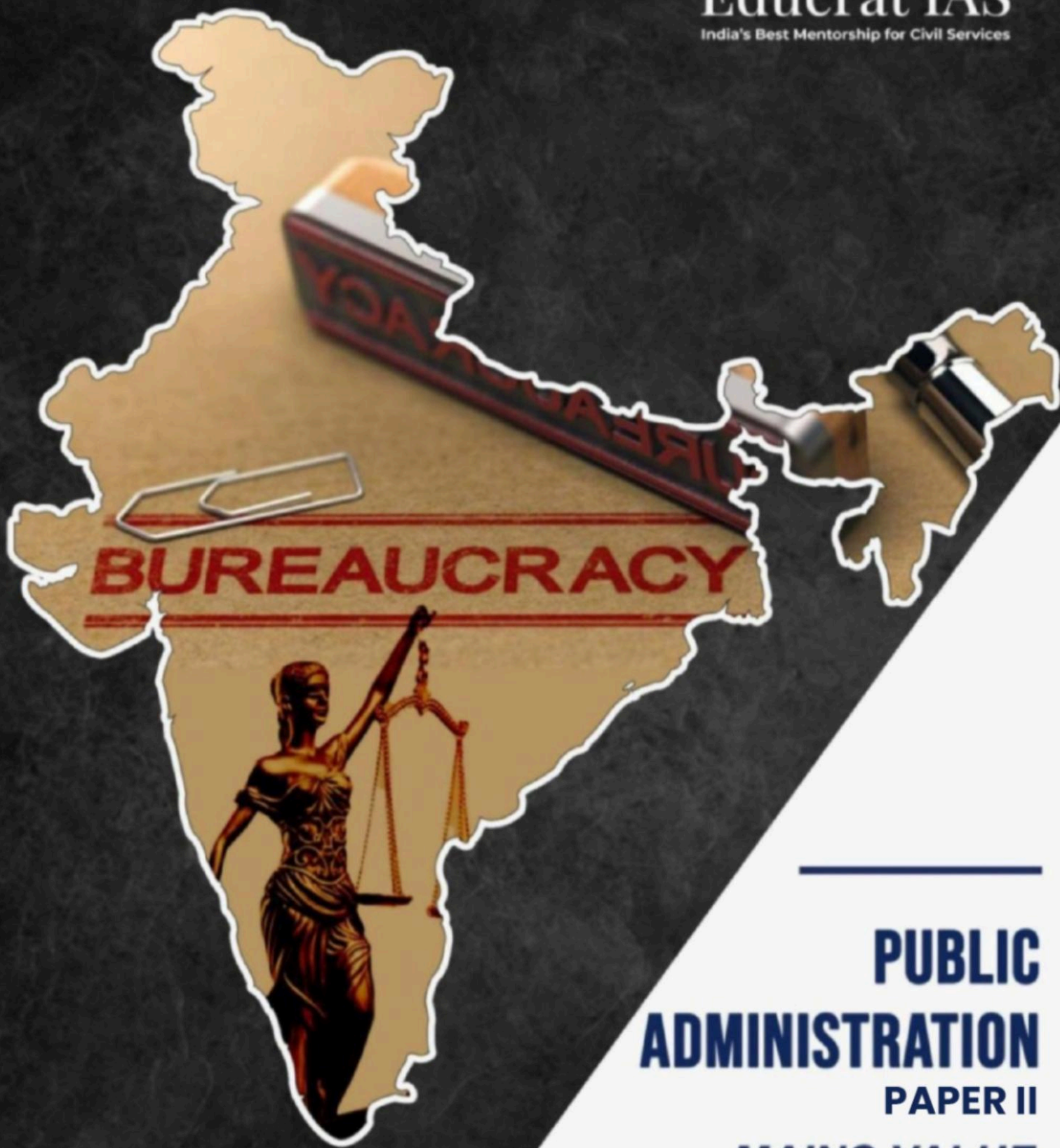Educrat IAS
India's Best Mentorship for Civil Services

BUREAUCRACY

PUBLIC
ADMINISTRATION
PAPER II

MAINS VALUE
ADDITION MATERIAL

# INDEX

## PUBLIC ADMINISTRATION

## HANDOUT (PAPER-II)

# 1
**CHAPTER**

# Arthashastra

## INTRODUCTION

Kautilya's work Arthashastra belongs to the tradition of **dandashastra**. The prime issue in Arthashastra is **statecraft (principles of politics and administration).**

**Main ideas in Kautilya's arthshstra**

Kautilya defines statecraft as Arthashastra. 'Arth' denotes material wellbeing. According to him, the **most important objective of the king is to secure the material well-being of his people**. In his words: "Material well-being is supreme, attainment of all other goals Dharm, Kama, Moksh depends on material well-being".

In ancient times, land was the main source of securing material well-being. Hence, the **main idea of Arthashastra was how to acquire the land.** It is natural for a state to go for acquiring land. The first land to be acquired is the land of neighbour. Hence, **neighbours are natural enemies**. Thus, the relations between two states are relations of war. **Arthashastra can be considered as the "First textbook in geopolitics".**

- According to concept of geopolitics, **state is an organism**. Like any other organism, state has to grow. If state does not grow / expand, state will perish/decay

**Prominent ideas of Arthashastra:**
1. State of relations between two countries
2. Mandal Siddhaant
3. Saptanga theory
4. Shadgunya Neeti (6 fold policy)
5. 4 upayas
6. Types of wars

**State of relations between two countries**

According to Kautilya, relations between two states are **relations of WAR**, where the strength of lion prevails. Thus, **Kautilya is a realist who believes that inter-state relations are the struggle for power**. According to realist wisdom, interstate relations or international politics is in a state of war. Nations are either in the war or in the preparation for war. Hence in such situation, **state can rely only on power**.

**Kautilya belongs to the School of "offensive realism".** He believes in power maximisation rather than defence. For offensive realists "**offence is the best defence**"

**Mandal Siddhaant**

**Raja Dharma** – Kshatriya Dharma i.e. war. After coronation, King has to start for expedition.

- In ancient India, there was tradition of different YAGNAS
- **Example: Aswameda ; Rajasuya Yagya**
- According to Kautilya, **King should have the desire to become "Chakravarthi Samrat".** He addresses the king as 'VIJIGISHU' - one who aspires for victory. **Mandal Siddhaanth is based on the concept of**
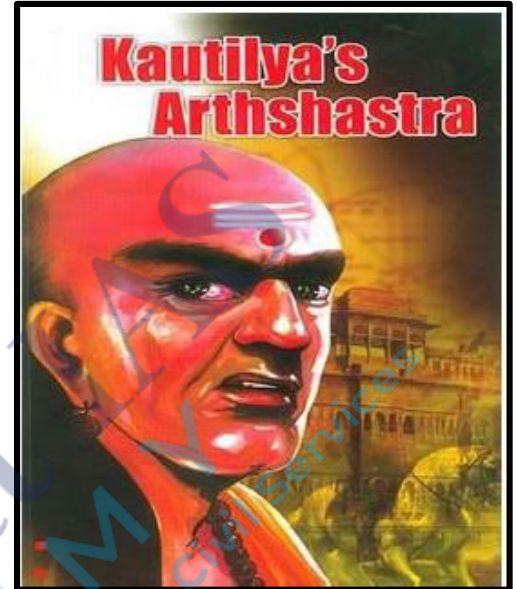
**Geopolitics.**

- According to Geopolitics, State is organism. Organism has to grow for which it has to expand
- If it does not expand, it will perish
- Thus, **states are expansionists by nature**.

War is inevitable feature of inter-state relations. **War is Kshatriya dharma**. War is necessary for the material well-being. King should aspire to become Chakravarti Samrat. (It means King should strive to achieve hegemony and not just balance of power.)

**According to Kautilya, there can be three types of wars depending on the situation**.
- ➤ **Parakrama yuddha** – means open war.
- ➤ **Koot yuddha** – guirella war.
- ➤ **Tushnim (silent) yuddha** – proxy war.

**Kautilya also mentions three types of victories.**

- ➤ **Dharma Vijaya** – as per rules of war.
- ➤ **Lobha Vijaya** – by giving economic inducement to the enemy's forces.
- ➤ **Asura Vijaya** – by cunningness or unfair means.

T**he strategy of war is explained through Mandala Siddhant.**
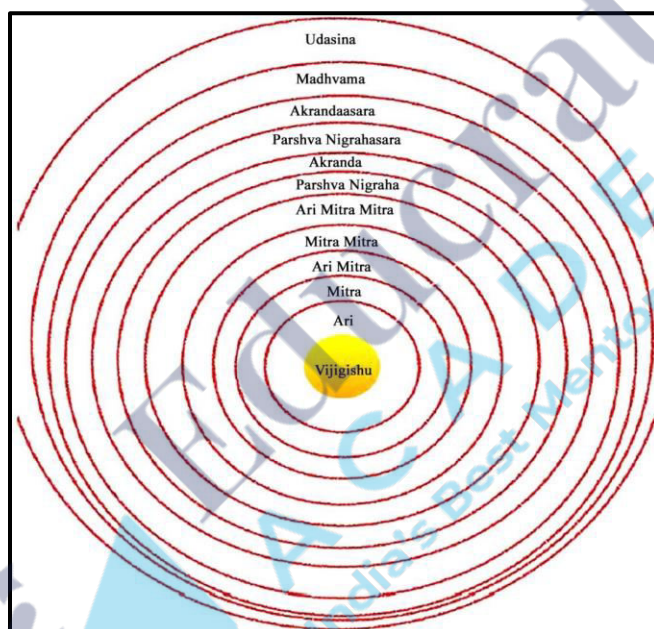


Mandala represents the concentric circle of kings frequently used in Indian texts. **Mandala siddhanta is based on the view that neighbours are natural enemies.** Because both kings have to achieve the material welfare and both aim at acquiring the same piece of land. e**.g. India – Pakistan – China all aim to acquire the territory of Kashmir, which is not only full of resources but also strategically located**. Hence, there is bound to be a war between India and Pakistan, India and China over the territory of Kashmir.

Mandal siddhant also suggests that **there is no permanent friend or permanent enemy**. When Vijigushu acquires the land of the enemy, the mandal of Vijigishu extends. Now the country which was mitra (friend) will become enemy. **Hence nations seek hegemony as well as balance of power**. When king thinks of going for expedition in one direction, he should not ignore enemies and friends in the opposite direction.

**What policies Vijigishu can adopt?**

Depending on the situation, vijigishu has an option of following policies.

**Four Upayas:** Sama, Dama, Danda, Bheda. This shows the **realist tradition similar to Machiavelli**. According to Machiavelli, in politics, **ends justify the means.**

**Kautilya also gives Shada gunya Siddhanta. (Six fold policy).** Vijigishu should opt for

1. **Sandhi** (If enemy is strong.)
2. **Vigraha** (Break the Sandhi, start war if you are strong.)
3. **Asana** (Stationing of the forces near enemies territories.)
4. **Yana** (Sanskrit word for mobilization – it means military exercise near enemies territory.)
5. **Samashraya** (Joining hands with those who have similar aims, like Quad.)
6. **Dvaidhbhava** (Dual policy — it means friendship with one enemy for the time being and enmity with the other — don't open two fronts at the same time.)

**Kautilya mentions the importance of different kings in the Mandal. Two kings hold special importance.**

1. **Udasin:** It denotes **neutral state**. e.g. Switzerland in Europe, Turkmenistan in central Asia has been given neutral status. [Neutrality is a status recognized by others with respect to the country in the war. If a country is neutral in the war, it means it will have to give equal access to its territory to both the parties in war. e.g. Nepal aspires to get neutral status, however Nepal's aspirations are not in favour of India. As of now, Nepal is tied to India with 1950 treaty. Hence only India can access Nepal's territory during war. If Nepal gets neutral status, China will also get equal access.]

2. **Buffer state / madhyama:** Buffer state is a small state between two major powers. **The purpose is to avoid direct confrontation. e.g. Bhutan, Sikkim, Nepal,** Tibet have been the ideal buffer states between India and China. Whichever country acquires the buffer state gets advantage. China occupied Tibet, India acquired Sikkim. India maintained the strategic advantage by entering into treaties with Bhutan and Nepal.

**Saptanga Theory (Sapta Prakriti)**

**Kautilya's Saptang Theory**

Saptanga siddhant explains the elements of the state. It is an **example of the organic view of the state**. It explains **state as a system of seven elements / limbs or seven elements of sovereignty**. Vijigishu has to take into account the status of its own elements as well as the elements of other kings in mandal.
Hence before starting war, king has to take the stock of 84 elements of sovereignty. **Saptangas can be considered as 'determinants of state's power'.**
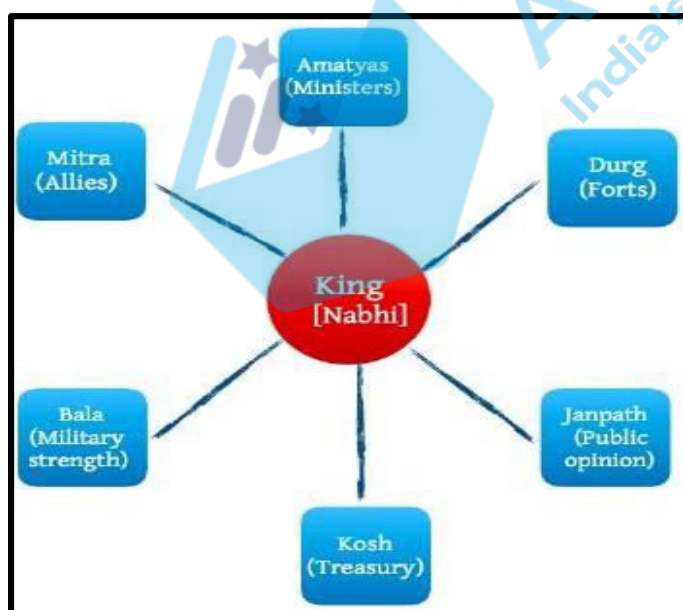


1. **King:** King is center. All other elements depend upon King. According to Kautilya, if King is smart and other elements of sovereignty are weak, he can convert these elements into the elements of strength. On the other hand, if king is not smart, lacks courage but other elements of sovereignty are strong, then also

these elements will not be able to play the role of determinant of power. This shows the importance of leadership. **Kautilya's views on kingship have a huge continuity with Manu's views on kingship.** However, Kautilya is not specific about the varna of the king, he **suggests person from any varna to be eligible for the king**

Though king plays the most important role in the system, yet king needs to understand that single wheel cannot turn the chariot of the state. It means king cannot rule alone, king needs the help of other elements, hence king should give adequate importance to the other elements. Thus, **he takes the organic view that the state is not just the sum of parts, state is an interdependence though the king retains primac**y. He warns against arrogance. Arrogant king will destroy himself.

2. **Amatyas:** Amatyas are the **senior ministers, preferably bramhins**. Required for consultation. Should be well versed in Vedas, Shastras. **Out of all amatyas, the most important role is of ambassador**. King should be particular about choosing the ambassador. **Ambassador is the representative of the king to the outside world. Thus, next to king in importance.** Ambassador should be well versed, man of integrity, should be dedicated towards the king. Ambassador should be handsome.

   **He suggests, king should have at least three amatyas because two can easily conspire against the king.** King should keep on testing the integrity of the amatyas because they can be potential challenge. He gives detailed measures to check the integrity. e.g. he gives suggestion to send spies to amatyas with the message that queen is in love with amatya, if amatya will come to palace, queen will help amatya in killing the king and then amatya can become the king.

3. **Forts/Durg:** Mauryans were known for fortifications. Forts are the **symbols of the offensive and defensive powers of the state**. Kautilya advices to construct different types of forts that include hill forts, water forts, desert forts.

4. **Janpaths:** Janapath represent the **heart of the state**. It is a place where common man/ citizens lives. It is a place for economic activities. It is the duty of the king to take care of the needs of janapath. King should treat his citizens as his children. In the words of Kautilya, "**In the happiness of the subjects, lies the happiness of the king.**"

   At the same time, Kautilya advices king to **keep track of the public opinion by using spies to prevent rebellion.**

5. **Kosh/Treasury:** Kosh of the state should be enough not just for meeting day-to-day expenditures but to meet any sort of calamity, whether it is war, or natural disasters.

6. **Bala (Force):** Kautilya prefers the army of Kshatriyas. However, if need arises, other varnas can also be included. King should have sufficient army and should always keep the morale of the army high.

7. **Mitra (Allies):** Mitras have symbolic importance. When a person has lot of mitras, it shows that the person is powerful. Hence, it is a **symbol of power to be the friend of strong.**

   **Internal administration**

   Kautilya like Machiavelli deals with the internal as well as external aspects of the statecraft. Conceptually the internal and external cannot be separated. As far as internal statecraft is concerned, **Kautilya has given special emphasis on (1) Administration (2) Espionage. (Spies)**

   ## 1. Administration

   Kautilya is extremely concerned with the problem of corruption among officials. According to Kautilya, corruption is an inevitable part of public life. It is like honey on the tongue, it is not possible, not to taste it. Public officials handle so much of the resources that corruption becomes unavoidable. Even officials may not be knowing when they are doing corruption. Fish swimming in the water will itself not know, when it has drunk the water.

Though corruption is the part of public life, yet corruption is not desirable. Corruption weakens the state, both internally and externally. It **weakens the capacity of the state to achieve the welfare of the people**. It brings the morale of the people down. It is very easy for enemy to win if morale is down. Hence corruption needs to betackled.

**The biggest problem is detection of the corruption**. In the words of Kautilya, "It is easy to detect the movement of the birds in the sky but it is not easy to detect the act of corruption by the officials." **Kautilya himself madethe list of at least forty types of embezzlements done by officials.**

➤ e.g. Officials can play with weights and measures.
➤ Officials can sale the resource at a higher price but show lesser value in the accounts.
  Officials can sale the resources at a lesser value than the actual value.
➤ They may take out public money for private purposes but enter it in the account later.

  **Kautilya also suggests measures to deal with corruption.**
➤ Right sizing the bureaucracy.
➤ Transfer the person before he understands all the loopholes in the system
➤ **Protection to the whistleblowers.**
➤ Not just punishing the official, punish the entire chain. **Punish dayak (One who gives bribe), one who receives(pratigraha), one who keeps (nidhayak).**
➤ Public humiliation of the corrupt officials and reward honest officials.

## 2. Espionage

Kautilya prescribes king to maintain the efficient system of intelligence. He **mentions at least 10 types of spies.** He even goes to the extend of suggesting the use of children, women, orphans, destitute, bhiksuks, sadhus to be used as spies. Some of the spies mentioned by Kautilya include **kapatikas (students), grahapalikas(domestic servants), udasthita (destitute).**

He **suggests the use of sadhus to frighten the enemy** king. Thus, like Sun Tzu, he talks about p**sychological warfare** also. Sadhus can go to the enemy king, can tell the fortune, they can frighten the king by suggesting that the bad times are coming. Thus, like **Machiavelli he also permits the use of religion**.

### Comparison of Kautilya and Machiavelli

Pandit Nehru in his book **DISCOVERY OF INDIA has mentioned Kautilya as Indian Machiavelli.** Upinder Kaur in her recent book titled **POLITICAL VIOLENCE IN ANCIENT INDIA suggests that ideally Machiavelli should have been called Italian Kautilya.**

Scholars like Winternitz, Bottazi have traced the roots of realism in Kautilya along with Thucydides. Machiavelli is also realist.
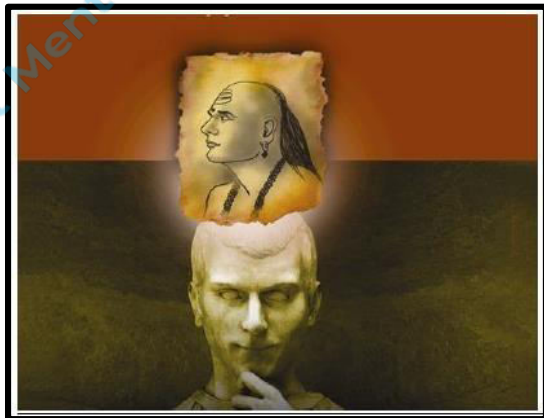
Kautilya and Machiavelli differ in time and space yet there are remarkable similarities between the two scholars. Both had similar concerns. Both were concerned about the state of motherland. Both were fearful of motherland being vulnerable to external invasions. Both are realists. Both give advices on the statecraft. Both go for the separation betw**een ends and means**. If Machiavelli suggests that in politics ends justify the means, **Kautilya suggests, Sama, Dama, Danda,Bheda.**

**Both allow the use of religion in the interest of the state**. Both **favour imperialist foreign policy**. Both are concerned with the corruption within the state. Both give similar advices on the statecraft. Both suggest that the **king should rule with the iron hand**. Both expect king to be the symbol of knowledge and sacrifice. The actions of the king are justified only for the sake of the happiness of the people. Thus, directly or indirectly, **Kautilya's king and Machiavelli's prince come near to Plato's philosopher king.** Kautilya's king shares many characteristics. According to Kautilya, king should have the knowledge of Vedas, shastras. King should have self-control, should not be arrogant, should control the appetite.

**Max Weber in his book POLITICS AS A VOCATION has mentioned that Kautilya was more Machiavellian than Machiavelli.** Machiavelli's advices are too general. Machiavelli appears hesitant about what kings should do. There is no hesitation in Kautilya when he suggests extreme means. According to Max Weber, 'when we look at Kautilya's king, Machiavelli's prince appears 'harmless'.'

It is to be noted that there is a similarity in the circumstances, aims, approach, style, perspective yet they differ in the sense that Machiavelli was not as fortunate as Kautilya.

### Kautilya's ideas on Personnel Administration
1. Personnel are as important as organisations.
2. **Spoils system** i.e king made all appointments

**3. Qualities**
a) **Sattva** – energy
b) **Prajna** – intelligence
c) **Vakya Shakti** – communication skills, power of expression

4. Recommended tests like **Dharmopadha** (whether the person is likely to involve in a conspiracy against the king), **Arthopadha** (if one is lured by money), **Bhayopadha** (if one uses fear in the minds of people as a tool), **Kamopadha** (if one is too much involved in sensual pleasure)
5. Salaries to be given on a fairly liberal scale to rule out discontent and corruption. **Kautilya allows 25% of state revenue as salaries.**
6. Roots of pension scheme are also found.
7. Promotion based on king's wish.
8. Transfer before the official comes to know about all the loop holes.
9. Removal at the pleasure of king.

### Principles of Public Administration in Arthashastra
1. **Unity of command** – king is at the apex but the king is by no means a dictator. He is a paternalistic figure.
2. **Division of work** – "Single wheel cannot move the chariot". Similar to modern day rules of business and allocation of business, Government. of India 1961. **Kautilya divided the work into 34 departments and each department was headed by a designated officer.**
3. **Principle of coordination** – King himself is the principal coordinator. Ex – PMO in India performs this function.
4. Practice of job classification
5. **Prinicple of hierarchy** –king –Mahamatya- Amatya- Adyaksh etc; Promotions were based on merit and suitability of the candidate.
6. Planning and budgeting.
7. King ruled on the basis of written orders i.e codification of laws to act as precedence and enforce accountability.
8. **Centralisation** – All the legislative,executive and judicial powers were vested in King, however a suitable balance was also seen in the structure of administration. The **empire was divided into provinces, provinces into sthaniya. Sthaniyas were further divided into nagars and villages.**
9. **Authority and responsibility** – Kautilya suggested a balance between authority and responsibility. Just like the king had been vested with all the powers, he was also expected to shoulder all the responsibilities
10. Kautilya recommended measures to tackle corruption and a system of just and fair punishment (neither more nor less). This shows value based administration.
11. **Leadership** – king was expected to be a paternalistic figure who was concerned with pain and sorrow of his subjects.

### Principles of Good Governance in Arthashastra
1. **Yogakshema** – Welfare state. It is the duty of the king to maintain minors, aged and persons in distress. It can be attributed to **accomplishment of objectives (yoga) and peaceful enjoyment of prosperity (kshema)**
2. **Rakshana** and Palana – paternalistic rule
3. **Personnel administration** – tests and qualities of bureaucrats
4. **Financial administration** – kosha more important than Danda.

5. **Professionalism** – principles like unity of command, specialisation, hierarchy etc;
6. Planning and budgeting

## Mughal Administration

- Came into power in **1526** after **First Battle of Panipat**
- Emperor was the most important person. As long as emperor was strong, empire was stable and strong. He had unlimited powers. His words were the law.
- **All powers –** legislative, executive and judicial were with the emperor.
- **No rule of law**. Mughal empire was not secular
- Administration was according to **shariyat**.
- A strong blend of religion and politics
- King was expected to rule according to **islamic traditions and obey the commands of ulemas** (religious leaders)
- King had a difference of attitude towards his Muslim and other subjects. For **Muslim subjects, king undertook socialist functions (welfare) but for hindu subjects king followed policy of minimum interference** i.e only police and revenue functions
- **Hierarchy** -  Empire (King)-Provinces (Governors)-**Subahs (Subedars)-Sarkars-Parganas-villages**
- Subedars had their own army and collected taxes. They implemented laws and had judicial powers. A portion of tax collected was kept with themselves and the rest was sent to treasury of the emperor.
- Revenue collection started from village itself. **Land revenue was the major source of revenue** (1/4 to 1/3rd of total produce). Output was scientifically calculated and then revenue was fixed.
- Mughal Administration was completely military in nature.  No difference between army and civilian officers.
- It had **rank classification**. Lowest rank official had ten soldiers and some horses. Upper ranked had 20, 50, 100, 1000 upto 5000 soldiers along with suitable number of horses. Therefore principle of hierarchy is visible.
- Army officers were either paid in cash or were allotted jagirs for a certain period of time through which they could collect revenue. This also led to exploitation of workers (tillers and cultivators).

## Law and order Administration

- **Present day police stations** have their origins in Mughal administration.
- Policing was left to locality. It was done by local chaukidars who were servants of the village community. They were not considered officers of state or paid by state. Therefore Mughal administration did not assume responsibility of law and order.
- **Mughal administration was kaagaz raj** i.e written communications, judgements, land records etc;
- **Mughal administration was centralised despotism – no rule of law**. It collapsed because its strength became its weakness. The strength was centralised despotism and therefore empire was stable as long as emperor was strong. It became a weakness because it made the system dependent on individuals/personalities rather than institutions. Good governance cannot be achieved if the state runs on basis of personalities.
- Mughal administration had no elements of self-criticism

## Legacy of British rule
### Character of British rule

- East India Company came to India for trade. Economic interest was primary and other things were subordinate to it.
- From 1858 onwards the entire administration went in the hands of British Government. This can be said as the **end of company rule in India**
- **Absentee Sovereignty** – ultimate power was outside Indian territory i.e British cabinet was responsible for Indian affairs. Therefore India was ruled by Britain from Britain.
- British in England took decision on basis of Governor-General's information which was not always correct.
- **Fundamental alienness** i.e. distance between the ruler and the ruled.
- A sense of **racial superiority** (white man's burden)
- Administration had a narrow base, highly exclusivist. Even if entry of Indians was allowed, they were expected to profess loyalty to British Empire and not Indian people.

### Impact on Legislature

- **Adopted Parliamentary System of Democracy**. Indians were already familiar with this system. "Not the Potomac but Thames fertilises the flow of Yamuna". The statement means that Indian political system is like that of British parliamentary system and not American Presidential system.
- Various tools of parliament's functioning like its sessions, procedures, budget etc. were also adopted from Britain.

### Impact on Judiciary
- Intro**duced the concept of rule of law**. All Indians were equal before law.
- Codification of laws – **IPC, CrPC, Indian councils Act, Indian evidence Act, Christian marriage Act, Parsi marriage and divorce Act, Muslim personal law, application of Shariat Act etc.**
- Introduced a court culture
- **Warrent Hastings gave both revenue and judicial powers to collector (1772) keeping in mind the amalguzar under the Mughals also had revenue and judicial powers**. Later, Cornwallis code 1793 took away the judicial powers of collector. Thus **Lord Cornwallis laid the foundation of independent judiciary**. It established a three tier judicial system – a) Zilla and city courts b) Provincial courts of appeal c) Sadar Diwani and Nizamata Adalat
- Until Lord Bentick, Indians were not interested with any post in judicial system. After Bentick, Holt Mackonzie recommended that Indians should also be appointed.

### Impact on Executive
- **Centralised setup**. Excessive power was concentrated at the apex which did not suit Indian conditions.
- Emphasis on **regulatory administration at the cost of welfare/development.**
- **District admnistration was the fundamental unit of administration** and collector's office was like a mini state. Collector was state-in-action
- **Positive contribution –** This contributed to political and administrative unification not by design but by chance. It was not motivated by honourable intentions.

### Impact on Personnel/Civil Services
- **Merit system** for recruitment to civil services rather than **spoils system** or patronage by king.
- **Neutrality orientation** – politically neutral to what was happening in Britain. Concerned only with implementation
- **Emphasis given to training**. Ex – Haileybury college in Britain
- **Generalist orientation** – intelligent amateur who can be trained and posted anywhere in field or headquarters.
- **Civil services organisation**, its ethos, integrity, spirit of working etc all have been taken from Britain.
- **Negatives** – authoritarian mentality – power oriented, status quoist – non progressive and conservative attitude, Elitist, Ivory tower mentality – alienated from people and ground reality, Hierarchy and status conscious, Generalist –today there is need of specialisation. It is time to specialise the generalists

### Impact on Citizens
- It contributed to the notion of **omnipresent and omnipotent administration**.
- Dependency syndrome among citizens. **DC's office was 'MaiBaap'**

### Regulating act of 1773
- First step by British Government to regulate affairs of EIC
- It **prohibited servants of the company from engaging in private trade**.
- Thus this act not only introduced values in administration but also **laid the foundation of a centralised administration in India.**
- **Governor of Bengal was made Governor-General of Bengal** and Governors of Madras and Bombay were made subordinate to him
- Supreme Court was established at Calcutta.

### Charter act 1853
- It is very significant from the point of view of constitutional Government. in India.
- For the first time it **introduced the concept of separation of powers**. It laid the foundation for Parliamentary Democracy.
- It separated legislative and executive functions of Governor-General's council
- It provided for **addition of six new members called legislative councilors to the council**. Thus a separate Governor-General's Legislative Council was setup which functioned as mini parliament.
- It also **introduced the system of open competition for recruitment of civil servants of company.**
  **Read other acts from Laxmikant**

# Philosophical & Constitutional Framework of Government

**What is a constitution?**

- Constitution is the **most basic** but **supreme law** of the land.
- All other laws in order to be valid, have to be as per the constitution.
- A constitution also gives relationship between **state and its people** (Part 2 of COI defines citizenship).
- A constitution also gives **the structure of state, its organs, their powers and limitations on their powers.**
- For countries like India, **Constitution isn't just a legal document but also a socio-economic document** reflecting values of Indian state and aspirations of its people.

**What is constitutionalism?**

- It means **implementation of ideals of constitution in both letter and spirit**. The constitution of the country isn't merely a dead letter but it is an organic document which serves as the basic law.
- *"Running a constitution is more difficult is more difficult than framing one."* – W. Wilson
- **Constitutionalism is the operational aspect of constitution, known as constitution at work.**
- Dr. Ambedkar famously observed - *"if this constitution fails, it isn't the fault of constitution but the people and persons in power."*

**Constitutionalism has following dimensions:**

(a) Strict implementation of rule of law.
(b) Protection of fundamental rights from state as well as private entities.
(c) Limited government.
(d) Checks and balances.

