16. A Look At How And When Parliament Is Convened	45
17. What Are Question Hour And Zero Hour, And Why Do They Matter?.....	47
18. How Are Rajya Sabha Mps Elected? Why Are The Polls Important?.....	50
19. Pardoning Power Underjudicial Review	53
20. An Analysis Of States Power To Challenge Central Laws	56

SUSPENSION OF MPS: THE RULES, AND THE POWERS OF PRESIDING OFFICERS

The below article will be helpful in dealing with Questions related to issues of Discipline and Decorum on the floor of the house, Powers of Presiding Officers on the matter and what role Judiciary is/ can play in the matter. The provisions to be used in specific scenarios have been explained and the same need to be incorporated in answers on questions related to Powers of Presiding Officer and also in answers related to Disruption of Proceedings. Care should be taken to understand how Rajya Sabha and Lok Sabha have different provisions to deal with such issues. Views of Former Speaker of Lok Sabha Late Shri Somnath Chatterjee need to be directly incorporated in PSIR Optional answers.

Over this week, the two Houses of Parliament **have suspended 27 MPs** between them, the latest being two AAP MPs and an independent MP from Rajya Sabha on Thursday. Lok Sabha has suspended four Congress MPs, and Rajya Sabha 23 MPs from the Trinamool Congress, DMK, TRS, CPI, CPI(M) and AAP, besides the independent. The Rajya Sabha suspensions are for the remaining part of this week, and those from Lok Sabha are for the rest of the session.

The two Houses suspended these MPs because they disrupted proceedings, demanding a debate on rising prices and increasing GST rates on essential commodities. The suspended MPs have started a **fifty-hour dharna** on the Parliament complex, and Opposition parties are demanding the revocation of the suspensions.

Why do MPs disrupt Parliament?

- Over the years, the presiding officers of legislatures and political leaders have discussed and identified four broad reasons leading to disorder in legislatures. One reason is the lack of time available to MPs for raising important matters; a second is the “unresponsive attitude of the government and retaliatory posture by Treasury benches”. The other two reasons are deliberate disruption by parties for political or publicity purposes, and the absence of prompt action against MPs disrupting parliamentary proceedings.

What has Parliament done to address these issues?

- The government and not Parliament decides the parliamentary calendar. Therefore, the decision about the time available with Parliament for discussions rests with the government. Parliamentary procedure also prioritises government business over other debates that take place in the legislature.

- In this regard, Parliament has not updated its rules over the last 70 years to give Opposition parties a say in deciding the agenda for discussion. The stance of political parties on uninterrupted parliamentary functioning depends on whether they belong to the ruling party/coalition or are in the Opposition. And in 2001, Lok Sabha amended its rules to give the Speaker more powers to discipline MPs who disrupt House proceedings.

Who can suspend MPs, and for how long?

- Rules for ensuring the smooth functioning of Parliament have been unchanged since 1952. First, the presiding officers can direct an MP to withdraw from the House for any disorderly conduct. If the MP continues disrupting the House, the presiding officer can “name” the legislator. After that, the House can move a motion to suspend the MP until the end of the session. These powers are common to the presiding officers of both Houses.
- In 2001, during **Speaker G M C Balayogi’s** term, Lok Sabha changed its rules to give the Speaker more powers to deal with grave and disorderly conduct. As per this new rule, the Speaker can “name” an MP, who shall then automatically stand suspended for five days or the remaining part of the session. This rule removes the need for the House to pass a motion for suspension. Rajya Sabha has not incorporated this provision in its procedures.

Can courts intervene in a matter of suspension of MPs?

- **Article 122** of the Constitution says parliamentary proceedings cannot be questioned before a court: *“No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers”*.

In some cases, however, courts have intervened in the procedural functioning of legislatures. For example, the Maharashtra Legislative Assembly passed a resolution in its 2021 Monsoon Session suspending 12 BJP MLAs for a year. The matter came before the Supreme Court, which held that the resolution was ineffective in law beyond the remainder of the Monsoon Session.

Do presiding officers have a role in breaking a deadlock?

Presiding officers are the custodians of Parliament, and their role is to be a nonpartisan implementer of the rules. In the 14th Lok Sabha (2004-09), during the tenure of Speaker Somnath Chatterjee, Lok Sabha was continuously getting disrupted by Opposition MPs. They asked him to convey their grievances against the government and the Treasury benches to the Prime Minister.

Speaking in Lok Sabha, **Speaker Chatterjee** said, *“I feel it will be an unwarranted exercise of power of the Speaker if he meddles into the political affairs or the political formulations of any Party or Group of Parties, and seeks to intervene.”* He said such an action would be *“an intrusion by the Speaker into an arena, which should be left to the political parties to decide and resolve”*

Previous Year Questions

1. Differentiate parliamentary supremacy from parliamentary sovereignty. Would you consider the Indian Parliament as a Sovereign Parliament? (2017/250/20)
2. Comment on: Decline of Indian Parliament. (150/10/2013)

ELECTION COMMISSION AND DISPUTES RELATED TO PARTY SYMBOLS

The below article talks in detail about the original and existing provisions related to settlement of disputes related to party symbols in India. One has to carefully note the powers of Election Commission in this regard with special reference to Symbols Order, 1968 as this has to be directly quoted/explained in the answers on the topic. Also, what other criteria's are generally adopted by Election Commission informally in this regard have to be noted along with actual examples of usage of the same. The content is to be also used in a brief format while explaining the general powers and responsibilities of Election Commission.

The Uddhav Thackeray-led Shiv Sena has approached the Election Commission of India, requesting it to hear its side before deciding claims to **the party's bow-arrow symbol**. The Shiv Sena has lost a large number of members in the Eknath Shinde-led rebellion that eventually caused the fall of the Thackeray-led government in Maharashtra.

The Thackeray camp approaching the EC was a pre-emptive move, since the dispute hasn't yet officially reached the EC's doorstep. Shinde, who has claimed to be the "original" Shiv Sena on the basis of the support of more than two-thirds of the party's legislators in the Maharashtra Assembly, has not officially written to the EC yet to stake claim to the party symbol.

What are the EC's powers in such a dispute?

- On the question of a split in a political party outside the legislature, Para 15 of the **Symbols Order, 1968**, states: "*When the [Election] Commission is satisfied... that there are rival sections or groups of a recognised political party each of whom claims to be that party the Commission may, after taking into account all the available facts and circumstances of the case and hearing [their] representatives... and other persons as desire to be heard decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.*"
- This applies to disputes in recognised national and state parties. **For splits in registered but unrecognised parties, the EC usually advises the warring factions to resolve their differences internally or to approach the court.**

And how did the EC deal with such matters before the Symbols Order came into effect?

Before 1968, the EC issued notifications and executive orders under the Conduct of Election Rules, 1961. The most high-profile split of a party before 1968 was that of the Communist Party of India in 1964. A breakaway group approached the EC in December 1964, urging it to recognise it as CPI(Marxist). They provided a list of MPs and MLAs of Andhra Pradesh, Kerala and West Bengal who supported them. The ECI recognised the faction as CPI(M) after it found that the votes secured by the MPs and MLAs supporting the breakaway group added up to more than 4% in the 3 states.

What was the first case decided under Para 15 of the 1968 Order?

It was the first split in the Indian National Congress — in 1969. Then **Prime Minister Indira Gandhi's** tensions with a rival group within the party came to a head with the death of President **Dr Zakir Hussain** on May 3, 1969. The Congress old guard, led by **K Kamaraj, Neelam Sanjiva Reddy, S Nijalingappa and Atulya Ghosh** — known as the '**Syndicate**' — nominated Reddy for the post. Indira Gandhi encouraged Vice-President **V V Giri** to contest as an Independent and called for a "conscience vote" in defiance of the whip issued by party president Nijalingappa.

After Giri won, Indira was expelled from the Congress, and the party split into the "old" Congress(O) led by Nijalingappa and the "new" Congress (R) led by Indira Gandhi.

The "old" Congress retained the party symbol of a pair of bullocks carrying a yoke; the breakaway faction was given the symbol of a cow with a calf.

Is there a way other than the test of majority to resolve a dispute over election symbols?

- In almost all disputes decided by the EC so far, a clear majority of party delegates/office bearers, MPs and MLAs have supported one of the factions. **Whenever the EC could not test the strength of rival groups based on support within the party organisation (because of disputes regarding the list of office-bearers), it fell back on testing the majority only among elected MPs and MLAs.**
- Only in the case of the split in the AIADMK in 1987, which happened after the death of **M G Ramachandran**, was the EC faced with a peculiar situation. The group led by MGR's wife Janaki had the support of the majority of MPs and MLAs, while J Jayalalithaa was supported by a substantial majority in the party organisation. But before the EC was forced to make a decision on which group should retain the party symbol, a rapprochement was reached.

What happens to the group that doesn't get the parent party's symbol?

In the case of the first Congress split, the EC recognised both the Congress(O) and the breakaway faction whose president was **Jagjivan Ram**. The Congress(O) had a substantial presence in some states and satisfied the criteria fixed for recognition of parties under Paras 6 and 7 of the Symbols Order. This principle was followed up to 1997.

However, things changed when the Election Commission dealt with the cases of splits in the Indian National Congress and Janata Dal. The disputes led to the creation of **Himachal Vikas Congress, Manipur State Congress Party, West Bengal Trinamool Congress, Rashtriya Janata Dal, Biju Janata Dal**, etc. The EC then did not recognise the new parties as either state or national parties.

It felt that merely having MPs and MLAs is not enough, as the elected representatives had fought and won polls on tickets of their parent (undivided) parties.

The EC introduced a new rule under which the splinter group of the party — other than the group that got the party symbol — had to register itself as a separate party and could lay claim to national or state party status only on the basis of its performance in state or central elections after registration.

Previous Year Questions

1. “The success of the electoral democracy can partly be attributed to the status and the role of Election Commission of India”. Explain. (2021/250/20)
2. Examine the role and functioning of the Election Commission of India and Comptroller and Auditor General in last two decades. (2020/150/10)
3. Make an assessment of the role of the Election Commission of India in the conduct of free and fair elections. (2011)

WHAT IS SC'S 'KIHOTO HOLLOHAN' JUDGMENT, AND WHY IS IT RELEVANT?

The below article talks in details about the relevance of landmark 'Kihoto Hollohan vs Zachillhu And Others' (1992) judgement in context of Anti-Defection Act. Students are advised to read the all the major observations of Judiciary on the matter including the minority opinion and quote them directly in their answers in case of PSIR optional questions. One needs to understand that although the decisions of Presiding Officers did come under judicial review in exceptional circumstances but at the same time Judiciary also upheld the sweeping discretion available to the Presiding Officers in such cases.

Maharashtra Shiv Sena political crisis: References have been made to the landmark judgment in '**Kihoto Hollohan vs Zachillhu And Others' (1992)**, in which Supreme Court upheld the sweeping discretion available to the Speaker in deciding cases of disqualification of MLAs.

The top court had given the 16 rebel Shiv Sena MLAs until July 12 to respond to the disqualification notice issued by the Deputy Speaker. Among other things, the petition had challenged the short time — 48 hours — given to the rebel MLAs to respond.

In the context of the crisis, references have been made to the landmark judgment in '**Kihoto Hollohan vs Zachillhu And Others' (1992)**, in which the Supreme Court upheld the sweeping discretion available to the Speaker in deciding cases of disqualification of MLAs.

However, as rebel leader Eknath Shinde's petition before the court has argued, in '**Kihoto Hollohan'**, the SC held that "**the Speaker/Deputy Speaker while deciding disqualification Petition under the 10th Schedule as such a Tribunal and therefore it is incumbent upon the Deputy Speaker to afford a reasonable opportunity of hearing and defending his case to the Petitioner**".

What is the 'Kihoto Hollohan' case?

- The law covering the disqualification of lawmakers and the powers of the Speaker in deciding such matters became part of the statute book in 1985 when the **Tenth Schedule** to the Constitution, commonly known as the '**anti-defection law**', was adopted.
- A constitutional challenge to the Tenth Schedule was mounted, which was settled by the apex court in '**Kihoto Hollohan**'.

- The principal question before the Supreme Court in the case was whether the powerful role given to the Speaker violated the doctrine of basic structure — the judicial principle that certain basic features of the Constitution cannot be altered by amendments by Parliament.
- The Supreme Court laid down the doctrine of basic principle in its landmark judgment in ‘**Kesavananda Bharati vs State Of Kerala**’ (1973).

What does the Tenth Schedule of the Constitution say?

- The Tenth Schedule, which was inserted in the Constitution by the Constitution (Fifty-Second Amendment) Act, 1985, provides for the disqualification of Members of Parliament and state legislatures who defect.
- Paragraph 2 of the Schedule says that ***“a member of a House belonging to any political party shall be disqualified from being a member of the House... if he has voluntarily given up his membership of such political party; or if he votes or abstains from voting in such House contrary to any direction issued by the political party... without obtaining... prior permission...”***

And what is the extent of the Speaker’s powers under the Tenth Schedule?