Q.1) Constitutionalism is not a guarantee for constitutional government. Comment.
Q.2) Constitutionalism seems to exist more in theory and less in practice in India. Give your views.
Q.3) Britain has constitutionalism but no Constitution. Comment.

**Features of constitution**

1. A written constitution.
2. Separation of powers among L, E & J.
3. Independent judiciary.
4. Judicial review.
5. Military under civilian control.

In India, there is **constitutionalism but with a bit of constitutional formalism** (concept of formalism was given by Riggs), that is, the difference between the ideals of the constitution and the reality in our society. We are still far from realising the ideals of our constitution as evident by following examples:

(a) **43% of 17th Lok Sabha MPs have criminal cases pending against them**. When law breakers become law makers, rule of law becomes a casualty. Also, people's faith in democracy gets eroded.
(b) High degree of corruption. By very definition, corruption means violation of rules.
(c) People not able to enjoy fundamental rights. Example: **misuse of sedition law, NSA 1980 and UAPA.**
(d) Pendency of cases in judiciary (Justice delayed is justice denied.)

**Global constitutionalism**

It is said that when there is global constitutionalism, why there shouldn't be a constitution, that is, countries don't need separate constitution. **Global constitutionalism has been experienced in 2 phases:**

(a) When UN, IMF, WB were constituted. The member countries which signed and ratified their charters

which work as a sort of legal documents and make member states morally obliged to follow these charters. For example, **UN Declaration on Human Rights (UN-DHR), 1978.**

(b) 2$^{nd}$ phase can be found with the **emergence of LPG and ICT.**

### Is constitution relevant in times of global constitutionalism?

Although global constitutionalism has significant influence on constitution of a country but at the same time, constitution is necessary for any sovereign state for its own constitutionalism. Internal functioning of a state is influenced by its own constitution rather than global constitutionalism.

### Salient features of Constitution of India
1. Fundamental rights
2. Separation of powers amongst L, E & J
3. Federalism
4. Independence of judiciary and judicial review
5. Secularism
6. Socialism
7. Free and fair elections with Universal Adult Franchise (UAF)
8. Parliamentary democracy
9. DPSPs
10. Local self-governments

### Value premises

The philosophical framework of government and administration is influenced by **Kautilya's Arthashastra, Mahabharata, Ramayana, Geeta, Upanishads**. Indian society has certain values like **Dharma, Karma, Rama Rajya, Satyameva Jayate** etc. which guide the modern day governance.

The values given in COI become legal framework of administration. These values are found in Preamble, Fundamental Rights, DPSPs and Fundamental duties.

### Preamble:



THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [1][SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity and to promote among them all;

FRATERNITY assuring the dignity of the individual and the [2][unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976. Sec.2, for "Sovereign Democratic Republic" (w.e.f. 3.1.1977)
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976. Sec.2, for "Unity of the Nation" (w.e.f. 3.1.1977)

**Preamble tells us the following:**

(a) The essence of COI and mind of constitution makers.
(b) People as **supreme, people's constitution**.
(c) **Nature of Indian state** – Sovereign, socialist, secular, democratic, republic (3SDR or SSSDR).
(d) **Objectives of Indian state**: Justice, liberty and equality.
(e) **Unity and integrity of nation.**

Q.1) The preamble is more idealistic than realistic. Comment
Q.2) Does preamble provides the essence of governance? Give your views
Q.3) What is the significance of Preamble in Indian Administration.

**Is preamble a part of COI?**
Yes, Supreme Court in **Kesavananda Bharati Case 1973** held that Preamble is a part of constitution.

**Is preamble and its values justiciable / enforceable?**
No, they are voluntary in nature (AK Gopalan vs State of Madras, 1950).

**Is preamble amendable?**
Yes, it has been amended once so far by 42nd CAA in 1976 which added **socialist, secular and integrity.**
**Preambular Values**

**1. Sovereign:**
(a) Implies **political independence**
(b) Gives the power to a state to draft its internal and external policies
(c) In times of LPG, no country is absolutely sovereign. Today, countries are not only independent but inter-dependent. Sovereignty isn't compromised but bartered. **India didn't compromise its sovereignty despite international pressure by refusing to sign NPT and CTBT. The modern concept of sovereignty has its roots in Treaty of Westphalia in which states agreed to not interfere** in each other's internal matters.

**Socialist vs Capitalising:**

| Socialist | Capitalising |
|---|---|
| Equality | Individual liberty |
| State controls economy | Free market |
| Subsidies for poor & taxes on rich | Freedom to accumulate wealth |

**2. Socialist:**
(a) emphasis is on equality (as against capitalism where emphasis is on individual liberty)
(b) **reduce inequalities** of all types
(c) prevention of exploitation
(d) prevention of concentration of wealth
(e) social justice for all
(f) state controls market
(g) higher taxes on rich
(h) subsidies for poor
(i) socialism is like a hat which has lost its shape because everybody wears it. **India has adopted a democratic socialism (unlike communist socialism).**

- *Was India not a socialist country before 1976 (42nd CAA)?*
  *India was socialist since the beginning but the word 'socialism' wasn't included in original constitution because:*
  i. *India adopted non-alignment in its foreign policy.*
  ii. *Socialism meant different to different people.*
  iii. *We included socialism in spirit. Examples: **planning commission, DPSPs, FYPs, PSUs, banks nationalization etc.***

- *Is India socialist in the era of LPG?*

  *Under social contract, state should serve and not the market. Under social contract, people created state toprotect the lives and freedom of people. People transferred power to the state. This is an upward delegation of power from people to state. But today, **market has started serving the people**. When market serves, its effects are:*
  I. *Differential treatment instead of uniform treatment.*
  II. *Cost of service increases which dilutes the service motive.*
  III. *Democratic accountability is replaced by accountability to the clients.*
  IV. *Collective goods are replaced by individual goods.*

  *Indian state hasn't abandoned the goals of socialism. What has changed is only the means to achieve the goals. Today, **the state is more of a 'promoter and facilitator' rather than 'doer and producer'**. Even if state has rolled back, in some ways, socialism has been strengthened.*
  I. *The state has become more resourceful due to **expansion of economy and hence, state can provide better services to the citizens.***
  II. *Indian state has always focused on **social sector, inclusiveness and social justice** initially via Planning Commission and now, via NITI Aayog.*
  III. *Private sector has to spend on its social responsibilities (**Mandatory CSR spending according to Companies Act**).*

[Rest Preambular values are Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity. They can be found in Polity's notes!]

## Fundamental Rights

In case of violation of FRs, the aggrieved individual may directly approach Supreme Court under **Article 32**. In case of violation of other rights, the aggrieved individual may approach a subordinate court or at best, a highcourt under Article 226.

### Features / nature of fundamental rights:
(a) They are individual in nature.
(b) Enforceable against state.
(c) **Some FRs are only for Indian citizens (article 15, 16, 19, 29, 30).**
(d) **Not absolute but restricted rights** (except article 17 – right against untouchability)
(e) They are **negative obligations on state**. They prevent the state from performing certain actions.

### How fundamental rights act as framework for government and PA?
1. They ensure **actions of arbitrariness of state, that is, rule of law and constitutionalism.**
2. They limit the power of state and empower the citizens.
3. They indicate that the administration not only should ensure such rights to people but should also imbibe in its structure and behaviour these values such as **equality, liberty, freedom, secularism, protection ofminorities (Article 30).**
4. They help the administration to achieve values of **impartiality, neutrality and objectivity in decision making.** FRs work as conscience of administration.
5. Fundamental rights are significant from the perspective that if **FRs are obstructed by administration, citizens can seek judicial remedy under Article 32.** Example: if district administration imposes restrictions of people without justification, people may challenge it. During Covid-19, many such restrictions took away people's FRs like freedom to assemble (19 – 1B), freedom of movement (19 – 1D), right to livelihood (inferred from article 21).
6. FRs becomes the basis for judicial control on administration if there is misfeasance (error in interpretation of law), malfeasance (wrong application of law) or over-feasance (excess of jurisdiction).

### Directive Principles of State Policy
- Adopted from **Irish Constitution**.
- Welfare state.
- **Article 37:** not enforceable by any court.
- **Positive obligations on state.**
- They are social and economic in nature.

  **4 types of DPSPs are:**

(a) Socialist
(b) Gandhian
(c) Liberal-western
(d) International

### Fundamental duties:
- Added by 42nd CAA, 1976 on recommendation of **Sardar Swaran Singh committee.**
- Initially 10 duties, now there are 11. **11th was added by 86th CAA, 2002** — duty of parents / guardians tosend their children (6-14 years) to school.
- **Not enforceable**. Parliament by an ordinary law, may enforce them.
- For citizens only.

### The significance of fundamental duties for administration is because:
- The difference between a diffracted and prismatic society is that in the **former, people are law abiding and dutiful, resulting in rule of law. But in prismatic societies, people violate laws and feel proud.**
- **Good Governance and Deliberative Democracy demands citizens' participation.** In India, people's participation in administration, decision making and governance has been less than satisfactory. For example: poor attendance in Gram Sabha meetings. This happens because citizens don't feel this as their duty to participate.
- Fundamental duties work as **individual ethics for civil servants.**

Thus, a sense of duty must prevail in both – citizens as well as administration. State can't govern unless people cooperate.

### Political culture

Political culture means the attitude, beliefs, **feelings, views, values of people towards constitution, state, government, political parties, elections etc. This political culture manifests itself through the active or passive role of people in the political processes including governance and democracy**. Examples of some of the manifestations are:

(a) How actively people participate in elections.
(b) How actively people participate in decision making via **RTI, Citizen Charter, e-governance and social audit**.
(c) The level of people's awareness, knowledge and understanding of their culture, history and how theyinfluence day to day administration.
(d) How people derive their identity - whether on basis of **'sons of soil' factor (parochial or regional) ornational factors.**

### The political culture can manifest itself by level of people's participation in elections as follows:
(a) When people are asked a question that which political party they support in next LS elections — if morethan 50% people say a specific choice of theirs, it shows their political awareness.
(b) If more than 50% people haven't yet decided, it shows passivity.

### Types of political culture

**Gabriel Almond and Sidney Verba** in their book — '**The Civic Culture, 1963'** gave three types of political culture and three factors which influence political culture. They conducted a study in 5 countries — US, UK, Italy, Germany and Mexico.

### Following are 3 factors which influence political culture:

1. **Emotions:** When a political culture is influenced most by emotions, it is considered backward. **People vote on basis of emotions and sentiments like caste, religion, language, dynasty influenc**e. Voters aren't concerned about development. **Political parties win elections by appealing to emotions** (*Demagogues: a political leader who seeks support by appealing to the desires and prejudices of ordinary people rather byusing rational argument)*. Political parties don't worry about performance and rely on charismatic leaders. There is **no inner party democracy**.

2. **Values or ideologies:** It is better than a political culture where emotions and sentiments dominate. Here, **voting behaviour is based on values and ideologies professed by political parties:**

(a) **Rightist philosophy:** Rightist political parties **believe in majoritarian rule**. They advocate interest of

majority population (can be religion, race or caste). In **economic sphere, they prefer market based economy**. In culture, they are conservative. **Example:** BJP and Shiv-sena in India, Republican party (Donald Trump) in US and Conservative party in UK.

(b) **Leftist philosophy:** These political parties believe in leftist and Marxist ideology. They **believe in secularism. They are interested in protecting the rights of minorities whether religious, linguistic or depressed and backward sections**. In economic sphere, they want state controlled and state regulated economy. Public sector enterprises to be given predominant role. **Example:** CPI in India, Labour party in UK.

(c) **Centrist philosophy:** These political parties are **ideologically flexible**. They **believe in role of both market as well as state.** They try to bring a balance in rights of both minority as well as majority community. **Example**: India – INC, US – Democrats (Joe Biden).

Thus, in a political culture, influenced by values and ideologies, people vote for parties not on basis of fulfilment of promises and performance but on basis of the values and ideologies professed by a political party.

3. **Cognition:** Here, people decide on basis of actual performance and promises made by political parties. **People are active, aware and knowledgeable. They hold political parties accountable**. It is found in developed countries.

   **On basis of their study, Almond and Verba gave three types of political culture:**

1. **Parochial**
   *Example: Mexico*
   - People are very **passive**
   - People's identity is based on local factors.
   - Society is **patriarchal**.
   - **Low awareness** about political objects.
   - Distance between government and citizens.

2. **Subject**
   *Example: Italy and Germany*
   - Better than parochial culture.
   - People are **active occasionally**. Example: during elections.
   - People treated as **subjects by government**.

3. **Participative**
   *Example: US and UK*
   - People are **active and aware**.
   - They participate in democracy and day-to-day administration.
   - Identity is based on **national factors**.
   - **Strong civil society.**

4. **Civic**
   - It is the **combination of the best aspect of all other political cultures**.

There are other scholars who contributed to study and understanding of political culture – **Lucian Pye, MorrisJones, Ashis Nandy, Rajani Kothari and Yogendra Yadav.**

**Political culture in India**

**Factors influencing Indian political culture:**

1. **Historical factors:** British legacy has given both, positive and negative factors. On positive side, **liberal democratic system, a unified India**. On negative side, **divide and rule, religion & cast divisions**, ruling mindset, elite orientation and corruption.

2. **Socio-cultural factors:** On positive side, Indian society has always **been plural, secular and inclusive in nature**. On negative side, **caste system, patriarchy, prejudice** etc.

3. **Political factors:** On positive side, national party after independence propagated **secular, liberal & democratic values, socialist orientation**. On negative side, dominance of regional political parties (it isn't good because they keep reviving the regionalist tendency in minds of subject over the nationalist tendency), caste, religion, language based politics.

**Assertive political culture**

According to recent research and publication by Welzel and Dalton, the participative political culture given Almond and Verba isn't only outdated but also transformed into assertive political culture because of following factors. **People have become more assertive in demanding their rights and they hold political parties accountable.**
1. ICT (Information and Communication technology)
2. Social media
3. Role of civil society
4. Globalisation

**Bureaucracy and Democracy**

| Bureaucracy | Democracy |
|---|---|
| Rule by officials | Rule by elected members |
| Based on efficiency and merit | Based on equality amongst people, their freedom and liberty |
| Bureaucrats are trained | Amateurs |
| Implements policies | Formulation of policies |
| Neutral | Based on opinions, values, beliefs |
| Permanent | Temporary |

In developing countries, bureaucracy is expected to play not only a regulatory role like in diffracted countries, but a larger developmental role. There can't be a complete separation between bureaucracy and democracy as advocated by first paradigm of public administration and Woodrow Wilson.

**Is the relationship between bureaucracy and democracy conflictual / contradictory?**

On the basis of principles on which they are established, it seems that they are conflictual. But they aren't necessarily conflictual as shown by the following points:
(a) Bureaucracy should be based on **efficiency principle.**
(b) **Efficiency principle strengthens democratic ideals**.
(c) Democratic control over bureaucracy makes bureaucracy less threatening to citizens' liberty.
(d) Democratically elected Government needs efficient machinery (bureaucracy) to achieve the promises.

In India, the first 2 decades after independence, there was **'balanced polity' (term given by Riggs) which means politics and bureaucracy don't interfere in each other's matters**, but thereafter, India witnessed imbalanced polity. There has been **politicisation of bureaucracy and bureaucratisation of politics.**

In most western countries, bureaucracy and democracy developed almost simultaneously. The relationship between the two has been supportive as well as antagonistic.

**Views of various scholars on bureaucracy and democracy**

**Max Weber**

*"Democracy has to promote what reason demands and democratic sentiments hate."* – **Weber**.

**According to Weber, democracy demands rule of law and absence of arbitrariness**. This calls for establishing an organisation (administration) which works impersonally and on the basis of rules. This leads to creation of bureaucracy. This bureaucracy must be protected from political interference. But too much protection and independence can make bureaucracy undemocratic because of concentration of powers. Bureaucrats aren't accountable to popular sentiments. But **Weber maintains that without a civil service class, democracy will be plagued by spoils system and lack of technical efficiency**.

### Eva Etzioni Halevy's thesis

**He puts forward 3 dimensions of the problem between democracy and bureaucracy.**

1. There is a **paradoxical or self-contradictory relationship**. On one hand, power of bureaucracy poses a threat to democracy. On the other hand, modern democracy can't exist without a powerful and independent bureaucracy.

2. According to him, **democracy poses a dilemma for bureaucracy**. **Bureaucracy is in a double bind. It is expected to be under the control of elected politicians and yet exempt itself from such control**. Bureaucracy is expected to implement policy and yet participate in formulation of policy. Bureaucracy is expected to be value neutral but policy formulation isn't effective without values. Thus, this dilemma of bureaucracy is because of role ambiguity in the definition of bureaucracy.

3. Because of absence of clear definition of role, senior bureaucrats often enter into political no-man's land which doesn't fall clearly within domain of bureaucracy, nor clearly outside it. Whenever bureaucracy has crossed the boundary, it has led to power struggles. The power struggles generated by bureaucracy are more ruthless than those of politicians because bureaucratic power struggles aren't decided by electoral process.

### Safeguards against bureaucratic threat to democracy
1. **By Paul Van Riper: A representative bureaucracy.**
   (a) Representation to different sections of society.
   (b) Bureaucracy should be in tune with ethos and attitudes of society.

2. **FW Riggs recommended a balanced polity.**
3. **Participatory bureaucracy.**
   (a) Organisational democracy, that is, participation by officials at all levels in decision making. (**Likert's participative management**)
   (b) Bureaucrats may be allowed to contribute in public debate.
   (c) Citizens' participation in bureaucratic functioning.

### Scenario in developing countries

The dilemma of democracy vs. bureaucracy is more acute in developing countries. There is an incompatibility between rapid economic development on one hand and democratic political development on the other hand. For rapid economic development, a strong independent and powerful bureaucracy is essential but such a bureaucracy pose a threat to democracy. Thus, bureaucracy becomes a necessary evil. **Riggs suggested development of middle class to limit bureaucratic power.**

### Bureaucracy and development

### Problems at conceptual level
1. Rule orientation ☐ displacement of goals
2. Hierarchy oriented ☐ status consciousness
3. Emphasis on sub-unit goals
4. Transforms itself from an instrument to institution
5. Empire building

### On the positive side
1. Bureaucracy isn't necessarily bad. It needs to be **transformed into developmental bureaucracy**, for which training and motivation are primary needs.

2. Organisational adjustment towards fitting developmental needs.

### Features of Indian bureaucracy
1. Colonial processes, structure and attitudinal hangover.
2. **Maai-baap culture** (people consider them as almighty).
3. Narrow social base, urban and elite oriented.
4. Resist administrative reforms.
5. Failed to invoke people's participation.
6. Inadequate accountability mechanisms.
7. Corruption reduced efficiency of bureaucracy in bringing development.

### Achievements of Indian bureaucracy
1. **Bureaucracy has been a good crisis manager**. E.g.: handling refugee problems, natural disasters.
2. A link between masses and political executive.
3. Conduct of free and fair elections.
4. Efficient management of India's foreign policy.
5. Self-sufficiency in food grain production.
6. Safeguarding unity, integrity and sovereignty of India.

# 3
**CHAPTER**

# Union Government and Administration



## Parliamentary

**Prime Minister Leader/heads parliament, the law making body**

**Parliament selects the Prime Minister**

**Prime Minister can dissolve the parliament**

**Parliament members can vote to elect a new Prime Minister**

My have a head of state with little power: king or queen

**Citizens elect lawmakers**

**Leader heads the military and runs the government**

## Presidential

**Legislature: law making body (only)**

**President is elected by citizens**

**President: Leader (only)**

**Legislature and President serve a fixed amount of time**

**President does NOT make laws**

**President is head of state and chief executive**

## PARLIAMENTARY AND PRESIDENTIAL FORM OF DEMOCRACY

**Features of parliamentary system:**

- **Presence of dual executive**. President / Monarch is nominal or de jure head. He is head of state. **The Prime Minister is the real or de facto head**. He is head of government. In Presidential system, President is both head of state as well as government.

- Citizens elect the lower house of legislature and the party / parties winning majority of seats forms the executive or government whereas Presidential systems are based on strict separation between legislature and executive.



Citizens separately elect the lower house as well as the President who is the head of executive.
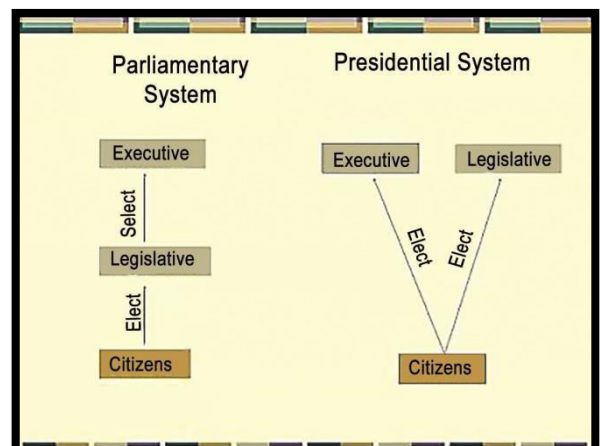
- The members of executive have dual membership in the sense that they are members of legislature also.

**Merits of parliamentary system:**
- There is a **better harmony between legislature and executive** because the executive has majority in lower house. The bills, amendments, resolutions etc. can be introduced by executive and are passed in lower house because of majority. Whereas in Presidential system, if the President belongs to one party while some other party has majority in the legislature, there can be a conflict.
- The powers of executive aren't concentrated. They are dispersed and exercised by council of ministers (CoM) headed by the PM. Therefore, there is **a plural executive (not unitary executive).** Whereas, in Presidential system, **powers of executive are concentrated in President**.
- **The executive is accountable to legislature for its actions and decisions.** The legislature exercises a direct, continuous and concurrent control over government which is both political and financial control. Whereas, a Presidential government is only financially accountable to the legislature.
- It is a **more representative government.** The ministers are drawn from parliament which is nation-in- assembly. Therefore, it provides greater opportunity for almost all sections of population to be properlyrepresented in decision making process of the country.

**Demerits of parliamentary system:**
- If the ruling party has absolute majority, responsibility and accountability gets diluted since there is no difference between party and government, that is, no difference between legislature and executive.
- **Absence of strong and constructive opposition**. Power corrupts and absolute power corrupts absolutely! — as depicted by internal emergency.
- In case of a **fractured mandate or hung Lok Sabha, there is either a minority government or a coalition government.** In such conditions, only administration takes place and not government because government is in survival mode. It leads to **policy paralysis, populist policies, myopic policies**. Also, a smaller party may become ruling party which is against the mandate of people. It can make the government transforming itself into a soft state.
- **In first past the post system, relative votes matter and not absolute votes**. Therefore, the representationmay not be true representation.
- Accountability isn't true accountability, Poor attendance, lack of educational qualifications, a divided opposition, MPs with criminal charges etc.
- The Government is led by ministers who may not have experience and expertise in their portfolios.

**Achievements of parliamentary system:**
- Created a democratic culture and increased political consciousness.
- Has **broad based people's participation** in political process.
- **73rd and 74th amendments have made grass root democracy a reality**. It has made democracy deeper, more meaningful, participative and not just representative.

**Why did India adopt parliamentary system?**
1. Socio-economic conditions.
2. A pluralistic society which was heterogenous and complex.
3. Size of country.
4. Need for representation of diverse sections.
5. British legacy.
6. Preferred a more accountable government than a stable government.
7. Familiarity with system.
8. In Presidential system, if a charismatic leader comes to power, the country may transform to a dictatorialsystem. it was experienced in many Afro-Asian countries.

Thus**, Constituent Assembly adopted a parliamentary democracy and preferred to go with a known devilrather than an unknown angel**.

# PRESIDENT

**Article 52:** there shall be a President of India.
**Article 53:** the executive power of the union shall be vested in the President.

**Qualifications:**

- Citizen of India (by any method)
- 35 years of age.
- Qualified for being a member of Lok Sabha.
- Shouldn't hold any office of profit.

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**Office of Profit:** President, VP, MPs, Governors, MLAs, MLCs aren't allowed to maintain / hold any office of profit. **Office of profit may lead to a conflict of interest between constitutional duties and personal interest.** Constitution allows the Parliament to prescribe as to which offices come under office of profit. 2nd ARC in its 4th report recommended that parliament should enact such a law. So far, no such law has been enacted. **According to judiciary, an office of profit has following features:**

(a) Appointment by state

(b) For a limited period

(c) Terminable

(d) Carries emoluments (cash or kind)

**Parliament has enacted Prevention of Disqualification act, 1959 which contain a list of offices which if held by an MP**, the MP will not be disqualified. Example: Deputy Chairman of NITI Aayog; Chairperson of NCSC, NCST or NCW.

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## POWERS AND FUNCTIONS

### Legislative powers:
- Summons both the houses of the parliament for sessions.
- Prorogues the sessions.
- Can dissolve Lok Sabha.
- In first session of each year and first session of newly elected LS after the general elections, **President gives a joint address to both houses of parliament** (similar to king's speech from throne in UK).
- Nominates 2 Anglo-Indians to LS (person born in India, domiciled in India, male line of descent of European origin). This system has been stopped now! It hasn't been extended further, thus, automatically got lapsed.
- Can send messages to Parliament. It can be his opinion on any matter. It is one of his discretionary power (no need to advice of CoM).
- **Nominates 12 members to RS from fields of LASS – literature, arts, science, social service.**

### Financial powers:
- No money bill can be introduced in the Parliament **except on the recommendation of the President.**
- He appoints the **Finance Commission**.
- He also **makes advances out of Contingency Fund of India** to meet unforeseen expenses.

**Emergency powers:** President of India may decide to announce National emergency (Article 352), State emergency (article 356) and financial emergency (article 360).

## VETO POWERS

### What is the rationale behind veto powers?
- When a bill has been passed in haste without sufficient discussion.
- When there is **lack of consensus on provisions of bill**.
- **Veto powers act as intermediary check before judiciary examines the constitutionality.**

The President's veto powers shouldn't be called as a tool to suppress people's opinions. These powers are used as strategic intervention and not interference.

### Are these powers empty power?

They shouldn't be called empty because they've been effectively used in past.

### Article 111

**When a bill is passed by parliament, President has following options:**

(a) May give assent and thus, bill become act?

(b) He may withhold his assent and thus, prevent the bill from becoming act. **It is called absolute veto.** This veto is exercised on the advice of PM and CoM when the bill is a private member's bill or the bill of previous government. Such a bill becomes dead. A bill with similar provisions can be introduced afresh.

**President Rajendra Prasad in 1964 and R Venkatraman in 1991 have used absolute veto.**

**Rajendra Prasad used it against a money bill of PEPSU** (Punjab and East Patiala State Union) state. Venkatraman used it against MPs' salary bill which was a money bill but introduced without prior recommendation of the President.

(c) **Suspensive veto:** The **President may return the bill (not a money bill) to the parliament for its reconsideration.** The parliament may pass the bill with or without changes. President may return the bill with or without his objections. If parliament passes the bill again, President shall give his assent.

Critics argue that suspensive veto doesn't serve any purpose because if the bill has been passed once, it can be passed again also. **This criticism is not valid because when President returns the bill, it sends a strong message to the country and it becomes politically difficult for the Government to get the bill passed.** If the Government gets the same bill passed again, then President's veto powers aren't to be blamed because he has performed his duties.

(d) **Pocket veto:** Article 111 doesn't mention any time period within which the President has to take a decision. Therefore, **implicitly President has a fourth option of keeping the bill pending on his table indefinitely. This is called pocket veto.** In case of pocket veto, the bill isn't dead and the President at a later date or the next President may give assent.

**Note:**
- Suspensive veto and pocket veto can be used by the President in his own discretion also.
- **After 24th CAA, 1971, President doesn't enjoy veto powers in case of CABs (constitution amendment bills).**

**Legislative powers of the President to make or promulgate ordinances:** In a democratic country, it is legislature's power and function to legislate but parliament can sit and conduct its business only when it is in session. There can be some circumstances which render it necessary to have a new law or amend a law but parliament isn't in session. For this purpose and such circumstances, **Article 123 gives the President power to promulgate ordinances. An ordinance can be promulgated only when either both houses aren't in session or either one of the houses isn't in session** (because a bill needs to be passed by both houses). An ordinance promulgated when both houses are in session will be void ab initio. **An ordinance has the same force and effect throughout the country as that of an act of Parliament.** Every ordinance promulgated shall be laid before both houses of parliament and ceases to operate at expiry of 6 weeks from parliament's reassembly. If approved by parliament (simple majority), it becomes a law. **6 months and 6 weeks is the maximum life of any ordinance.** President can promulgate ordinance on subjects of union and concurrent lists. An ordinance can't amend constitution.

**On 19th July 1969, 14 private banks were nationalised by an ordinance of President** (VV Giri was VP but acting as President because Zakir Hussain had died). On 21st July that year, parliament's monsoon session was going to begin. The petitioner RC Cooper challenged in the Supreme Court, the satisfaction of President under Article 123 in promulgating that ordinance. SC in *Cooper vs UOI, 1970* held that the satisfaction of President under article 123 is subject to judicial review. It must be based on relevant material and bona fide grounds.

The Governor of Bihar from 1967 onwards promulgated as many as 256 ordinances and many of them were repromulgated. This was challenged in SC by DC Wadhwa, a professor of economics in Pune. SC, in *DC Wadhwa vs State of Bihar, 1987* held that promulgation of an ordinance again without any attempt of getting it approved from legislature shall be unconstitutional. But if the ordinance is repromulgated because Parliament / State legislature couldn't discuss it because of pending business, repromulgation shall not be void. This case has left open the space for misuse of ordinance making power.

In 1997, two lawyers filed a petition challenging 10 ordinances promulgated by PV Narsimha Rao Government. The stand of the government was that in spite of the best efforts of government by introducing the ordinance in the parliament, because of the circumstances beyond control of the government and because of heavy and other urgent work load before parliament, the ordinances could be debated and/or passed. Therefore, the circumstances compelled the government to promulgate the ordinances. The SC considered this as a valid reason. [*Gyanendra vs UOI, 1997*]

SC in *Krishna Kumar Singh vs State of Bihar, 2017* held that failure to place an ordinance before legislature isfraud on constitution. If an ordinance is allowed to lapse, actions done under it will also lapse.

**Ordinance making power, though necessary, becomes unacceptable when it degenerates into ordinance raj. It shouldn't become a parallel legislative power** because it is the parliament which represents the voice and choice of people. Ordinance shouldn't be used to avoid accountability to legislature. In recent times, the government has used ordinances because of lack of majority in the upper house. Every ordinance when placed before legislature for approval should be accompanied by a memorandum explaining thecircumstances which required promulgation of ordinance.

### CONSTITUTIONAL POSITION OF PRESIDENT

**Ultra-literal view of constitution:**
- President is merely a constitutional head like British crown. This view is held by **Granville Austin, Alexandro Wicz and MC Setalvad.**
- President isn't a mere figure head and some of his powers are supra-ministerial. This **view is held by AlanGledhill, KM Munshi.**
- Middle view is held by majority of experts. While President is constitutional head, he has unspecifiedreserved powers as guardian of constitution.

**Article 53 has vested the executive power of union in President.** Article 74 says that there shall be a council of ministers headed by PM to aid and advice the President in his executive functions.