Paragraph 6(1) of the Tenth Schedule describes the Speaker’s sweeping discretionary powers: **“If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final.”**

What did the Supreme Court rule in ‘Kihoto Hollohan’?

- The petitioners in ‘**Kihoto Hollohan**’ argued whether it was not fair that the Speaker should have such broad powers, given that there is always a reasonable likelihood of bias.
- The majority judgment authored by **Justices M N Venkatachaliah** and **K Jayachandra Reddy** answered this question in the affirmative: **“The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in them should not be considered exceptionable.”**
- They added that the Schedule’s provisions were **“salutory and intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.”**

Did all judges on the Bench agree with this view?

- No, **Justices Lalit Mohan Sharma** and **J S Verma** dissented and took a different view: **“The tenure of the Speaker, who is the authority in the Tenth Schedule to decide this dispute, is dependent on the continuous support of the majority in the House and, therefore, he does not satisfy the requirement of such an independent adjudicatory authority.”**

- They added: *“An independent adjudicatory machinery for resolving disputes relating to the competence of Members of the House is envisaged as an attribute of the democratic system which is a basic feature of our Constitution... [the Speaker’s] choice as the sole arbiter in the matter violates an essential attribute of the basic feature.”*

What about the role of the Deputy Speaker?

Article 93 of the Constitution mentions the positions of the Speaker and Deputy Speaker of the House of the People (Lok Sabha), and **Article 178** contains the corresponding position for Speaker and Deputy Speaker of the Legislative Assembly of a state.

Maharashtra has been without a Speaker since February 2021, and Deputy Speaker **Narhari Zirwal** has been carrying out the responsibilities of the position.

Article 95(1) says: “While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker”.

In general, the Deputy Speaker has the same powers as the Speaker when presiding over a sitting of the House. All references to the Speaker in the Rules are deemed to be references to the Deputy Speaker when he presides.

WHAT ARE THE SPEAKER'S POWERS UNDER LAW DURING A REBELLION, AND HOW HAS THE SC INTERPRETED THESE?

The article below explains in detail the stance taken by Judiciary on whether “the Presiding Officer of a Legislative body can examine petitions under 10th Schedule when resolution for his/her own removal is pending on the floor of the house?” with special reference to observations of Supreme Court expressed in the Nabam Rebia v Bemang Felix case. The observations of Judiciary need to be compulsively included on all the answers which pertain to powers of Presiding Officers in context of Anti-Defection Act. Detailed analysis of Nabam Rebia v Bemang Felix case is necessary along with reasons for the observations of SC and also instances where Anti-Defection proceedings have been stalled by legislators by seeking removal of Presiding Officers in the meanwhile. One needs to clarify in his/her answer that first the removal motion against the Presiding Officer needs to be disposed and then the disqualification proceedings can be taken up by him/her/

While **granting interim relief to rebel MLAs** of the Shiv Sena, the Supreme Court made a crucial but unusual judicial intervention that raises questions on the powers of the Speaker under the Tenth Schedule of the Constitution. The Speaker's powers under the Tenth Schedule have been previously upheld by the Supreme Court itself; the court has allowed judicial review only once the Speaker has made a decision, and has ruled out interference with the process.

What does the interim order say?

- The interim order grants more time to the rebel MLAs to reply to the disqualification notice served on them. It seeks affidavits from them, and also a counter-affidavit from the Deputy Speaker on his removal as demanded by the rebels.
- In granting more time, the Supreme Court has essentially delayed the disqualification proceedings, which would have a direct impact on a trust vote in the Assembly, whenever it takes place.
- The issue of considering the removal of the Deputy Speaker himself is more complex and raises questions on the sanctity of the Tenth Schedule.

What does the Tenth Schedule say?

The Tenth Schedule or the anti-defection law, introduced in 1985, gives the Speaker of the House the power to disqualify legislators who 'defect' from the party. In the landmark case **Kihoto Hollohan versus**

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Zachillhu in 1992, the Supreme Court upheld the power vested in the Speaker and said that only the final order of the Speaker will be subject to judicial review.

Courts have refrained from interfering with the process itself.

However, a 2016 ruling of a Constitution Bench of the Supreme Court has shifted the balance on the powers of the Speaker. In the landmark **Nabam Rebia v Bemang Felix case**, concerning a constitutional crisis in Arunachal Pradesh then, a five-judge Bench of the SC limited the Speaker's powers.

What was the Nabam Rebia ruling?

- While the larger legal issue in the Nabam Rebia ruling was on the contours of the powers and limitations of the Governor, the issue of anti-defection also came up.
- On that point, the **Supreme Court held that it is “constitutionally impermissible” for a speaker to proceed with disqualification proceedings, if a no-confidence motion against him is pending.**
- *“The action of the Speaker in continuing, with one or more disqualification petitions under the Tenth Schedule, whilst a notice of resolution for his own removal, from the office of Speaker is pending, would ‘appear’ to be unfair. If a speaker truly and rightfully enjoys support of the majority of the MLAs, there would be no difficulty whatsoever, to demonstrate the confidence which the members of the State Legislature, repose in him,”* the Supreme Court ruled.
- This ruling gave a window to defecting legislators to stall or circumvent the Tenth Schedule by seeking removal of the Speaker when disqualification proceedings are anticipated — effectively tying the hands of the Speaker.

Use of this legal route by Legislators to escape from Anti-Defection Act?

- Since 2016, this legal route has been a familiar playbook for legislators cutting across states and political affiliations.
- In 2016, rebel MLAs of the Congress including **Vijay Bahuguna** sought removal of Uttarakhand Assembly **Speaker Govind Singh Kunjwal** after shifting ranks to the BJP to stall anti-defection proceedings.
- In 2018, **AIADMK legislator S Karunas** sent a notice to the Tamil Nadu Legislative Assembly Secretary K Srinivasan, seeking removal of **Speaker P Dhanapal** at a time when the AIADMK leadership was mulling action against Karunas and three other MLAs for having pledged their support to T T V Dhinakaran.
- In June 2020, the Congress in Manipur served a notice for the removal of **Speaker Y Khemchand** as nine of its MLAs defected to the BJP.

How can the Speaker be removed?

- Under **Article 179** of the Constitution, a Speaker can be removed by a resolution of the Assembly passed by a majority of **“all the then members of the Assembly”**. The process begins with **notice of at least 14 days**.

- In the 2016 Nabam Rebia ruling, the Supreme Court interpreted Article 179, specifically the term “**all the then members of the Assembly**”, to mean the composition of the house at the date/time of giving the notice for the removal of the Speaker.
- This interpretation would mean that **the composition of the Assembly cannot be changed from the date of issuing of a notice of the removal of the Speaker, and therefore the Speaker cannot make any decisions under the Tenth Schedule to change the composition of the House until the question of his removal is settled.**

What were the reasons for the Supreme Court’s 2016 decision?

- The Supreme Court’s reasoning in barring the Speaker from acting under the Tenth Schedule when a notice for his own removal is pending, is to ensure that the Speaker who disqualifies legislators must enjoy the confidence of the Assembly.
- *“After all, disposal of the motion under Article 179(c), would take no time at all. As soon as the motion is moved, on the floor of the House, the decision thereon will emerge, forthwith. Why would a Speaker who is confident of his majority, fear a floor test? After his position as Speaker is affirmed, he would assuredly and with conviction, deal with the disqualification petitions, under the Tenth Schedule. And, why should a Speaker who is not confident of facing a motion, for his removal, have the right to adjudicate upon disqualification petitions, under the Tenth Schedule?”* the Supreme Court had said in **Nabam Rebia**.
- This interpretation would mean defection is followed by an immediate floor test and not proceedings of the Tenth Schedule. A floor test is the ultimate step in ascertaining majority in the House, but legal experts have criticised that 2016 interpretation saying **it would not lead to ascertaining “real majority” that is determined after punishing defecting MLAs.**

GOVERNOR'S POWER TO CALL FOR A FLOOR TEST DURING POLITICAL CRISIS

The short article below explains who holds the power (Presiding Officer or Governor) to call for a floor test if there is a prima facie view that the government has lost its majority. The content can be quoted as an example of power/responsibility of both constitutional dignitaries, and one needs to explain that When the House is in session, it is the Speaker who can call for a floor test. But when the Assembly is not in session, the Governor's residuary powers under Article 163 allow him to call for a floor test. This content is critical in ensuring factual accuracy in answers dealing with questions on Floor Test, Discretionary Powers of Governors and Examination of the role played by Presiding Officers when the majority of the Government is in doubt along with possible questions on balance of power between the Highest Officer of the Legislature and the Executive Head of the State.

- Article **174(2)(b)** of the Constitution gives powers to the Governor to dissolve the Assembly on the aid and advice of the cabinet. **However, the Governor can apply his mind when the advice comes from a Chief Minister whose majority could be in doubt.**

In 2020, the Supreme Court, in **Shivraj Singh Chouhan & Ors versus Speaker, Madhya Pradesh Legislative Assembly & Ors**, upheld the powers of the Speaker to call for a floor test if there is a prima facie view that the government has lost its majority.

“The Governor is not denuded of the power to order a floor test where on the basis of the material available to the Governor it becomes evident that the issue as to whether the government commands the confidence of the House requires to be assessed on the basis of a floor test,” a two-judge bench of Justices D Y Chandrachud and Hemant Gupta said.

Under **Article 175(2)**, the Governor can summon the House and call for a floor test to prove whether the government has the numbers. In a detailed judgment, the Court also explained the scope of the power of the Governor and the law revolving around floor tests.

The Madhya Pradesh Governor was faced with a similar situation when MLAs in the **Jyotiraditya Scindia** camp had defected to the **BJP** and the then Congress Chief Minister **Kamal Nath** had asked the Governor to dissolve the Assembly.

The Governor instead called for a floor test.

When the House is in session, it is the Speaker who can call for a floor test. But when the Assembly is not in session, the Governor's residuary powers under Article 163 allow him to call for a floor test.

In its 2020 ruling, the Supreme Court had also discussed the right of a political party to access “captive” MLAs who were whisked away to a resort. While the Court did not allow such a right, it underlined that the MLAs are entitled to **“decide for themselves as to whether they should continue to be Members of the House when they lack faith in the incumbent government in the state.”** But that, the Court said, has to be done on the floor of the House.

“The spectacle of rival political parties whisking away their political flock to safe destinations does little credit to the state of our democratic politics. It is an unfortunate reflection on the confidence which political parties hold in their own constituents and a reflection of what happens in the real world of politics. Political bargaining, or horse-trading, as we noticed, is now an oft repeated usage in legal precedents,” the Court had said.

Previous Year Questions

1. Do the Lieutenant Governors have more powers than the Governors of the States? Explain. (/2018/200/ 15)
2. Critically examine the role of Governor in recent times. (2016/ 200/15)
3. Critically analyse the discretionary powers granted to the Governor by the Indian Constitution. (2015/200 /15)

WHAT IS THE SEDITION LAW, AND WHY SUPREME COURT'S FRESH DIRECTIVE IS IMPORTANT?

The below article talks in detail about the provisions and background of the Sedition Law. In order to tackle any argumentative question on Sedition law, one needs to quote the evolving opinion of judiciary on the matter through quoting the landmark judgments specially Kedar Nath Judgement and other subsequent cases. The reasons behind the recent directive of Supreme Court suspending/ pausing all the trials, appeals and proceedings need to be examined and all the factual content from the article including the judicial observations can be quoted in the answers in order to define the stance of Judiciary on the matter and also the changed and more conciliatory approach of the Executive on the issue.

The **Supreme Court** directed the Centre and states to **keep in abeyance all pending trials, appeals, and proceedings with respect to the charge framed under Section 124A of the Indian Penal Code (IPC)**, which deals with the offence of sedition, till the central government completes the promised exercise to reconsider and re-examine the provision.

The central government had initially defended the colonial provision, but later told the apex court it was reviewing it.

What is the sedition law?

Section 124A defines sedition as: ***“Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law shall be punished with imprisonment for life, to which fine may be added...”*** The provision also contains three explanations:

- The expression **“disaffection”** includes disloyalty and all feelings of enmity.
- Comments expressing condemnation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, **do not constitute an offence under this section.**
- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

What are the origins of the sedition law?

- Although **Thomas Macaulay**, who drafted the **Indian Penal Code**, had included the law on sedition, it was not added in the code enacted in 1860. Legal experts believe this omission was accidental. In 1890, sedition was included as an offence under **section 124A IPC through the Special Act XVII**.
- The punishment prescribed then, transportation “beyond the seas for the term of his or her natural life”, was amended to life imprisonment in 1955.
- The provision was extensively used to curb political dissent during the Independence movement. Several pre-independence cases involving Section 124A of the IPC are against celebrated freedom fighters, including **Bal Gangadhar Tilak, Annie Besant, Shaukat and Mohammad Ali, Maulana Azad and Mahatma Gandhi**. It is during this time that the most notable trial on sedition — **Queen Empress v. Bal Gangadhar Tilak** — took place in 1898.
- **The Constituent Assembly debated including sedition as an exception to the fundamental right to freedom of speech and expression, guaranteed in the Constitution, but several members vehemently disagreed and the word is not included in the document.**

Legal challenges to IPC Section 124A

- As early as 1950, the **Supreme Court** in **Romesh Thapar v State of Madras** held that “*criticism of the government exciting disaffection or bad feelings towards it, is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the state.*” Justice Patanjali Shastri cited the Constituent Assembly’s deliberate omission of the word sedition from the Constitution for the liberal reading of the law.
- Subsequently, two high courts — the **Punjab and Haryana High Court** in **Tara Singh Gopi Chand v. The State** (1951), and the **Allahabad High Court** in **Ram Nandan v. State of Uttar Pradesh** (1959) — declared that Section 124A of the IPC was primarily a tool for colonial masters to quell discontent in the country and declared the provision unconstitutional.
- However, in 1962, the issue came up before the Supreme Court in **Kedarnath Singh v State of Bihar**.

The Kedar Nath ruling on sedition

- A five-judge Constitution Bench overruled the earlier rulings of the high courts and upheld the constitutional validity of IPC Section 124A. However, the court attempted to restrict its scope for misuse.
- **The court held that unless accompanied by an incitement or call for violence, criticism of the government cannot be labelled sedition.** The ruling restricted sedition only insofar as seditious speech tended to incite “**public disorder**”- a phrase Section 124A itself does not contain but was read into it by the court.
- The court also issued seven “guidelines”, underlining when critical speech cannot be qualified as sedition. In its guidelines on using the new, restrictive definition of sedition law, the court said not all speech with “disaffection”, “hatred,” or “contempt” against the state, but only speech that is likely to incite “**public disorder**” would qualify as sedition.

- Following the **Kedar Nath verdict**, “**public disorder**” has been considered a necessary ingredient for the commission of sedition. **The court has held that mere sloganeering unaccompanied by any threat to public order would not qualify as sedition.**

Post Kedar Nath Judicial Observations

- This ruling in **Balwant Singh v. State of Punjab** (1995), reiterated that the real intent of the speech must be taken into account before labelling it seditious.
- In subsequent rulings — **Dr. Vinayak Binayak Sen v. State of Chhattisgarh** (2011), — the court also held that a **person can be convicted for sedition even if she is not the author of the seditious speech but has merely circulated it.**

In 2016, in **Arun Jaitley v State of Uttar Pradesh**, the Allahabad High Court held that **criticism of the judiciary or a court ruling** — former Union minister Arun Jaitley in a blog post had criticised the Supreme Court’s 2016 ruling declaring the National Judicial Appointments Commission unconstitutional — **would not amount to sedition.**

Successive reports of the Law Commission of India and even the Supreme Court, have underlined the rampant misuse of the sedition law. The Kedar Nath guidelines and a textual deviation in law puts the onus on the police who register a case to distinguish between legitimate speech from seditious speech.

Just last year, in **Vinod Dua v Union of India**, the Supreme Court quashed FIRs with charges of sedition against the journalist for criticising Prime Minister Narendra Modi’s handling of the Covid-19 crisis and cautioned against unlawful application of the provision.

Why & How Supreme Court’s order in latest case virtually stalls operation of sedition law?

By ruling that “it will be appropriate to continue” with the offence of sedition till the government reviews the provision, the Supreme Court while testing the constitutionality of Section 124A of the Indian Penal Code has raised the bar for the government to invoke the provision. In effect, the law on sedition is suspended till the court hears the case next.

“The case of the petitioners is that this provision of law dates back to 1898, and pre-dates the Constitution itself, and is being misused. The Attorney General had also, on an earlier date of hearing, given some instances of glaring misuse of this provision, like in the case of recital of the Hanuman Chalisa. Therefore, we expect that, till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the governments,” the court said in its order.

Although the court did not explicitly stay the provision — no criminal law in force has ever been stayed by the court — it virtually stalls the operation of the provision. For cases already pending trial, the court said they will *“be kept in abeyance”*, and on registering fresh cases, it said it would “hope and expect” that **governments would refrain from registering fresh FIRs, investigating cases or taking any coercive action against accused.**

“If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned courts for appropriate relief. The courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India,” the court added.

In underlining the possibility of fresh cases being registered despite the judiciary's refrain, the Supreme Court has put the onus on the government to ensure that frivolous cases of sedition are not filed to misuse the law. The central government told the court it would issue a directive to states and Union Territories on the new application of the sedition law.

Legal experts fear the language of "hope and expect" might not carry much water as it is often difficult for court rulings to trickle down to the lowest level of governance to curb misuse.

The court's shifting the burden of deciding the validity of the law to the government is also new territory. The government has not indicated whether Parliament or a separate committee will review the law.

The significant legal question of law before the Supreme Court is whether the 1962 ruling in **Kedar Nath Singh v Union of India** was correctly decided. The Kedar Nath Singh ruling, which upheld the constitutional validity of Section 124A, held that speech that is likely to incite disruption of public order would amount to sedition.

The correctness of that verdict — crucially whether a law on sedition can be an exception to free speech — will have to be decided by a seven-judge bench.

Ultimately, short of Parliament repealing the law on sedition, the court will have to decide the crucial question. Even diluting the provision or replacing it with a new law will have to pass the test of constitutionality before the court.

Previous Year Questions

1. Examine the evolution of the jurisdiction of the Supreme Court of India as a constitutional court. (2021/250/20)
2. Judicial Overreach in India. (2020/150/10)
3. Whether judicial activism has undermined or strengthened Parliamentary Democracy in India Discuss. (2018/250 /20)
4. Judiciary has acquired the role of both, a legislature, and an executive in recent years. Examine with suitable examples. (2017/ 250 /20)
5. Discuss the efficacy of judicial review in India. (2015/250 /20)
6. Examine the role of Supreme Court as the final interpreter of the Indian Constitution. (2013/ 200 /15)

HINDUS AS MINORITY: GOVT'S AFFIDAVIT ON THE MATTER AND HOW IT IS CONSISTENT WITH THE CONSTITUTION

The below article explains in detail all the factual aspects of the debate of recognition as a minority in India and why the Government of India has gone against the recommendation/observations of judiciary on the matter. One has to quote accurately the constitutional provisions on the matter and role of National Commission of Minorities as well along with Judicial intervention on the matter. Questions can be asked on definition of minorities in India and how the same will be affected with the latest affidavit furnished by Government. What alternative approaches can be adopted for recognition of minorities also has been discussed.

This week, the **Government of India submitted a detailed affidavit in the Supreme Court** on the issue of who is a minority, and how minorities are defined in the Constitution. This affidavit complicates the claim of “**minority appeasement**” — after all, if Hindus too are a minority (in some places) as the affidavit rightly states, how can schemes of minority welfare be criticised as “appeasement”?

Government's Affidavit

- The government has sought the dismissal of the petition filed in 2020 by lawyer Ashwini Upadhyay — the affidavit says Hindus can be declared a minority in a few states, and **minority welfare schemes are not in violation of Article 15 that prohibits discrimination “only on the basis of religion”**; the schemes are for the benefit of the poorer sections among minorities, and the government has a duty under Articles 38 and 46 to protect the interests of the weaker sections of the people.

Prof Faizan Mustafa, Vice-Chancellor of NALSAR University of Law on the matter :

- *The government has also defended Parliament's jurisdiction to enact The National Commission for Minorities Act, 1992, and The National Commission for Minority Educational Institutions Act, 2005. The affidavit says minorities are defined both nationally and at the level of states.*
- *In an earlier petition filed by Upadhyay in the same matter, the Supreme Court had referred the issue of grant of minority status to Hindus to the NCM.*

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- *A subcommittee set up by the NCM had in 2019 rejected all the prayers, viz., declaration of Hindus as a minority in states where they are not in majority.*
- *The government's affidavit this week suggests it has now gone against the views of the NCM.*

The definition of minority

- **“Minorities” (or “minority”) appears at four places in the Constitution — in the headnotes of Articles 29 and 30, and clauses (1) and (2) of Article 30. The Constitution does not define “minority”.**
- The most obvious definition of minorities (and majorities) is in terms of numbers — a minority is a group that is numerically smaller than the majority in a society. But the preponderance or the lack of numbers alone is not a guide to any authoritative definition. In apartheid South Africa, minorities exercised power and domination over the rest of the society.
- In some countries, the numerical line dividing minority and majority is so thin that it may be impossible to delineate a minority group. Alternatively, a society may be composed of different groups, none of which forms a minority, numerically speaking. The criterion of numbers may be important, but it is not a sufficient condition for any definition of a minority.
- A second component of the definition of minority is that the group must be non-dominant in society and the polity. A group can be conceptualised as a minority when its values and worldviews are either not reflected at all, or are insufficiently reflected in the public sphere and in the constitution of societal norms. These factors reinforce each other — marginalisation and exclusion are extremely important.
- Muslims satisfy both the tests, viz. numerical inferiority and non-domination. Their representation in Parliament and state Assemblies is at an all-time low.
- But numerical size and non-dominance may not necessarily result in a minority/majority problem. A group may be numerically smaller than the others, and its values may be incompletely reflected in dominant political or social norms, but this may not lead to despondency or a feeling of exclusion. Parsis are a good example.
- The Constitution talks of only religious and linguistic minorities. It does not recognise sexual minorities such as LGBTQ+.
- Also, the Supreme Court has accepted only the numerical inferiority test, i.e., less than 50% in a state's population, for a group to be recognised as minority under Article 30(1).

What does the Constitution say about minorities?

- **Article 29**, which deals with the **“Protection of interests of minorities”**, says that “any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”, and that “no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them”.

- **Article 30** deals with the “right of minorities to establish and administer educational institutions”. It says that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It says that “in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority..., the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause”, and that “the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language”.
- **Article 350(A)** says there shall be a **Special Officer for linguistic minorities** to be appointed by the President. “It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned”.

So, who is a minority in India?

Currently, only those communities notified under **section 2(c) of the National Minorities Commission Act, 1992**, by the central government are regarded as minority.

And which are the minorities notified by the Government of India?

In the exercise of its powers under the Section 2(c) of the NCM Act, the Centre on October 23, 1993, notified five groups — Muslims, Christians, Sikhs, Buddhists and Parsis — as ‘minority’ communities. Jains were added to the list in January 2014.

Supreme Court judgments, Legislations and Constitutional Provisions on the matter

- In ‘**Re: The Kerala Education Bill**’ (1958) a seven-judge bench explicitly rejected districts as a unit to determine the minority status of a group within the state of Kerala. The apex court took the “state” as a unit to determine the minority status of groups claiming themselves as minorities.
- The 11-judge bench in ‘**TMA Pai Foundation**’ (2003) laid down that in the absence of any special definition of “minorities”, any community, religious or linguistic, which is numerically less than 50 per cent of the population of a state is entitled to the protection of minority rights.
- The Supreme Court has consistently observed that minorities are to be defined at the level of states, which were carved out on linguistic basis, as Article 30 uses the words “**minorities, whether based on religion or language**”.
- **Article 30** gives the same rights to religious and linguistic minorities, but does not say that these minorities must necessarily be determined at the level of the state.
- In its 2019 report, the NCM said that under section 2 of the NCM Act, 1992, the Centre alone is entitled to notify a community as a religious minority. This was not consistent with the law laid down by the apex court, and the Centre’s March 25 affidavit has cited the example of the Maharashtra government under Devendra Fadnavis, which in 2016 recognised Jews as a minority in the state.

- Two views are possible as to the recognition of minorities. One approach can be to define religious minorities nationally and linguistic minorities on the basis of the state. The Government of India under the NCM Act has already notified some religious groups as religious minorities for the entire country.
- The second approach can be to accept the dissenting opinion of **Justice Ruma Pal** in TMA Pai Foundation. The learned judge had observed that whether or not a group is a minority must be determined in relation to the source and territorial application of the particular legislation against which protection is claimed. **If a law of Parliament is being challenged, minorities must be defined nationally; if it is a state law, then minorities must be determined at the state level keeping in view numerical inferiority within the state concerned.**
- In an erroneous decision in 2005, the Allahabad High Court held that Muslims are not a minority as they are too many in number, and also quite powerful. The **'threat of extinction'** test is not relevant here. The court also held that no one is a minority in India, and thus made minority rights irrelevant.
- In a controversial judgment, the Supreme Court had in **'Bal Patil'** (2003) refused to recognise Jains as a minority. A three-judge bench not only went against larger bench judgments but also negated the constitutional vision of the preservation of distinctive identities.
- The court said that no new religious group is to be recognised as a minority, and that the NCM must work towards reducing the list of religious minorities and finally do away with it altogether. This was a call for assimilation — but our Constitution wants integration, not assimilation.
- Article 25 does not give freedom of religion only in respect of existing religions. It does not bar the birth of new religions. New religions can come into existence, and such groups may be recognised by the government as religious minorities.
- In 1930, the erstwhile Permanent Court of International Justice (PCIJ) had defined community not in terms of numbers, but in terms of shared religious, racial, and linguistic traditions, traditions that the group wished to preserve and perpetuate through rituals, education, and socialisation of the young. The existence of a community is not dependent upon recognition by law, the PCIJ observed.
- In **N Ammad (1998)**, the Supreme Court rightly held that minority status is a matter of fact, and does not require state recognition or declaration.