**The phrase "aid and advice" is of Canadian origin.** The Constituent Assembly adopted a flexible approach. They left it on time to shape the institution of President. They expected healthy conventions to develop but the lack of clarity created disputes. **The aid and advice can be said to be not binding because:**
(a) Nowhere mentioned in constitution that aid and advice is binding.
(b) If President is always bound by aid and advice, his procedure of impeachment becomes redundant.
(c) The words aid and advice are voluntary in nature.
(d) President is thinking individual and has a personal responsibility if not constitutional to the country.

**The aid and advice can be said to be binding because:**
(a) PM and CoM have been given only the function of giving aid and advice to the President.
(b) Immunity given to President in **Article 361** for his executive functions.
(c) President is indirectly elected.

24th CAA, 1971 deprived the President of his veto powers in constitution amendment bills.

**42nd CAA, 1976 amended article 74 and made the advice binding on President.**

**44th CAA, 1978 allows President to require CoM to reconsider the advice and President shall act according to advice given after reconsideration**. President KR Narayan sent back the advice of imposing President's rule in Bihar on advice of Gujral government. He was re-advised for the same by Vajpayee government in 1999 and thus, Raabri Devi was dismissed and Bihar came under President's rule.

Thus, there is a need to maintain a delicate balance without slipping into either an unthinking rubber stamp or an overzealous interventionist. President isn't a rubber stamp but a rubber stamp but an emergency light. Even after 42nd amendment which made the advice binding, President has certain unwritten situational discretionary powers.

**Discretionary powers of the President:**
1. Appointing PM in case of hung Lok Sabha.
2. Dismissing PM if he fails to resign on losing confidence in Lok Sabha.
3. If PM has lost majority in Lok Sabha and advices the President to dissolve Lok Sabha, President may

notdo so.

4.  Summoning the session of parliament, if not advised by PM and 6 months are going to lapse since lastsession.
5.  Suspensive veto and pocket veto may be exercised by President in his discretion.
6.  Giving time to PM to prove majority.
7.  Sending messages to parliament.
8.  If PM fails to perform his duty under article 78, President in his discretion can ask the PM about affairs ofadministration.
9.  Under Article 74, President in his discretion can ask the PM and CoM to reconsider their advice.

**Presidency since independence:**

*Note: If question asked about trends of Presidentship in India, don't mention specific names of the Presidents.*

**1950s:**
- Post-independence era
- Era of reconstruction
- Decade of optimism
- Nascent constitution
- **Rajendra Prasad:**
  - (a) President talked about **independent presidency** and put it to academic debate.
  - (b) **President-PM conflict over Hindu Code Bill** (about marriage/divorces and succession) but both acted maturely.

**1960s:**
- Non-political President, a great personality, teacher and academician.
- **Invoked Article 78 — right to be informed** (earlier, PM had to inform the President about administrative affairs, but there, the President himself asked for the same as PM could be busy with other important things and could forget this duty).
- Expressed unhappiness with performance of defence minister after Indian lost war with China. It showed President wasn't a rubber stamp.

**1970s:**
- **Presidentialisation of PM's post**. (VV Giri and Indira Gandhi)
- President became less assertive and made people comment that President is a rubber stamp.
- **42ⁿᵈ CAA** – advice made binding.
- **Internal Emergency** – lowest point of Presidency (Fakhruddin Ali Ahmed).

**Mid 1980s:**
- Rajiv Gandhi was automatically made PM after assassination of Indira Gandhi by Gyani Zail Singh (first, a caretaker PM has to be made).
- Poor relations between President and PM (**Rajiv Gandhi and Gyani Zail Singh).**
- President accused PM of not doing enough to prevent anti-Sikh riots. And that PM was corrupt. PM accused President of links with Khalistan movement.
- Used **veto powers (pocket) against Post Office Amendment Bill.**

**Early 1990s:**
- Political instability and President (R Venkatraman) desired to have a national government (all-party government) which he himself wanted to lead.
- Wanted to remove PM who was facing corruption allegations but PM managed to stay.

**Mid 1990s:**
- Interpretation of **electoral mandate**.
- Increased discretion of President (SD Sharma).
- New convention of asking letters of support to form government.

**Later 1990s:**
- Activist President (KR Narayan) because he was vocal in articulating his opinion. As head of state, President can express himself but in such a way that he doesn't embarrass the government.
- Didn't dispose-off even a single mercy plea.

**2002-07:**
- **Non-political scientist President** (APJ Abdul Kalam).
- Close to people and therefore, called as **popular presidency.**
- **Defended India's nuclear tests.**
- Sent back Office of Profit Amendment Bill. Disposed-off only 2 mercy petitions — one rejected and one commuted.

**2007-12:**
- **First woman President** (Pratibha Patil) in 60 years of independence.
- It shows maturity of Indian democracy.

**2012-17:**

- Considered one of the pragmatic Presidents. **Neither rubber stamp, nor activist** (Pranab Mukherjee).
- Opened up **unused sections of Rashtrapati Bhavan for general public**.
- Disposed-off all 34 pending mercy citizens (30 rejected). **Highest rejection rate of mercy petitions, only next to R. Venkatraman who rejected 45 mercy petitions.**
- Expressed mild displeasure on over-use of ordinances by BJP government.

**Conclusion:** It isn't about strong presidency vs weak presidency. It depends on the incumbent how he or shewants it to be. President isn't a rubber stamp but an emergency.

# PRIME MINISTER

- **De-facto head of government**.
- Aka real executive.
- In reality, he can be called **first person of the country because of his position in country's political and administrative setup.**
- His leadership is very essential for economic growth, development, direction and destiny of the country. That is why; PM should be a person of high calibre, visionary, a transformational leader or at least a transactional leader.
- Generally, India has experienced PMs of high calibre, clean background, non-controversial, though some exceptions are there!
- **President appoints PM as per Article 75.** According to convention, President appoints leader to the largest party / alliance of parties having majority in Lok Sabha as PM.
- PM remains in office as long as he enjoys majority in LS.

**Constitutional provisions with respect to PM:**
- Constitution hasn't given detailed provisions with respect to powers and functions of PM as India adopted a **west-ministerial type of parliamentary democracy which is based on conventions**. The powers and functions of President given in constitution can be called powers and functions of PM.
- No special qualifications for PM.
- Must be eligible to be an MP.
- The PM can be an MP or either house unlike UK, where the PM has to be from House of Commons.
- **Article 74, 75, 77 and 78 can be used to define powers and functions of PM.** Although these articles don'tincorporate the whole range of functions performed by PM.

**POWERS AND FUNCTIONS OF PM**

**PM and CoM:**
- PM is the head of CoM as per **Article 74**.
- There are 2 schools of thought regarding PM's position with respect to CoM.
  - **(a) Traditional or classical: PM is primus inter pares**, **that is, first among equals**. According to Lord Morley, he is only a coordinating force and a buckle that fastens.
  - **(b) Modern:** PM is effectively a **boss and a Sun among lesser stars**.

- According to **Article 75**, President appoints and removes ministers on advice of PM, therefore, **PM iscreator of Government.**
- Council of ministers holds office during pleasure of President. In reality, they **hold office during pleasure of PM.**
- PM's resignation leads to fall of government. Therefore**, PM is compared with Brahma – Vishnu – Mahesh**!

**PM and Cabinet:**
- Cabinet is headed by PM and it is this body which is responsible for decision making at highest levels of government.
- **Union Cabinet is extra-constitutional** and its details aren't given in constitution. Although it is mentioned in Article 352 after 44th amendment, 1978.
- Generally, 15-20 ministers are in Union Cabinet. Its powers and functions are given in allocation of business rules and transaction of business rules, 1961. It **functions in camera (secret) and every member has equal vote, although, headed by PM. That's why in cabinet, PM is first among equals**.

Cabinet takes all the major decisions of government related to budget, bills, economic policy, foreign affairs, political matters, administration, civil services, national security, planning etc. all major policies of government require approval by cabinet. Because of the pre-eminent position of cabinet, **parliamentary democracy is also called cabinet form of government**. The role of cabinet is both important as well as challenging and hence, it works on principle of division of work as given by classical theories.

**Cabinet committees:**

- They are created as per **Allocation of Business Rules, 1961**.
- They are **extra-constitutional**.
- Can be ad-hoc or standing.
- Ad-hoc committees are **setup to deal with a particular and urgent matter and once the matter is over, the committee is dissolved.**
- **Example:** Cabinet committee on political affairs (CCPA), on economic affairs (CCEA), on appointments (CCA).
- Most cabinet committees are headed by PM.

- Cabinet secretariat provides secretarial assistance to the CoM, Cabinet and Cabinet committees. Cabinet secretary works as chief coordinator and advisor of cabinet and CoM.

- CoM is a collective body and functions unanimously. According to **Article 75 (3), CoM is collectively responsible to Lok Sabha.**

- **After 91st CAA, 2003, the strength of CoM can't be more than 15% of LS.** Ideally, according to 1st ARC, there should be 40-45 ministers and cabinet ministers to be 15-20. There was a time in coalition era that there were more than 100 ministers.

**PM as leader of Parliament:** PM is the leader of Parliament and is the leader of house to which he belongs. The role of PM is very important in effective functioning of parliament in terms of quality of debate. PM along with presiding officers and leaders of opposition significantly influence the quality of functioning of parliament.

**PM as leader of Nation:** He plays most important role in economic growth, development and direction of country. Destiny of people depends on his leadership. That's why, he should be transformational leader. **PM is chief-in-crisis**. If and when the country faces any crisis, he is the first man-in-action and the trigger point. He should be compassionate, responsive, responsible and lead from the front, that is, leadership according to Chester Barnard.

**PM as head of government:** As HoG, he performs following functions:

(a) **Head of some ministries** (Right now, it is ministry of personnel, department of space and department of atomic energy). This allows a direct contact of these departments with the PM without any interference. It has proven successful given the performance of **ISRO and DRDO**. It is an example of autonomy and performance.

(b) PM is head of many institutions such as **NITI Aayog, Disaster Management Authority**. In this capacity, PM has to ensure administrative reforms.

**PM as spokesperson of foreign policy**

**PM gives a direction to country's foreign policy**. He represents the country at various international platforms. Therefore, the role of PM as head of Government and head of cabinet is considered very important and can be related to **POSDCORB of Gullick and Urwick, functions of executive by Barnard, Situational leadership by MP Follet, charismatic and transformational leader**.

PM has to maintain a communication with the people. He shares his thoughts via initiatives like **Mann ki Baat,** but there should be a two-way communication so that the reality of society and aspirations of people are known to the highest levels.

**Structure of Government of India:**
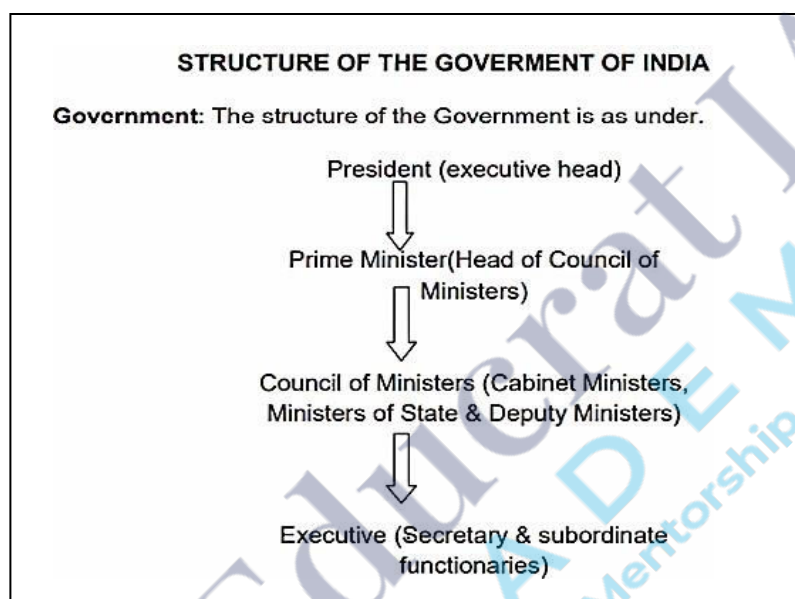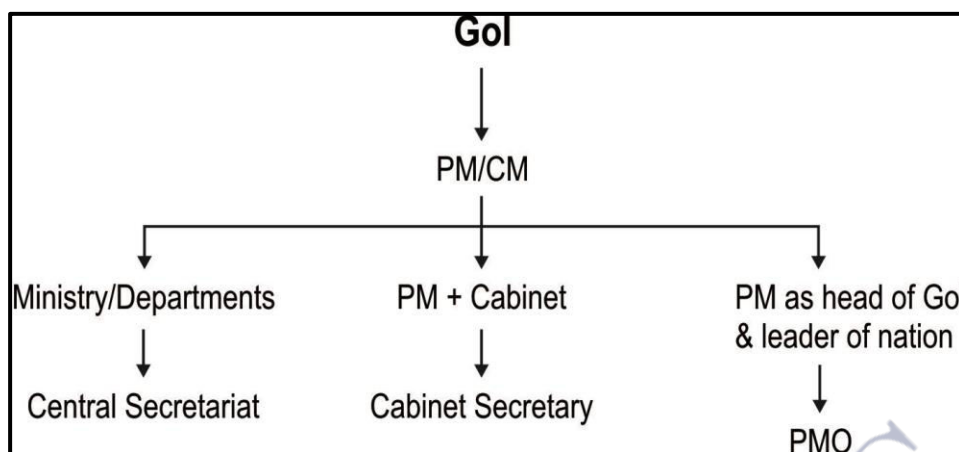
### Ministries/departments:

- They are **created as per portfolio system** (Lord Canning brought this system to India). Their powers and functions are as per allocation of business rules (AOBR), 1961.

- **In general, ministries / departments are a staff agency as well as line agency:**
  (a) **Secretariat**: policy making, headed by secretary.
  (b) **Directorate**: policy implementation, headed by director.

- **Functions of ministries / departments:**
  (a) Policy making regarding its portfolio.
  (b) Drafting bills, rules.
  (c) Preparation of its budget.
  (d) Personnel management.
  (e) Preparing answers to parliamentary questions with respect to its functioning.

### Difference between ministry and department:

- A **ministry** is identified with a **minister** whereas a **department** is **headed by a civil servant**.
- A **ministry can have one or more departments**. For example: MHA has department of internal security, department of J&K affairs, department of states, department of border management, department of official languages etc.
- Each department is headed by an officer of rank secretary.

**Various ministries and departments under them:**

1. **Ministry of finance:**
   (a) Department of economic affairs
   (b) Department of expenditure
   (c) Department of revenue
   (d) Department of company affairs

2. **Ministry of home affairs:**
   (a) Department of internal security
   (b) Department of states
   (c) Department of home
   (d) Department of official language

3. **Ministry of personnel, public grievances and pensions:**
   (a) Department of personnel and training
   (b) Department of administrative reforms and public grievances
   (c) Department of pensions and pensioner's welfare

4. **Ministry of defence:**
   (a) Department of defence
   (b) Department of defence production and supplies
   (c) Department of defence research and development

# CENTRAL SECRETARIAT

- It is the **name which represents all the secretariat of ministries / departments, that is, central secretariat isn't a single institution except PMO and cabinet secretariat (nobody heads it).**
- **Functions:**
   (a) It is the body through which union government operates and is the **nodal agency for implementation of union subjects.**
   (b) Policy making.
   (c) Provides relevant data and statistics for policies.
   (d) Provides advice.
   (e) Sectoral planning and proGram formulation.
   (f) Helps in coordination and interpretation of policies.
   (g) Evaluates implementation.
   (h) Modification in policies if required.
   (i) In a parliamentary democracy, the ministers are amateurs. They may not have experience and/or expertise in their respective portfolios. Administration is a technical activity and therefore, ministers receive technical support from bureaucracy in terms of policy formulation. Thus, staff organisations like central secretariat (sect.), cabinet sect., PMO help the political executive in performing their functions in a more efficient manner. The origins of secretariat administration in India can be traced back to British times.

**3 pillars of central secretariat are:**
I. **Minister:** represents the will of people
II. **Secretary:** represents the brain
III. **Head of department:** represents the limbs (implementation)

**Secretariat system is based on two principles:**

**(a) Split system:** the work of government is split into 2 major categories which is also **a Taylor's principle:**
- Policy formulation by staff agency:
- Help ministers in policy formulation
- They are headed by generalist
- **Advisory in nature**, that is, can only give suggestions to the ministers because final decision is by the minister
- Situated in headquarters (NCR)
- **Example**: central secretariat, cabinet secretariat, PMO, NITI Aayog

I. **Policy implementation by line agency:**
- Responsible for policy implementation
- Headed by specialists

- Work in the field
- **Example**: Directorates and departments
- Control and guided by staff agencies

**(b)** **Tenure system:** It was **introduced by Lord Curzon in 1905**. Recruitment to all India service is done at central level (UPSC) and thereafter, these officers are allotted their state cadres. **At central level, policies are made by secretariat.** The secretariat organisations have no separate recruitment for high and middle positions. To make a secretariat more efficient, British introduced tenure system. Officers recruited for ICS (Imperial Civil Services) were expected to work in provinces. Tenure system gave them an opportunity to work in central secretariat organisations. India being a huge and diverse country, policies can be successful only if they reflect ground realities — the actual aspirations and problems of people**. Tenure system is to bridge the gap between idealism and reality**. ICS officers who worked mostly in the fields during early part of their career have sufficient experience in policy implementation. These officers when they come to central secretariat on deputation as part of tenure system are expected to use their field experience and formulate policies reflecting problems of people at lowest levels.

**Tenures:**
- **Secretary** – 3-5 years
- **Additional secretary** – 4 years
- **Joint secretary** – 4 years
- **Deputy secretary** – 4 years
- **Undersecretary** – 3 years

As AIS officers, **IAS officers must develop macro and integrated outlook towards problems faced by the country.** They can't afford to be narrow in their perspective. T**enure system helps them to develop this macro perspective.** This system was successful during British times but after independence, this system failed because of politicisation of civil services. Most of the IAS officers who come on deputation to central secretariat for a particular tenure often don't want to go back to their state cadres. For this, they develop political connections. It **leads to shortage of officers in state and other officers not getting opportunity to workat central level.**

**There has been a rapid expansion in size of secretarial administration for following reasons:**
- During British times, administration was performing simple and regulatory functions but after independence, **Indian administration is performing welfare and developmental functions also.**
- Challenges to environment leading to new ministries like **MoEF (environment and forest).**
- Scientific and technological development. Example: e**-governance led to creation of ministry of IT, space tech led to department of space, atomic energy for DoAE.**
- The most important reason for rapid expansion of number of ministries and departments is the political reason. **Coalition politics has forced the government to create more ministries / departments to accommodate demands of coalition partners** resulting in artificial division of work even where there is no work. For example, a single subject of education divided into primary, secondary and higher education. This has resulted in lack of coordination, conflicts and fight over domains.
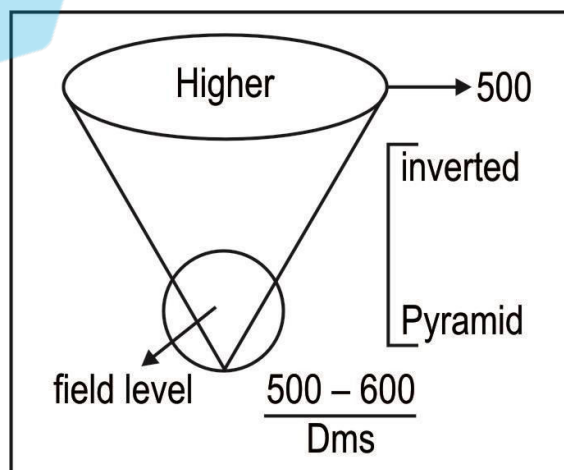
- Apart from political reasons, there are other administrative reasons. Promotions in civil services are based on seniority principles, that is after every few years of service, civil servants must get promoted to next higher level. It has resulted in the structure of secretariat look like an inverted pyramid. It is also **known as Parkinson's law.**

**Problems of central secretariat:**
1. **Pampered child**: over staffing and Parkinson's law.
2. KP Geeta Krishnan said **disguised unemployment in government of India.**
3. Too many hierarchical levels. According to 2nd ARC, there are 16 different hierarchical levels within ministries and departments. Each one of them has veto powers. It has made decision making processes within the government extremely complicated and slow resulting in red tapism, inefficiency and corruption. The rank of Joint secretary is rank of neither lower level, nor higher level within secretariat.
4. In the age of Globalisation, policy making in India is still dominated by generalists. There is a need to specialise secretariat administration.
5. **Absence of coordination between staff and line agencies**. Policy formulation is done by staff agencies without involving the line departments which are responsible for implementation. This is **due to centralised top-down approach towards policy making.** It has resulted in failure of public policies. Senior bureaucrats in secretariat lose touch with ground realities and display Peter Principle (promotions to the level of incompetence).
6. The bureaucrats aren't accountable to citizens.
7. High levels of secrecy.

**Solutions:**
1. The number of Ministries and departments should be reduced to less than 27 from present more than 50.
2. **All those Ministries and departments which perform similar functions should be merged**. For example: rural development agriculture proGramme implementation drinking water poverty alleviation should be merged into a single ministry
3. There must be a better coordination between Ministries and departments involved in socio-economic development. This can be done by having a separate institutional mechanism wherein regular meetings are held among concerned Ministries and departments.
4. The number of hierarchical levels within each ministry and department should be reduced from present 16 to 4 so that decision making process becomes much more efficient. It also **helps in getting down red-tapism and eliminating corruption.**
5. **Rank of joint secretary within secretarial administration should be removed**. It has not served any specific purpose. It only resulted in expansion of size of Administration without making it efficient. All those officers who are currently working at level of joint secretary should be working in the field to make policy implementation more effective.
6. **The present inverse pyramid should be changed**. Experienced officers should be working at the ground level. Only extremely efficient officers should be promoted to higher levels. **As pointed out by 2nd ARC, only top 10% of IAS officers should reach the position of secretary.**
7. In order to ensure better coordination between the secretariat organisations and directorates, MIS should be used. **E-governance helps in providing up-to-date real time information to Secretariat organisations** so that public policies reflect ground level realities.
8. **There must be lateral entry and lateral exit within civil service**. All middle and lower level positions from the rank of joint secretary and above should be made open to people from private sector and NGOs. It ensures better competition for positions within the secretariat administration. Similarly, **as part of lateral exit, civil servants should be encouraged to temporarily leave the administration and work in private sector and NGOs.** This will help them to understand the complexity of governance from a different perspective.
9. E-Governance should be implemented in administration from lowest to top most level. It reduces the time and improves efficiency.
10. **Citizens Charter should be made compulsory for all Ministries and departments.** This will ensure participation of stakeholders in governance.
11. In order to ensure transparency in governance, **RTI should be implemented in both letter and spirit**. Transparency should be the norm and, secrecy, exception.
12. As part of work study and time study, there should be strict time limit for disposal of files by officials at different hierarchical levels within Ministries and departments.
13. **360 degree performance evaluation should be adopted to analyse the performance of bureaucrats**. It must be done in an objective and rational manner. This performance evaluation should

be the basis of their career advancement. It will help in eliminating politicization of civil services.

14. Extensions should not be given to bureaucrats after they retire from services. It sends wrong signals to existing civil servants. It also means that the political executive has no confidence in the abilities of civil servants.

15. There must be **effective grievance redressal mechanism** to ensure that the problems of ordinary citizens are properly addressed. The essence of democracy is accountability. It is possible only when there are effective grievance redressal mechanism.

# CABINET SECRETARIAT

**Introduction:** The Cabinet Secretariat is responsible for the **administration of the Government of India (Transaction of Business) Rules, 1961 and the Government of India (Allocation of Business) Rules 1961,** facilitating smooth transaction of business in Ministries / Departments of the Government. This Secretariat provides Secretarial assistance to the Cabinet and its Committees, and also assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst Ministries / Departments and evolving consensus through the instrumentality of the standing / ad hoc Committees of Secretaries. Through this mechanism new policy initiatives are also promoted.

The Cabinet Secretariat ensures that the President, the Vice President and Ministers are kept informed of the major activities of all Ministries / Departments by means of monthly summary of their activities. Management of major crisis situations in the country and coordinating activities of various Ministries in such a situation is also one of the functions of the Cabinet Secretariat.

**Origin:** Before the adoption of the portfolio system in the Government of India, all Governmental business was disposed of by the Governor-General in Council, the Council functioning as a Joint Consultative Board. As the amount and complexity of business of the Government increased, the work of the various Departments was distributed amongst the members of the Council, only the more important cases being dealt with by the Governor-General or the Council collectively.

**This procedure was legalized by the Indian Councils Act, 1861 during the time of Lord Canning, leading to the introduction of the portfolio system** and the inception of the Executive Council of the Governor-General. The Secretariat of the Executive Council was headed by the Private Secretary to the Viceroy, but he did not attend the Council meetings.

**Lord Willingdon first started the practice of having his Private Secretary by his side at these meetings.** Later, this practice continued and in **November, 1935, the Viceroy's Private Secretary was given the additional designation of Secretary to the Executive Council.** But these posts were separated subsequently, and a separate Secretary was appointed to the Executive Council as distinct from the Private Secretary to the Viceroy and Governor General.

Constitution of the Interim Government in September 1946 brought a change in the name of this Office. On **5th September, 1946, the Secretariat of the Executive Council was designated as 'Cabinet Secretariat', and the Secretary to the Executive Council as 'Cabinet Secretary'**. It seems, however, at least in retrospect, that Independence brought a sort of change in the functions of the Cabinet Secretariat. It no longer remained concerned with only the work of circulating papers to Ministers and Ministries, but developed into an organisation for effecting coordination between the Ministries.

**Functions:** The Cabinet Secretariat functions directly under the Prime Minister. The **administrative head of the Secretariat is the Cabinet Secretary who is also the ex-officio Chairman of the Civil Services Board**. The business allocated to Cabinet Secretariat under Government of India (Allocation of Business) Rules, 1961 includes:

(i) Secretarial assistance to the Cabinet and Cabinet Committees; and

(ii) Rules of Business.

The **Cabinet Secretariat is responsible for the administration of the Government of India (Transaction of Business) Rules, 1961 and Government of India (Allocation of Business) Rules, 1961** facilitating smooth transaction of business in Ministries/ Departments. The Secretariat assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst Ministries/Departments and evolving consensus through the instrumentality of the standing / ad hoc Committees of Secretaries.

Management of major crisis situations in the country and coordinating activities of various ministries in such a situation is also one of the functions of the Cabinet Secretariat.

### Allocation and disposal of Government Business:

1. The Government of India (Allocation of Business) Rules, 1961 (AoB Rules) and the Government of India (Transaction of Business) Rules, 1961 (ToB Rules) have been framed under **Article 77 (3) of the Constitution of India.** The **First Schedule to the AoB Rules specifies the Ministries, Department, Offices and Secretariats while the Second Schedule lists out the business allocated to different Ministries/ Departments of the Government of India.**

2. The ToB Rules lay down the procedure for disposal of business and decision making in Government of India. The business of the Government of India is normally disposed of at various levels within the Ministries / Departments by, or under the general or special directions of the Minister-in-charge subject to requisite inter-Departmental consultations stipulated in the ToB Rules. Further, the ToB Rules specify the cases for which approval of the Prime Minister, the Cabinet and its Committees, and of the President is required.

**The cases that require approval of Cabinet are indicated in the Second Schedule to the ToB Rules, and those requiring approval of the Committees of the Cabinet are indicated in the First Schedule to the ToB Rules.** The cases that require submission to the Prime Minister and the President are listed in the Third Schedule to the ToB Rules.

Accordingly, while a significant portion of the Government business gets disposed of at the departmental level, certain cases, or class of cases that are important from the national perspective, require approval of the Cabinet or one of the Committees of the Cabinet.

### SUPPORT TO CABINET COMMITTEES

**The secretarial assistance, provided by Cabinet Secretariat to the Cabinet and Cabinet committees, includes:**
- Convening of the meetings of the Cabinet & its Committees on the orders of the Prime Minister.
- Preparation and circulation of the agenda.
- Circulation of papers related to the cases on the agenda.
- Preparation of record of discussions.
- Circulation of the record of discussions after obtaining the approval of the Prime Minister.
- Monitoring implementation of decisions taken by the Cabinet and its Committees. **The Cabinet Secretariat is the custodian of the papers of the Cabinet meetings.**

### PROMOTION OF INTER-MINISTERIAL COORDINATION

**Among the inter-Ministerial matters, the coordination is required for:**
- Removing difficulties.
- Removing differences.
- Overcoming delays.
- Coordination in administrative action.
- Coordination of policies.

While each Ministry is responsible for acting on its own for expeditious implementation of Government policies, plans and programmes, where inter-Ministerial cooperation is involved, they often seek the assistance of the Cabinet Secretariat. The inter-Ministerial problems are dealt with in the meetings of the Committees of Secretaries (COS).

Committees are constituted for discussing specific matters and proposals emanating from various Secretaries to the Government and meetings are held under the chairmanship of the Cabinet Secretary. These committees have been able to break bottlenecks or secure mutually supporting inter-Ministerial action.

The discussions of the COS take place on the basis of a paper formulated by the principal Department concerned and the Department with a different point of view, if any, providing a supplementary note. The decisions or recommendations of the COS are unanimous.

These proceedings are also circulated to and are followed up by the Departments. **There are other**

**important functions which it discharges, viz.**
- Monitoring.
- Coordination.
- Promoting new policy initiatives.

The Cabinet Secretariat is seen as a useful mechanism by the Departments for promoting inter-Ministerial coordination since the Cabinet Secretary is also the head of the civil services. Ministries/ Departments through the system of monthly letters apprise the Cabinet Secretary about important issues / developments pertaining to their respective Ministry / Department. A monthly report is also sent by Ministries / Departments to the Cabinet Secretariat providing details on a wider range of issues such as important policy matters, compliance of CoS decisions, sanction for prosecution pending for more than 3 months, departure from ToB Rules, implementation of e-Governance etc.

### Cabinet Secretary:
- Senior-most, highest ranked and highest paid civil servant in India
- Cabinet Secretary is the **ex-officio Chairman of the Civil Services Board**.
- Provide assistance to the Council of Ministers
- Act as **advisor and conscience keeper of the civil services**
- Handle senior appointments
- Prepare **the agenda of the Cabinet meetings**
- Attend the meetings of the Cabinet
- Ensure that the Cabinet decisions are implemented
- Advise the Prime Minister of India
- Act as the **Chairman of the Committee of Secretaries on Administration**
- Act as the Chairman of the Chief Secretaries Committee
- Provides an element of continuity and stability to administration during crises

## PMO (PRIME MINISTER'S OFFICE)
- A staff organisation.
- Headed by PM (politically) and by principal secretary (administratively).
- **Status**: department.
- **Extra**-constitutional.

### Functions:
1. Secretarial assistance to PM that is **aid and advice**.
2. Principal advisor to PM.
3. Helps PM to perform his parliamentary responsibilities like preparing replies to the questions.
4. Coordination.
5. Managing public relations of PM.
6. **Acts as residual legatee at central level**, that is, performs any function not assigned to any ministry.