Previous Year Questions

1. Comment on: Secularism in the Indian Constitution. (2015/150/10)
2. What are the provisions for constitutional protection of right to freedom of religion and how far have they succeeded in promoting secularism in India? (2014/200 /15)

THE LEGAL ASPECTS OF UNIFORM CIVIL CODE

The article below explains the factual background of the debate on the Uniform Civil Code and the various legal challenges associated with the idea due to the nature of wording used in Article 44. A careful reading of Article 44 and word by word interpretation has been provided and the same can be used in 15 mark and 20 mark Question Answers to elaborate on the exact intent of the Constitution makers on the matter. The immense diversity which exists in personal laws not just across religions but even states has been explained which can be used as an argument for a more deliberative and participative approach on the matter by the State.

Many appear to believe that a UCC would remove all inequalities in one stroke and create a gender-just society. But it is important to understand that “formal equality” cannot bring about a radical change; what society needs is “substantive equality”.

Background of the issue: Hindu Code Bill

- The Hindu Code Bill Committee was constituted in 1941 but it took 14 years to pass the legislation — and not as one uniform Act but as three different ones: Hindu Marriage Act, 1955; Hindu Succession Act, 1956; and Hindu Adoption & Maintenance Act, 1956.
- Moreover, not all reforms could be incorporated because of opposition from the Hindu right. Even Congress leaders such as **Sardar Vallabhbhai Patel**, **Pattabhi Sitaramayya**, **M A Ayyangar**, **Madan Mohan Malaviya** and **Kailash Nath Katju** opposed such reforms. In the debate on the Hindu Code Bill in 1949, 23 of the 28 speakers opposed it.
- In 1949, the Hindu right formed an **All-India Anti Hindu Code Bill Committee** under the leadership of **Swami Karpatriji Maharaj**, who justified unregulated polygamy. **Geeta Press's Kalyan magazine** published a number of articles that favoured polygamy, opposed the daughter's right to inheritance and questioned the Constituent Assembly's right to legislate on religious matters.
- **Syama Prasad Mookerjee**, later founder of the Bharatiya Jana Sangh, said in Parliament that instead of the Hindu Code Bill, the government should bring a UCC.

- While there was substance in this argument, reforming the majority community's laws is easier than reforming those of the minorities. Several Muslim countries, including Pakistan, have been able to reform Muslim laws but not the laws of their minority communities.
- Dr B R Ambedkar had to resign as Law Minister. On September 15, 1951, **President Dr Rajendra Prasad** threatened to return the Bill or veto it. PM Jawaharlal Nehru yielded; the Bill was not passed.
- When eventually passed after several years, it did not give daughters a share in a Hindu joint family's property. This amendment came in 2005, during the UPA regime.

Reading Article 44

- **Article 44** of the Constitution says the state shall endeavour to secure for citizens a uniform civil code throughout the territory of India.
- The definition of 'State', as given in Article 12, includes the government and Parliament of India and the government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India.
- If state means state government or local or other authorities, does it mean states or local authorities can make a uniform civil code for the whole of India? It would be ridiculous to say the Uttarakhand Assembly or Dehra Dun Municipal Corporation could make a UCC for the entire country.
- **The Constitution's framers used the term "uniform" in Article 44 and not "common", because "common" means "one and the same in all circumstances", while "uniform" means "the same in similar conditions".**
- **Different people may have different laws, but the law within a particular group should be uniform. Such a classification is permissible even under the right to equality under Article 14.**
- "Civil" means matters where personal rights (not public rights) are in question —such as a contract, or sale and purchase of goods/services or properties.
- Even "code" does not necessarily mean one single law in every circumstance. It may mean either one enactment such as Indian Penal Code, or the Hindu Code Bill that includes three different Acts.
- While Article 44 uses the phrase "**state shall endeavour**", other Articles in the 'Directive Principles' chapter use expressions such as "in particular strive"; "shall take steps"; "shall promote with special care"; "shall in particular direct its policy"; "shall regard its primary duty"; "shall be obligation of the state" etc.
- All of these mean that the duty of the court is far greater in other directive principles than in Article 44.
- While Article 43 mentions that the "state shall endeavour by suitable legislation", the phrase "by suitable legislation" is absent in Article 44, which indicates that the framers did not intend enactment of uniform civil code by a single legislation.

Diversity in personal law

- It is erroneous to assume that India has different personal laws because of religious diversity. As a matter of fact, the law differs from state to state.

- **Under the Constitution, the power to legislate in respect of personal laws rests with both Parliament and state Assemblies.**
- Preservation of legal diversity seems to be the reason for inclusion of personal law in the Concurrent List (entry No. 5). Had uniformity of laws been the primary concern, personal laws would have been included in the Union List with Parliament having the exclusive jurisdiction to enact laws on these subjects.
- Bringing amendments to central personal laws with enactments such as the Hindu Marriage Act is possible under entry No. 5, but this power cannot be stretched to include enactment of a uniform civil code for the whole of India.
- Once a legislative field is occupied by parliamentary legislation, states do not have much freedom to enact laws. Such laws would require Presidential assent under Article 254.
- It is also a myth that Hindus are governed by one uniform law. Marriage among close relatives is prohibited in the north but considered auspicious in the south. Lack of uniformity in personal laws is also true of Muslims and Christians. The Constitution itself protects local customs of Nagaland, Meghalaya and Mizoram.
- As an example, take Goa, often cited as a state that already has a UCC. But Hindus of Goa are still governed by the Portuguese Family and Succession Laws.
- The reformed Hindu Law of 1955-56 is not applicable to them, and unreformed Shastric Hindu law on marriage, divorce, adoption and joint family remains valid.
- The Shariat Act of 1937 is yet to be extended to Goa, and the state's Muslims are governed by Portuguese law as well as Shastric Hindu law but not by Muslim Personal Law.
- Even the Special Marriage Act, a sort of progressive civil code, has not yet been extended there.

While certain parties favour a UCC to ensure equality, reforms in Hindu law have not completely removed gender discrimination. The amount of land actually inherited by Hindu women is a small fraction of what they are entitled to under reformed Hindu law. Even when they inherit land, it is invariably much less than an equal share. The power of will is used to give the entire property to sons.

The Way Forward

- one way forward could be to constitute a Muslim Law Reforms Committee, Tribal and Indigenous Law Reform Committee, Christian & Parsi Law Reforms Committees, just like the Hindu Law Reforms Committee formed in 1941. Based on their recommendations, it could take the reforms process forward.
- The goal of a UCC should ideally be reached in piecemeal manner, like the recent amendment on the age of marriage. A just code is far more important than a uniform code.

Previous Year Questions

1. Comment on the relevance of the Directive Principles of State Policy in an era of liberalization and globalization. (2019/200 /15)
2. Comment on: Secularism in the Indian Constitution. (2015/150/ 10)
3. Comment on: Increasingly higher focus on Directive Principles of State Policy (2014/150 /10)

THE BAIL LAW AND SUPREME COURT CALL FOR REFORM

The below article would be specially useful for answering questions on reform of the Justice system in India specially Criminal Justice mechanism. The existing provisions and their comparison with the UK law can be quoted to show the inadequacies of the existing rules and then students can extensively quote the judicial observations on the matter along with suggestions for reform. The same can also be quoted in answers for question related to judicial pendency as reform in bail law would result in drastic decrease in number of bail applications pending with higher courts thus reducing the incoming backlog. Role of magistrates and judicial officers has also been highlighted.

The Supreme Court underlined that **“there is a pressing need”** for reform in the law related to bail and called on the government to consider framing a special legislation on the lines of the law in the United Kingdom.

What is the ruling about?

- Referring to the state of jails in the country, where over two-thirds lodged are undertrials, the Supreme Court underlined that arrest is a draconian measure that needs to be used sparingly. **“Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offense, being charged with offenses punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offense being inherited by many of them,”** the court said.
- Theoretically, the court also linked the idea of indiscriminate arrests to magistrates ignoring the rule of “bail, not jail” to a colonial mindset. The Code of Criminal Procedure (CrPC) was first drafted in 1882 and continues to be in use with amendments from time to time. **“Our belief is also for the reason that the Code as it exists today is a continuation of the pre-Independence one with its modifications,”** the Court said.

What is the law on bail?

- The CrPC does not define the word bail but only categories offences under the Indian Penal Code as ‘bailable’ and ‘non-bailable’.

- The CrPC empowers magistrates to grant bail for bailable offences as a matter of right. This would involve release on furnishing a bail bond, without or without security.
- Non-bailable offences are cognisable, which enables the police officer to arrest without a warrant. In such cases, a magistrate would determine if the accused is fit to be released on bail.

And what is the UK law?

- **The Bail Act of the United Kingdom, 1976**, prescribes the procedure for granting bail. A key feature is that one of the aims of the legislation is “**reducing the size of the inmate population**”. The law also has provisions for ensuring legal aid for defendants.
- The Act recognises a “general right” to be granted bail. Its Section 4(1) raises the presumption of bail by stating that the law applies to a person who shall be granted bail except as provided in Schedule 1 to the Act.
- For rejecting bail, the prosecution must show that grounds exist for believing the defendant on bail would not surrender to custody, would commit an offence while on bail, or would interfere with witnesses or otherwise obstruct the course of justice; unless the defendant must be detained for his own welfare or protection; or in other circumstances.

What has the Supreme Court held on reforms?

The court’s ruling is in the form of guidelines, and it also draws the line on certain procedural issues for the police and judiciary.

Separate Law for Bail:

- The court underlined that the CrPC, despite amendments since Independence, largely retains its original structure as drafted by a colonial power over its subjects. The court made this point to signal that despite its rulings, structurally, the Code does not account for arrest as a fundamental liberty issue in itself.
- It also highlighted that magistrates do not necessarily exercise their discretionary powers uniformly. ***“Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offense shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India,”*** the Court said.
- The court’s solution on this is the framing of a separate law that deals with the grant of bail.

Indiscriminate Arrests:

- The court noted that the culture of too many arrests, especially for non-cognisable offences, is unwarranted. It emphasised that even for cognisable offences, arrest is not mandatory and must be “necessitated”.

- *“Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured,”* the court said.
- **It held that lower courts must satisfy that these conditions are met and “Any non-compliance would entitle the accused for grant of bail”.**

Direction To States:

- The SC also directed all state governments and Union Territories to facilitate standing orders to comply with the orders and avoid indiscriminate arrests. The CBI has already communicated earlier orders of the Court to special judges under its jurisdiction.
- *“We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years,”* the court said.

HATE SPEECH, IPC SEC 295A, AND HOW COURTS HAVE READ THE LAW

The short article below explains the various provisions related to hate speech in India and the specific grounds on which they are invoked. For bigger word limit answers, the colonial background of the provisions also can be mentioned as an introduction to the answer. The relevant judgements have been enumerated and the same need to be quoted in answer for any argumentative and opinion based question on hate speech.

India does not have a formal legal framework for dealing with hate speech. However, a cluster of provisions, loosely termed hate speech laws, are invoked. These are primarily laws to deal with offences against religions.

Provisions in the Indian Penal Code (IPC), primarily Section 295A, define the contours of free speech and its limitations with respect to offences relating to religion.

Section 295A & others

- **Section 295A** defines and prescribes a punishment for deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. *“Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both,”* the IPC section reads.
- Section 295A is one of the key provisions in the IPC chapter to penalise religious offences. Section 295A has been invoked on a wide range of issues from penalising political satire and seeking bans on or withdrawal of books to even political critique on social media.
- The state often invokes Section 295A along with **Section 153A of the Indian Penal Code**, which penalises promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc, and doing acts prejudicial to maintenance of harmony and **Section 505 of the IPC** that punishes statements conducing to public mischief.

- In cases where such speech is online, **Section 66A of the Information Technology Act** that punishes sending offensive messages through communication services is added. **In a landmark verdict in 2015, the Supreme Court struck down Section 66A as unconstitutional on the ground that the provision was “vague” and a “violation of free speech”. However, the provision continues to be invoked.**
- The broad, vague terms in the laws are often invoked in its misuse. Lower conviction rates for these provisions indicate that the process — where a police officer can arrest without a warrant — is often the punishment. Critics have pointed out that these laws are intended for the state to step in and restore “public order” rather than protect free speech.

Origins of the law

- Colonial origins of the hate speech provisions are often criticised for the assumption that Indians were susceptible to religious excitement.
- In a 2016 paper in the Economic and Political Weekly, legal scholar **Siddharth Narrain** notes that the **First Indian Law Commission, headed by T B Macaulay who drafted the Indian Penal Code, had written to the Governor General of India in 1835 that “there is perhaps no country in which the Government has so much to apprehend from religious excitement among the people.”** Section 295A was brought in 1927.
- In his book *Offend, Shock or Disturb*, lawyer **Gautam Bhatia** writes that the antecedents of Section 295A lie in the **“communally charged atmosphere of North India in the 1920s”**.
- The amendment was a fallout of an acquittal under Section 153A of the IPC by the Lahore High Court in 1927 in *Rajpaul v Emperor*, popularly known as the **Rangila Rasool case**.

Later Cases

- In 1957, the constitutionality of Section 295A was challenged in **Ramji Lal Modi v State of Uttar Pradesh**. The Supreme Court upheld the law on the grounds that it was brought in to preserve “public order”. Public order is an exemption to the fundamental right to freedom of speech and expression and the right to religion recognised by the Constitution.
- In a 1960 ruling, in **Baba Khalil Ahmed v State of Uttar Pradesh**, the Supreme Court said that “malicious intent” of the accused can be determined not just from the speech in question but also from external sources.
- In 1973, in **Ramlal Puri v State of Madhya Pradesh**, the Supreme Court said the test to be applied is whether the speech in question offends the “ordinary man of common sense” and not the “hypersensitive man”. However, these determinations are made by the court and the distinction can often be vague and vary from one judge to the other.

- In **Baragur Ramachandrappa v State of Karnataka**, a 2007 decision of the Supreme Court, “a pragmatic approach” was invoked in interpreting Section 295A. The state government had issued a notification banning Dharmakaarana, a Kannada novel written by award-winning author P V Narayana on the ground that it was hate speech, invoking a gamut of provisions including Section 295A. The pragmatic approach was to restore public order by “forfeiture” of a book over individual interest of free speech

Previous Year Questions

1. Comment on: Judicial activism and social change. (2012/150 /10)

HOW ELECTORAL BONDS WORK, AND WHY THEY FACE CRITICISM

A short article on the exact working mechanism of the electoral bonds for a straightforward question on the topic. One also needs to explain why the bonds were introduced in the first place and what are the exact issues related to transparency of funding and anonymity of the donors with the present mechanism.

- A donor can then give this bond (just one, if the denomination chosen is Rs 10 lakh, or 10, if the denomination is Rs 1 lakh) to the party or parties of their choice.

Chief Justice of India N V Ramana has assured petitioners that **the Supreme Court will take up for hearing** a pending plea challenging the Electoral Bond Scheme, 2018. Two NGOs — **Common Cause** and **Association for Democratic Reforms (ADR)** — have challenged the scheme, alleging that it is “distorting democracy”.

What are electoral bonds?

Simply put, electoral bonds are an instrument through which anyone can donate money to political parties. Such bonds, which are sold in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore, can be bought from authorised branches of the State Bank of India.

As such, a donor is required to pay the amount — say Rs 10 lakh — via a cheque or a digital mechanism (cash is not allowed) to the authorised SBI branch.

The donor can then give this bond (just one, if the denomination chosen is Rs 10 lakh, or 10, if the denomination is Rs 1 lakh) to the party or parties of their choice.

The political parties can choose to encash such bonds within 15 days of receiving them and fund their electoral expenses. On the face of it, the process ensures that the name of the donor remains anonymous.

When were electoral bonds introduced and why?

The central idea behind the electoral bonds scheme was to bring about transparency in electoral funding in India. In the Union Budget speech on February 1, 2017, then Finance Minister Arun Jaitley stated: “*Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections...Political parties continue to receive*

most of their funds through anonymous donations which are shown in cash. An effort, therefore, requires to be made to cleanse the system of political funding in India.”

In response, he proposed two main changes. One, he reduced the amount of money that a political party could accept in cash from anonymous sources — from Rs 20,000 to Rs 2,000. Two, he announced the introduction of electoral bonds as a way to make such funding more transparent.

Formally, these bonds were introduced in 2018.

Why have electoral bonds attracted criticism?

- The central criticism of the electoral bonds scheme is that it does the exact opposite of what it was meant to do: bring transparency to election funding. For example, critics argue that the anonymity of electoral bonds is only for the broader public and opposition parties.
- The fact that such bonds are sold via a government-owned bank (SBI) leaves the door open for the government to know exactly who is funding its opponents. This, in turn, allows the possibility for the government of the day to either extort money, especially from the big companies, or victimise them for not funding the ruling party — either way providing an unfair advantage to the party in power.

Critics such as Anjali Bhardwaj, co-convenor of the National Campaign for People’s Right to Information, have noted that more than 75 per cent of all electoral bonds have gone to the BJP, which is in power at the Centre.

Further, one of the arguments for introducing electoral bonds was to allow common people to easily fund political parties of their choice but more than 90% of the bonds have been of the highest denomination (Rs 1 crore).

Moreover, before the electoral bonds scheme was announced, there was a cap on how much a company could donate to a political party: 7.5 per cent of the average net profits of a company in the preceding three years. However, the government amended the Companies Act to remove this limit, opening the doors to unlimited funding by corporate India, critics argue.

SHORT NOTE ON HISTORICAL BACKGROUND OF CENTRE-STATE TENSIONS

A brief write up for the background of Centre State Relations and associated conflicts and tensions and how the States have attempted to resist the alleged centralising tendencies of the Union in the past decades. Content to be used for factual supplementation for 15 or 20 mark questions on the evolution of Indian Federalism and nature of Centre State Relations.

- The recent pushback by opposition chief ministers against alleged centralising tendencies of the BJP government recall similar efforts made by opposition CMs several decades ago — their target then was Indira Gandhi's Congress government at the Centre.

Soon after becoming CM in 1969, Stalin's father, **M Karunanidhi**, spoke about setting up an expert committee to study Centre-state relations. Months later, his government appointed a committee headed by **P V Rajamannar**, former Madras High Court Chief Justice, which, in its report submitted in 1971, recommended that **"the Inter-State Council should be constituted immediately"**. (Article 263 of the Constitution provides for the setting up of the Council "if at any time it appears to the President that the public interests would be served by [its] establishment". The Council was ultimately set up in 1990.)

The next time opposition CMs rallied against the Centre was in 1983. **Since returning to power in 1980, Indira had dismissed nine state governments, leading to what Granville Austin called the constitutional revolt of 1983.**

On March 20 that year, Ramakrishna Hegde (Karnataka), M G Ramachandran (Tamil Nadu), N T Rama Rao (Andhra Pradesh), and D Ramachandran (Pondicherry) met in Bangalore. A white paper issued after the meeting demanded more powers for states, and abolition of the post of Governor. It was also decided to form a council of southern CMs.

On May 28, NTR convened a meeting of 14 non-Congress parties in Vijayawada. Among those who attended were L K Advani of the BJP, Maneka Gandhi of the Sanjay Vichar Manch, S S Barnala of the Akali Dal, Sharad Pawar of the Congress (S), Basavapurnaiah of the CPI-M, and Farooq Abdullah of the National Conference. The meeting passed a resolution demanding the abolition of Article 356.

A statement issued at a meeting of non-Congress leaders convened by Farooq Abdullah from October 5-7 said: **"Unitary features (of the Constitution) have increasingly come to overshadow its federal features."** Among the attendees was A B Vajpayee.

CONG, BJP: ROLES REVERSED

- Three decades later, two successive full-majority governments in Delhi are triggering similar frictions. Strong, adversarial CMs are challenging the Centre, and pushing back against its policies.
- With the BJP in power and the Congress seriously weakened, the roles have been reversed. A lot of the criticism against the Centre's alleged high-handedness today echoes the denunciation of Indira's Congress years ago.
- Interestingly enough, even while in the opposition, the BJP was never against the idea of a strong Centre —what it opposed was the way in which Indira used the unitary bias in the Constitution.
- Among the issues that current non-BJP CMs have raised are **the alleged centralising drive in education, partisanship of Governors, the new electricity policy, the general weakening of federal principles in the fiscal, economic, and legislative spheres, and the distribution of revenues.**
- Kerala, Tamil Nadu, West Bengal, Maharashtra, and Delhi **have protested against the proposed changes in the All India Service rules of IAS and IPS officers.** Ten opposition parties have objected.
- Responding to the criticism, Indira had appointed the **Justice R S Sarkaria commission** to examine Centre-state relations. It began its work in February 1984, and submitted its 600-page report in October 1987.
- Some of its recommendations have been adopted, but many remain pending. The Supreme Court has urged the Centre on several occasions to implement the recommendations on the selection and appointment of Governors.

Are there shortcomings or grey areas in the Constitution itself that have allowed the repeated misuse of the Centre's powers?

Not quite, wrote the jurist Nani A Palkhivala: *"The problem has arisen today in an acute form because over a period of years the Centre has acted in a manner in which at best has been contrary to the spirit of the Constitution and at worst has been tantamount to a fraud upon the Constitution... The truth of the matter is that it is a noble Constitution which has been worked in an ignoble spirit."*

Previous Year Questions

1. Indian federation has moved from cooperative federation to competitive federation. Discuss. [2017/10m/150w/5c]
2. Identify the contested areas in centre state relations in India. [2015/15m/200w/7b]
3. Discuss mechanism for settling inter-state disputes. [2020/10m/150w/5e]
4. The philosophy and administration of the distribution of powers between centre and state is required to be re-accessed. [2016/10m/150w/5e]

GOVERNOR'S POWERS, FRICTION WITH STATES, AND WHY THIS HAPPENS OFTEN

The below article provides critical factual data and quotes to be used in questions related to the post of Governor and its critical examination in context of role played by them in Indian Federal politics. Students are advised to prepare a list of examples of constitutional and political conflict between State Council of Ministers and Governors both from recent times and from post 1967 era. The scholarly and institutional commentaries and observations need to be quoted to summarize/conclude/introduce such answers and recommendations of NCRWC and Sarkaria Commission need to be included without fail as suggestions on the topic.

- In recent years, the bitterness between states and Governors have been largely about the **selection of the party to form a government, deadline for proving majority, sitting on Bills, and passing negative remarks on the state administration**
- **West Bengal Chief Minister Mamata Banerjee** blocked **Governor Jagdeep Dhankhar** on Twitter. She said she was “forced” to do so because of his “**unethical and unconstitutional**” statements and accused him of treating government officials like “his servants”. Dhankhar responded with a series of tweets on the “**essence and spirit of democracy**” and saying the **CM’s move was “against constitutional norms”**.
- Days earlier, the Tamil Nadu government had taken exception to **Governor R N Ravi’s Republic Day** speech articulating the benefits of NEET, the medical entrance exam. Tamil Nadu has passed a Bill to exempt the state from NEET; Ravi has sent it back to the state. These are two of many examples of bitterness between states and Governors.

What is the law on Governor-state relations?

- Although envisaged as an apolitical head who must act on the advice of the council of ministers, the Governor enjoys certain powers granted under the Constitution, such as giving or withholding assent to a Bill passed by the state legislature, or determining the time needed for a party to prove its majority, or which party must be called first do so, generally after a hung verdict in an election.

- There are, however, no provisions laid down for the manner in which the Governor and the state must engage publicly when there is a difference of opinion. The management of differences has traditionally been guided by respect for each other's boundaries.

What have been the friction points?

- In recent years, these have been largely about the selection of the party to form a government, deadline for proving majority, sitting on Bills, and passing negative remarks on the state administration.
- In November 2018, then **J&K Governor Satyapal Malik** dissolved the Assembly amid indications that various parties were coming together to form the government. This paved the way for the Centre to later bifurcate state into two Union territories, by considering the Governor as the government.
- In November 2019, after a hung verdict in Maharashtra, **Governor Bhagat Singh Koshiyari** quietly invited BJP leader **Devendra Fadnavis** and administered him oath as CM. This government lasted just 80 hours. Six months later, Koshiyari refused to nominate CM Uddhav Thackeray to the Legislative Council, leading Thackeray to meet PM Narendra Modi to resolve the issue.
- In West Bengal, **Dhankhar** has often commented on law and order and political violence. Ravi, in his previous stint as Nagaland Governor, had criticised affairs of the state and allegedly interfered in administration.
- In December 2020, **Kerala Governor Arif Mohammed Khan** turned down a request to summon a special sitting of the Assembly to debate the three central farm laws.
- Following the Karnataka polls in 2018, **Governor Vajubhai Vala** invited the BJP to form the government and gave B S Yeddyurappa 15 days to prove majority. Challenged by Congress and JDS in the Supreme Court, it was reduced to three days.

Is such friction recent?

- Allegations of the Centre using the Governor's position to destabilise state governments have been made since the 1950s.
- In 1959, **Kerala's E M S Namboodiripad** government was dismissed based on a report by the Governor.
- Several state governments have been dismissed since then, including 63 through President's Rule orders issued by Governors between 1971 and 1990.
- These have include the **Birender Singh government in Haryana (1967); Virendra Patil government in Karnataka (1971); M Karunanidhi government in Tamil Nadu (1976); B S Shekhawat government in Rajasthan and SAD government in Punjab (1980); Janata Party governments in UP, Odisha, Gujarat and Bihar (1980); N T Rama Rao government in Andhra in (1984); and Kalyan Singh governments in UP (1992, 1998)**. These became less frequent during the coalition era at the Centre and the emergence of strong regional parties.