### Evolution of PMO

**1950s:** Pandit Nehru believed in **democratic functioning** and therefore, not a strong PMO. To ensure that cabinet secretariat plays pre-eminent role, he **downgraded the post of principle secretary to the rank of joint secretary.** The size of PMO was also small.

**1960s:** Lal Bahadur Shastri (term 1964-66) didn't enjoy the same popularity as that of Nehru. In order to ensure effective control over governance, PMO was made very powerful. Cabinet ministers were asked to get their decisions ratified by PMO. **LK Jha was the principal secretary — a powerful and dynamic personality raised the status of PM's secretary. Soon he was called super secretary.**

**1970s:** Indira Gandhi, from 1969 onwards and after 1971, made PMO extremely powerful. PM had limited experience and therefore, had to establish herself. **Emergence of strong PMO was inevitable**. It was also a reflection of her personality and sense of insecurity that she wanted a strong body personally loyal to her. Jha was sent to participate in deliberations of NPT. PN Haksar replaced Jha. Most powerful bureaucrat during this period was Haksar who took PM's secretariat to new heights. **PMS possessed anything from intelligence reports (RAW was under PMS) to appointment of positions as low as under-secretary**. Policy making cells setup in PMS. Most domestic and foreign policies began to shape in PMS. It reduced the ministries to the status of post offices whose ministers were powerless. **Haksar brought in Gareebi Hatao Andolan and socialism became fashionable**. Haksar was replaced by PN Dhar. Emergency

announced without even informing the cabinet. **PMS became the focus of all authorities. Therefore, after IG, PMS became a national policy making body with cabinet secretariat and secretary playing a subordinate role.**

Morarji Desai appointed V Shankar as principal secretary. He tried to reduce status of PMS. **Name was changed from PMS to PMO as the secretariat is a policy making body**. He divested PMO of its policy making cells.

**1980s:** IG returns to power in 1980. PC Alexandre was the principal secretary. She was a mellowed down version in of the earlier IG this time. She increased the power of PMO but at the level as earlier.

**Rajiv Gandhi:** It is said that he was in a hurry to take India into 21$^{st}$ century**. DG Deshmukh was appointed as Principal Secretary. Profile of PMO increased again**. PMO had members from different technical background like Montek Singh Ahluwalia, Sam Patroda, Mani Shankar Iyer etc. PMO came to be known as government of Government of India (GOI).

**1990s:** PMO under VP Singh, Chandrashekhar, HDD, IK Gujral were weak. They were the **product of coalition government; therefore, the PMO had reduced profile and visibility.**

**PV Narsimha Rao:** PVRK Prasad was the Principal Secretary and he became the most powerful bureaucrat. Initially, PMO remained back office but from 1993 onwards, it became powerful as well as controversial. It played important role in **Babri Masjid issue, Hawala scam etc.**

**Atal Bihari Vajpayee: First time PMO was managed by a non-IAS officer Brajesh Mishra (IFS).** He was the principal secretary and first National Security Advisor. PM was a democratic personality and therefore, ensured that cabinet secretariat is given its importance. He **strengthened PMO professionally but didn't allow it to become a monster.**

**2000s:** Dr. Manmohan Singh: principal secretary was IN Dixit and then, TKA Nair. PMO had reduced profile but increased size. For example, more than 350 officers of rank Joint Secretary worked in PMO. A minister of state was appointed to oversee the working of the enlarged PMO! Outside influence of National Advisory Council and Congress President Sonia Gandhi.

**2010s:** The country again witnessed single party rule after almost 30 years and it resulted again in strong PMO. **Major decisions taken by PMO, all major appointments, crucial decisions like demonetisation were taken without informing cabinet.** All cabinet ministers can announce decisions only after ratification by PMO. Article 356 imposed in Maharashtra midnight only on advice of PM.

To conclude, a strong PMO is a salvation for any PM. It helps in to control, coordinate and regulate the activities of COM. But at the same time, it can go against the spirit of parliamentary democracy (PD). PD is all about collective decision making. A strong PMO results in concentration of powers in the hands of few unelected officials. Therefore, the spirit of parliamentary democracy demands that parliament should remain highest policy making body. PMO should always remain back of its PM. There must be clear cut division of work between cabinet and PMO.

## PARLIAMENT

It is considered as the most important institution of state and also an **August institution (auspicious)**. It represents the will of people. People govern themselves through this institution or state governs through this institution. Parliament has superior status to other institutions. Although it is the constitution which is the highest. It is made up of **LS, RS and the President (President is part of parliament, not its member).**

When the term legislature is used, it indicates its law making function. **Article 118 of COI allows both houses to make their own rules to conduct their business. They are called rules of business.**

   **Functions:**

1.  **Law making**: it represents the will of people.
2.  Amends constitution.
3.  **Control on executive**: there are 3 types of control –
    (a) General: debates, discussion, motions, resolutions etc.
    (b) Financial: budget

(c) Detailed: parliamentary committees

4. **Quasi-judicial functions**: removal of President, SC judges, HC judges, CAG and Chief election commissioner.

### PARLIAMENTARY COMMITTEES

#### Why the need?

The work done by the Parliament in modern times is not only varied and complex in nature, but also considerable in volume. The time at its disposal is limited. It cannot, therefore, give close consideration to all the legislative and other matters that come up before it. A good deal of its business is, therefore, transacted in **Committees of the House, known as Parliamentary Committees.**

Parliamentary Committee means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat.

By their nature, **Parliamentary Committees are of two kinds: Standing Committees and Ad hoc / Select Committees**. **Standing Committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha**. The work of these Committees is of continuous nature. **The Financial Committees, DRSCs and some other Committees come under the category of Standing Committees**. Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report.



Parliamentary Committees
1. Standing Committees    2. Ad-Hoc Committees
1. Financial Committees    2. Departmentally Related Standing Committees    3. Other Standing Committees

**Public accounts committee (Miniature parliament):**
- **22 members in total** (15 LS and 7 RS)
- Members are elected by **proportional representation** from all political parties.
- Chairman is always from opposition party.
- Minister can't be a member

- **Functions:** Helps parliament in ensuring financial accountability of executive. In this job, PAC is assisted by CAG.

**Estimates committee (miniature Lok Sabha):**
- **30 MPs**
- Chairman from ruling party
- Only Lok Sabha
- Proportional representation from all parties
- Ministers can't be members
- Aka continuous economy committees
- **Examines the budget estimates** to bring economy in expenditure. It performs its duties throughout the year even after the budget is passed.
- Suggests the form in which the budget is to be presented before parliament.

**Departmentally related standing committees:**
- There are **24 DRSCs**
- 31 MPs in each DRSC (21 LS and 10 RS)
- Minister can't be member

**Functions:**
(a) To examine the budget of ministries and departments related to them.
(b) To examine the bills referred to them.

**Advantages of parliamentary committees:**
- Help in **division of labour and specialisation**;
- effective functioning of Parliament;
- as a whole Parliament is a large body to perform all functions collectively;
- Committees are free from political bias because it is beyond public and media eyes.
- Enhance the standards of **executive accountability**
- Can take the help of experts

**Problems of Parliamentary Committees:**
1. Recommendations are **advisory in nature.** Executive does not take the recommendations of these committees seriously and they mostly not implemented. It reduces effectiveness of committees.
2. The **term of all these committees is just one year**. It takes time for members to understand the work of these committees so that they can perform their functions effectively and exercise control over executive. Since the term is only one year, they are replaced with new set of members and this reduces their effectiveness.
3. Members of committees are nominated to committees by political parties in a random manner. Qualification, experience, skills and knowledge are not taken into account while nominating members.
4. Conflict of interest is routinely ignored while appointing the members to these committees. An MP having business interest in a particular ministry should not be appointed as member of a committee overseeing the same ministry.
5. **Services of CAG are available only to public accounts committee.** Other committees do not have assistance of CAG which reduces their effectiveness of their functioning.
6. CAG performs a job which is **post-mortem in nature i.e., it evaluates performance of Ministries and departments only after money has been spent**. It is difficult to recover unproductive expenditure. Effectiveness of public accounts committee is reduced as it depends on reports submitted by CAG.
7. Every year **PAC evaluates performance of only few Ministries.** Thus, it takes 7 to 8 years to cover all the ministries by PAC.
8. Usually, executive does not co-operate with these committees. These committees have power to summon officials but if they are not present either deliberately or otherwise, these committees do not have power to penalize them.
9. Most of the time government takes shelter under **Official Secrets Act 1923** to deny information to these committees.
10. Failure of members of these committees to rise above narrow political lines and submit reports in unanimous manner

11. Proceedings of these committees are held in camera therefore citizens cannot access the proceedings. This means **lack of transparency.** In countries like UK and USA, the proceedings of such committees are telecast live so that citizens know about the work of these committees.
12. Reports of these committees are never discussed on floor of the house so that ordinary citizens also know about functioning of these committees. There is no motivation for MPs as they don't get any recognitionof their hard work.

### Solutions:

1. **Recommendations of these committees should be made mandatory** i.e., the government must submit an action taken report regarding recommendations of these committees. It must provide information about time limit during which recommendations will be implemented and if government is rejecting some recommendations, it must provide reason that was why not implemented. It ensures accountability of Executive towards legislature
2. The **term of these committees must be extended to at least three year**s so that members can use theirknowledge and experience in a more efficient manner.
3. Conflict of interest should be taken into consideration while appointing members
4. Like in US and UK, **proceedings of the committees should be telecast live** so that ordinary citizens can come to know about performance of their representatives.
5. Services of CAG should be provided to all other committees and not only PAC.
6. Official secrets act should be amended to allow the members to access sensitive information also.
7. These communities should be given powers to punish officials who do not present themselves and whodo not co-operate with these committees.
8. Proper training should be given to members of these committees in aspects related to administration sothat they can ensure your more effective control over executive.
9. **Concurrent Audit should be adopted** in place of the existing post audit or post mortem audit.
10. MPs must rise above their selfish political interests and submit reports in a unanimous manner so thatthey have more credibility.
11. Reports of these committees should be regularly discussed on floor of the house India has adopted an integrated judicial system, common for both Union and States.

### Reasons for decline of parliament and reforms required:

1. presence of persons with criminal background (43% of current LS)
2. destructive role of opposition
3. Globalisation has made modern laws complicated which requires capacity building for the MPs
4. Poor attendance reduces accountability of the houses
5. Low productivity
6. Insufficient number of sittings (16th LS has 331 days of sitting in 5 years). NCRWC has recommended 100days every year for RS and 120 for LS.
7. No official data on voting pattern of MPs. How would citizen or voters evaluate the stand of their representatives?
8. **Male dominated** – calls for passage of women's reservation bills
9. **Lack of systematic post legislative scrutiny** (after a law has been passed, to check the achievements of the law). When parliament passes the laws, it may not always have expected outcomes. In some developed countries, majority of laws are scrutinised after some time of performance and most of the laws are lapsed because of the associated sunset clause.
10. There is a need to strengthen parliamentary committees and they shall be given trained research staff.
11. CAB should be completely scrutinised by constitutional committee rather than hurriedly introduced by the parliament.
12. Anti-defection law should be amended to allow free voting on certain laws.
13. The present ordinary vote of no confidence should be replaced by the German constructive vote of no confidence. **In this system, the opposition party introduces two motions:**
    (a) The first motion expresses lack of confidence in present government.
    (b) The second motion expresses confidence in a leader of opposition.

Both motions are put to vote simultaneously. If both are passed, it will lead to a smooth change of government without any political instability. If first motion is passed and second fails, it means the house neither has confidence in present government nor in anybody else. The present government will continue. If first motion fails, second motion becomes infructuous.

**The purpose of this type of constructive NCM is that it prevents political parties from pushing the**

**country into political instability**. To adopt this system in India, necessary changes are required in constitution.

14. There should be a PM's question hour for MPs to ask questions cutting across departments. In British parliament, every Wednesday, half an hour is reserved for this purpose, it is known as PM's Question Hour.

# SUPREME COURT

Supreme Court represents not only the appellate court but also the constitutional Court. According to **justice Krishna Iyer, Indian Judiciary is second most powerful Judiciary after Judiciary of America.**

**The functions of Supreme Court are considered as follows:**
  ➢ The Guardian of constitution
  ➢ The Protector of fundamental rights
  ➢ the final interpreter of constitution and law
  ➢ the power of Judicial review to ensure constitutionalism

**Qualification of Supreme Court Judges:** Judge of high court for five years for advocate of High Court for 10 years for a **distinguished jurist in the opinion of President**. He/she must be citizen of India they are appointed by President on advice of Council of Ministers and Recommendation of a collegium headed by Chief Justice of India, until the age of 65 years.

They can be removed by an order of President after a resolution passed by both houses of Parliament by a special majority on the grounds of proved misbehaviour or incapacity of a judge.

### PUBLIC INTEREST LITIGATION

**Public Interest Litigation** is also known as **social interest litigation**. By name itself it suggests that it is litigation in the name of public interest. It is **influenced by social interest litigation practice in US and Australia**. According to principles of law, litigation can be filed only by aggrieved party against the accused. But **under PIL, a third-party can also file the case.** Thus, the **legal principle of locus standi stands relaxed in case of PIL.** The 3rd party can be an individual, or group, civil society, advocate or any organisation working for public interest.

**Court can also take Suo-motu cognizance of case on the basis of publication in newspaper, social media or videos, etc.** When a PIL is filed and accepted, it is given priority over other cases. The court itself takes responsibility to do justice. Therefore, it is also considered as cost-effective litigation.

**Origin and Evolution in India:** PIL origin is taken from Bihar undertrials case known as **Hussainara Khatoon case 1979**. In this case, concept of PIL took its roots in India where **Supreme Court ordered release of 40,000 undertrials on basis of newspaper reports**.

The second case is **SP Gupta case 1981 in which justice PN Bhagwati and Krishna Iyer** laid the foundation of PIL. Hence, they are considered as **Pioneers of PIL** in India.

**According to Supreme Court following are the guidelines for PIL:**
➢ PIL will be for **Social Justice**
➢ For vulnerable section of society to access justice. It must involve Public Interest Supreme Court has established screening committee to scrutinise PILs so as to discourage frivolous and disguised PILs

  **Advantages:**
1. It makes justice **inclusive** and **accessible**.
2. it makes **justice cost-effective**

3. it widens scope of Judicial review (Judicial review can't be done Suo motu)
4. it has made legislature, executive and administration proactive, responsive and accountable.
5. it widens the scope of public interest and its protection
6. it resulted into many policy initiatives and Reforms
7. it has checked arbitrariness of Executive
8. it has restored the faith of people in constitution.

### Disadvantages:
1. It is **extra constitutional mechanism innovated by judiciary**. Hence it becomes basis for encroaching uponspheres of executive and legislature such as policy making and policy implementation
2. It has resulted into **relegation of appellate cases and has affected quality of judgements** on substantivequestions of law
3. It has resulted into unnecessary interference by judiciary in legislative and executive affairs
4. Judiciary has been trapped by PIL by vested interests as it can be diverted through PILs
5. It has through **PIL acted as symbol of modern liberal state but society remains conservative**

**Judicial activism:** Judicial activism is a difficult concept to be defined. It is judicial interpretation through innovation which results into recodification of law and redefines its relationship with other two organs of thestate. It is **responsible for judicial neutrality, passivity or restraint.**

Judiciary hasn't been given a passive role working as a neutral umpire rather it scrutinises the actions of executive and legislature on the touchstone of constitution.

The p**ower of judicial review is the legal basis of JA according to late Justice JS Verma.** He said that judicial overreach doesn't have judicial basis and should be rejected. **JO goes beyond the role of judiciary and encroaches on the two organs.** For example, it not only gives innovative interpretation but also substitutes interpretation of the law by judicial legislation.

**The difference between judicial activism and overreach is that former is accepted and justified but latter isn't. All judicial overreach is activism but not vice versa.**

### Causes of judicial activism:
1. Failure of legislature, executive and administration to perform their duties and address demand of people such as **police reforms, electoral reforms, non-appointment of Lokpal, misuse of CBI, violation of FRs etc.**
2. Vacuum left by legislature. E.g., **Vishakha guidelines 1996 - preventing sexual harassment at workplace.** They were replaced by POSH act, 2013.
3. Legal loopholes, policy flaws give space to judiciary to intervene.
4. More awareness in citizens, civil society and media.
5. Over feasance or misfeasance by administration.
6. In principle, legislature and executive should be the main institutions for addressing problems and aspirations of citizens. They should come up with solutions for the problems of people but in actual practice, the organ which is supposed to be least active has become most active, i.e. judiciary.

### Advantages of judicial activism:
1. **JA has protected constitution and ensured constitutional government. It has checked misuse of constitutional provision**s. Example: misuse of President's rule (article 356) has been checked by SR Bommai Case of 1992, misuse of parliament's amendment power has been checked by Kesavananda Bharati Case of 1973, misuse of article 123 (ordinance making power of the President).
2. SC **expanded the scope of fundamental rights by giving birth to a number of inferred rights.**
3. SC expanded the protection to people's life and liberty by reading the **due process of law in article 21**. It has struck down many sections of law and executive orders such as section 6A of Delhi Special Police Establishment (DSPE) act, 1946; section 66A of IT Act, 2000; section 8 (4) of RPA etc. Thus, SC, by judicial activism has ensured philosophy of constitutional morality.

### JUDICIAL OVERREACH

**Some cases of judicial overreach:**
1. Free distribution of food grains.
2. Striking down 99th amendment (NJAC).
3. Making national anthem necessary in cinema halls.
4. Ban on liquor sale around 500 metres of national and state highways.
5. Censoring Jolly LLB movie.
6. Setting up SITs

Judiciary by judicial overreach can disturb the balance of powers among three organs. J**udicial overreach can lead to executive apathy whereby rather than being proactive, executive will merely wait for judicial directions**. Judges aren't elected and only appointed and therefore, they don't have the mandate to make policies. Judges have little knowledge of administration as they are only legal experts. Their orders can be more emotional than administratively practical. No doubt that judicial activism has given vent to people's grievances but some people have misused it by filing frivolous and false **PILs. Thus, judiciary must exercise judicial restraint so that judicial activism doesn't become judicial overreach. According to** Justice JS **Verma, Judicial activism is a double edged sword which should be used as a scalpel in the hands of a skill-full person to save somebody's life and not as a Rampuri knife to kill someone.**

# INTRA-GOVERNMENTAL RELATIONS

**L-E relations:**
- legislature provides the executive- it is not a fusion, only an organic connection
- legislature controls and holds the executive accountable
- legislature lays broad policies of governance through laws
- Executive remain in office till they enjoy legislature's confidence
- Executive accountability to legislature is a short through sessions, questions and answers, motion, resolve, debate
- legislature controls finances, budget, plan approval
- all bills introduce by executive have to receive assent of Legislature
- However, **executive's degree of Responsibility in practice depends on majority that it enjoys in the parliament**
- executive also has power to recommend dissolution of Lok Sabha
- executive has Ordinance making power
- executive can draft rules under delegated legislation

**L-J relations:**
- As per the system of checks and balances, appointment to Judiciary is made by executive. However, removal of judges can only be done on the Recommendation of Legislature.
- Judiciary has power of judicial review which is constitutionally vested through which it can declare as ultra-vires any legislation which is against the provision of the Constitution in letter and spirit.
- **Judiciary asserted that supremacy is of the constitution**. Hence, legislature is not completely sovereign in amending the constitution.
- Judiciary has reviewed its stand on constitutional amendments by legislature through various judgements.
- In **Golaknath case 1967- FRs cannot be amended by legislature**. This brought legislature and judiciary in conflict with each other since legislature and executive together were actively promoting the concept of Re-distributive justice especially with respect to land reforms.
- **Executive with the approval of Legislature by First Constitutional Amendment Act 1951 ultimately created a protected schedule 9 and kept it outside the purview of judicial review**. However, Judiciary asserted that the power is not absolute and Judiciary reserves the right to examine whether a proposed legislation in 9th schedule should be examined by Judiciary or not.
- **Keshav Nanda Bharti Case 1973:** J**udiciary conceded the amending power of legislature but ruled that it cannot amend the basic structure of constitution**. However, what constitutes basic structure was kept open-ended.
- **Right to property** which was the prime bone of contention between legislature and Judiciary was **deleted as a fundamental right by 44th CAA 1978** and was made only a **constitutional right under article 300A.**

- **Minerva Mills's vs Union of India case 1980:** Judiciary ruled that there is no fundamental conflict between FRs and DPSPs. Both are required for harmonious working.

A period of lull was there between legislature and Judiciary till the new Millennium. However, there was a point of divergence between Judiciary and legislature during the Bihar elections and aftermath period. Legislature was of the opinion that democracy is a majority rule and Judiciary was entering into arenas where legislature had its own privileges and that majority decisions cannot be overturned by judicial minority.

### EXECUTIVE AND JUDICIARY

**Role of judiciary in governance:** Within the framework of parliamentary democracy and federalism, Judiciary is an indispensable part of governance and an efficient, impartial and independent Judiciary is one of the prime requirements for ensuring that government runs as per the provisions of constitution.

**Constitution accords a place of importance to judiciary by constitutionally guaranteeing its independence**. The power of judicial review is conferred on Judiciary to ensure that Executive or legislature does not violate consciously or unconsciously the provisions of constitution. It acts as the interpreter of constitution whenever there is any ambiguity and sees that constitution is respected both in letter and spirit. It **acts as the arbiter of disputes between centre and states and also among States.**

# ATTACHED AND SUBORDINATE OFFICES

Executive agencies are also responsible for policy implementation. In general, executive agencies are headed by a director or commissioner. The e**xecutive agencies consist of attached and subordinate offices also.** Attached offices and subordinate offices are created according to **Allocation of Business Rules (AOBR), 1961.**

**An attached office** is an intermediary between secretariat and field agencies. It is **also a line agency**. Their functions are:
(a) Supervision of policy implementation by field agencies.
(b) Exercise budgetary control.
(c) Seek report from field agencies.
(d) Inspection of field agencies.

Thus, **attached offices are repository of knowledge on policy implementation** and hence, they help the ministries / secretariats in policy making.

**Example:** national population register is an attached office under ministry of home affairs; staff selection commission is an attached office in ministry of personnel.

Not all ministries may have attached offices. **Example**: MEA doesn't have any.

**A subordinate office** exists in fields and has direct contact with people. It can be **considered as cutting edge level (ground level) office where policies are translated into action**s. Most central and state government ministries / departments have their functional units at the field level. Field agencies are usually headed by specialists and only sometimes by generalists and their role is policy implementation.

### Problems of executive agencies:

1. **Centralisation of powers**, i.e., ministries and departments exercise strict control on field agencies (a principle of classical theory — workers not to use their wisdom). They aren't allowed to take initiatives or innovate methods. In this context, NPM called for greater autonomy for cutting-edge level officers — *let managers manage!* (by Christopher Hood).
2. Problems of communication and effective coordination because there is a distance between field agencies and ministries / departments / attached offices. There is lack of effective communication, delay in communication because of taller span of control.
3. There is **lack of understanding of ground realities by headquarters and attached offices**. Their attitude is "let them come, we will see".
4. Inadequate administrative capacity in terms of physical, financial and human resources.

5. Lack of training to staff in advanced technology and about new policies, proGrams especially digital skill.
6. **Generalist and specialist conflict:** generally, ministries and secretariats have generalist domination whereas field offices are usually headed by specialists and thus, specialists are made to report to generalists.
7. Corruption and **sons of soil factor** in field agencies because their personnel belong to the local areas

**Reforms:**
1. **Greater use of technology especially e-governance**, MIS can help in addressing many problems of executive agencies.
2. Motivation and incentivisation of field agencies. Pay commission recommended to abolish subordinateoffices mainly because the term indicates humiliation and subordination of personnel.
3. **2nd ARC has recommended to adopt principle of subsidiarity** (work should be done at the level where itcan be done the best) and MoU in relationship between headquarters and field agencies.

# BOARDS AND COMMISSIONS

Apart from ministries, departments, secretariats, executive agencies, there are other types of executive organisations which are part of the state:

(a) **Bureau type organisation:**
   - It is headed by single head, that is, **unity of command.**
   - Such organisations are created where there are routine operations, not much demand for consultation and deliberation.
   - Such organisations are lesser in number.
   - **Example: NCRB, BPRD, NCB, CBI, CAG** etc.

(b) **Boards / commissions:**
   - These organisations are **collegium type, that is, multi-member bodies**.
   - They are created due to volatile and dynamic conditions, need for consultation and deliberation, democratic decision making.
   - Today, most organisations are created as boards or commissions.
   - **Example: UPSC, EC, NITI Aayog, railway board, CBDT** etc.

   **There can be 3 categories of boards / commissions:**
I. **Constitutional:** created by constitution or are given constitutional status by amending the constitution. Recently, **NCBC (National commission for backward classes) has been given constitutional status in article338-B.**
II. **Statutory:** created by act of parliament. Example: CVC, CIC, National commission for human rights etc.
III. **Executive:** created by executive order of government, notified in gazette of India. **Example: NITI Aayog**. Such boards / commissions enjoy least autonomy.

# State Government and Administration

State Government and administration in general is replica of union government and administration with some differences. Hence, at state level also there is **parliamentary system but it functions within the principles of federal and unitary features of the constitution**. Therefore, there is limited parliamentary democracy constrained by provisions of constitution and circumstances.

**State executive** consists of **Governor, Chief Minister, council of ministers and advocate general.** It is also divided into nominal and real executive.

The **Chief Minister is the head of state's council of ministers and forms the real executive.** His position is similar to prime minister at Central level. However, there are some **differences between PM and CM**:

- PM has more departments under his control which are not in the portfolio of chief minister such as **foreign relations, national security, national planning and development, administrative reforms**, etc.
- **Role and responsibility**: PM has role and responsibility for entire country as well as managing foreign affairs. Therefore, his role and responsibility is much more challenging.
- **Personality**: PM should be of high calibre, should have transactional and transformational leadership. He should be visionary. Generally, PMs have been of high calibre and quality. But same cannot be said for chief ministers and there have been allegations of misconduct, corruption, etc. **Although there have also been some strong chief ministers like Naveen Patnaik Jayalalitha, Karunanidhi, Mamata Banerjee**. Some chief ministers have also went-on to become prime ministers including the present prime minister. After coalition era, due to emergence of strong chief ministers, there is a change in dimensions of union-state relations.

  - **In terms of freedom, prime minister has greater freedom than freedom enjoyed by chief minister such as:**
    - (a) Power and functions of chief minister are constrained by unitary and federal provisions of constitution and office of Governor
    - (b) State chief minister also controlled by central party High command.

  - **Dynamics of power enjoyed by chief minister is different from the dynamics of power of prime minister.** for example: if CM belongs to a national party, then he is a choice of national party not of his own MLAs in the state. The ministers who are appointed at state level are also choice of national party and not state chief minister. In such cases, ministers are more responsible to national party High command rather than chief minister. CM works in state with council of ministers who are not in his control. Hence such type of chief ministers generally becomes weak as compared to formal head of the state.

**Conclusion:** In general, chief minister is considered as replica of prime minister at state level even if there are differences but in general CM have also emerged as strong leaders and provided effective governance in the state for example: in Southern States, Nitish Kumar in Bihar, Naveen Patnaik in Odisha etc. **Indian constitution adopted the colonial institution of Governor after making local modifications so as to suit the special needs of Indian federalism.**

# GOVERNOR OF A STATE

A closer look at the institution would reveal that he is one of the points of convergence for philosophy of federalism and parliamentary democracy. In this context, **Governor of state has to play a dual role in the sense that he has to act not only as head of state as warranted in parliamentary democracy but also function as vital link between Union and States.**

The mode of appointment of Governor was severely contested in the constituent assembly and ultimately the **Canadian model of having nominated Governor was chosen**. Although at the outset it seems to be an anomaly to have a nominated head of state in a federal system, the context in which our federalism evolve justified such a move. The centrifugal tendencies made the sustainability of united and integrated India as the prime aim of Indian federalism.

Also given the fact that Governor had to play the role of only a nominal executive, the mode of direct election was not preferred otherwise it would have led to conflict of interest and friction between real and nominal executive.

- **Article 153 –** there shall be a Governor for each state.
- After 7th CAA, a person can be the **Governor of 2 or more states.**
- **Article 154** has vested the executive power of state in Governor.
- According **to Article 155**, Governor is appointed by the President.

Accepting the NCRWC recommendation**, Punchhi commission recommended that Governor should be appointed on recommendation of a selection committee of PM, Home Minister, Speaker of LS and CM of the state.**

Constitution doesn't give any ground or procedure for removal of Governors. **Article 156 says that a Governor shall hold office for 5 years subject to pleasure of President.** Supreme Court in BP Singhal vs UOI, 2010, by a five-judge constitutional bench held that Governor can't be removed in arbitrary or capricious manner. The President need not give any reason to Governor who is removed but there must be some valid reason and relevant material to arrive at such a decision. The Punchhi commission also criticised arbitrary dismissal of Governors saying "the practice of treating Governors as political football must stop". It recommended that a Governor should only be removed by impeachment by state legislature.

**Qualifications of Governor:**
(a) Citizen of India
(b) 35 years of age

### Governorship through the years 1947-67:
- Largely independent
- Impartial
- Appointed for their eminence experience and competence.

However, some Governors attracted early criticism. In **1953, PEPSU government was dismissed on ground of law and order based on Governor's report. In 1959, Kerala government enjoying majority was similarly dismissed.**

**1967-77:**
- End of single party rule
- Beginning of **combative phase of Indian federalism**
- Governors started to play **partisan role in some States** in appointing and dismissing ministries
- In 1967, Rajasthan Governor interpreted the electoral mandate so as to favour the ruling party at the centre.
- In West Bengal in 1967 the Governor dismissed the incumbent ministry based on a unilateral judgement that it has lost the support of assembly.

Matters reached such a proportion that governments in West Bengal and Bihar openly expressed their unwillingness to accept as Governor the person appointed by President.

**1977-89:**
- Combative phase continued.
- Governor's post became a kind of spoils post since Governors tenure was becoming coterminous with

that of the party in power at Central level which had appointed him.

- Controversial dismissals of incumbent governments based on Governors report in **Andhra Pradesh 1984, Jammu and Kashmir 1985, Punjab 1987 and Karnataka 1989.**
- In 1990, 18 Governors were asked to resign by the President to facilitate a reshuffle by the union government confirming the apprehension that Governors post had become a kind of a spoils post.

**Coalition phase:** Even in coalition phase, conduct of some of the Governors like that of the then Governor of Bihar came under severe criticism and invited comments even from the judiciary. Even as latest as 2004 centre asked some of the Governors to put in their papers so as to facilitate a reshuffle pointing out the fact that not much has changed with respect to politicization of Governor's post.

Another unhealthy trend observed during the coalition phase was appointment of active politicians and important party functionaries as the Governors who went back to party politics and even assumed ministerial responsibility as both at state level as well as at National.

### Sarkaria commission recommendations:

- Should be an eminent personality
- Preferably an **outsider**
- Should be detached and not to intimately concerned with local politics.
- Should be appointed based on recommendation of committee of vice President speaker chief minister.
- Term of office should not be unnecessarily disturbed and if there is premature termination, status report should be tabled in Parliament. Not eligible for further appointment except for Governor President and vice President.

### Conclusion:

- Governors have a critical role to play in Nations progress. There is perhaps no other institution which carries such important responsibility as that of Governor. In these turbulent times, people have great expectations from the office. Greater the responsibility, greater will be the public scrutiny in a democracy.
- Governor should play a positive and a **proactive role and should act as a calming influence in the times of turbulence.**
- Governor should become **voice of moderation** and must use their influence to contribute to good governance.
- They should play a role of an **elder statesman** in ensuring that interstate issues are handled with sagacity.
- The Governor should provide intellectual and moral leadership for ensuring that India moves steadily but firmly on the path of progress, peace and prosperity.
- They should forget their political and ancestry and instead concentrate on task at hand.
- They have to perform dual roles and there is no fundamental dichotomy between the two roles. Both are equally important from view point of federalism and democracy.

# STATE SECRETARIAT

**It is a staff office which works as secretariat to:**

1. Chief minister
2. Cabinet
3. Council of ministers.

Therefore, **state secretariat performs the functions equivalent to three secretariats at centre - Central secretariat, cabinet secretariat and PMO.** Therefore, at the state level, administration is even more centralised than at Central level. It functions on the same principles of Central secretariat such as split system and tenure system.

Although there is a post of principal secretary but chief secretary is the chief of all secretaries in state. He is head of state secretariat. **State secretariat represents all ministries and departments of the state**. A ministry or department is headed by secretary and it performs the same functions as performed by ministries and departments at Central level.

Some states have tried to bring a separate chief minister's office such as Rajasthan, MP and Maharashtra but these practices are very occasional and CMO is not a replica of PMO at Central level.

*Problems of state secretariat are same as Central secretariat*. In fact, **state secretariat is subject to more bureaucratization and there is practice of Riggs formalism, overlapping**. Central government has introduced reforms in form of **ICT in governance, perform and perish culture and 360 degree performance appraisal but states are yet to introduce such reforms**. At state level, there is a doctrine of 'committed bureaucracy' (it is a negative term, not positive).

**Directorates:** These are attached officers at state level headed by a director level functionary. **It is a specialised institution which plays dual role:**

1. Provides technical assistance in policy making to secretariat
2. Monitor supervise the implementation of policies by field agency.

*Weaknesses are same as attached office subordinate office in centre.*

### CHIEF SECRETARY

### Question: chief secretary is alter ego of chief minister. Comment

Chief Secretary is chief of all secretaries at state level. This office has its roots during British times. It **was also known as financial commissioner** and then gradually chief secretary came to be the senior most officers and recognised by status of head of state civil service.

**Appointment and term:** There is lack of clarity on appointment of chief secretary. Although it happens as per business rules of the state. This office does not have a fixed tenure. His **appointment is done by chief minister on the basis of the trust of chief minister in the officer.** Although other factors are also taken into consideration like seniority and merit. His loyalty to chief minister is also considered.

#### Powers and functions:
- He is the **chief advisor to chief minister and state cabinet**
- He is **alter ego of chief minister**
- He is the **think tank of State Government** and assists the cabinet in its effective functioning
- All the decisions of state government including files of state government go through him and reach chiefminister
- Chief coordinator of States among ministries and departments
- Link between Union and State
- Head of state civil services
- Head of general administration department which is responsible for administrative reforms at state level, law and order management and personnel management
- He is also **head of state committee of secretaries**.

**Working of office common problems and issues:** The healthy convention is that chief secretary should be senior most civil servants. Generally, after completing the term, he should retire. But due to coalition politics, frequent changes in government, there is politicization of the office and generally when there is a change in government, there is change in chief secretary. Thereafter he is appointed at a junior office which is in a way demeaning for the officer. There are **also allegations of corruption on the post such as chief secretary of UP Neera Yadav who was declared by UP IAS association as most corrupt IAS officer of UP** and on order of Supreme Court; she was removed from post of chief secretary.

Nevertheless, the **office of chief secretary has also upheld the decorum of the office as its demands administrative leadership**. Anyone who becomes chief secretary, it is he or she who determines the character of state administration. Since he belongs to IAS and there is also a committee of chief secretaries and all India conference of chief secretaries is presided by cabinet secretary. Thus, this also influences functioning of the office. **As a healthy practice on the pattern of union government which has fixed the tenure of cabinet secretary for two years and even the term is extended**. Similarly, state governments should also fix the tenure of chief secretary and ensure that thereafter chief secretary retires.

### COMPARISON BETWEEN CHIEF SECRETARY AND CABINET SECRETARY

#### Similarities:
1. Chief advisor to cabinet
2. Chief coordinator among ministries and departments

3. Head of respective civil services
4. Senior most civil servant

**But there are differences:**
1. Chief Secretary is equivalent to many secretaries at Union level namely **cabinet secretary, finance secretary, home secretary and personnel secretary** in terms of functions.
2. Cabinet secretary is not chief of all secretaries but chief secretary is.
3. Cabinet secretary does not head any department but chief secretary heads departments including general administration department and state planning department
   Even if chief secretary performs wide range of functions at state level but in terms of status and challenges, it is the cabinet secretary who is considered superior to chief secretary.

## SIMULTANEOUS ELECTIONS

**It is a part of electoral reforms.**

**Arguments in favour:**
1. In last 40 years, there was not a single year in India without elections. Political parties remain in election mode. The **top leadership focuses on elections at the cost of governance. This leads to delay in policy making as well as policy paralysis.**
2. **Huge expenditure** — direct budgetary as well as indirect expenditure like revision of rules before each election, teachers missing from schools, officers and vehicles of different departments are on election duty, mobilisation of security forces which isn't only costly but also diverts them from key security concerns, fatigue and illness by constant movement across country.
3. By a reduced expenditure, burden on tax payers will also come down.
4. It is sad but true that **casteism, communism and other polarising factors** are at their peak. Simultaneous elections will reduce these divisive factors.

**Arguments against:**
1. In case of fixed 5 year terms, coalition will become compulsion rather than virtue.
2. It will require certain constitutional amendments.
3. It will reduce the accountability of elected representatives.

## FEDERALISM

Federalism is a form of governance in which there is distribution of responsibilities and powers between the centre and the constituent units. It is the **most natural form of governance in a multicultural and pluralistic society.** Thus, although pluralism is the prime reason for genesis of a federation, It also continues to be its prime challenge. At the time of independence, it was decided by our constitutional forefathers that India will have a federal form of government but it will not be a classical federation as strong as USA. In USA, all federal units had come together and merged themselves with the central government in a voluntary manner but at the same time they retained their distinct identity also. Every state can have a separate citizenship, Supreme Court and the residual powers. Even though they had come together in a voluntary manner, there was no choice for them to secede from federation.

If we analyse the conditions prevailing in India at the time of independence, it would have become almost impossible for India to have a classic federation like USA:
- **Government of India act 1935** proposed a **loose federation** with provinces having more freedom and powers.
- The **rule of Central Government was restricted to external affairs, defence, communication and currency**. Even this arrangement was not acceptable to provinces.
- The country was facing severe problems at the time of independence in the form of partition on communal lines, the question of integrating more than 550 princely states, separatist movements in different parts of country.

**The idea of India as a single nation had come into existence only during freedom movement.** Although Mughals ensured political integration of the country, emotional connect between people was absent. It was rightly decided by our constitutional forefathers that India would not be a strict federation as that of USA.

Article 1 of constitution had cleared any ambiguity regarding status of state governments in India. **India**

was described as a union of States rather than federation of states and the states had no independent political existence. **India can be called as indestructible Union of destructible states** because union is indestructible but States can be created or divided by the union.

For the purpose of better **governance federalism was adopted because India being a large and diverse country, it was not possible to govern it by a single national government.** Thus, powers of government wereshared with the states.

**Indian constitution is often described as federal in form but unitary in spirit. Different scholars described Indian federation as follows:**
- **Paul Appleby**: extremely federal
- **Morris Jones**: bargaining federalism
- **Sir Ivor Jennings**: federation with a strong centralising tendency. Indian constitution is mainly federal with unique safeguards for enforcing national unity and growth.
- **Alexandrowicz**: India is a case of sui generis federation
- **Granville Austin**: cooperative federalism ; first and foremost a social document

### Federal features:
1. **Written constitution** which clearly divides the power and revenue between Union and States
2. **Independent judiciary** whose original jurisdiction includes settling disputes between Union and States
3. Rajya Sabha which is a council of states and whose **primary objective is to protect the interests of states**
4. **Interstate council, National integration council**, etc whose primary job is to ensure better coordination between Union and States
5. Some constitutional amendment bills require ratification by at least half of state legislatures
6. Supremacy of constitution

### Unitary features of Indian constitution:
1. **Article 3** where the **union government has absolute powers to create, destroy or change the name the states.** States can only give a non-binding opinion and thus States may be called merely administrative entities without any political identity.
2. Emergency provisions under Article **352, 356 and 360** wherein union government can suspend centre-state relations in favour of Central Government during emergencies.
3. Integrated judiciary wherein orders of Supreme Court are binding on all high courts and states are not allowed to have separate supreme courts.
4. All India services whose appointment is done by central government; service conditions are determined by central government but officers work in States also.
5. **Finance commission members are appointed by central government** but they are responsible for givingrecommendations regarding devolution of revenue from centre to States.
6. Governor's post and Governor's discretionary powers: Governors are appointed by central government but have discretionary powers to control functioning of state governments.
7. Institutions like **CAG and Election Commission** members are appointed by central government but they have jurisdiction over entire country.
8. Union government also has powers to make laws under state list in exceptional circumstances.
9. No separate citizenship and constitution for States.

# CENTRE-STATE RELATIONS

The relations between Union and states are divided into legislative, administrative and financial relations. **The division of powers between Union and States is based on the principle of subsidiarity,** that is, those functions which can be performed better at state level are part of state list those functions which can be efficiently performed by Central Government are part of union list, whereas those functions which can be performed byboth centre and states are in concurrent list.

Also, those matters in which uniformity throughout the country is essential are in the union list. The functions on which nationwide uniformity is a desirable but not necessary are in concurrent list and those functions their nationwide uniformity is neither desirable not feasible are in state list.
- **Article 245 to article 255**: legislative relations
- **Article 256 to article 263**: administrative relations
- **Article 264 to article 293**: financial relations

## CENTER-STATE LEGISLATIVE RELATIONS

**Article 245 (1):** Parliament can make laws for whole of India while state legislatures can legislate for respective state.

**Article 245 (2):** Parliamentary laws can have **extra-territorial operations** (applicable on citizens even if they areoutside Indian Territory).

*However, there are some restrictions / limitations on such powers of Parliament. **President can make regulations for peace, progress and good governance of 3 UTs – Andaman & Nicobar, Lakshadweep, Dadra & Nagar Haveli and Daman & Diu**. These regulations have same force as that of laws of Parliament and can even repeal or amend anyact of parliament.*

**Article 246:** Parliament has legislative competence on subjects of list 1 (Union) and 3 (Concurrent) (given in the 7th schedule)

**Article 246 A:** added by 101st CAA, 2016. It allows both parliament and state legislatures to make laws on GSTbut only parliament can legislate on IGST.

**Article 248:** residuary powers reside with the parliament.

**Article 254:** in case of conflict between parliamentary law and state law on a subject of concurrent list, parliamentary law prevails except if the state's bill is reserved by Governor for consideration of President andthe President gives his assent, the state law shall prevail over parliamentary law.

### INTERPRETATION OF LISTS

**Judiciary uses following concepts to interpret legislative powers:**

1. **Doctrine of incidental or ancillary powers:** It means that power to legislate on a subject includes the **power to legislate on ancillary matters which are reasonably connected to that subjec**t. Example: the power to impose tax would include power to search and seizure to prevent tax evasion.

2. **Doctrine of colourable legislation:** This concept says that a legislature can't make a law on a subject over which it doesn't have competence and justify it by a colour of another subject under its competence. Thus, what is prohibited directly is prohibited indirectly also. In 2020, Chhattisgarh Government challenged NIA act in SC as a colourable legislation.

3. **Doctrine of pith and substance:** It means the true nature, substance and majority part of something. If a law on union list incidentally encroaches on state list, it doesn't become invalid or doesn't become unconstitutional. **Example: SC declared AFSPA as constitutionally valid using this doctrine.**

### PARLIAMENTARY LAWS ON MATTERS IN STATE LIST

**Under normal circumstances, Parliament can't make laws on matters on state list but in following 5circumstances, parliament can:**

(a) **Article 249:** if Rajya Sabha passes a resolution in national interest by majority of not less than 2/3rd ofmembers present and voting.

(b) **Article 250**: during national emergency

(c) **Article 252:** when two or more states request parliament

(d) **Article 253**: to implement international agreements

(e) **Article 356**: during President's rule in a state

Central government can influence state legislations by **Article 200 and 201.**

**Center-state administrative relations:** Center-state administrative relations are on the pattern of center- state legislative relations**. According to Article 256 and 257,**

1. Executive power of state shall be so exercised to ensure compliance with parliamentary laws in force.

2. State's executive power shall not prejudice (obstruct) executive power of union.

3. Union can give executive directions to the states.

### ISSUE AREAS IN ADMINISTRATIVE RELATIONS

1. **Misuse of article 356:** If there is any one article of constitution which has been abused and misused, it is article 356. It has been used by central governments to dismiss state governments ruled by opposition parties only to settle political scores. Governors have also played a politicised role in this matter. (More details in the following sections)

2. **Appointment of Governor:** Governors have been appointed on political lines, no consultation with CMs.
3. **Governors' role in discretionary powers:** Appointment of CM in case of hung SLA.
4. **All India Services:** Generalist IAS is misfit in specialist administration. They are no longer a repository of talent. There is a mismatch between authority (lower) and responsibility (higher). All India outlook is missing.
5. **Article 355: consent of state:** According to Punchhi commission, 2007, consent of state should be taken by center before sending central forces. If prior consent not possible, consent to be taken ex-post facto.

### ISSUE AREAS IN FINANCIAL RELATIONS

**State's point of view:**
1. Most developmental works are with states (about 70%), whereas, they have only 30% of revenue.
2. **Restrictions on borrowing powers of the states:** Central government is allowed to borrow from within or outside the country. States can borrow within the country but if any loan taken by state from central government is yet to be repaid, a state can't borrow any more money without consent of central government.
3. **Cess and surcharge isn't shared with states:** Central government can impose a surcharge or cess anytime but their proceeds aren't shared with states.
4. Proceeds of VDIS (Voluntary disclosure of income scheme) not shared with states.
5. **Pay commission recommendations are implemented unilaterally:** Pay commission is appointed without consulting states which causes domino effect in states because state government employees demand similar pay structure.
6. **Inelasticity of resources:** The taxes of states aren't elastic, that is, limited scope of variation. Lucrative taxes are with center.

**Centre's point of view:**
1. Administrative inefficiency:
   (a) Over-sized administration
   (b) Non-development expenditure (populist measures, erecting statues)
   (c) Lack of fiscal prudence.
2. Central government has commitments like defence.

# FINANCE COMMISSION
- Under **Article 280**, by President every 5<sup>th</sup> year.
- Vertical devolution of tax proceeds between center and states.
- Horizontal distribution among states.

**Problems with FC:**
(a) Grants in aid without consulting states.
(b) There is lack of credibility of finance commission.
(c) Punchhi commission has recommended that in the **spirit of cooperative federalism**, **states should participate in appointment of finance commission.**
(d) States perform most of the developmental work (almost 70%) but as per 14<sup>th</sup> finance commission, get 42% of tax revenue from center. Punchhi commission has recommended 50% of tax devolution to states.
(e) **Horizontal distribution of tax revenue is decided on the basis of efficiency and equity**. Efficiency is in terms of performance of state government based on parameters like fiscal deficit, developmental and non- developmental expenditure, achieving FRBM targets etc. **Equity is in terms of backwardness, poverty, unemployment, population, lack of healthcare etc.** If equity is used as criteria, then states like UP, Bihar, Odisha shall get maximum revenue but this will act as a disincentive for good performing states.
(f) States complaint that the terms of reference (ToR) of finance commission is unilaterally decided by central government without consulting states.
(g) Grants in aid are given to state governments on recommendation of FC to finance their revenue deficits so that they can spend more on capital expenditure. The good performing

states argue that this is a penalty for their good performance.

**Article 356: Deals with failure of constitutional machinery in the state(s) on account of –**
(a) Hung assembly and no party forms government.
(b) Government resigns because of coalition malfunction.
(c) Anti-secular practices.
(d) Subversive of constitution.
(e) If states doesn't comply with directions of the union.
(f) Physical breakdown of state structure.

**There are certain points which can't be the grounds for invoking article 356:**
(a) Corrupt government
(b) Bad governance
(c) Law and order issues

# Effects of President's rule:
*Note: BIMAKU – Bihar, Maharashtra, Andhra (+ Telangana), Karnataka, UP have upper houses.*
- Executive is dismissed
- Legislative powers are assigned to President.
- Judiciary stay unaffected.

**Analysis:**
- It was modified and inserted in Indian constitution in the hope that it will be **used only as a deterrent**. Itwas to be invoked only when all other measures have failed.
- But it is one article which has led to **most irritant relationship of C-S relations**.
- Incorporation of this provision was justified in the context in which our which constitution was framed. Given the centrifugal tendencies, our constitution was to be turned into a unitary system whenever required.
- Framers hoped that it will be **used as a method of last resort and not as first last of defence**.
- But hoped were belied when it was abused more than used.

**Sarkaria commission pointed use of article 356:**
(a) 1950-64: 5 times
(b) 1965-69: 9 times
(c) 1975-79: 21 times
(d) 1980-87: 18 times

- **Sarkaria commission pointed that in 13 cases, President's rule was invoked despite the fact that incumbent CoM enjoyed majority in SLA**.
- It was done just to sort out **political rivalry**.

**Major sore points:**
(a) Expression "**breakdown of constitutional machinery**" not defined in constitution.
(b) Opposition parties are often not given opportunities to form the government.
(c) Governor's report is often written on the behest of the central government. It is politically biased.
(d) **Article 356 often used to dislodge SG run by other political parties than the ruling party at center.**

### SR BOMMAI CASE

In *Bommai* case **(1994),** the following propositions have been laid down by the Supreme Court on impositionof President's Rule in a state under Article 356:
- The Presidential proclamation imposing President's Rule is **subject to judicial review**.
- President's power is not absolute and subject to existence of sufficient pre-conditions. The **satisfaction ofthe President must be based on relevant material**. The action of the President can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be mala fide or

perverse.

**Rameshwar Prasad Vs UOI, 2007:**
- In **Rameshwar Prasad vs UOI, 2006 case**, SC held that Governor cannot recommend President's rule on basis of his subjective assessment that majority was formed by tainted means/horse-trading. **Buta Singh, then Governor of Bihar recommended President Rule on this ground.**
- **Burden lies on the Centre** to prove that relevant material exists to justify the imposition of the President's Rule.
- If the court holds the Presidential proclamation to be unconstitutional and invalid, SC can **restore status quo ante** (can even revive dissolved SLA)
- The state legislative assembly should **be dissolved only after** the Parliament has approved the Presidential proclamation. Until such approval is given, the President can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.
- The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated

**Article 356 can't be invoked in the following cases:**
- Mal-administration
- Where CoM resigns and Governor Recommends President's rule w/o exploring other options.
- Allegations of corruption (bad governance) against Government
- Where no floor test is conducted and Governor makes subjective assessment of majority of CoM.
- Financial problems in state.
- No prior warning to CoM
- Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.

**Can be invoked:**
- In case of **hung assembly**
- When CoM resigns, and no other party is willing to form Government
- Where a constitutional direction of the Central government is disregarded by the state government.
- Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
- When state Government. follows anti-secular policies.
- Physical breakdown where the government willfully refuses to discharge its constitutional obligations endangering the security of the state.

**Terms of Reference of 15th FC:**
**While making its recommendations, the Commission shall have regard, among other considerations, to**
1. Context of both tax and non-tax revenues, the Commission will also take into consideration potential and fiscal capacity of Union and states.
2. The demand on the resources of the Central Government particularly on account **of defence, internal security, infrastructure, railways, climate change**, commitments towards administration of UTs without legislature.
3. The demand on the resources of the State Governments, particularly on account of financing socio-economic development and critical infrastructure, assets maintenance expenditure, balanced regional development and impact of the debt and liabilities of their public utilities
4. The impact on the fiscal situation of the Union Government of substantially enhanced tax devolution to States following recommendations of the 14 Finance Commission.
5. The impact of the GST, including payment of compensation for possible loss of revenues for 5 years, and abolition of a number of cesses,
6. The conditions that Gol may impose on the States while providing consent under Article 29303) of the

Constitution

**The Commission may consider proposing measurable performance-based incentives for States, at the appropriate level of government, in following areas:**
1. Efforts made by the States in expansion and deepening of tax net under GST;
2. Efforts and Progress made in moving towards replacement rate of population growth:
3. Achievements in implementation of flagship schemes of Government of India, disaster resilient infrastructure, sustainable development goals, and quality of expenditure:
4. Progress made in increasing capital expenditure, eliminating losses of power sector, and improving the quality of such expenditure in generating future income streams:
5. Progress made in increasing tax/non-tax revenues, promoting savings by adoption of Direct Benefit Transfers and Public Finance Management System, promoting digital economy and removing layers between the government and the beneficiaries;
6. Progress made in promoting ease of doing business by effecting related policy and regulatory changes and promoting labour intensive growth;
7. Provision of grants in aid to local bodies for basic services, including quality human resources, and implementation of performance grant system in improving delivery of services;
8. Control or lack of it in incurring expenditure on populist measures; and
9. Progress made in sanitation, solid waste management and bringing in behavioural change to end open defecation.

# 5

**CHAPTER**

# District Administration since Independence

If there is one institution of the British which has survived the test of time and has continued to play a vital role in adminstration, it is the district administration. It has shown tremendous amount of resilience and strength of character so as to adopt and adapt to the changing circumstances. **The office of DC symbolises the concept of continuity with change**. However, the pace of change may not be at the rate at which people expected.

Nevertheless, it has withstood the test of time and has **everytime emerged with a re-oriented role and renewed vigour.** In times of covid 19, when people's representatives took a back seat, DC emerged as a frontline fighter.

**District Administration in one form or the other has been there form times immemorial**. Even during Mauryan times, the district official i.e Ayukta performed duties similar to modern day DC. During Mughal times, at district level, the officers were in charge of revenue collection, military duties, law and order and other responsibilities similar to that of DC

However credit needs to be given to the British to have laid the foundation of district adminstration in its current format. **After battle of Plassey and buxar, the diwani rights i.e revenue collection rights were given to the East India Company which made it mandatory for evolution of an institutional mechanism to collect revenues.** This led to emergence of one of the foremost colonial institutions called office of DC. Various Governor Generals like **Warren Hastings, Cornwallis, Wellesley, Bentick and Curzon shaped up the institution of DC**. Government. of India act 1919 was a litmus test for the DC due to introduction of dyarchy. By this time, from citizen's point of view, the office of DC had transformed into an omnipotent and omniscient institution. For citizens of the day who had more of a subject mentality, **DC symbolised the might of the state**. The amalgamation of revenue collection duties, regulatory responsibilities and judicial powers made the DC the most powerful institution at the field level, and in the eyes of citizens, he was maibaap. He along with the army and police truly formed the steel frame.

### Importance of district administration

- Cutting edge level of administration where policies of state are translated into action.
- Problems of people are studied at this level and communicated to higher levels.
- Vast and complex machinery of Government. becomes operational at district level.
- It has a **political significance** as it is by accomplishments at this level that people measure success of Government policies and public opinion is shaped about performance of ruling party.
- **District is like a mini state because, most of the state departments have district level officers.** Thus district represents state in action. District headquarter is abuzz with activities of officials belonging to departments as diverse as agriculture, cooperatives, welfare department, education, employment, forest, health, industry, labour, home, public works, revenue department, animbal husbandry, police department, registration etc
- It **symbolises decentralisation of administration** process of country as most of the needs of citizens are fulfilled at this level.
- It is **pivot of judicial administration of country**.
- Important unit for electoral purposes. Every major political party attempts to build a strong organisation at this level.
- First ARC commented that district is the most convenient geographical unit where the total apparatus of adminstration can be concentrated. It is neither too big nor too small making it the ideal unit of administration.
- **District administration is the litmus test for policies** since most policies are translated into action at this level. Sometimes, even a skeletal policy will get translated into action succesfully if district administration

is competent.

### Functions of DC

- Single office but performs multiple functions.
- maintanance of land records, managing Government land, resolving land title disputes, disbursement of benefits under schemes
- maintenance of law and order as **District Magistrate, imposing section 144 of CrPC, issuing orders for preventive detention, intimation about movement of army,** request for military assistance.
- head of district jail or prison, releasing prisoners on parole
- Chief development officer of district – all central and state Government schemes are implemented by DC
- Chief coordinator of all departments at district level
- Chief electoral officer at district level- plays important role in conduct of elections whether Lok Sabha or local bodies.
- Chief protocol officer at district level plays important role in receiving liasion with vips
- Head of district disaster management authority

### Issue Areas

**1. Inadequate longevity of tenure leads to following problems**

  i.   not being able to contribute much to development of district
  ii.  not able to develop effective rapo and working relationship with district officers
  iii. implementation and continuity of proGrams or policies suffers
  iv.  his administrative competence suffers and does not develop adequately
  v.   performance evaluation suffers
  vi.  the credibility of time tested institution suffers in eyes of people.

**2. Increasing political interference**

  i.   There is a new class of district level politicians who command considerable clout of state Government, very often eclipsing the role of DC. If he excepts the demand of local politicians, he is labelled partisan. If not, he is called insensitive to people's representatives.
  ii.  With the rise of parliamentary democracy, there is concentration of power in ministers/secretariats. Therefore, DC is no longer responsible for several decisions which earlier were part of his functional domain.

**3. Narrow vision of DC**

  i.   due to young age of DC, they are attracted to those areas which intuitively appeal to them
  ii.  inadequacy of field level knowledge and experience
  iii. reduced to arm chair functionaires – tent is mightier than pen is no longer applicable

**4. Adverse implication of separation of judiciary and executive**

  i.   Magisterial role of DC allowed him to gain deeper insight into working of social and economic environment. District courts consist of judges with purely legal background without any administrative experience and therefore justice suffers.

**5. DC is an overburdened functionary**

  Decreasing size of district is not a viable suggestion because there is no unanimity as to what constitutes an ideal district in size and population. Besides, carving out smaller districts may create problem of coordination. Very often districts are created for political advantage and once created, it is very difficult to uncreate them.

**Suggestions to reduce work load of DC**

  i.   get rid of protocol function
  ii.  reducing number of committees under his charge
  iii. winding up organisations like DRDA
  iv.  effective use of positions like additional DC and Sub-divisional magistrate

**6. Law and order is the first charge on collector's time and efforts, yet he is not in a position to contribute fully to law and order on account of following**
   i. Changing profile of crime characterised by communal and caste violence
   ii. terrorism
   iii. insurgency
   iv. human trafficking and cross border crime
   v. narcotics
   vi. cyber crimes and other white collar crimes
   vii. poor rapo with police functionaries in district
   viii. politicisation of police in states

**7. Factors that have induced change in position of DC**
   i. advent of political democracy and adoption of goal of welfare state
   ii. emergence of local bodies and vigorous attempts towards democratic decentralisation
   iii. increasing public consciousness and awareness. People demand accountability and transparency.
   iv. Emergence of civil society, media, IT revolution and other changes in S&T
   v. Creation of much smaller districts

**8. Nature of change in position of DC**
   **i.** Separation of executive and judiciary by **CrPC 1973**
   ii. British collectors viewed themselves as uncrowned sovereigns of Empires and people as subjects to be governed. Today, DCs are required to look themselves as welfare functionaries. Even though regulatory functions continue to be major area of collector's responsibility yet focus has shifted to his developmental role
   iii. no longer the only channel of communication between Government and district
   iv. reducing role in management of law and order
   **v.** Changing role in development administration i.e. **rather than being formulator and implementor, he is more of a facilitator**

To conclude, it would be appropriate to state that perhaps he is no longer the tortoise and his prestige and influence have reduced considerably but ironically areas of functioning are as numerous as before. So he continues to be **principal coordinator and communicator** and still enjoys greatest prestige in district. **He acts as a buffer between district administration and people**. He is still over all in charge of what happens in district and **therefore can be called residual legacy at district level**. His functions are as undefined as during British times. Besides in some areas his position has strengthened, for ex – management of elections on account of assertive stance of election commission, in disaster and crisis management, grievance redressal especially human rights violations, schemes like **MPLADS, land acquisition etc**.

### 2nd ARC recommendations on DC
- In view of emergence of district as key unit of field administration coupled with rapid advancement in physical and electronic connectivity between state headquarters and district, there is no need to have intermediate level of divisional commissioner in between state Government and DC.
- **Need to realign function of DC to enable him to concentrate on his core functions.**
- Efficient land title management system should be one of the primary duties of collector.
- Need to strengthen the compliance machinery at district level for enforcement of RTI. This can be done by setting up dedicated RTI cell in office of collector
- Officers may be posted as DC earlier in their careers but in complex and problem prone districts there should be posted as DC after 10 to 12yrs of service.
- Office of DC should be modernised by introducing features like **MIS for effective monitoring and evaluation of proGrams under his charge, dedicated vigilance cell under supervision of DC to check corruption at district level**, immediate steps to adopt e-governance in district administration, innovations and best practices by individual officers should be offered to others. Ex- Lakhina experiments in Maharashtra, **Jan Seva kendr Gujarat, Lok Mitra** project UP etc.

- District or sub district offices whose activities coincide with functions transferred to local bodies should not exist as separate entities. Instead these officers and offices should be transferred to relevant local bodies
- A district council to be created to act as district Government with representation from urban and rural areas. DC should be accountable to this council on local matters and accountable to state Government on regulatory matters.

## DC's role in development administration
DC was focus of all developmental activities during the period of 1960s to 1980s. DC was chairperson of DRDA. He was responsible for planning, implementation, monitioring and evaluation.

### Case against DC's involvement in development function
i. Over burdened - A tortoise on whose back there is weight of elephant. Therefore in some states like **Gujarat, Maharashtra** etc. role of development is separately given to district development officer. In Tamil Nadu, revenue function has been taken away from DC and given to District Revenue Officer.
ii. Development requires coordination for which DC alone is not enough. What is required is an institutional mechanism
iii. Today most development work is being organised through local bodies. Collector's involvement could have the effect of interference. It could curb the initiative of local bodies and might even be used by state Government to control the affairs of local bodies.

### Case for DC's involvement in development function
i. Local bodies are often characterised by conservative attitudes and often dominated by upper caste which may lead to a situation where interest of weaker section is neglected. This can be changed by DC's involvement.
ii. DC can provide **comprehensive direction to development efforts** by appropriately balancing national, state and district level perspectives.
iii. **Inter department and inter district coordination** for development can be better organised at district level.

### Conclusion
The balance of opinion is retaining the role of development with DC but with few reforms like proper longevity of tenure, improving welfare training for DC and other development functionaries, clarify relation between district administration and local bodies in area of development, promote effective institutional coordination.

### Magisterial and law and order functions of DC
i. Responsible for law and order at district level
ii. Has **status of executive magistrate of first class under CrPC.**
iii. Responsible for preventive and prosecution functions
iv. Exercises general control and supervision of police but not day to day management of police or law and order
v. **Maintains liaison with military units** if they exist in his district
vi. On his request, State Government provides additional forces if required.
vii. Overall in charge of correctional administration (Jails)
viii. Responsible for issuing arms license, cancellation and for ensuring deposit of arms with Government during sensitive periods like elections.
ix. **Role of a buffer between police machinery and citizens** to maintain balance between rights of people and use of force.
x. Submits annual crime report of district to state Government.
xi. Responsible for release of prisoners on parole.
xii. **Appointment of public prosecutors** in consultation with district judges.
xiii. Enforcement of social and criminal laws.