Why does this happen?

- ***“Because Governors have become political appointees,”*** said NALSAR chancellor and constitutional expert Faizan Mustafa. ***“The Constituent Assembly envisaged governor to be apolitical. But politicians become Governors and then resign to fight elections.”***
- Constitutional expert Alok Prasanna of Vidhi Centre for Legal Policy said: ***“The CM is answerable to the people. But the Governor is answerable to no one except the Centre. You can sugarcoat it with ideas of constitutional morality and values, but the truth is there is a fundamental defect in the Constitution.”***
- There is no provision for impeaching the Governor, who is appointed by the President on the Centre’s advice. While the Governor has 5-year a tenure, he can remain in office only until the pleasure of the President.
- In 2001, the **National Commission to Review the Working of the Constitution**, said, ***“... because the Governor owes his appointment and his continuation in the office to the Union Council of Ministers, in matters where the Central Government and the State Government do not see eye to eye, there is the apprehension that he is likely to act in accordance with the instructions, if any, received from the Union Council of Ministers... Indeed, the Governors today are being pejoratively called the ‘agents of the Centre’.”***
- In the Constitution, there are no guidelines for exercise of the Governor’s powers, including for appointing a CM or dissolving the Assembly. There is no limit set for how long a Governor can withhold assent to a Bill.

What reforms have been suggested?

- From the Administrative Reforms Commission of 1968 to Sarkaria Commission of 1988 and the one mentioned above, several panels have recommended reforms, such as **selection of the Governor through a panel comprising the PM, Home Minister, Lok Sabha Speaker and the CM, apart from fixing his tenure for five years. Recommendations have also been made for a provision to impeach the Governor by the Assembly.**
- No government has implemented any of these recommendations.

Previous Year Questions

1. Do the lieutenant governors have more power than the governor of the states? Explain. [2018/15m/200w/6b]
2. In normal conditions, the Governor is a constitutional executive but in case of constitutional crisis, he can become a powerful and effective executive. Discuss. [2011/30m/6b]
3. Critically examine the role of governor in recent times. [2016/15m/200w/7b]
4. Critically analyse the discretionary powers granted to the governor by the Indian constitution. [2015/15m/200w/6b]

WHAT IS THE SIXTH SCHEDULE, AND CAN LADAKH BE INCLUDED UNDER IT?

The short article below explains the recent and growing demand from Ladakh to be included in the 6th Schedule and what are the background factors and reasons for the same. While discussing the topic, one has to also explain what are the exact benefits of being covered under the 6th Schedule and why the demand of Ladakh also poses several challenges for the Union Government. The content needs to be prepared along with PESA and issues related to 5th Schedule Areas.

- Ladakh has got the Union Territory status that it wanted, so why do its representatives now want to be brought under the ambit of a constitutional provision that allows for the creation of autonomous councils with some special powers?
- BJP MP from Ladakh Jamyang Tsering Namgyal demanded that the region be included in the Sixth Schedule of the Constitution to safeguard land, employment, and cultural identity of the local population. Namgyal spoke in Parliament a day after Ladakh observed a shutdown to press for statehood. Representatives of the region have raised the demand repeatedly since the constitutional changes in the erstwhile state of Jammu and Kashmir in 2019.

What is the Sixth Schedule?

- The Sixth Schedule under **Article 244** provides for the formation of **autonomous administrative divisions — Autonomous District Councils (ADCs) — that have some legislative, judicial, and administrative autonomy within a state.**
- ADCs have up to 30 members with a term of five years, and can make laws, rules and regulations with regard to land, forest, water, agriculture, village councils, health, sanitation, village- and town-level policing, inheritance, marriage and divorce, social customs and mining, etc. The Bodoland Territorial Council in Assam is an exception with more than 40 members and the right to make laws on 39 issues.
- The Sixth Schedule applies to the **North-eastern states of Assam, Meghalaya, Mizoram (three Councils each), and Tripura (one Council).**

Why does Ladakh want to be part of the Sixth Schedule?

- There was much enthusiasm initially, mostly in Leh, after the August 5, 2019 decisions that created two new Union Territories. Buddhist-dominated Leh district had long demanded UT status because it felt neglected by the erstwhile state government, which was dominated by politicians from Kashmir and Jammu.
- In Parliament, **Namgyal** had said, **“Under Kashmir, our development, our political aspiration, our identity, our language – if all of this got lost it is because of Article 370...”** Prime Minister Narendra Modi had **“given an address on the political aspirations, developmental spirit and even recognized the contribution of the people from the region of Ladakh”**, he said.
- The enthusiasm waned as it was understood that while the UT of J&K would have a legislature, the UT of Ladakh would not. There had been four MLAs from the region in the erstwhile J&K Assembly; the administration of the region is now completely in the hands of bureaucrats. To many in Ladakh, the government now looks even more distant than Srinagar.
- Also, the changed domicile policy in Jammu and Kashmir has raised fears in the region about its own land, employment, demography, and cultural identity.
- The UT has two Hill councils in Leh and Kargil, but neither is under the Sixth Schedule. Their powers are limited to collection of some local taxes such as parking fees and allotment and use of land vested by the Centre.

What are the voices from the ground saying?

- A coalition of social, religious, and political representatives in Leh and Kargil has gone beyond the Sixth Schedule and demanded full statehood for Ladakh, besides protection of land and jobs for locals.
- In Kargil district, which is dominated by Shia Muslims, demands have been raised for the restoration of special status — also for a merger with the UT of J&K which has been provisioned a legislature. Representatives of social, religious, and political groups in Kargil have come together under the banner of the KDA.

Can Ladakh be included in Sixth Schedule?

- **In September 2019, the National Commission for Scheduled Tribes recommended the inclusion of Ladakh under the Sixth Schedule, noting that the new UT was predominantly tribal (more than 97%), people from other parts of the country had been restricted from purchasing or acquiring land there, and its distinct cultural heritage needed preservation.**
- Notably, no region outside the Northeast has been included in the Sixth Schedule. In fact, even in Manipur, which has predominantly tribal populations in some places, the autonomous councils are not included in the Sixth Schedule. Nagaland and Arunachal Pradesh, which are totally tribal, are also not in the Sixth Schedule.
- **“Ladakh’s inclusion in the Sixth Schedule would be difficult. The Constitution is very clear, Sixth Schedule is for the Northeast. For tribal areas in the rest of the country, there is the Fifth Schedule,”** a Home Ministry official said.

- However, it remains the prerogative of the government — it can, if it so decides, bring a Bill to amend the Constitution for this purpose.

What has been the government’s response?

- The Centre woke up to the anxieties of the region when, a year after the abrogation of Article 370, all political parties in Leh, including the BJP, announced a boycott of the LAHDC-Leh elections.
- In January, the MHA announced that a committee under then MoS Home G Kishan Reddy would be formed to address “**the issues related to language of Ladakh, culture of Ladakh and conservation of land in Ladakh**”. In July, Reddy promised KDA representatives that representatives of Kargil would be included in the committee.
- In August, MoS Home Rai assured representatives of Kargil and Leh that the government was committed to look into their concerns. Not much has happened since.

Previous Year Questions

1. Discuss the demands for the creation of new States in India.

LOWER JUDICIARY AND CENTRALISED RECRUITMENT DEBATE

The short article below explains the debate on creation of All India Judicial Services and various arguments in favour of the idea and also arguments against the proposition. One has to explain the background of the idea and provide some factual inputs regarding its evolution over time, analyse the nature of Executive and Judiciary's response and then provide arguments on its utility and why certain states have shown reluctance on the matter. The content is to be used in detailed format for direct questions in General Studies Paper 2 and in a summarized format for holistic questions on the need of Judicial Reforms for both in General Studies Paper 2 and PSIR Optional.

- The central government is preparing **to give a fresh push** to the establishment of an **All India Judicial Service (AIJS) on the lines of the central civil services**.
- The idea of centralised recruitment of judges has been debated in legal circles for decades, and remains contentious.

What is the proposed All India Judicial Service (AIJS)?

- The AIJS is a reform push to centralise the recruitment of judges at the level of additional district judges and district judges for all states.
- In the same way that the Union Public Service Commission conducts a central recruitment process and assigns successful candidates to cadres, judges of the lower judiciary are proposed to be recruited centrally and assigned to states.

How are district judges currently recruited?

- **Articles 233** and **234** of the Constitution of India deal with the appointment of district judges, and place it in the domain of the states.
- The selection process is conducted by the State Public Service Commissions and the concerned High Court, since High Courts exercise jurisdiction over the subordinate judiciary in the state. Panels of High Court judges interview candidates after the exam and select them for appointment.

- All judges of the lower judiciary up to the level of district judge are selected through the Provincial Civil Services (Judicial) exam. PCS(J) is commonly referred to as the judicial services exam.

Why has the AIJS been proposed?

- The idea of a centralised judicial service was first mooted in the **Law Commission's 1958 'Report on Reforms on Judicial Administration'**.
- **The idea was to ensure an efficient subordinate judiciary, to address structural issues such as varying pay and remuneration across states, to fill vacancies faster, and to ensure standard training across states.**
- A statutory or constitutional body such as the UPSC to conduct a standard, centralised exam to recruit and train judges was discussed.
- The idea was proposed again in the **Law Commission Report of 1978**, which discussed delays and arrears of cases in the lower courts.
- **In 2006, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 15th Report backed the idea of a pan-Indian judicial service, and also prepared a draft Bill.**

What is the judiciary's view on the AIJS?

- In 1992, the Supreme Court in **All India Judges' Assn. v. Union of India** directed the Centre to set up an AIJS. In a 1993 review of the judgment, however, the court left the Centre at liberty to take the initiative on the issue.
- In 2017, the Supreme Court took suo motu cognizance of the issue of appointment of district judges, and mooted a **"Central Selection Mechanism"**.
- Senior advocate Arvind Datar, who was appointed amicus curiae by the court, circulated a concept note to all states in which he recommended conducting a common examination instead of separate state exams.
- Based on the merit list, High Courts would then hold interviews and appoint judges. Datar submitted that this would not change the constitutional framework or take away the powers of the states or High Courts.

What is the opposition to the AIJS?

- A centralised recruitment process is seen as an affront to federalism and an encroachment on the powers of states granted by the Constitution. This is the main contention of several states, which have also argued that central recruitment would not be able to address the unique concerns that individual states may have.
- Language and representation, for example, are key concerns highlighted by states. Judicial business is conducted in regional languages, which could be affected by central recruitment.
- Also, reservations based on caste, and even for rural candidates or linguistic minorities in the state, could be diluted in a central test, it has been argued.

- The opposition is also based on the constitutional concept of the separation of powers. A central test could give the executive a foot in the door for the appointment of district judges and dilute the say that High Courts have in the process.
- Additionally, legal experts have argued that the creation of AIJS will not address the structural issues plaguing the lower judiciary.
- The issue of different scales of pay and remuneration has been addressed by the Supreme Court in the 1993 All India Judges Association case by bringing in uniformity across states.
- Experts argue that increasing pay across the board and ensuring that a fraction of High Court judges are picked from the lower judiciary, may help better than a central exam to attract quality talent.

Why is the government seeking to revive the idea of AIJS?

- The government has targeted the reform of lower judiciary in its effort to improve India's Ease of Doing Business ranking, as efficient dispute resolution is one of the key indices in determining the rank.
- Officials have said that the AIJS is a step in the direction of ensuring an efficient lower judiciary.
- The government has countered the opposition by states, saying that if a central mechanism can work for administrative services — IAS officers learn the language required for their cadre — it can work for judicial services too.

Previous Year Questions

1. Comment on the 99th amendment of the Indian constitution. [2015/10m/150w/5c]
2. Examine the debate on the appointment procedure of judges to the higher judiciary in India. [2014/15m/200w/7b]

A LOOK AT HOW AND WHEN PARLIAMENT IS CONVENED

This short article explains the procedure and conventions associated with convening of Parliamentary Sessions and the role of Executive in it. Also, factual-historical examples have been provided related to politics of Session convening and how it has been used over time to benefit the Executive. Finally, data has been provided on how it impacts the functioning of Parliament and its productivity. The content is to be used in a summarized format for answering questions related to need of Reforms in Parliamentary Functioning.

Sessions of Parliament

- The power to convene a session of Parliament rests with the government. The decision is taken by the Cabinet Committee on Parliamentary Affairs, which currently comprises nine ministers, including those for Defence, Home, Finance, and Law. The decision of the Committee is formalised by the President, in whose name MPs are summoned to meet for a session.
- India does not have a fixed parliamentary calendar. By convention, Parliament meets for three sessions in a year. The longest, the Budget Session, starts towards the end of January, and concludes by the end of April or first week of May. The session has a recess so that Parliamentary Committees can discuss the budgetary proposals.
- The second session is the three-week Monsoon Session, which usually begins in July and finishes in August. The parliamentary year ends with a three week-long Winter Session, which is held from November to December.
- A general scheme of sittings was recommended in 1955 by the General Purpose Committee of Lok Sabha. It was accepted by the government of Prime Minister Jawaharlal Nehru, but was not implemented.
- The summoning of Parliament is specified in **Article 85** of the Constitution. Like many other articles, it is based on a provision of The Government of India Act, 1935.