### Dependence of police on executive magistracy

i. Inter-department coordination for police work
ii. deployment of additional forces
iii. inter district coordination for police work
iv. imposition of prohibitory orders under **Section 144 of CrPC**
v. DC ensures smooth functioning of police machinery by periodic inspection of police stations, jails etc.

### Magistracy dependence on police
i. Actual enforcement of law and order is done by police
ii. Police provides information with respect to bad characters and other intelligence inputs
iii. Prompt action dealing with violent situations.

### Arguments in favour of Commissionerate System
i. **DC lacks expertise and therefore there is a mismatch between his skills and challenges of law and order** like insurgency, communal violence, Naxalism, human trafficking, white collar crimes etc.
ii. **Lack of rapo** between police chief and DC.
iii. Interference in investigation aspect of law and order
iv. DC maintains that method of investigation often produces law and order disturbances
v. **Over burdened functionary** and not in a position to pay adequate attention to law and order
vi. Attitude of shifting blame on SP for disturbance in law and order.

### Arguments in favour of Executive Magistracy Control of Police
i. Commisionerate system works well only in urban or metropolitan areas which possess features like high court, media, a vibrant civil society etc
ii. Law and order problems are often rooted in **social, economic and political problems** that require broader perspective and wider view of things.
iii. Maintain balance between **use of force and rights of citizens**
iv. Relationship between law and order and land disputes – majority of problems in rural areas are with respect to land disputes.

To conclude it can be said that police Commisionerate System is suitable for urban and metropolitan areas while the regular system for other areas.

### DM –SP relations

### Factors which affect DM – SP relations
i. Provisions of police act, police manuals, CrPC etc.
ii. longevity of tenure
iii. Seniority level
iv. nature of district

### Factors behind tensions between DM and SP
i. **Generalist** – specialist controversy
ii. DM corresponding directly with officers junior to SP i.e bypassing office of SP (paper 1, Henry Fayol, Chain of command is sacrosanct, Gang plank is only an exception)
iii. Difference in priorities with respect to law and order
iv. Difference in priorities on use of force
v. Magisterial enquiries are ordered even when police is acting with bonafide intentions. This demoralises police force.
vi. DC remains a mute spectator because of politicisation of police.
vii. **Dual control of police by DM and DIG** (violation of classical principle of unity of command)
viii. Unmatched seniority
ix. Superiority complex of DC

### Recommendations
  i. Better training to DCs in law and order administration
 ii. DM and SP should be of matching seniority
iii. Appropriate longevity of tenure
 iv. Modernisation of police
  v. Sensitising police towards **human rights, rights and liberties of people** etc.
 vi. Separating law and order function of police from investigation function


## Union –State-Local relations

### State-Local relations
  i. powers and functions of Gram Sabha are decided by state legislatures
 ii. Elections to local bodies are determined according to law of state legislature
iii. States enjoy powers over matters of state list but **11<sup>th</sup> and 12<sup>th</sup> schedule functions are not automatically available to local bodies.**
 iv. Demarcation of constituencies for **Lok Sabha and State legislatures is done by Delimitation Commission, but constituencies for local bodies are done by state Governments.**
  v. In Lok Sabha and SLAs, SC and ST reservation is mandatory. In local bodies it is mandatory for SC and STs but voluntary for OBCs
 vi. MPs and MlAs disqualification grounds are given in constitution but that of local bodies is determined by State legislature.
vii. **Audit of union and state funds is done by CAG** – a constitutional body, but **the audit of funds of local bodies is as determined by State legislature**
viii. The AIS officers are recruited and trained by centre but work in states also. Similarly state civil servants are often posted in local bodies.

### Union – Local relations
Constitutionally there is no direct relationship. Yet union influences local bodies.

### By 73<sup>rd</sup> and 74<sup>th</sup> amendment, Union set the standards of the local bodies like
  i. Three tier Panchayats, mandatory reservation for **SCs and STs and Women** etc.
 ii. Union played important role in land reforms;
iii. Some plans of Union like **NREGA, Sarva Siksha Abhiyan** give direct role to local bodies;
 iv. Concepts like **social audit at grass root level was initiative of Union**;
  v. Central Government has taken indirect steps to improve financial position of local bodies. For ex – tax free municipal bonds;
 vi. Central Government ensures that the best practices are known to all other states
vii. Central Government can carry out comparative study of various models of PRIs
viii. Central finance commission suggests that how the funds of the states can be augmented so as to transfer more finances to local bodies.
 ix. Central Government under various schemes provides funds to rural bodies for poverty alleviation and employment generation. It also gives funds to urban bodies for slum improvement, sanitation, water supply, transport, infrastructure etc;

# 6

**CHAPTER**

# Plans and Priorities

**Planning Commission**

**Functions**

- To evaluate the resources of the country. (Human, financial and natural resources)
- To formulate both long term and short term objectives
- Rapid industrialisation
- Self sufficiency
- Employment generation
- Balanced regional development

**Weaknesses of Planning in India or Evaluation of working of Planning Commission**

- PM as chairman of PC inflated the ego of Planning Commission members and this created behavioural and attitudinal problems.
- Also compromised the advisory jurisdiction of cabinet. Therefore it was suggested that PM should not be the chairperson of PC, although he was free to work with PC (1st ARC recommendation). The Government rejected this suggestion because PM is the link between Government and PC which ensures that decision making in PC includes political priorities of Government. Also without PM as chairman, PC would not be taken seriously.
- **Victim of parkinson's law** – PC has displayed empire building tendencies. It was not able to display vigour and energy of a think tank. PC was divorced from ground realities and accused of applying textbook principles to Indian Socio-Economic situation
- **Poor focus on implementation** - Whatever concerns PC gave to implementation, it was only post script or after thought.
- **Conflict with finance commission** - PC dominated the federal fiscal relationship. The role of FC which was a constitutional body was diluted
- PC was not accountable to parliament. **Ashok Chanda (Former CAG) described PC as economic cabinet of Union Government.**
- Over centralisation.
- Lack of participation of people and state Governments. Stakeholder mentality could not be created.
- **Imperative planning** – feeling of imposition of plans in people, compulsion of adopting the plans, involuntary participation.
- Bureaucracy given the responsibility of plan implementation.
- **Bureaucracy was status-quoist i.e. not interested in innovation and change**. It was authoritarian, displayed trained incapacity and had target mentality, process compliance and not performance compliance. It was elitist.

**Historical analysis of Economic development**

- In first 5yr plan, agriculture was the focus of Government. From **Second 5yr plan onwards, India shifted its focus from agriculture to Industry.** Investments were made in heavy and large scale industries under public sector enterprises. But unfortunately these PSEs failed to generate surplus due to long gestation periods. By the end of second FYP, the country faced severe food crisis. **Third 5YP gave equal importance to both agriculture and industry but again this plan ended up as a failure due to India's war with China and Pakistan**. Till the end of third 5YP, PC enjoyed credibility amongst state Governments. It was believed that PC consisting of experts from different fields would formulate 5YP that would ensure rapid economic growth and development but none of the objectives were realised. State Governments started questioning credibility of planning commission. **In 1967, opposition ruled states also questioned the impartial functioning of PC**. During the period of confrontational federalism, PC

had become a major bone of contention between union and state Governments. PC had extra ordinary power in deciding allocation of financial resources to states. PC was an extra constitutional body and its members were appointed only by union but it had the power to decide financial allocation to state Governments which is against the spirit of cooperative federalism. **The importance of FC had declined over a period of time due to dominance of PC.** Maximum allocation from centre to states was made via PC. All these allocations were discretionary grants. By the end of $7^{th}$ 5YP (1985 – 1990), the country faced severe financial crisis due to centralised planning process, public sector monopoly, licence quota permit raj etc. which restricted the scope of private sector activity and led to autarky ( a closed economy based on self-sufficiency and limited trade)

- In order to overcome the severe BoP crisis in 1991, the country was forced to radically alter its economic policy. It opted for LPG.
- **From $8^{th}$ FYP onwards (1992 – 1997), India opted for indicative planning – a feature of capitalist economies**. Here the role of Government is restricted to act as a facilitator to the process of development. Private sector would be given complete freedom in terms of allocation of resources, production of goods and services, distribution of output and determination of prices. Role of PC would be restricted to indicating the financial outlays to be spent by private sector. PSEs would no longer enjoy monopoly and had to compete with private sector on a level playing field. As part of Globalisation, foreign MNCs were also allowed to invest in Indian market by removing controls over trade and investments. PC's role was defined in terms of acting as a think tank, as a staff organisation whose primary function is to provide suggestions to Government on policy matters. As part of indicative planning, the role of Government was defined in terms of providing necessary physical and social infrastructure for private sector to grow rapidly.
- By the end of $11^{th}$ 5YP (2007 – 2012), the country faced severe economic uncertainty due to global recession of 2008. It was realised that medium term plans like 5YPs had become redundant in the age of Globalisation due to very high levels of economic uncertainities.
- In 2014 , NDA Government decided to abolish PC and replace it with a new staff organisation known as NITI Aayog.

**Functions of NITI Aayog**

- It is said that **NITI Aayog is an example of cooperative federalism**. NITI Aayog has members who are not only experts from different fields but also academicians from India and abroad. They conduct extensive research on policy matters and provide invaluable suggestions to Government regarding public policy.
- **NITI Aayog is like think tank of Government of India**. In the age of Globalisation wherein administration has become a highly technical and specialised function, experts in NITI Aayog help Government to come up with pragmatic policies based on ground level realities
- NITI Aayog also collects, stores and updates information on a real time basis using MIS. This information pertains to implementation of developmental and welfare schemes. It helps the Government to modify policies according to their outcomes.
- It also helps the state Governments in conducting research at ground level regarding effectiveness of their developmental and welfare schemes. It provides suggestions to state Governments to improve their welfare adminstration.
- NITI Aayog shall come up with long term development agenda for the country with the **objective of ensuring sustainable development**. It would link these long term policy objectives with short term goals of Government to ensure continuity in development process.
- In the age of Globalisation, governance means regulation. **NITI Aayog from time to time provides critical inputs to the Government regarding improving functioning of regulatory authorities**
- Governance can succeed only when there is close coordination between union and states in terms of their economic policies. For ex – FDI proposals may be cleared at central level, but their implementation may take place at state and local level. State Governments are responsible for providing necessary land, skilled labour and removing red tapism
- NITI Aayog provides a platform for state's chief ministers to meet regularly along with union ministers to discuss, debate and decide major policy issues.
- NITI Aayog provides research support to union ministers and departments to come up with better policies.

**Comparision between Planning Commission and NITI Aayog**

| PC | NA |
|---|---|
| 1. Headed by Prime Minister with members appointed by central Government | Also headed by PM but also has chief ministers of all states |
| 2. Plans made by PC were ratified by NDC | NITI Aayog can be called **combination of PC and NDC** |
| 3. PC formulated 5 YPs | Doesnot perform this function as 5YPs have been abolished |
| 4. PC had powers to allocate funds to states | **NITI Aayog has no financial powers** i.e. it does not determine allocation of funds to states. |
| 5. Annual budgets were nothing but 5 YPs divided into 5 annual plans. Therefore PC had major role in formulation of Union Budgets also | NITI Aayog at present cannot look into budgetary allocation. It is taken care by ministry of Finance |
| 6. As part of centralised and top down approach to development, PC also had the powers to oversee implementation of developmental and welfare schemes. | NITI Aayog has no such powers |

**NITI AYOG has changed the fundamental nature of planning in India.**

- **Change in policy making: While designing strategic and long term policies and proGrams for the Government of India, NITI** Aayog also provides relevant technical advice to the Centre and States. Example: Medical Education Reform
- **Bottom- up approach**: This enables to achieve sustainable development goals with cooperative federalism by fostering the involvement of State Governments of India in the economic policy-making process using a bottom-up approach. Example:
- **New innovations**: At the core of NITI Aayog's creation are two hubs – **Team India Hub and the Knowledge and Innovation Hub.** The Team India Hub leads the engagement of states with the Central government, while the Knowledge and Innovation Hub builds NITI's think-tank capabilities. **Example: Atal Innovation Mission (AIM)**
- **Strategic proGrams**: To design strategic and long term policy and proGramme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learnt through monitoring and feedback will be used for making innovative improvements, including necessary mid-course corrections. Example: Education and Water Management
- **Coordination among different departments**: It offers a platform for resolution of inter-sector and inter-departmental issues in order to accelerate the implementation of the development agenda. **Example: Atal Mission for Rejuvenation and Urban Transformation**
- **Use of advanced technology:** NITI Aayog has t**aken initiative on Blockchain usages in E-governance and has conceptualized the tech stack as 'IndiaChain'**. IndiaChain is the name given to Niti Aayog's ambitious project to develop a nation-wide blockchain network.
- **Digitization**: It focuses on technology upgradation and capacity building for implementation of proGrammes and initiatives. Example: Digital India
- **Indices Measuring States' Performance in Health, Education and Water Management:** 'Name and shame' has helped improve states' business rankings
- **Interference of Technocrats:** introduction of individuals with technical training and occupations who perceive many important societal problems as being solvable with the applied use of technology and related applications. **Example: Swachh Bharat Abhiyan, National Mission for Clean Ganga.**

**Success of NITI AYOG so far**

- It has increased the involvement of the states in the planning process. Ex: Hosted three sub-group of chief

ministers on revamping centrally sponsored schemes, Swachh Bharat and Skill Development
- NITI AYOG has been at the forefront in conceptualizing initiatives to contribute to the growth of the country. **Ex: Roadmap for digital payment, Aspirational district proGramme, monitoring implementation of sustainable development goals (SDG) etc**
- It is **fostering a sense of cooperative as well as competitive federalism** amongst the states. Ex: Releasing ranking on various development parameters
- The Atal Innovation Mission, which is established under NITI Aayog, has done admirable work in improving the innovation ecosystem in India.

**Issues associated with NITI AYOG**
- NITI Aayog has no role in influencing private or public investment.
- Inequality has continued to grow in the Indian society and the effect of NITI AYOG in combating this has been subpar
- Politicization of the organization in recent times
- Solutions to solve structure issues in the country are still not forthcoming
- **NITI AYOG has been transformed into a glorified recommendatory body** which lacks the requisite power to bring positive change in the government's actions
- Inadequate resources to the new planning body

**Way forward**
- Equipping the planning body with requisite powers so that it can effect change
- Allocation of adequate resources
- NITI AYOG could be made legally accountable to the legislature for its inability to meet the targets. This would bring in more accountability
- Ensure the planning body remains a non-partisan institution
- The setting up of NITI AYOG has brought positive results. However, there is a need to ensure sufficient changes are brought in the planning body to ensure it can meet its objectives

# 7

**CHAPTER**

# Public Sector Undertakings

PUBLIC SECTOR in a narrower sense means commercial activities of government. In a wider sense it includes the entire range of government's functions.

**Public Sectors in Modern India**

**Rationale of Public Sector in India:**
1. **Ideological & Social Rationale:** Private sector was considered as exploitative for workers especially if workers are unorganized.
2. Pvt sector leads to concentration of wealth & income disparities.
3. Public sector takes its responsibilities in a wider sense.
4. Pvt sector may lead to wastage of resource & multiplication of product & services.
5. **Public utilities like water, sanitation etc should serve larger public interest**.
**6. Public sectors can be cursed as an instrument of redistribution**
   a. Setting up industries in backward areas.
   b. Profit earned is used in social sector proGramme.
   c. Create employment opportunities
   d. To implement reservation policies for weaker sections.

**Economic Rationale:**
1. Pvt sector was short of resources.
2. **Long gestation period of projects** with low returns.
3. Investment in untried sections.
4. Scarce natural resources like coal
5. PSUs can be managed with physical support of government

1930s onwards the socialist model of development had already gained popularity. Soviet Russia witnessed rapid economic growth using this model and became economic social power. In **India from 2nd FYP onwards focus was on heavy industries.** PSUs came to be known as commanding heights of economy. **Pandit Nehru called them temples of modern India. Nehru- Mahalanobis model was adopted in Industrial Policy Resolution 1965. The main objective of IPR 1965:**
   ➢ Rapid economic growth & industrialization of the country & creating necessary infrastructure.
   ➢ Promote redistribution of income and wealth
   ➢ To create employment opportunities.
   ➢ To promote balanced regional development.
   ➢ To assist development of small scale and ancillary industries.
   ➢ **Promote import substitution**, save and earn forex for the economy.

**Different Types of PSU:**
**1. Departmental Undertakings:**
a. Railway, Space, Postal department.
b. High accountability but low autonomy.
c. A part of executive but for perform commercial operations
d. Wholly owned by Government.
e. Entire capital comes from CFI.
f. Employees are considered as government employees

g. **Enjoy sovereign immunity for their action**. They are not Answered the snake legal entity other than government.
h. Headed by political executive & bureaucracy.

**Disadvantages:**
a. Less autonomy due to excessive control.
b. **Rigid bureaucracy** and financial control.
c. Rigidity of rules and associated delays.
d. **Lack of financial flexibility**. Financial budget lapses at the end of FY causing discontinuity in business.
e. Profits may not always be used for their own good/growth.

**2. Public Corporations:**
a. Statutory entities **(RBI, SBI,LIC)**
b. Origin in USA in 20th century.
c. Parliament defines functions, Powers, duties & responsibilities.
d. A separate legal entity.
e. Can enter into legal contracts with other organizations.
f. Their employees are not considered as government employees.
g. Decide salaries & other financial decisions.
h. **Wholly owned by state** (capital comes from state).
i. PCs enjoy foam more functional and financial autonomy except formal policy direction issued by ministers.

**Disadvantages**:
a. Rigid because any change to structure or procedures only by legislative amendment.
b. It is difficult to make clear distinction between 'matters of policy' & 'matters of day to day admin'.

**3. Public Companies:**
a. Set up by executive resolution known as Government company.
b. In a PC government holds more than or equals to 51% share capital. This makes government de facto controller.
c. Created under Companies Act.
d. Employees are not civil servants.
e. Independent staffing
f. **Two types:**
   1. **Pvt Ltd Company:** It is not listed in any stock exchange. Most of the PCs in India needs at least 2 shareholders and maximum 50% share.
   2. **Public Ltd Company**: Listed on Stock Exchange & shares are traded publicly. Minimum number of shareholders is 7. No cap on maximum numbers.

**Disadvantages:**
a. These companies **evade constitutional responsibility** which a state-owned enterprise should have towards parliament or legislature.
b. Public corporation and companies are almost the same thing except they defer on legal status.

**4. Holding Companies:**
a. It's **a parent company** that holds ample of shares in other company.
b. Came into existence in 1970s.
c. It was **recommended by 1st ARC 1967.**
d. In **1973 SAIL was established on experimental basis** & it proved to be successful.
e. They maximize benefits of economies of scale. The more you produce the better it is for utilization resources. Lesser will be the cost of production.

**How a holding company bring Economy of scale?**
a. Excess labour can be utilized in more efficiently.

b. Technology & resources can be put to optimum use.
c. Cost of credit will be less
d. Share price will become attractive.
e. Improved chances of success.

In order to ensure balance regional development government set up related PSUs in different parts of India. E.g. many steel plants brought under a holding company SAIL.

**Reasons for failure?**
a. Monopoly: PSUs did not care about quality, efficiency & cost of production.
b. **Geographical advantage**: In order to ensure balanced regional development PSUs were set up in places without raw material, skilled labour & market.
c. **Excessive political and bureaucratic interference**.
d. Instead buried unemployment cover staffed
e. Disguised unemployment (overstaffed)
f. Trade unions with support of political parties.
g. Corruption
h. **Weberian Bureaucracy**: They need to follow rules other than to achieve objectives.
i. **Absence of accountability**: Sovereign immunity and monopoly.

**Reforms Post 1991:**
a. In 1991, India adopted New Economic Policy influenced by **NPM, LPG, Structural Adjustment ProGramme & Washington Consensus.**
b. **The main themes were:**
   ➤ Dismantling monopolies of PSUs.
   ➤ End of LPQ raj.
   ➤ Provide level playing field to private sector.
   ➤ Economy was opened up for foreign companies as part of globalization.
   ➤ Loss making or Sick PSUs were privatized.
   ➤ PSUs were asked to perform or perish.

**Following are the reforms to revive PSUs:**
a. **Right sizing or downsizing**: in 1990s there were 242 public sector enterprises with 23 lakh employees. This over staffing made the PSUs inefficient. Reforms such as **VRS, golden handshake** (employees leave the organisation for one time lumpsum payment).
b. **SICA- Sick Industries Companies Act-** Under this act government set up a board called BIFR- Board for Industrial Finance and Reconstruction. It was **later renamed as BPRSE** (Board for Reconstruction of PSEs.) All the loss making public sector enterprises were referred to the board to give recommendations.

**Weather public sector enterprises can be revived?**
a. If yes, suggestion for revival.
b. If they can't be revived and their net worth is negative, suggestion for their closure.
c. Autonomy and accountability
d. Public sector enterprises were categorised into **Maharatna Navratna and Miniratna on basis of their annual turnover and profit**. This Public Sector Enterprises were given autonomy and also made accountable for their performance.
e. **Disinvestment**- Government in the initial years invested heavily in public sector enterprises with 100% ownership. This investment helps to make public sector enterprises both public as well as enterprising in nature it is because this investment offers shares to general public so that they truly become public in nature. Also it will bring private style business practices into public sector enterprises making them enterprising in nature. Public sector enterprises were converted into public limited companies. Through disinvestment, the proceeds were used to recapitalize and modernised public sector enterprises. This mate public sector enterprises efficient and competitive. Disinvestment proceeds can also be used to finance capital expenditure of government. Thus, the money from public sector enterprise can be used to improve

physical and social infra.

**Disinvestment was only partially successful because:**

1. For the first 20 years of New Economic Policy government could raise approx. 50000 crore rupees by this investment. It was mainly because of compulsion of coalition government. Between 2004 and 2009 government could not raise a single rupee by disinvestment because left parties were supporting government from outside.
2. One more reason for partial success of disinvestment was the pricing of shares were very high and public sector enterprises did not get many buyers.
3. The government asked LIC to buy the shares of PSUs so that government could manage its fiscal deficit. In this process the entire meaning and purpose of this investment was lost because one public sector enterprise buying shares of another public sector enterprise.
4. Also, the money which was raised by disinvestment was used to finance revenue deficit of government. Ine sab cases the shares of profit-making PSUs were also sold.
5. **Strategic sale**- here a public sector enterprise is completely privatised or sold. It is strategic because the government identifies a specific buyer to sell the PSU. It ensures that public sector enterprise retain some of the features like existing employees would not be laid off. Example Videsh Sanchar Nigam Limited was sold to TATA. However, the concept came under criticism that there was favouritism and allegation of corruption and also that public sector enterprises were sold to less than optimum price.
6. **Memorandum of Understandings**- this is also an example of NPM. The objective is to give functional and financial autonomy to public sector enterprises and at the same time to make them accountable for performance. NPM emphasizes on efficiency, accountability, performance orientation etc. In a MOU the government enters into an agreement with public sector enterprise. Public sector enterprises become accountable for its performance or profit in given amount of time. In return government will not interfere in functioning of the organisation during this period. The targets where decided by mutual consultation. If public sector enterprises fail to achieve targets government can decide to close the public sector enterprise. MOU promotes participative management of Likert. It's underlying philosophy is that with autonomy comes accountability.

# Rural Development

**Evolution Of Modern local Government in India**

**1687** – First municipal corporation setup in Madras

**1870** – Lord Mayo's resolution on **financial decentralisation** visualised development of local self Government institutions

**1882** – Lord Ripon's resolution on decentralisation

**1907** – Royal commission was set up on decentralisation

**1919** - Government of India act 1919

- It made local Government a transfered subject

**1935** - Government of India Act 1935

- It made local Government a provincial subject (state list in constitution of India)

**Why development of rural areas is important in India?**

At the time of independence, about 90 percent of India's population inhabitated rural areas and therefore development of country was not possible without development of rural areas. **Before British period, villages were isolated and self-sufficient.** Villages were headed by traditional authority i.e head of village was mostly hereditary in nature. British brought radical changes. Population of British in India was limited and therefore villages could not be headed by British. The unit of administration was changed to district. British deliberately destroyed the village self-rule in India and introduced bureaucratic administration at local level. **Lord Ripon is called father of local self-Government in India. He introduced some reforms in local self-Government** but other Governor Generals did not continue them. District continued to be the unit of administration until the Independence. Britishers wanted an administrative system which suited their economic interests therefore development of rural areas was neglected. After independence, importance of rural development was realised for over all development of India.

**Phases of rural development**

**Phase 1 1947 – 1992:** during this period, Government of India adopted a **bureaucracy centric and centralised approach to development**. Initially two major proGrams were launched with focus on development of rural areas.

1. **Community development ProGramme-1952**

2. **National Extension Service-1953**

- as part of CDP, the **focus was on all** round development of rural areas including agriculture, education , **health, infrastructure and employment generation**. However these proGrams failed to achieve the desired results.

- Balwant Rai Mehta committee was appointed to look into the reasons for failure of CDP. It identified two reasons, **first, lack of people's participation and second, absence of accountability for performance.**

- To overcome these problems, it **recommended a three tier local self Government in India**. Because local Government is a subject in state list, central Government recommended to states to implement recommendations of Balwant Rai committee. **Rajasthan was the first state to implement the scheme of democratic decentralisation as recommended by Balwant Rai Mehta committee on 2nd Oct 1959.**

- The First Five year plan gave importance to agriculture and development of rural areas. Second Five year plan onwards focus shifted to industries. Initially rural development was equated to just agricultural development. Other sectors in rural areas like health, education, small scale industries, infrastructure like irrigation facilities were ignored.

- In 1960s country faced food shortage and thus focus shifted to maximising agricultural production. Green revolution was initiated.

- In 1970s focused shifted from agricultural production to distribution of income and wealth as part of socialist

agenda.

- The **Government adopted two types of approaches**.

**1. Area based approach**

Ex- Hill Aread development proGramme, Desert Area development proGramme

**2. Target based approach**

As part of this approach, many initiatives were launched to target particular sections of population**. Ex- small and marginal farmers development agency, ICDS, training of rural youth in self employement, Mahila Samridhi Yojana, Food for Work proGramme, Rural Landless Labour Employment proGramme, NREGP (National Rural Employment Generation ProGramme)**

- Thus the welfarist approach continued with more and more development and welfare schemes in rural areas. **Later IRDP (Integrated Rural Development ProGramme) was launched by merging RLEGP and NREGP. Jawahar Rojgar Yojana was launched to provide employment to people in rural areas. After internal** emergency, there was change in central leadership. **The Janata Government adopted Gandhian socialism in place of nehruvian socialism**. Nehruvian socialism focused more on large scale industries and trickle down approach. Gandhian socialism focused on empowering villages and making villages self-sufficient**. Janata Government appointed Ashok Mehta committee to suggest reform in local self Government.** Ashok Mehta committee recommended a two tier Panchayat system. First, Mandal or block Panchayat and second, Zilla Panchayat.

**- The recommendation were required to be implemented by states but there was no sincere attempt.**

- it was realised that the developmental proGramms were a failure because

1. Bureaucracy centric approach
2. Absence of participation by people/stakeholders
3. Absence of accountability
4. **Centralised planning - Top down approach in implementation**
5. Secrecy in adminsitration and proGramme implementation
6. Absence of democratic Government at local levels

In order to overcome these problems, **65th and 66th Const amend bill were introduced in Parliament to empower local self-Government**. They were passed in Lok Sabha but failed in Rajya Sabha because states felt that these amendments were interfering with the powers of state Governments. In 1992, due to change in political situation, 73rd and 74th CAA got passed and approved by state legislatures also.

**2nd Phase:** 73rd amendment added part 9 in constitution with **Articles 243 to 243O. It also added 11th schedule which contains 29 functions.**

**Features of Panchayats:**

1. **Gram Sabha:** It consists of all the adults of village registered in electoral rolls. **Gram Sabha is considered as the basis of foundation of Panchayati raj system. It converts indirect democracy into grass root democracy**. Meetings of Gram Sabha are held as per provisions given in the law of state legislature. In most states, Gram Sabhas meet twice every year, however the powers of Gram Sabhas are determined by state legislature.

2. **Three tier Panchayat system:** At village level, it is called village Panchayat

- At intermediate level (group of villages), it is called **Block Panchayat or Mandal Panchayat or Kshetr Panchayat.**
- **At district level** – zilla parishad or district Panchayat.
- Number of members in each level of Panchayat are determined by state legislature (that depends on population)

3. **Term- 5yrs from first meeting**

- If any Panchayat is dissolved before 5 yrs (usually on grounds of financial irregularities or mis approapriation of funds) new Panchayat is elected only for remainder of the term.

- Minimum age to contest elections is 21yrs
- State election commissioner is appointed by Governor (status of that of high court judge)
- **Reservation for SC's and ST's at all levels of Panchayats including the post of chairpersons in the ratio of their population. Reservation may be given to OBCs also.**
- **At least 1/3rd reservation at all levels including posts of chair persons reserved for women**.
- Panchayats shall perform the function of planning and the functions of 11th schedule as assigned to them by states.

**4. Finances- State legislature may**
a. empower Panchayats to levy, collect and appropriate certain taxes, duties, tolls
b. assigned to Panchayats the proceeds of certain taxes, tolls, duties etc;
c. devolve to Panchayats funds and grants on recommendation of state finance commission (to be appointed every five years by Governor)

**Critical appraisal**
According to Rajgopalan, **PRIs are simultaneously a remarkable success and a staggering failure. 73rd Amendment and the working of Panchayats suffer from following problems**
1. Panchayat legislations in some states are not detailed and clear. For ex – the relationship between district administration and Panchayats is not clearly defined.

**2. Problem of 3Fs**

a. **Finances**- Panchayats suffer from acute shortage of finances. States have not sufficiently empowered Panchayats to levy taxes. Even when empowered, Panchayats dont utilise the full potential of taxes because of fear of losing popularity and elections. A**ccording to economic survey 2018, 95% of Panchayats's revenue is from centre and states.** Central and states grants are mostly scheme specific and do not give Panchayats discretion in expenditure. **Only when Panchayats are financially independent, they can truly become self reliant.** State finance commissions are not set up on time, quality of members is not comparable with central finance commission, recommendations are not given on time and recommendations are not accepted by state Governments. **According to ministry of Panchayati Raj, devolution report 2016, percent of accepted recommendations is as low as 11% in Karnataka to 50% in West Bengal, Andra Pradesh, Rajasthan and 100% in Kerala.**
b. **Functionaries**- Panchayat offices often lack sufficient number of functionaries or officials. Whatever functionaries are there, they are not **sufficiently skilled and motivated**. Postings of state Government officials to Panchayat offices are often seen as punishment postings.
c. **Functions**- States have still not transferred the **29 functions of 11th schedule to Panchayat**s. IIPA conducted a survey among states in terms of these three Fs. It came up with devolution index and activity mapping to analyse performance. On an average, only 36 percent of functions have been transferred to local self-Government. **In states like UP and Bihar, only 19% of finances have been transferred.**

3. **Elections are not held regularly and state Governments postpone the elections on various grounds like monsoon, drought, disturb law and order,** ongoing budget session of state assembly. Violence is still a norm in Panchayat elections which often continues even after elections.

4. Mahatma Gandhi observed that real freedom was not about freedom from British, real freedom is only when our villages are transformed into self-sufficient and independent republics i.e. there must be complete decentralisation of powers to people at lowest levels. **It was believed that Gram Sabhas would help in realising this dream of Gandhi but unfortunately it failed because of following reasons**
a. **Size of Gram Sabha** – Initial assumption when 73rd amendment was passed was that Gram Sabha size would be 1500 to 2000 people. Gram Sabha would be able to meet and discuss the problems and take decisions. With increase in population size, there are Gram Sabhas with strength of 25000 people. This makes it impractical for Gram Sabha to hold discussions.
b. Not active and large participation of villagers **because recommendations of Gram Sabha are not binding on Panchayats.** An average villager who is most likely a daily wage earner cannot afford to attend Gram

Sabha meeting at the cost of his livelihood.

c. Villages have a conservative social environment because of which participation of women in Gram Sabha meetings is poor.

d. **Meeting of Gram Sabha are not held regularly**

e. Meetings of Gram Sabha are often held in secrecy. Efforts are not made to inform all the stake holders regarding the meetings of Gram Sabha. Mostly, relatives and friends of Panchayat members attend Gram Sabha meetings and take decisions. It has resulted in massive level of corruption.

5. According to Dr. M.A.Oomen, States flout the constitution with impunity. **74th amendment requires every district to have a district planning committee to prepare district's development plan** by integrating plans of rural and urban local bodies. But in many states these DPCs are not functional.

6. The delimitation of constituencies is done by state Government and orders cannot be challenged in court. **There have been cases of gerrymandering of constituencies**. In some states **especially BMARU states women are Panchayat members only for name sake**. On their behalf a male member of the family (usually the husband) performs all the functions and women affects their thumb impression only. **This defeats the purpose of women reservation and does not help in fighting the patriarchial character of society**. **R.Chattopadyay and E.Duflo observed that district with female sarpanch/pradhan have performed better on services like drinking water, sanitation etc;** Similarly reservation for SCs and STs has not resulted in empowerment of these backward communities. Forward cast people do not allow the SC, ST members to attend meetings or speak in meetings.

7. 68% of Panchayat bodies do not have separate buildings of their own. Even when they have separate buildings, they are in poor condition. There is lack of access to internet and computer.

8. **Most of the Panchayat members are either illiterate or semi literate. They** are not clear about their role and responsibilities as Panchayat members. This calls for training of Panchayat members. Some states like Rajasthan, Haryana etc; have prescribed mandatory educational qualifications for Panchayat members. SC in Rajbala vs State of Haryana 2015 held educational qualifications for Panchayat members as constitutionally valid.

### Arguments against

➢ In democracy, it should be people's decision whether they want illiterate or literate representatives.

➢ It will adversely affect backward communities and women.

➢ If after 72 yrs of constitution coming into force, universal literacy has not been achieved, it is failure of Indian state and it will be unfair to punish people for the failure of state.

➢ No such qualifications for parliament and state legislatures.

### Arguments in favour

➢ Literate Panchayat members can better understand their role and responsibilities there by improving the efficiency of Panchayats

➢ It will encourage universal education

9. **Even after 73rd and 74th amendment, there are a number of centrally sponsored schemes**. Panchayats simply do not have any powers to take decisions. They have become merely line agencies responsible for policy implementation for central and state Government proGrammes. **Local bodies have not been transformed into institutions of self governance**

10. Emergence of community based organisations like **NGOs, women self help groups etc have reduced the significance of local Self-Government.** People often approach these organisations for redressal of their greivances rather than Panchayat bodies.

11. Non-cooperative attitude of bureaucracy

**Recommendations**

- ➢ **Mandatory for Gram Sabha to meet atleast three times in a year** and the meetings should be held on public holidays like 15th august, 2n oct, 26th Jan.
- ➢ Wherever villages are big in size, ward Sabhas should be organised consisting of not more than 1500 people. **Seperate mahila Sabhas should be organised to encourage women participation**
- ➢ Meetings of Gram Sabha should be widely publicised.
- ➢ Mandatory for Gram Panchayats to implement decisions on certain matters only after approval by Gram Sabha. This will prevent Panchayats from taking unilateral decisions without approval of Gram Sabha.
- ➢ **Capacity building of Panchayat members** by training or distance learning proGrammes.
- ➢ Recommendations of states Finance Commission to be binding on states.
- ➢ State budgets must have a **separate window for local self Government so that local self Government receive funding within specific time period.**
- ➢ Chief Ministers conference suggested that **devolution index must be the necessary condition for the release of grants from central Government to states**. Principle of subsidiarity should be followed and those functions which can be performed best at lower level, should be performed at lowest level.
- ➢ Number of centrally sponsored schemes should be reduced if not at least the Panchayats should be given the freedom to implement these schemes.
- ➢ A separate local body service like that of central civil services and state civil services
- ➢ Every **Panchayat should have a seperate building, staff and internet connection.**
- ➢ Sensitivity training for bureaucrats so as to bring a positive attitude in them towards local bodies.

# Urban Local Government

ULG is about management of urban areas, urban affairs including civic amenities so that people in urban areas have a good quality of life. Urban areas have features such as high density of population, non-agricultural activities, more revenue generation, urban areas are the places for new oppurtunities, innovations and initiatives, urban areas are supposed to offer better quality of life in terms of housing, sanitation, health, education, recreation etc;

Therefore **Urban machinery faces qualitatively different challenges than the machinery of rural local Government.** In cities, population is increasing constantly and therefore challenges are also increasing. As of now, 31% of India's population lives in cities which generates 40% of its own revenues (Panchayats only 5%). By 2045, 50% of Indian populaition will be living in cities. Urbanisation is increasing globally. Hence there are efforts at global level to improve urban governance. It is because of this that global local debate and new localism have emerged in urban governance.

**Global local debate**

This debate is influenced by Globalisation which has given rise to competition among cities. **At the same time it also propagates democratic values.** Global means think globally, act globally. Local means think locally, act locally. Glocal means think globally, act locally. **Therefore Glocal means achieving global values at local level as well as taking local standards at global level.**

1. global promotes uniformity or homogeneity / local promotes diversity or heterogenity
2. liberal values     / local values
3. Cosmopolitan culture   / local culture

Global values promote liberal values, philosophy of NPM in terms of managerial autonomy, decentralisation, efficiency or result orientation, quality of service and participation of people. Therefore city management should incorporate such global values so that a city reflects universal standards in terms of waste disposal, housing, water, sanitation, maintenance of parks etc. This is why **urban governance today is characterised by cosmopolitan culture and increasing homogenisation also known as manhattanisation.**

**Localisation i.e local culture also gets relevance and local good practices are promoted at global level. Glocalisation means that there should be a right mix of global and local practices in urban governance i.e global practices are implemented at local level** but at the same time local needs are also taken into consideration. **For ex – Super speciality allopathic hospitals also providing aayush treatment**. Similiarly global food chains also offering local tastes. Due to globalisation, the quality of urban governance has improved. There is a greater competition among cities and they hold conferences for improving city management. **But it has following problems –**

1. There is **biasness towards global than local**. ULBs are more concerned about global standards to their cosmopolitan clients rather than meeting local needs.
2. It has **resulted into skewed urban development** such that some areas within cities are smart while others are slums. For ex – squatter settlements around high rise buildings
3. The focus of ULBs has shifted to middle and upper class. They maintain global standards in services to cosmopolitan clients but quality of service to common people remains poor.

**Conclusion**

Thus global local debate has uneven impact on city management. Although it has infused efficiency, professionalism, greater emphasis on people's participation, more and more community efforts in city

management.


**New Localism**
**New Localism is a concept about urban local Government by application of not only democratic principles, but also NPM principles.** It was first initiated in UK and later became a popular concept in urban governance. **In new localism, goals are set at national level but achieved at local level by giving autonomy to local officials**. When Tony blair became British PM, he introduced concept of localism in which
1. Goals were set at national level, to be achieved at local level
2. Star rating was given to best practices followed by local bodies.
Due to bureaucratic nature, the approach failed as autonomy was not really given to local officials and agencies. When Tony Blair came to power for his second term, in new localism more autonomy was given to local bodies such that
1. to raise finances
2. variable pay for staff
3. local participation of civil society

Therefore **these features are related with managerial autonomy and not political autonomy.** National priorities and goals have to be achieved. This initiative became successful in health and education departments. In new localism, because there is local community participation, it is also called neighbourhood or co governance.
**In India, the relationship between central and local Government is different because India is a federal system** unlike UK which is unitary**. In India, States have to devolve powers to local bodies by taking power away from administrative units**. However in India, local bodies are not as strong. Some examples of new localism in India are
1. Municipal bonds issued by municipal corporation
2. Smart city practice developed through special purpose vehicles
3. Institutional pluralism i.e multiple institutions for city management.
4. Resident welfare associations

**74th CAA 1992**
74th amendment added part 9A with **Articles 243P to 243ZG, also added 12th schedule which contains 18 subjects/functions**
**Provides for three types of urban local bodies –**
1. Municipal corporations (>10lakh population)
2. Municipal council/Municipality (<10lakh population)
3. Towns in transition from rural to urban – Nagar Panchayat (more than 5000 population)

**An ULB has following main parts/components –**
1. A directly elected council for which the urban area is divided into as many wards as there are seats in ULB. This **council acts as deliberative organ which prepares plan for development, approves the policies, budget etc;**
2. A President or chairperson or mayor of ULB who is elected directly or indirectly as provided by law of state legislature. Mayor can either be nominal head of the council and only presides over its meetings or may also have executive powers.
3. The **CEO of ULB aka Municipal officer of Municipal Commissioner**

**Problems**
1. ULBs in India face the challenge of providing civic amenities to rapidly growing urban population. In modern times **ULBs face new challenges like climate change, air and noise pollution, nature of crimes**. To tackle these problems, resources available are limited. ULBs have introduced innovative ways of generating finances such as municipal bonds. For ex – Bangalore raised 125 crores by municipal bonds. In other ULBs also, bonds have been issued. **There are examples of planned city development in India such as Chandigarh, Jamshedpur etc;** Urban areas have shown tremendous progress in terms of expansion, development and development of satellite cities like Gurgaon, Navy Mumbai etc;

2. According to Jangarna survey, Indian cities are way behind the global bench mark of urban governance. **Pune topped the list but it was way behind Newyork, London and even Johanseburg**. This survey mentions poor state of affairs in Indian cities. For ex – absence of citizen charters, Lack of revenue to pay salaries to their staff

3. Urban governance in India is not ready to face challenges such as maintaining water supply, prevention of health problems including mosquito breeding, housing, schooling and providing basic services to people living in slums. Planning has not been successful as evident by sealing drives and dismantling illegal buildings.

4. ULBs are seen as most corrupt institutions

5. 74th amendment provides for district planning committee (Art 243ZD). Its role is to prepare draft plan for development of district by integrating plans of all local bodies and submit the plan to state Government. It was expected that **DPC will become a symbol of decentralised planning at cutting edge level but the actual performance is far from satisfactory.** Not all states have established DPCs and that too not in all districts. In some states, DCs are the heads of DPCs

6. **A problem of urban planning in India is sectoral planning i.e. planning for specific sectors like transportation, slum, water, planning for land use(spatial planning).** It was expected that after 74th amendment, planning will be integrated and not just sectoral however this has not happened and urban planning remains spatial. It cannot be called a developmental plan.

7. Drainage and Sewage system suffers from frequent blockages and even flooding during monsoon. Waste disposal and solid waste management are at a choking point.

8. Planning of construction activities is not regulated properly and construction is the single biggest source of air pollution. Usually illegal structures or encroachments are removed only on orders of judiciary

Thus in city management, the classical principles of POSDCORB can be applied, of which even the function of planning is missing in the India cities.

### Development Dynamics and Politics in city management
Development dynamics with respect to city refers to planning, policy making and policy implementation for city management and how it is influenced by politics

### Role of politics
- It means how politics determines the structure, functions, role and responsibility of urban Governments and how much autonomy they enjoy. In general, politics at national level gives a passive treatment to politics at local level. However because local Government is a separate entity, city politics has its own space in urban Government

- Most of the developed countries have a system of direct elections of the head of city Government. For ex – London, Tokyo, Newyork, Sydney etc; Therefore not only people elect their mayors directly, the elected mayors become accountable to the people of city. In India, there is no single leader who can be made accountable for city management. In other countries, city politics has its own space and it has been given political powers to take decisions regarding urban governance. There is a clear demarcation of role and responsibility based on principle of subsidiarity. But in India there is overlapping jurisdiction because of which there is not only lack of coordination but also problem in fixing responsibility.

- City politics remains less significant even though cities contribute significantly to national GDP. **Urban issues are hardly electoral issues at national and state level. ULBs are not given autonomy. City leaders are overshadowed by national and state leaders**. Even bureaucrats circumvent the authority of local leaders. For ex – the municipal commissioner who is appointed by state Government. Thus city politics has not been given its own space to grow and develop.

- Indian cities have not been able to adopt whole of the city approach. As per this approach, local body manages all the administrative affairs at city level. For ex – Shangai Corporation has control even on Shangai airport. **In India, ULBs are disempowered and depoliticised**. After 74th amendment, it was expected that ULBs will be empowered but the 18 subjects have not been transferred to ULBs. To levy taxes, ULBs need permission of the state. Most developmental activities at city level takes place by intervention of central and state Governments. Many services like transportation, housing, school etc; are executed by bureaucratic bodies. The concept of smart city has further disempowered ULBs because smart cities approach has bureaucrats at the fore front. **2nd ARC has recommended structural and functional**

**reforms in ULBs. Instead of three types of ULBs there should be 5 types-**
1. Metropolitan corporation (more than 50lakh population)
2. Municipal corporation (20 to 50lakh)
3. City corporation (10 to 20lakh)
4. Municipal council (5 to 10lakh)
5. Town council (less than 5lakh)

The Metropolitan corporation should have its own executive and even its own metropolitan police. Municipal commissioner should be appointed by metropolitan executive with approval of state Government. Mayor should be directly elected like in other countries. Like Gram Sabhas, there should be area Sabhas in urban local bodies.

**Municipal bonds**
- It is a **market based tool to mobilise finances from market**. In US these bonds generate billions of dollars. **In India Bangalore was the first corporation to issue bonds and since then Mumbai, Pune, Hyderbad and other ULBs** have also issued bonds. 14th finance commission has recommended that union and state Governments should provide support because municipal corporation lacks financial expertise and expert fund managers. 14th finance commission also recommended that municipal bonds may be issued by a set of municipalities together. SEBI has provided support by listing municipal bonds in stock martket.

**Smart Cities**
**A smart city is which matches international standards in terms of civic amenities and services like education, health services, transportation, energy etc**. In a smart city, for end to end transportation, max time taken should be one hour.

**Pillars of smart city** –
1. Technology
2. Governance
3. Development and infrastructure
4. Sustainability
- Therefore **smart city is a technology induced initiative** such that everything should be smart. Smart cities can be developed in two ways –
1**. Brown field**- An old city is redeveloped such that it can meet standards of smart city.
2. **Green field**- A city is developed afresh as smart city. Ex – **Amaravati**

**Advantages of Smart cities**
- A renewed attention on cities, problems of cities and city management.
- Many countries like Japan, Germany, France have partnered with India for smart cities
- Holding of smart city conferences

**Challenges of Smart cities**
- Whole of the city approach is not adopted
- Most smart cities are brown field projects and therefore development is uneven
- **Bureaucracy centric approach**
- It is t**echnology driven whereas social problems require solutions other than technology**
- Smart city initiative should be institutionalised for a longer period so that this policy initiative continues even with change of Government

# Personnel Administration

## Position and Rank Classification



**W.F.Willoughby:** "Classification and standardization of public employment constitutes starting point for thebasis on which whole personnel structure must rest."

### Why classification?
- to decide the hierarchy within organisation
- no organisation can survive without hierarchy

### Position classification or Duties classification
- USA Japan Taiwan Canada
- Mostly found in western developed countries
- A classification of activities or duties is done for each and every level in organisation.
- There is difference between position and incumbent of the position

### Important features
- recruitment is strictly on basis of merit and requirements of position
- organisations give importance to work to be performed
- salary and other service conditions are strictly determined on basis of duties and performance
- upholds principle of equal pay for equal work
- **facilitates lateral entry into government from private sector**
- the status depends on work/duties, not on rank of person
- **promotions strictly based on merit**
- performance evaluation can be objective in nature because duties of each position are clearlypredetermined
- training can also be specific
- **budget formulation can be more scientific and rational because salaries can be strictly determined based on cost benefit analysis**
- specialists can reach top level positions in organisation
- in the age of globalisation specialists are important to increase efficiency of organisation. It is only position classification that can ensure that specialists are given due importance

### Disadvantages of position classification
- Position classification dehumanizes organisations. It **converts human beings into machines**
- gives importance only to the work to be performed but not to the worker
- puts huge amount of pressure on workers to achieve the targets
- **results in trained incapacity**- can perform only one task, no knowledge of other tasks

- > **results in rigidity within organisation**- no scope for inter departmental transfer
- > Can also result in internal inconsistency. If there is conflict between departmental objectives and overall objectives of organisation, specialists give importance to department's objectives
- > Not suitable for developing countries undergoing rapid socio-economic development and changes. Duties of positions undergo rapid change and therefore classification becomes outdated

### Rank classification
- > UK France India Malaysia Pakistan Laos Germany
- > Introduced by Britishers in India and other commonwealth countries
- > Importance is given to worker and not the work to be performed
- > salary and other service conditions are determined based on rank they are holding and not work they perform
- > **generalist civil servants reach top level positions within organisation**
- > there is lot of flexibility within organisation with inter departmental transfer easily possible
- > it may be useful for developing countries wherein work performed by administrators is general in nature

### Disadvantages
- > recruitment cannot be objective and merit based
- > Training is also unproductive and lacks focus
- > performance evaluation can never be objective and merit based
- > promotions not based on merit
- > salary and other service conditions cannot be determined in an objective manner
- > may have mismatch between requirements of job and skills of the incumbent

**Conclusion:** 1st ARC recommended position classification in India. Fifth pay commission recommended functional classification in place of current group or class system. The present system is criticized because it promotes class consciousness.

### Promotion and Performance evaluation



**LD White:** "A badly planned promotion system harms an organisation not merely by pushing ahead unqualified persons but also by undermining the morale of the group."

**British Fulton committee (1966-68):** "Right promotion at right time is essential part of process of developing full talents of men and women in services."

The word promote is derived from latin expression "prmovere" which means to move forward.

### Following are the elements or components of promotion:
- > change of position that is from lower position to higher position
- > change of duties that is from less difficult type of work to more difficult type of work
- > change of responsibility that is from lesser to greater responsibility
- > change of title that is from lower designation to higher designation
- > change of pay that is from lower salary scale to higher salary scale

**Promotion is different from advancement, transfer and reassignment. Advancement refers to an increase in pay. It does not involve change of duties, responsibility or title**. Transfer implies change of place of work within the same grade and in the same position. **Reassignment implies change of work in the same agency within the same grade and in the same position**

### Why do we need promotions?
- Organisations can attract best of the talent from outside only when there are good promotional opportunities within organisation
- It will motivate employees to maximize their performance. **Promotions are continuous incentive mechanism for employees**
- In any organisation middle and top level positions are filled in through promotions because they require experience and knowledge of functioning of organisation

### Types of promotions
1. **from lower grade to higher grade** example junior clerk to senior clerk, constable to head constable
2. **from lower class to higher class** example group C to group B ;clerical to executive
3. **from lower service to higher service** example state services to all India services

### Different principles of promotions
1. promotions based on **seniority**
2. promotions based on **merit**
3. promotions based on **seniority cum merit**

### Based on seniority
- if a person works in a particular position for specific period of time, the person can automatically be promoted to next level

#### Advantages
- there is **no scope for personal biases and prejudices**
- provides equal opportunity
- motivates employees to stay in organisation for longer periods of time
- higher level positions can be held by people with experience

#### Disadvantages
- **does not take merit or efficiency into consideration**
- it demotivates employees who have better performance than their peers
- **makes organisation inefficient and incompetent** in long run
- might ensure equality but not equity
- seniority automatically does not mean experience for example a clerk would learn everything about his or her position within one year and even if he/she stays in the same position for five years, learning would be the same. It is not 5 years' experience rather, experience of 1 year, 5 times

#### Promotions based on merit
- people promoted to higher level positions based on skills, knowledge, experience and most importantly performance
- **organisations follow three methods for merit based promotions**
    (1) written or oral examination
    (2) efficiency ratings
    (3) personal judgement of head of department- annual confidential reports are the basis for promotions. HOD is responsible for preparing APR of employees

### MERITS
- helps to limit damage by Peter's principle
- promotions can be objective in nature
- organisations can stay efficient for longer period of time

#### DEMERITS
- problematic because performance evaluation by HOD. There is lot of scope for personal bias andprejudices. It can be subjective in nature.

# 11

**CHAPTER**

# Law and Order Administration



- Every citizen is a police without uniform and every police is a citizen in uniform
- law and order should not just be function of police
- For effectiveness of police, people's participation is necessary but there has been a lack of trust betweenpolice and people
- police is perceived as anti-poor and anti-people
- no effort by police to change this perception of people
- police serves the interest of Elite section of society
- Poor and middle class left out
- **district collector should act as bridge between people and police**
- Focus should be on sensitivity training and training on human rights
- accountability of police must be ensured
- focus should be on human intelligence at ground level
- **John Angell in 1971 for first time described community policing as democratic policing**
- In modern times, community policing has become popular in western societies like US UK etc.
- **The process of community policing has three components: (1) participation (2) problem solving (3)transformation**

**There are several successful practices of community policing in India such as:**

1. mohalla policing in Mumbai in aftermath of Mumbai riots
2. prahari Assam
3. Jan Maitri Kerala
4. Jan Suraksha samiti- Karnataka
5. Friends Tamil Nadu
6. SHE- Telangana
7. Yuva- Delhi

   - ➤ **Mohalla policing was successful in Mumbai in promoting inter religious peace and harmony**
   - ➤ it has become a platform for solving family disputes like marriage and property
   - ➤ **SHE in Telangana also got popularity especially for using soft approach such as psychological counsellingand rehabilitation** of those who are arrested on charges of eve teasing
   - ➤ it was referred as a successful model as compared to **anti Romeo squad initiative in UP**

- It has remained more **ad hoc approach** based on initiative by individual Police officers and when the officer is transferred, the successor does not continue the initiative. **For instance, Julio Ribeiro criticized the decline of Mohalla policing**

"Mohalla committees were formed in the aftermath of the communal riots which had torn apart our city andits social fabric after the demolition of the Babri Mosque in 1992. We must keep the spirit which made us form this committee alive," said Ribeiro:

- It is considered as a **soft approach** and there is a view that soft approach affects policing adversely as it does not have **deterrence factor**
- soft approach **does not work in Indian conditions** given the nature of crimes and behaviour of people
- It is **reactionary** that is whenever any incident happens then community policing initiatives are launched
- **It has sectoral approach ie it does not focus on overall law and order, rather certain aspects of policing largely related to peace and harmony and safety**
- **Elite capture:** some Elite members of society only participate in community policing projects and ordinary citizens have not become active stakeholders.

**British Legacy**
**British brought many changes in law and order adminsitration after 1857 -**
1. Indian Police Act 1860
2. Indian Penal Code 1861
3. Criminal Procedure Code 1872
4. Introduced rank classification
5. Top positions were reserved for British officers while lower posts in police were for Indians
6. Strict hierarchy and obedience
7. Maintenance of law and order and investigation function were combined
8. Police department was not accountable to people
9. Police was given extra ordinary powers mainly to suppress any revolt
10. Sedition law gave police powers to arrest for indefinite period.
11. Section 197 of CrPC provides protection to police officers
12. **Police was known as 'force' and not 'service'**
13. Thana or police station was made the basic unit of police administration

**Structure of Police in India**
Union --→ Ministry of Home affairs --→Home secretary-→Central Police officers (CPOs)-CRPF,BSF,CISF,NSG

State--→Ministry of Home affairs-→Home secretary-→DGP-→ADGP--→IG--→DIG--→SP--→DSP/ASP--→CI--→SI--→ASI--→Constable

**Constitutional Provisions**
- **Public order and Police are subjects under state list**. Therefore the primary responsbility of law and order is with state Government.
- **Union plays a role in security and law and order because**
  a. Criminal law including IPC and Criminal procedure including CrPC are in concurrent list
  b. All India Services including Indian Police Service is in Union list
  c. Arms and ammunition subject is in Union list
  d. Intelligence sharing, fr ex- IB
  e. Article 355 gives duty to union to protect states from external agression and internal disturbance
  f. Union plays a role of inter state coordination and coordination with other countries in matters such as crimes involving organised criminals or transnational criminals.

**Investigation agencies**

**1. CBI**
- During second world war, there was corruption by the British Government employees in war and supplies department. Special Police Establishment was setup to investigate such cases. After second world war, Delhi Special Police Establishment Act was passed to investigate corruption cases involving central Government employees and later even PSU employees.
- **Santhanam committee on prevention of corruption recommended to establish CBI and CVC. Thus CBI was set up in 1964 by an executive resolution of ministry of home affairs. CBI derives its powers form DSPE Act 1946**. At present it is an attached office under ministry of personnel. CBI director is appointed by central Government on recommendation of prime minister, leader of opposition in Lok Sabha and CJI.
- With banks nationalisation, corruption cases involving PSB officials also came under jurisdiction of CBI. With time, CBI established itself as an efficient and impartial investigation agency. Victims or families of victims of traditional crimes like murder, kidnapping, rape etc started demanding investigation by CBI. CBI can take up such cases with consent of state Government. Later SC and High Courts started entrusting investigation to CBI in some cases. **CBI also investigates cases involving violation of economic laws, cases involving transnational criminals or which require coordination with international agencies (CBI is nodal agency for coordination with INTERPOL)**

**2. NIA**
It was set up by **NIA act 2008 in the aftermath of 26/11 Mumbai attacks**. It investigates all cases of terrorism under IPC, UAPA or Cases involving weapons of mass destruction and aircraft hijacking. **It can take up cases suo motu or can be assigned cases by MoHA**. It does not need prior consent of state Government. In 2020, state of Chattisgarh challenged the constitutionality of NIA Act.

**Role of central and state agencies inlcuding para military forces**
**1. Central Paramilitary Forces (CPMFs)**
The term paramilitary is not defined anywhere. The paramilitary force is not a part of regular military but its tactics, training and modus operandi is similar to military.

**a. Assam Rifles**
- under MoHA
- Headquarter is **Shillong**
- Operational control is with Indian army
- **Performs counter insurgency operations in North-East**, Intelligence gathering, assistance during disasters, guards India-Myanmar border.
- During war it secures the rear area and provide assistance to military
- Famously called Sentinels of North East or friends of hill people.

**b. Special Frontier Force**
- Under **Cabinet secretariat**
- Initially called **Establishment 22**
- Its **main goal was to conduct covert operations behind Chinese lines in the event of another India – China war**. Today it is trained in covert warfare, high altitude and hill warfare, snow warfare and is an amphibious force. It participated in operation eagle, operation bluestar, operation meghdoot and operation vijay.
- Headquarters in Chakrata (Uttarakhand)

**c. Indian Coast guard**
- set up **by ICG act 1978**
- provides security all along the coast, enforces maritime laws, protect island territories, provides assistance to fishermen during distress.

## 2. Central Armed Police Forces (CAPFs)

### a. CRPFs
- Pre independence, called as crown's police
- under MoHA
- performs counter insurgency operations, anti naxal operations
- **Its role is of a catalyst in maintaining law and order.** It returns to barracks once this objective is achieved.
- Provides security during large scale events like elections in disturbed areas.
- VIP security, ten battalions of CRPF are specially trained in riot control, to reach the place of communal riot in zero response time
- **COBRA –Commando Battalion for Resolute Action** – Specially trained battalions in jungle warfare to be used against naxalism

### b. BSF
- **In 1965, world's largest border guarding force**
- Prevents cross border crime, unauthorised entry exit, collecting intelligence, prevents smuggling and during war, holding the ground in less threatened areas
- The only CAPF with its water wing and air wing.

### c. ITBP
- Under MoHA, 1962, also **known as HimVeers**
- guards India-China border
- **Keeps a vigil on India's northern borders,** promotes sense of security and prevents illegal activities

### d. Sashatra Seema Bal
- setup in 1963, initially known as **special services bureau**
- renamed in 2001, it keeps a **vigil at India-Nepal and India-Bhutan border**, prevents illegal immigration, trafficking and other criminal activities

### e. CISF
- Setup in 1969
- for airports, industrial units, space assets, atomic energy assets, major ports, buildings of Government of India are guarded by CISF. At UPSC too! Also guards historical monuments.
- **World's largest governmental industrial security force**
- Parliament amended CISF act to allow it to give security to private companies also like Infosys campus, Mysore was the first such private sector company.
- provides consultancy services for security like fire safety and security

### f. RPF (Railway Protection Force)
- it **facilitates free movement of railways**
- removes any obstruction in movement of railways
- protects railway property and passengers
- also contributes to UN peace keeping missions

### g. NSG
- NSG act 1986
- **under MoHA**
- it has two wings a) **special action group** – it is the main counter terrorist wing, specialised in bomb disposal, hostage rescue, anti-hijacking and post blast investigation. It maintains a national bomb data centre. b) **special rangers group** – provides security to vips

### h. SPG
- Setup as special protection unit and later as SPG.

- SPG act 1988 set up on recommendation of **Birbal Nath committee**. It provides security to pm, ex pm and their immediate families. Provides proximate security on land, air, place of residence, work, travel etc.

## AFSPA

Parliament enacted AFSPA in 1958 for states of north east and later in 1990, for state of J&K.

### Main provisions are

- **Section 3 –** It gives Governor or the central Government to declare any area within a state where AFSPA is enforced as disturbed area if the use of armed forces in aid of civil power is necessary.
- **Section 4 –** it gives special powers to the armed forces of union
    o After giving due warning, fire upon any person violating law and order
    o enter and search any building or premises
    o arrest a person accused of cognisable offence
    o destroy any arms dump, stop and search any vehicles.

- **Section 5** – A person arrested shall be handed over to nearest police station with least possible delay
- **Section 6** – Any suit or legal proceedings against any officer exercising powers under AFSPA cannot be filed without prior consent of Government of India (Ministry of Defence). The critics of AFSPA alleged that this section gives undue protection to officers exercising powers under AFSPA and this has led to misuse of **AFSPA.**
    **SC in Naga peoples movement for human rights vs Union of India 1997 upheld the constitutionality of AFSPA** and did not find it to be a colourable legislation. SC further held that section 3 does not confer an arbitrary power on Governor to declare an area as disturbed. There shall be reasonable grounds for a Governor to believe that aid of armed forces of union is needed to maintain law and order. BP Jeevan reddy committe and Second ARC recommended to revoke AFSPA.