Instances when session lengths have varied

- Over the years, governments have shuffled around the dates of sessions to accommodate political and legislative exigencies. In 2017, the Winter Session was delayed on account of the Gujarat Assembly elections. In 2011, political parties agreed to cut short the Budget Session so they could campaign for Vidhan Sabha elections in five states.

- Sessions have also been cut short or delayed to allow the government to issue Ordinances. For example, in 2016, the Budget Session was broken up into two separate sessions to enable the issuance of an Ordinance.
- Sessions have been stretched — in 2008, the two-day Monsoon Session (in which a no-confidence motion was moved against the UPA-I government over the India-US nuclear deal) was extended until December. The ostensible reason was to prevent the moving of another no-confidence motion. It meant that there were only two sessions that year.

Impact on Parliamentary Functioning

- Over the years, there has been a decline in the sittings days of Parliament. During the first two decades of Parliament, Lok Sabha met for an average of a little more than 120 days a year. This has come down to approximately 70 days in the last decade.
- One institutional reason given for this is the reduction in the workload of Parliament by its Standing Committees, which, since the 1990s, have anchored debates outside the House.
- However, several Committees have recommended that Parliament should meet for at least 120 days in a year.

Congress leader Pawan Kumar Bansal, during his tenure as member of Rajya Sabha, made this proposal in his private member Bills.

Sitting Rajya Sabha MP Naresh Gujral, in his 2017 private member Bill, suggested that Parliament should meet for four sessions in a year, including a special session of 15 days for debating matters of urgent public importance.

WHAT ARE QUESTION HOUR AND ZERO HOUR, AND WHY DO THEY MATTER?

Factual Questions are being asked in General Studies Paper 2 on the various Parliamentary practices and procedures. The below article explains in detail how the Zero Hour and Question Hour is conducted on the floor of the house, their procedures and utility. Content is useful for answering direct questions on the said mechanisms and also as supplementary content for debates on Executive Dominance and its bypassing of Parliamentary Scrutiny.

What is Question Hour, and what is its significance?

- Question Hour is the liveliest hour in Parliament. It is during this one hour that Members of Parliament ask questions of ministers and hold them accountable for the functioning of their ministries. The questions that MPs ask are designed to elicit information and trigger suitable action by ministries.
- Over the last 70 years, MPs have successfully used this parliamentary device to shine a light on government functioning. Their questions have exposed financial irregularities and brought data and information regarding government functioning to the public domain. With the broadcasting of Question Hour since 1991, Question Hour has become one of the most visible aspects of parliamentary functioning.
- Asking questions of the government has a long history in our legislative bodies. Prior to Independence, the first question asked of government was in 1893. It was on the burden cast on village shopkeepers who had to provide supplies to touring government officers.

And what is Zero Hour?

- **While Question Hour is strictly regulated, Zero Hour is an Indian parliamentary innovation. The phrase does not find mention in the rules of procedure. The concept of Zero Hour started organically in the first decade of Indian Parliament, when MPs felt the need for raising important constituency and national issues.**
- During the initial days, Parliament used to break for lunch at 1 pm. Therefore, the opportunity for MPs to raise national issues without an advance notice became available at 12 pm and could last for an hour until the House adjourned for lunch. This led to the hour being popularly referred to as Zero Hour and the issues being raised during this time as Zero Hour submissions.

- Over the years, presiding officers of both Houses have given directions to streamline the working of Zero Hour to make it even more effective. Its importance can be gauged from the support it receives from citizens, media, MPs and presiding officers despite not being part of the rulebook.

How is Question Hour regulated?

- Parliament has comprehensive rules for dealing with every aspect of Question Hour. And the presiding officers of the two houses are the final authority with respect to the conduct of Question Hour. For example, usually Question Hour is the first hour of a parliamentary sitting.
- In 2014, Rajya Sabha Chairman Hamid Ansari shifted Question Hour in the House from 11 am to 12 noon. The move was to prevent the disruption of Question Hour.

What kind of questions are asked?

- Parliamentary rules provide guidelines on the kind of questions that can be asked by MPs.
- Questions have to be limited to 150 words. They have to be precise and not too general.
- The question should also be related to an area of responsibility of the Government of India.
- Questions should not seek information about matters that are secret or are under adjudication before courts.
- **It is the presiding officers of the two Houses who finally decide whether a question raised by an MP will be admitted for answering by the government.**

How frequently is Question Hour held?

- The process of asking and answering questions starts with identifying the days on which Question Hour will be held. Question Hour in both Houses is held on all days of the session.
- But there are two days when an exception is made. There is no Question Hour on the day the President addresses MPs from both Houses in the Central Hall. The President's speech takes place at the beginning of a new Lok Sabha and on the first day of a new Parliament year.
- Question Hour is not scheduled either on the day the Finance Minister presents the Budget.
- **Since the beginning of the current Lok Sabha, approximately 15,000 questions have been asked in the Lower House.**

How does Parliament manage to get so many questions answered?

- To streamline the answering of questions raised by MPs, the ministries are put into five groups. Each group answers questions on the day allocated to it.
- MPs can specify whether they want an oral or written response to their questions. They can put an asterisk against their question signifying that they want the minister to answer that question on the floor. These are referred to as starred questions.
- After the minister's response, the MP who asked the question and other MPs can also ask a follow-up question. This is the visible part of Question Hour, where you see MPs trying to corner ministers on the functioning of their ministries on live television.

- Seasoned parliamentarians choose to ask an oral question when the answer to the question will put the government in an uncomfortable position.

How do ministers prepare their answers?

- Ministries receive the questions 15 days in advance so that they can prepare their ministers for Question Hour. They also have to prepare for sharp follow-up questions they can expect to be asked in the House.
- Governments officers are close at hand in a gallery so that they can pass notes or relevant documents to support the minister in answering a question.
- When MPs are trying to gather data and information about government functioning, they prefer the responses to such queries in writing. These questions are referred to as unstarred questions. The responses to these questions are placed on the table of Parliament.

Are the questions only for ministers?

- MPs usually ask questions to hold ministers accountable. But the rules also provide them with a mechanism for asking their colleagues a question.
- Such a question should be limited to the role of an MP relating to a Bill or a resolution being piloted by them or any other matter connected with the functioning of the House for which they are responsible.
- **Should the presiding officer so allow, MPs can also ask a question to a minister at a notice period shorter than 15 days.**

Is there a limit to the number of questions that can be asked?

- Rules on the number of questions that can be asked in a day have changed over the years. In Lok Sabha, until the late 1960s, there was no limit on the number of unstarred questions that could be asked in a day.
- Now, Parliament rules limit the number of starred and unstarred questions an MP can ask in a day.
- The total number of questions asked by MPs in the starred and unstarred categories are then put in a random ballot.
- From the ballot in Lok Sabha, 20 starred questions are picked for answering during Question Hour and 230 are picked for written answers.
- Last year, a record was set when on a single day, after a gap of 47 years, all 20 starred questions were answered in Lok Sabha.

Previous Year Questions

1. Comment on the decline of Indian parliament. [2013/10m/150w/5c]

HOW ARE RAJYA SABHA MPS ELECTED? WHY ARE THE POLLS IMPORTANT?

The below article explains in brief the process of election for MP's in Rajya Sabha. The content explaining the mechanism and specially the electoral college needs to be directly included in the answers. Content on relevance of numbers in the Upper House in context of passage of Non-Money Bills has been provided and the same needs to be added to answers on the continued relevance of the Upper House.

Why are Rajya Sabha elections important?

For both the ruling party and the Opposition, every Rajya Sabha seat counts as any Bill, barring those designated as Money Bills by the Lok Sabha Speaker, needs the assent of the second chamber to become law.

Rajya Sabha, or the Council of States, has 245 seats. Leave aside reaching the halfway mark of 123, no ruling party has ever touched the 100 mark in the last three-and-a-half decades.

The BJP-led NDA fleetingly touched 100 in April but its strength is down to 95 now after the retirement of five of the nominated members who had taken BJP membership.

The NDA government has so far managed to get crucial Bills — farm laws, the Jammu and Kashmir Reorganization Act, or the Citizenship Amendment Act — passed with the help of allies and support of other parties such as AIADMK, Biju Janata Dal, and YSR Congress.

Rajya Sabha has a limited role in the case of Money Bills. It cannot amend a Money Bill, but can recommend amendments within a stipulated time, and Lok Sabha may either accept or reject all or any of these.

How often are Rajya Sabha elections held?

- Rajya Sabha is a permanent House and cannot be dissolved. To ensure continuity, one-third of its members retire after every second year, under **Article 83(1)** of the Constitution, and “**biennial elections**” are held to fill these vacancies. The term of a member is six years.

Out of the 245 members, 12 are nominated by the President and 233 are representatives of the States and Union territories of Delhi and Puducherry.

Vacancies arising due to resignation, death or disqualification are filled up through bypolls, and those elected serve out the remainder of their predecessors' term.

Under **Article 80(3)**, the 12 nominated members should have special knowledge or practical experience in matters like literature, science, art etc. A nominated member may join a party within six months of taking a seat.

Who votes, and how?

- Rajya Sabha MPs are elected by MLAs through an indirect election. **Article 80(4)** provides that **members shall be elected by the elected members of state Assemblies through a system of proportional representation by means of a single transferable vote.**
- The **Fourth Schedule** to the Constitution provides for allocation of Rajya Sabha seats to the states and Union Territories, on the basis of the population of each state.

For instance, there are 31 Rajya Sabha seats in Uttar Pradesh and 1 in Goa.

Elections are held when there are more candidates than vacancies; otherwise, candidates are elected unopposed.

How are the votes counted?

- The number of votes a candidate requires depends on the number of vacancies and the strength of the House. If there is only one vacancy, the required quota under the Election Commission's Conduct of Election Rules, 1961, is calculated by taking the number of votes polled, divided it by 2, and adding 1. For example, if 100 votes are polled in an Assembly, the Rajya Sabha candidate would need:

$$100/2 + 1 = 51 \text{ votes}$$

- If there is more than one vacancy, the equation is based on an assigned value of 100 for every first-preference vote. The values of the votes credited to all candidates are totalled. The total is divided by 1 more than the number of vacancies, and 1 is added to this quotient. For example, if 100 members of an Assembly vote for 3 Rajya Sabha vacancies, the required quota by any candidate would be

$$(100 \times 100)/(3 + 1) + 1 = 2501$$

- If for any seat, candidates fail to get the specified number, the second-preference votes will be taken into account, but with a lower value.

Beyond passing Bills, why do Rajya Sabha numbers matter?

- Rajya Sabha enjoys some special powers. **If it passes a resolution by a majority of not less than two-thirds of members present and voting, saying that it is "necessary or expedient in the national interest" that Parliament should make a law on a matter enumerated in the State List, Parliament becomes empowered to make a law on the subject.**
- Such a resolution remains in force for a maximum of one year but this period can be extended by one year at a time by passing a similar resolution.

- A similar route can be adopted for recommending creation of one or more All India Services common to the Union and the states. Parliament becomes empowered to create such services.
- Also, Rajya Sabha has a role to play if the President, as empowered by the Constitution, issues proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both Houses of Parliament within a stipulated period.
- Under certain circumstances, however, Rajya Sabha enjoys special powers. If a proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified under Articles 352, 356 and 360 of the Constitution.

PARDONING POWER UNDER JUDICIAL REVIEW

Pardoning Powers of Executive heads like President and Governors have seen several controversies over the years with increased judicial observations on the matter. The below article explains in detail the evolution of judicial opinion on the matter and provides valuable factual data on the same. Relevant case names and observations have been highlighted and the same need to be incorporated in the answers directly. Special attention has to be given to cases like Kehar Singh v Union of India & Swaran Singh v State of U.P along with the landmark judgment of Epuru Sudhakar & Anr vs Govt. Of A.P. & Ors wherein the grounds of judicial intervention in the matter have been clearly delineated.

- There has always been a debate as to whether the power of the executive to pardon should be subjected to judicial review or not. Supreme Court in a series of cases has laid down the law relating to judicial review of pardoning power.
- In **Maru Ram v Union of India**, the Constitutional Bench of Supreme Court held that the power under Article 72 is to be exercised on the advice of the Central Government and not by the President on his own, and that the advice of the Government binds the head of the Republic.
- In **Dhananjay Chatterjee alias Dhana v State of West Bengal**, the Supreme Court reiterated its earlier stand in Maru Ram v Union of India case and said: ***“The power under Articles 72 and 161 of the Constitution can be exercised by the Central and State Governments, not by the President or Governor on their own. The advice of the appropriate Government binds the Head of the state.”***
- The Supreme Court in **Ranga Billa case** was once again called upon to decide the nature and ambit of the pardoning power of the President of India under Article 72 of the Constitution. In this case, death sentence of one of the appellants was confirmed by the Supreme Court. His mercy petition was also rejected by the President. Then, the appellant filed a writ petition in the Supreme Court challenging the discretion of the President to grant pardon on the ground that no reasons were given for rejection of his mercy petition. The court dismissed the petition and observed that the term “pardon” itself signifies that it is entirely a discretionary remedy and grant or rejection of it need not to be reasoned.
- Supreme Court once again in **Kehar Singh v Union of India** reiterated its earlier stand and held that the grant of pardon by the President is an act of grace and, therefore, cannot be claimed as a matter of right. The power exercisable by the President being exclusively of administrative nature, is not justiciable.

- In **Swaran Singh v State of U.P.**, the Governor of U.P. had granted remission of life sentence awarded to the Minister of the State Legislature of Assembly convicted for the offence of murder. **The Supreme Court interdicted the Governor's order and said that it is true that it has no power to touch the order passed by the Governor under Article 161, but if such power has been exercised arbitrarily, mala fide or in absolute disregard of the finer cannons of constitutionalism, such order cannot get approval of law and in such cases, the judicial hand must be stretched to it.** The Court held the order of Governor arbitrary and, hence, needed to be interdicted.
- In the early case of **K.M. Nanavati v State of Bombay**, Governor granted reprieve under Article 161 which was held unconstitutional as it was in contrast with the Supreme Court rulings under Article 145.

In a landmark judgment **Epuru Sudhakar & Anr vs Govt. Of A.P. & Ors**, it was held by the Supreme Court that it is a well-set principle that a limited judicial review of exercise of clemency powers is available to the Supreme Court and High Courts. Granting of clemency by the President or Governor can be challenged on the following grounds:

- The order has been passed without application of mind.
- The order is mala fide.
- The order has been passed on extraneous or wholly irrelevant considerations.
- Relevant material has been kept out of consideration.
- The order suffers from arbitrariness.

Now, it is a well settled principle that power under Articles 72 and 161 is subject to judicial review.

Process of Granting Pardon in India:

The process starts with filing a mercy petition with the President under Article 72 of the Constitution. Such petition is then sent to the Ministry of Home Affairs in the Central Government for consideration. The abovementioned petition is discussed by the Home Ministry in consultation with the concerned State Government. After the consultation, recommendations are made by the Home Minister and then, the petition is sent back to the President.

Conclusion

- The pardoning power of Executive is very significant as it corrects the errors of judiciary. It eliminates the effect of conviction without addressing the defendant guilt or innocence.
- **The process of granting pardon is simpler but because of the lethargy of the government and political considerations, disposal of mercy petitions is delayed. Therefore, there is an urgent need to make amendment in law of pardoning to make sure that clemency petitions are disposed quickly. There should be a fixed time limit for deciding on clemency pleas.**
- Regarding the judicial review debate, pardoning power should not be absolute as well as Judiciary should not interfere too much in exercise of this power. As judicial review is a basic structure of our Constitution, pardoning power should be subjected to limited judicial review. If this power is exercised properly and not misused by executive, it will certainly prove useful to remove the flaws of the judiciary.

Previous Year Questions

1. Discuss the efficacy of judicial review in India. [2015/20m/250w/6a]
2. Critically analyse the discretionary powers granted to the governor by the Indian constitution.

AN ANALYSIS OF STATES POWER TO CHALLENGE CENTRAL LAWS

The below article explains the balance of Legislative power between the Centre and the States and also comments on the evolving nature of Indian Federalism which shows tendencies of being both Cooperative and Competitive at times. The article talks in detail on the scenarios in which States can challenge the Union laws in the courts and what specific conditions need to be fulfilled in order for such petitions/challenges to be deemed maintainable. The article also provides detailed factual elaboration on the working of Article 131 and judicial observations on the same.

- There are two commonly observed trends of federalism across countries. Federalism is primarily founded on the principle of “**Competitive Federalism**,” as viewed in countries such as the United States, Canada and Australia, which suggests that there is much competition between central and national governments.
- The notion of federalism has, however, evolved over time to ‘**Cooperative Federalism**’, and in the face of such considerations as the rise in warlike conditions, the growing importance of a welfare state and improvements in transportation and connectivity, etc., all governments acknowledged their interdependence.
- In the modern world, the concept of ‘**cooperative federalism**’ has been increasingly adopted by the nations. However, this concept has been incorporated with respect to mutual cooperation with the adoption of a centralized trend. This means that there is a division of powers between the central and state governments with a more powerful central authority.
- This is because there are some issues that can be handled best by the national government, while the other issues can be handled better by the regional governments who can well handle the issues of local interest.
- However, a strong government at the Centre does not imply weakness of the state governments rather the state governments work as administrative agents for carrying out the policies of the Centre.
- This approach will be addressed in greater detail in India, especially with regard to the ability of states to question the validity of central laws with regard to the provisions of the Indian Constitution.

Nature of Indian Federalism

- The India Constitution introduces the concept that the centre has greater rights than the states of the country as 'cooperative federalism'. Therefore, "**Indian federalism has been called quasi federal or unitary with federal principles and thus, has not been prevented from being predominantly federal in nature**".
- The Indian Constitution separates the regions to be governed separately by the provincial and central legislatures. In this respect, a Union List (List 1), a State List (List 2) and a Concurrent List (List 3) set out under The Seventh Schedule of the Constitution specifically differentiate between the issues addressed by the legislative processes of the two tiers of government. In this respect, the federal and state governments have sole right to legislate on subjects referred to in Schedule 7 List 1 and List 2 respectively. Furthermore, List 3 provides the Center and the States with authority to legislate in certain respects. However, the centre's rule will prevail in the event of any differences between the two levels of government.
- Pursuant to **Article 246** of the Indian Constitution, the right to make laws on issues specified in Schedule 7 has been accorded.
- The Union Government has the sole right to exercise its powers under **Article 246(1)** of the Constitution of India in the fields of defence, international affairs, citizenship, railways, airways, aircraft, currency, among others. It can also clearly imply that the central administration alone has the authority to regulate these matters. There is no right of state governments to challenge power of the central government.
- **Moreover, it is compulsory for States to respect laws adopted by the central legislature under Article 256 of the Indian Constitution. This ensures that States are bound by central rules and have no legislative authority to refuse them.**
- As a result, the States do not have the right to challenge the centre in its law-making procedure considering the separation of competency between the central and state governments.

Analysis of Article 131 of the Constitution

- In the way that the people may resolve it in the event of violation of their rights, the Supreme Court shall be the guardian of the Indian Constitution. Citizens can appeal to the Supreme Court in writing, or Article 226, to any High Court for the restitution of their rights pursuant to **Article 32** of the Constitution of India. Likewise, in the event of a violation of all law, states still have the authority to approach the Supreme Court.
- Article 131 can be invoked in this context when a conflict exists between the central and state governments. It grants the Supreme Court initial and exclusive competence to address those discrepancies.
- **Original jurisdiction means that the Supreme Court has the power to hear the merits of the disputes in the first instance. Further, the phrase 'exclusive jurisdiction' means that the Supreme Court is the sole source of authority that has the power to handle the disputes between the central and**

state governments. No other court or tribunal has the power to do so. However, there are certain requirements enshrined under Article 131 of the Constitution of India that need to be met. These requirements are-

- ▶ The dispute must be between the centre and the states or between two or more states, and
- ▶ The dispute must be involving a legal issue.
- Considering these aforementioned conditions, one of the most important requirements relates to the fact that the **Supreme Court takes up any dispute between the centre and the states only when there is a question of law or fact on the basis of the extent of the legal rights involved.**
- The same principle was also upheld in the case of **State of Rajasthan v. Union of India** wherein it was held that the Supreme Court has the power to provide any type of relief in case it is important to enforce the legal right of any state if such legal right has been established by the Government of the state. However, no political differences shall be entertained by the Supreme Court.
- In the same case, the Supreme Court ruled that it was not compulsory for the government to refer the matter to the Supreme Court under Article 131 only in violation of its legal right.
- **Instead, the State Government(s) can, under the present clause, sue any move by the Central Government for its breach of the law or for its constitutional validity. These disputes are then determined in accordance with the procedural rights of the parties to the conflict.**
- As happened in the case of **State of Karnataka v. UoI**, The maintenance of the suits brought in accordance with Article 131 was debated by **Justice Bhagwati**. It is him who says, *'what has, therefore to be seen in order to determine the applicability of Article 131 is whether there is any relational legal matter involving a right, liberty, power or immunity qua the parties to the dispute. If there is, the suit would be maintainable but not otherwise'*.
- This implies that the States do not bring an initial suit in accordance with Article 131 of the Constitution unless a legal conflict exists. **The Court has no right to entertain a political controversy between the States and the Centre.**
- An analysis of Article 131 leads to the inference that **even though the state governments cannot question the central laws because it was passed within the legislative powers of the central government, In compliance with Article 131 of the Constitution, state governments may file an original lawsuit.** Invoking this article requires states to appeal central laws on the grounds that they have ignored constitutional requirements and because the underlying framework of the Constitution has been violated.
- The key issue, though, is whether the state government will reject a central rule. For Article 365 specifically states that the State Government is obliged to observe in exercising its executive powers in accordance with the Constitution, among the many other clauses of the Constitution.

Issue of Maintainability: Differing Opinions

- In the **State of Karnataka v. Union of India** case of 1977, Article 131 was held to be valid only in cases involving a disagreement between the Center and the States with respect to their constitutional provisions. In this situation, the majority decision emphasized on *"when differences arise between the*

representatives of the State and those of the whole people of India, on questions of interpretation of the Constitution, which must affect the welfare of the whole people, and, particularly that of the people of the State concerned, it is too technical an argument to be accepted that a suit does not lie under Article 131 of the Constitution”.

- In 2011, in contravention of the constitutional requirements, the state of Madhya Pradesh opposed a law passed by the Centre. This was the case with **State of Madhya Pradesh v. Union of India**. The question of whether states would appeal central laws in accordance with Article 131 of the Constitution was one posed in the Court.
- The judges’ bench of Justice P. Sathasivam and Justice B. S. Chauhan claimed that only Articles 32 and 226 of the Indian Constitution could oppose a centralised rule. The judges’ contention was that, under the **43rd Amendment Act 1977, Article 131-A**, which gained the Supreme Court exclusive authority in such cases, was omitted on the grounds that it limited the right of judicial review of the High Courts in compliance with Article 226 of the Constitution.
- In 2014 Judge Bench **J. S. A. Bobde** and **J. J. Jasti Chelameswar**, in their judgement in the **State of Jharkhand v. State of Bihar** , dismissed the rationale in the **State of Madhya Pradesh v. Union of India** . The bench underlined the fact that, in compliance with Article 131 of the Constitution, the exclusive and original competence of the Supreme Court is inextricably related to that of Article 32 of the Constitution.
- Since two judge’s benches made the judgments of both cases, the matter has been appealed to a wider bench. The question is still still relevant and there has been no decision in this respect. Consequently, the Court has not yet addressed the issue of maintainability in accordance with Article 131 of the Constitution.
- The State of West Bengal had presented a written petition pursuant to Article 32 of the Indian Constitution in order in 2017 to question the substantive legitimacy of the Adhaar Act in **Binoy Viswam v. Union of India**.^[23] using the method outlined in the **State of Madhya Pradesh v. Union of India**^[24].
- Two Judge Bench **A.K.Sikri** and the Judge **Ashok Bhushan** noted that, in cases where the legislation has been approved within the legal authority of the centre, the State does not have the right to appeal a central law.
- If such an approach is adopted, the States would find it hard to demonstrate that their acts are maintainable, undermining the constitutional legitimacy of central rules. However, Article 131 is interpreted as specifically requiring that in the event of any infringement of any legal rights, a State may claim the initial and exclusive competence of the Supreme Court.

Conclusion

- In the Indian Constitution, the essence of federalism is such that the central has greater influence than the nations. The states shall comply, in this regard, with every order or regulation passed by the central parliament. However, under Article 131 of the Constitution of India, these states will object to the central laws of the Supreme Court of India for the reason that they contradict the Constitution.

- The states have no power to reject central legislation, because of the obvious obligation of the states to comply with the Constitution. However, whenever the Supreme Court of India determines that certain rules are ultravires to the Constitution, they are abolished. That will only happen if the charges brought by the state governments can be retained. The Supreme Court's decision is then supposed to become transparent and fix the issue entirely.

Previous Year Questions

1. Do you think that there has been a gradual shift in the basis on which the demands for the creation of new States have been raised in different regions of India? Explain. [2021/15m/200w/7b]
2. Discuss mechanism for settling inter-state disputes. [2020/10m/150w/5e]
3. The philosophy and administration of the distribution of powers between centre and state is required to be re-accessed. [2016/10m/150w/5e]
4. Despite constitutional mandate the Inter-State Council has not come of age. Discuss. [2019/10m/150w/5c]
5. Identify the contested areas in centre state relations in India. [2015/15m/200w/7b]
6. "Articles 2 and 3 of the Indian Constitution are inconsistent with the spirit of federalism". Comment. [2010/20m/7b]