**The protests against AFSPA are not against AFSPA but its misuse. To prevent its misuse and to make it more human, following are some recommendations** -
a. Mandatory enquiry in case of allegations of misuse. To make this enquiry credible amongst people, enquiry should be held at a public place, say a Panchayat office accessible to civilians and media, a civilian officer not below rank of SDM to be part of enquiry, in case of sexual assault allegations, women officer to be part of enquiry and enquiry to begin within 72hrs.
b. **All operations under AFSPA to be video recorded.**
c. In all operations under AFSPA, a **civilian officer not below rank of SDM to be present**. If this is not feasible operationally, the commanding officer to give reasons in writing
d. There should be a maximum period to grant or reject sanction for prosecution, also there should be clear guidelines of granting or rejecting the prior sanction
e. Slow and poor conviction rate can be one reason for alleged misuses of ASPFA. To encourage security forces to handover the arrested persons to police, there should be some incentive system
f. **The language of AFSPA needs more clarity and more human rights sensitivity**. Fr ex – in Section 4, how much warning is due warning, for how long and in which language. Similarly, opening fire even to the causing of death requires more sensitive formulation of law.
g. AFSPA may be repealed and replaced by another law.

### Arguments against AFSPA

1. Message of peace to the people
2. Partial lifting to facilitate talks with extremists or seperatists
3. Army's arguments are more theoretical than practical
4. It has **roots in colonial times** because British brought similar law during quit India movement to suppress the national movement
5. Violation of human rights
6. SC ignored due process of law while examining constitutionality of AFSPA

### Arguments in favour of AFSPA

1. Will compromise efficiency of armed forces in controlling militancy or insurgency
2. will undo efforts of security forces
3. once revoked, politically difficult to impose again
4. partial lifting not advisable
5. Most allegations of human rights violations are baseless
6. list of dos and donts already in place
7. Review of disturbed areas every six months

# 12

**CHAPTER**

# Police-Public Relations

- Police public relations deal with the **interface between the two**, police interaction with people and people's interaction with police
- Traditionally the interaction between the two was more formal, intermittent, legal and procedural. It was believed that **law and order administration is enforcement of law and involves application of power i.e.'danda'**
- Police should create fear among people by its actions to enforce rule of law and hence there was emphasis on physical efficiency. However today this approach is considered outdated and less suitable for present democratic society where the focus is on **citizen friendliness, responsiveness, good governance, justice, participation by people, sense of security and sensitivity.**
- In public administration while there is emphasis on deliberative democracy, where citizens are considered active stakeholders
- Traditional approach of policing is less suitable and less effective.
- 1980s onwards, the objectives of governance have changed and the role of police is not merely enforcement of law and order
- it is also to win the trust of people
- **The nature of crimes has also changed**. They are much more organised.
- In a nutshell police alone cannot do effective policing without participation of people. But in actual practice relations between police and public are characterized by mistrust, indifference, lack of cooperation
- citizens fearing police high handed behaviour of police
- Therefore, from both sides there is trust deficit
- in fact people have on **one hand fear psychosis and on other hand they don't respect police and policing institutions**
- it is due to colonial past that people have lack of trust in police

There have been attempts to improve police-public relations by initiatives such as community policing, self-defence training by police to civilians, sports events organized by police, outreach by police on social media.

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# 13
**CHAPTER**

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# Police Reforms

Policing in democratic societies is governed by the rule of law and is indeed a difficult and challenging task. Given the fact that the Indian police force was trained in the past to serve the objectives of colonial rule and has not yet been granted the autonomy, resources and training for professionalisation in a democratic milieu, its performance has not been entirely satisfactory. What is disconcerting today is the steady deterioration of standards of policing, the increasing lawlessness amongst the policemen themselves and the attitude of complacency and complicity amongst the leadership in polite organisations. Given the prevailing attitudes and approaches in the police force, there is not much hope that the people will get better services from the police in the immediate future. Since the purity and efficiency of the criminal justice system is largely dependent on the police who feed the system, there is need for immediate reforms in police.

**Issues with Police administration in India**
1. **Based on 1861 Indian Police Act (as modified due to Fraser Commission recommendations)**
   - Strict focus on Suppression and repression
   - Modelled on Irish constabulary system
   - Strict regulatory, controlling & curative role
   - Created to serve colonial purposes
   - Armed Police System
   - Strict control without operational autonomy
   - Dual command structure (District Magistrate and Police Hierarchy) - Problems of coordination andego clashes.
2. Centre's control over States in law & order (Articles 257, 355, 312) (Public order, Police administration inState List, CrPC and IPC in concurrent list)
3. Investigation and law & order functions are together that leads to inefficiency and poor conviction rate.
4. Prevalence of high degree of corruption in police service.
5. High politicization of police service.
6. Police - politician - criminal nexus.
7. Exploitative nature and human rights violations.
8. Police is not citizen friendly.
9. Instrument of state suppressive.
10. Depending on the socio-cultural *status,* economic power and influences of people who *approach them, police* adopt differential attitudes, violating equality and human dignity.
11. Highly inefficient and incapable
12. Incompetent to tackle challenges like *terrorism,* **naxalism, insurgency** etc.
13. Outdated legislations like 1872 Indian *Evidence* Act and 1861 Police Act.
14. Lack of accountability mechanisms.
15. Unqualified, and Very large population of constables (7lh standard Pass).
16. Poor working conditions - Low pay scales, long working hours (14-16 hours/day).
17. 88% of police force is constabulary.
18. **Obsolete weaponry**; obsolete methodologies for investigation and tracking
19. Criminalisation of politics & politicization of crime.
20. Ineffective coordination between Centre and State has led to ineffective functioning of police.
21. Concomitant legal reforms have not been done.
22. Lack of coordination between Central intelligence agencies & State police forces.
23. Poor training - Training is biased in favour of higher level officials. 94% of training is conducted forofficials.
24. Prevalence of rank system like military and excessively hierarchical structure.
25. Curative rather than preventive.
26. Police's goal is maintaining order rather than serving.
27. Police focus on short-term objective of maintaining order.

28. Police are the principal violators of the law and they get away with impunity.
29. While crimes are getting sophisticated, the police are becoming less professional.

### Reform Efforts

### History:
- **Warren Hastings** - Brought some, changes in policing system
- **Cornwallis –**
  (i) Took away police powers from Zamindars
  (ii) Set up **Doroga System**
  (iii) Separate Police Force under District Magistrate (1792)
  - *Police* Commission (I860) - Indian Police Act (1861)
    o Created a police force based on Irish Constabulary System
- **Fraser Commission (1902)**
  (i) Armed Police Force at District HQ
  (ii) Sub Inspector created
  (iii) CID created

### Post-Independence Reform Efforts
1. Gore Committee on Police Training (1971)
2. National Police Commission (Dharam Vira) (1977)
3. Julio Ribeiro Committee (1992)
4. Padmanabhaya committee (2000)
5. Police Reforms and Supreme Court (Prakash Singh V/s UOI) (2006)
6. Police Act Drafting Committee - Soli Sorabjee (2006)
7. ARC-I1 Recommendation (Public Order)

### National Police Commission (1977)
- State Security Commission - To prescribe policy guidelines, performance evaluation, act as a forum of appeal
- Statutory tenure of service - DGP - 4 yrs
- Selection of DGP to be made non-partisan and independent
- Recruitment only at two levels – Recruitment at SI and Inspector levels
- Central Police Commission at National Level
- Enactment of **Model Police Act**
- Other recommendation to make police responsive, accountable and efficient
- Make police accountable in cases of custodial deaths/rapes, HR violations etc.
- To eliminate political interference from police functioning
- Prevent misuse of power by police; misuse of police by administration and executive

### Julio Rebeiro (1992) (Based on SC directives)
- State Security Commission
- District Police Complaint Authority
- Police Establishment Board - To handle transfer, promotion and posting
- Selection of DGP (3 officer panel)
- New Act to replace IPA, 1861
- Recruitment at SI and Inspector levels, constables should be recruited less

### Padmanabhaya Committee (2000)
- Crimes having inter-state ramifications should be designated Federal crimes
- Create federal law enforcement agency under Home Minister
- Community Policing/Citizen oversight policing
- Ratio of top official to bottom should be changed from present ratio 1:17 to 1:5
- Police personnel should be retrained. If retraining is not successful, they should be given compulsory retirement
- DGP appointment should be made independent and non-partisan

- Police Establishment Board
- Statutory tenure of 2 years for operational officials
- District Police Complains Authority
- Strict enforcement of code of conduct
- Raising the status, conditions and skills of constabulary
- Separating invest from Law & Order
- Repeal 1861 Act and bring about New Police Act

**Prakash Singh V/s UOI (2006):** Supreme Court issued directive to Centre and States to take immediate steps to implement police reforms in conformity with the directions (based on various Commission and Committee reports).

**Model Police Act (Soli Sorabjee Committee based on SC directives):** After decades of public pressure, lack of political will and continued poor policing, on 22 September 2006, the Supreme Court delivered a historic judgement in Prakash Singh and Others vs. Union of India and Others instructing central and governments to comply with a set of (seven directives laying down practical mechanisms to kick-start reform.

**Focus of SC Directives: SC Divided the direction in two parts —**
(a) **Self-executing reforms** and need no administrative arrangement as well as financial implications e.g.;selection, transfer and postings of DGP and other field officers above DySP.
(b) Reforms which need **administrative/financial arrangements** such as setting up of State Security Commission/Police Complaints Authority/Separating law and order from investigative agencies.

**New Model Police Act:** The reforms can be broadly divided into two categories**; those seeking to achieve functional autonomy for the police (Part I) and those seeking to enhance police accountability (Part II).**

### Part I: Functional Autonomy

In India today, illegitimate political interference in policing is routine. Some trends include manipulating police recruitment, promotion and transfer practices to suit political purposes, bringing political elements into crime control and investigation, or using the strong "hand of the police to endanger communal harmony in the worst cases. The result is intense public dissatisfaction and a demonstrable deterioration in safety and security. This needs to change. Yet, there is a danger that too much autonomy can lead to blatant abuse of power, while too little can create a police that, is pliant to the political/partisan interests of a "powerful few. Across the world, best practices have created mechanisms by which greatest police effectiveness is ensured through maintaining a delicate balance between functional or operational autonomy and oversight of the police by the political executive.

1. **State Security Commission:** To shield the police from the undue interference of politicians and ensure appropriate policy directions, the Supreme Court requires the establishment of a State Security Commission.

    **Composition:**
(a) Leader of the Opposition in the state assembly
(b) Retired High Court Judge nominated by the Chief Justice of the High Court
(c) Home Secretary
(d) Five non-political persons of proven reputation for integrity and competence from the fields of academia, law, public administration, media or nongovernment organisations to be appointed on the recommendation of a Selection Panel composed of:
    (i) A retired Chief Justice of a High Court to be nominated by the Chief Justice of the High Court;
    (ii) The Chairperson of the State Human Rights Commission; in the absence of a State Commission, a person nominated by the Chairperson of the National Human Rights Commission; and
    (iii) The Chairperson of the State Public Service Commission.

    **Functions:**
- Ensure that the state government does not exercise unwarranted influence or pressure on the police.
- Lay down broad policy guidelines. The Model Police Act provides that these policy guidelines are aimed at promoting efficient, effective, responsive and accountable policing, in accordance with the

law.
- Give directions for the performance of the preventive tasks and service oriented functions of the police.
- Evaluate the performance of the state police and prepare a report on police performance to be placed before the state legislature.
- The Model Act sets out that the state government may establish an Inspectorate of Performance Evaluation to assist the State Security Commission in its task of performance evaluation.

2. **Director General of Police (DGP):** To ensure that there is no arbitrariness in the appointment of the highest ranking police officer, the Supreme Court has laid down the procedure for selecting the Director General of Police (DGP).

   **Selection:** The state government should select the DGP from amongst the three senior-most officers empanelled by the Union Public Service Commission (UPSC) for the post. The UPSC should make its choice on the basis of the candidates: (i) length of service, (ii) very good record, and (iii) range of experience.

   **Minimum Tenure:** The Supreme Court provides for a minimum tenure of two years for the DGP. In practice, this does not mean that erring DGPs cannot be removed, it only makes removal "consequent on laid-down grounds in law:
   - An action taken against her/him under the Discipline and Appeal section of the All India Services Rules;
   - A conviction in a court of law for a criminal offence or a case of corruption; or
   - Being otherwise incapacitated from discharging duties.

3. **Minimum tenure for other police officers:** Security of tenure is similarly important for other police officers on operational duties in the field. In order to help them withstand undue political interference, have time to properly understand the needs of their jurisdictions and do justice to their jobs, the **Model Police Act provides security of tenure for:**
   - Inspector General of Police (in charge of a Zone)
   - Deputy Inspector General of Police (in charge of a Range)
   - Superintendent of Police (in charge of a District)
   - Station House Officer (in charge of a Police Station)

   **Besides cases of promotion or retirement, premature removal of the above mentioned officers will be possible only consequent upon:**
   - Disciplinary proceedings
   - conviction for a criminal offence or a case of corruption
   - Being otherwise incapacitated from discharging duties
   - gross inefficiency and negligence
   - where a prima facie case of a serious nature is established after a preliminary enquiry.

   When an officer is removed under these exceptional cases, the Model Police Act sets out two types of safeguards:

   (i) The authority which orders the transfer must inform the next higher authority and the Director General of Police of the grounds for the premature transfer in writing and

   (ii) The aggrieved officer may approach the Police Establishment Board to submit a representation against his/her premature removal. The Board shall consul the merits of the case and makes appropriate recommendations to the transferring authority.

4. **Police Establishment Board:** To counter the prevailing practice of subjective appointments, transferred and promotions, the Model Police Act provides for the **creation of a Police Establishment Board**. In effect, the Board brings these crucial service related matters largely under police control. Experience in India shows that this statutory demarcation is absolutely required in order to decrease corruption and undue peonage, given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

   **Composition:** To ensure that decisions related to career advancement are not made by just one officer, the Police Establishment Board will be composed of the Director General of Police and four other senior officers of the police department. **The Model Police Act clarifies the fact that the four other officers**

**should be the four other senior-most officers within the police organisation of the state.**

**Functions**: The Police Establishment Board will have the following functions:
- Decide all transfers, postings, promotions and other service related matter for police officers of andbelow the rank of Deputy Superintendent of Police
  Exception: In exceptional cases, the state government will be allowed k) interfere with the decision of the Board after recording its reasons for doing so.
- Make recommendations to the state government on postings and transfers of officers above the rank of Deputy Superintendent of Police.
  Impact: The state government is expected to give due weight to these recommendations and normally accept them.
- Be a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding: (i) their promotion or transfer; (ii) disciplinary proceedings against them;or (iii) their being subject to illegal or irregular orders.
- Generally, reviewing the functioning of the police in the state.

5. **National Security Commission:** The Supreme Court directs the central government to establish a National Security Commission.

   **Composition:**
- **Chair**: Union Home Minister
- **Secretary**: Union Home Secretary
- **Members**: Heads of the Central Police Organisations (CPOs) and security experts

   **Functions:**
- Prepare a panel for the selection and placement of Chiefs of the CPOs, who should be given a minimum tenure of two years;
- Review measures to upgrade the effectiveness of the CPOs;
- Improve the service conditions of CPO personnel;
- Ensure that there is proper coordination between the different forces; and
- Ensure that the forces are utilised for the purposes they were created.

   The Commission will also have the power to make recommendations with regards to the above.

### Part II: Accountability

Functional autonomy must be coupled with responsibility to ensure high standards of policing. Armed with the power to use force against ordinary people, the police must be accountable for all of their actions in the course of duty, from minor infractions to serious rights violations. Unfortunately, at present, there is little demonstrable accountability for wrongdoing. Rather, there is a general perception that neither the internal disciplinary mechanisms, nor the existing external oversight agencies, nor the criminal justice system are able to properly and consistently address police misconduct. Far too many officers are getting away without having to fully account for wrongful acts of omission and commission.

**(i) Police Complaints Authority:** The Supreme Court sets out an independent accountability mechanism in the form of a Police Complaints Authority to be established both at the state and the district levels. Their mandate is to look into public complaints against police officers in cases of serious misconduct.

**(a) State level Composition:**

**Chair:** Retired judge of the High Court or the Supreme Court to be chosen by the state government out ofa panel of names proposed by the Chief Justice.

**Other members:** Three to five members (depending on the volume of complaints in the state) selected by the state government out of a panel of names prepared by the state Human Rights Commission, the Lok Ayukta, the State Public Commission.

Members of the authority may include: retired civil servants, police officers or officers from any other department, and members from civil society.

**Functions:** The role of the Police Complaints Authority at the state level will be to enquire into cases of misconduct by police officers of and above the rank of Superintendent of Police in cases of serious misconduct, which includes incidents involving (ii) grievous hurt, or (iii) rape in police custody.

(b) District level Composition:

**Chair**: Retired District Judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her.

**Other members:** Three to five members selected according to the same process as members of the state level Police Complaints Authority (see above).

**Function:** The role of the Police Complaints Authority at the district level will be to inquire into cases of misconduct by police officers of and up to the rank of Deputy Superintendent of Police in cases of serious misconduct, which includes incidents involving:

  (i)   Death;
  (ii)  Grievous hurt;
  (iii) Rape in police custody;
  (iv)  Extortion;
  (v)   Land/house grabbing; and
  (vi)  Any incident involving serious abuse of authority.

The recommendations of the Authority for any action, both disciplinary and criminal, shall be binding. In practice, this implies that the inquiry conducted by the Complaints Authority replaces the internal disciplinary inquiry. Once the inquiry is completed the Complaints Authority can recommend a suitable disciplinary punishment to the appointing authority, which will be bound by it. The Complaints Authority can also recommend the registration of a FIR against the erring police officer.

**(ii) Separation of investigation and law and order police:** Both investigation and law and order are vital and specific police functions, which must be streamlined separately to run concurrently. At present, it often happens that investigations are stalled if there is a pressing law and order situation of investigations divert officers' attention from law and order concerns.

The Model Police Act provides a workable model to separate the two wings without affecting the chain of command. It also seeks to enhance the efficiency of the investigation wing by providing for adequate scientific support to investigation forensic sciences and qualified and properly trained manpower. The Model Police Act sets out the following system:

### At the police station level

Creation of a **Special Crime Investigation Unit** headed by an officer not below the rank of Sub-Inspector of Police and comprising an appropriate strength of officers and staff. **Members of the Unit shall investigate the following category murder, kidnapping, rape, dacoity, robbery, dowry-related offences, serious cases of cheating, misappropriation and other economic offences, as notified by the Director General of Police**. Police officers posted at the Special Crime Investigation Unit will work solely on investigation, unless exceptional circumstances require them another area as well. Such exception can only be granted with the written consent of the Director General of Police. They shall be posted at the Unit for a period ranging between three and five years.

**At the district level:** Creation of **one or more Special Investigation Cell(s) at the headquarters** of each police district under the direct control and supervision of the Additional Superintendent of Police. The cell will investigate offences of a more serious nature arid other complex crimes, including economic crimes.

**At the state level:** The Criminal Investigation Department will investigate inter-state crimes inter district crimes, or crimes of otherwise serious nature as notified by the state government from time to time and as specifically entrusted to it by the Director General of Police.

### Evaluation:
- Barring seven States, other states have implemented Model Police Act but not in spirit
- States that are still holding out on Police Reforms - Tamil Nadu, Andhra Pradesh, West Bengali Uttar Pradesh, Madhya Pradesh Delhi, J&K
- In May 2008, Supreme Court set up a 3-person monitoring committee chaired by former SC Judge K.T.Thomas to monitor implementation of Police Reforms. Its term is of two years.
- In whichever state police reforms have been implemented, they lacked transparency, community consultation and civil society input. Citizens are completely unaware of police reforms.

- The only State Kerala associated citizens by giving them opportunity to interact directly with the DGP.
- Lack of political will both at centre & state level.
- States criticizing Police Reforms as "Against Federalism," "Judicial overreach" etc.
- Resistance from both politicians and top administration

### Other Suggestions:
1. **Community Policing** - for e.g. in Maharashtra, Mohalla Committees should be strengthened
2. Increased **Civilian Oversight of Police**
3. Focus on training in attitudes & mindsets
4. Focus on psychological traits in the recruitment process
5. **Regular police adalats** – for addressing grievances in every Police Station
6. Change performance evaluation criteria from number of FIR lodged to social indicators.

### Reforms that People can initiate

According to an old adage, every society gets the police it deserves. After all policemen come from the same society and reflect the attitudes and behaviour that are found in society. How respectful is the average citizen with regard to human rights of fellow citizens? In a society where doctors cheat their patients, lawyer; exploit their clients, teachers indulge in politics instead of teaching and even the clergy is corrupt, one cannot expect any better from policemen. The evidence they collect is doubted and their status is worse than that of other comparable positions in government.

All sections of society, particularly the media, can help improve the status and efficiency of the police force. They can attempt not to disparage the police without justification. If they cooperate in law enforcement, there is bound to be a welcome response from the other side that eventually will result in greater social defense and better law and order situation. People and police ought not to maintain an adversary relationship as it harms both of them. There are black sheep in every organisation. To isolate and cultivate the talented is the challenge that has to be faced by the community, the media and the NGOs. Such a partnership guarantees human rights protection, the security of life and property and a credible system of criminal justice in the country.

### ARC-II Recommendations:
1. Investigation & other functions of police to be separated
2. State police performance & accountability commission to be established
3. Police Establishment Committee headed by Chief Secretary to be set up
4. Outsourcing of non-core police functions to other agencies
5. Constabulary to be substituted by graduate ASI
6. Better Forensic infrastructure
7. 33% of police force should be women
8. Citizen friendly registration of crime
9. Independent complaints authority at all levels
10. Independent Inspectorate of Police to conduct Performance audit

# Civil Services

## POLITICAL RIGHTS OF CIVIL SERVANTS

### In different countries, civil servants enjoy different political rights:
(a) In the US, civil servants have the right to strike and collective bargain, other rights are restricted.
(b) In France, civil servants don't have right to strike and collective bargain but are given political rights like right to contest elections including Presidential elections. Then, they are allowed to join civil services again with seniority. France has a history of civil servants contesting elections and also, appointment as Prime Minister.
(c) In the UK, political rights are regulated and very limited like right to vote and right to contest only local body elections.

In India, political rights of civil servants are restricted. Conduct rules allow them to vote without revealing their votes but can't join party or contest elections.

### Why political rights are restricted to civil servants?
(a) It strengthens neutrality and anonymity.
(b) Eliminates chances of conflict between politics and administration.
(c) Ensures clarity in chain of command between politics and permanent executive.
(d) Promotes discipline.
(e) Prevents politicisation of civil services.
(f) Send some message to civil servants that they should remain professional and neutral.

### Is it unethical for civil servants to join politics ahead of polls or do they make good political leaders?

As per conduct rules, there is no restrictions on civil servants to join politics after retirement or resignation. There is restriction only of 1 year on commercial assignments to prevent conflict of interest. In recent times, there is increasing trend of civil servants joining politics even before retirement. **Examples: PL Punia, Manishankar Ayer, Ajith Jogi, Yashwant Sinha, Jaswant Singh, Kiran Bedi, Arvind Kejriwal, OP Chaudhary, Shah Faizal etc.**

### Advantages:
(a) Civil servants have good academic background, training and field experience and therefore, they can formulate better policies as political leaders.
(b) **Mostly, civil servants have clean backgrounds and therefore, will reduce criminalisation of politics. 43% of LS, more than 50% of UP's MLAs have criminal background.**
(c) Will make politics more professional and disciplined.

### Disadvantages:
(a) It can become a **wrong culture of career in civil services as platform to politics**.
(b) May have a **demoralising effect** on civil servants.
(c) May compromise neutrality, loyalty.

Therefore, although joining politics can't be completely restricted but there can be a cooling off period of 2 years. Also, it is not a matter of serious concern because not many civil servants are equally successful in politics.

### Code of conduct

**For any organisation, to maximise efficiency, there must be discipline within organisation - one of the 14 principles of Henry Fayol.** This can be ensured through code of conduct. It regulates negative

behaviour of employees and ensures discipline within organisation.

The origin of code of conduct can be traced to British times. It was **Cornwallis who introduced a code of conduct to regulate negative / undesirable behaviour of company's employees**. There was a lot of corruption in company administration and most employees were having private trade of their own. It resulted in huge financial loss to EIC. **Cornwallis code focused on reducing corruption and ensuring discipline with the objective of maximising profit of company. Code of conduct during this period included:**

(a) Company employees can't have private trade of their own.
(b) Shouldn't accept any gifts,
(c) Shouldn't indulge in corrupt practices,
(d) Submit financial statements yearly,
(e) Strictly follow orders of superior,
(f) Any insubordination will invite punishment.

**After independence, code of conduct was drafted taking into consideration the requirements of a welfare state. As per the current conduct rules:**

(a) Civil servants can't join any political party or contest elections.
(b) No trade, business or any other profession.
(c) No speculation in stock market, no accepting gifts or lavish hospitality.
(d) Can't sublet official accommodation.
(e) Liquor restrictions.
(f) Can't join any association (except service).
(g) No right to strike.

It was realised that code of conduct prevented negative behaviour of civil servants but it didn't promote positive values. **2nd ARC, in its report on 'Ethics in Governance' recommended a code of ethics for civil servants along with code of conduct.** It extensively studied the code of ethics of different countries like OECD countries, code of ethics recommended by UN and the British Nolan committee, 1997. Following are the values and ethical concerns for civil servants:

(a) Honesty
(b) Empathy
(c) Objectivity
(d) Integrity
(e) Selflessness
(f) Impartiality
(g) Non-partisanship
(h) Transparency
(i) Courage
(j) Accountability
(k) Commitment
(l) Rule orientation
(m) Equity

**2nd ARC suggested a public services code for civil servants by integrating code of conduct and code of ethics.** It is believed that this public service code is necessary to realise objectives of good governance and empowerment of citizens. Structural reforms in Indian administration failed because the attitude and behaviour of civil servants. It can be changed only with a code of ethics for civil servants.

### Classification of services in India
**Civil Services in India are classified on basis of their roles, functions and status as follows**
1. All India Services
2. Central Civil Services
3. State Civil Services

### Constitutional Position
- India is probably the **only country where civil servants have been given constitutional protection.**
- **Article 309** – parliament shall determine the recruitment and conditions of service of persons appointed under union. (state civil servants – respective state legislatures)
- **Article 310** – Civil Servants hold office during pleasrue of president and state civil servants during pleasure of governor
- **Article 311** – No public servant shall be dismissed or removed by an authority subordinate to that by which he was appointed.

No public servant shall be dismissed, removed or reduced in rank except after an enquiry in which he has been given a reasonable oppurtunity to defend himself. **Before 42nd CAA 1976, the accused public servant got an oppurtunity to represent himself at the time of decision on quantum of penality.**
**The enquiry may not be held if:**
1. In the opinion of president, it is not in national interest
2. If the civil servant is convicted by a court of law

### Should Article 311 be abolished?
It is believed by some that the excessive constitutional protection given to civil servants is one of the causes of corruption. **Second ARC observed the following in favour of retaining article 311**
1. The problem lies not with art 311 but the complicated procedures used to conduct the enquiry.
2. There have been conflicting judicial pronouncements which make disciplinary actions against civil servants difficult and time consuming
3. Even without art 311, an enquiry before dismissing or removing a civil servant shall be necessary. Courts shall declare any action against the civil servant without him being given a chance to defend as null and void on the ground of violation of principles of natural justice.

### Arguments in favour of repealing art 311
1. Deletion of Art 311 will reduce job security of govt servants and thus make them more **responsive, commited and efficient.**
2. Constitutional protection was given to civil servants in the aftermath of independence when the country faced huge challenges and private sector employment oppurtunities were limited.
3. Govt servants have rushed to the courts even against their transfers which was never the intention of constitution makers.
4. No other democratic constitutions provides such safeguards to civil servants.
5. **Courts have extended constitutional protection even to employees of PSUs on the ground of equality.**
6. The rights of civil servant should be subordinate to public interest and contractual right of state

### Conclusion
**Art 310 and 311 should be repealed.** Suitable legislation can be enacted by Parliament under 309 to protect bonafide actions of public servants taken in public interest.
### Article 312
Parliament by law can create a new All India Service after Rajya sabha passes a resolution by majority of not less than **2/3rd members present and voting.**

### All India Services
- These were created by the **British and ICS was the most superior AIS**. After Independence, along with IAS and IPS, a third AIS, IFS is created in 1966.
- **AIS officers work in both union and states. They are allotted to their state cadres.** Union doesnt have its own cadre and AIS officers work in the union on basis of tenure system on deputation. While they are posted in states, their immediate control is with states but final control is of union.

### Features of All India Services
- **All India in character.**
- Maintain unity and integrity of India
- **Enjoy constitutional protection**
- Attracts best talent and therefore provides administrative leadership
- bring uniformity in adminsitrative leadership through out the country.
- **link between union and states**
- After independence, Pandit Nehru was not in favour of All India Services. In draft Constitution. AIS were not mentioned but experience of partition and integration of princely states gave sardar patel an experience of working with these officers. Thus he supported to continue AIS. **In his address to first batch of IAS officers in 1948, he called them steel frame of Indian Administration.**

### Why to continue AIS?
- Country needed and needs leadership for transformation for socio-economic development
- for young leadership in fields
- to provide talent through out the country.
- India still suffers from many 'isms' like **casteism, communalism, regionalism, naxalism, terrorism** etc; and against these challenges, AIS officers can act impartially and uphold the constitution without getting influenced by local factors. **At the level of states, three services are still very poor – Education, Health and Subordinate judiciary.**

### Criticisms of AIS
- **British legacy, not welfare in spirit, colonial hangover**
- created in times of unitary british administration but after independence india is a federal state. States often complain that AIS officers are more loyal to their union cadre controlling authorities rather than state govts.
- Not all states are equally represented in these services.
- They also **lack all india perspective**
- Criticised for inefficiency and lack of innovation
- **Indian bureaucracy is considered biggest reason by Indian corporate for lack of development in India.**
- Demoralises state services.

### Conclusion
Despite the above mentioned criticisms and that AIS is no longer the steel frame, its relevance remains of utmost importance given the challenges to India's unity and integrity.

### All India Judicial Service
#### Arguments in favour
- More than 2.5 crore cases pending in lower judiciary.
- Vacancies in lower judiciary (approx 30%)
- Lack of standard in state judicial services
- Will attract talented law graduates from prestigious law schools
- Officers of AIJS shall be directly appointed as district judges and this will address the problem of vacancies and administrative leadership.

#### Arguments against
- **AIJS will be a unitary feature and thus may not get support from states**
- Subordinate judiciary works in local language and hence language can be a barrier
- Subordinate judiciary is under administrative control of respective high courts and therefore some high courts are not in favour of AIJS
- **Existing AIS have failed to achieve their objectives fully and suffer from corruption, regionalism and nexus with local political leaders.**
- In the times of de-bureaucratisation, a new AIS will be a step towards bureaucratisation.

#### Conclusion
42nd CAA provided for AIJS but it was not notified. There is a large support for AIJS including from NITI Aayog,

former PM as well as the current PM. Language should not be a barrier as it can be learnt.

## Central Civil Services

Central Services are those which are truly All India in character. These services serve the union for the subjects of union list. **There are over 57 central services out of which Indian Foreign Service is considered most prestigious**. **They are divided into Group A,B,C,D and are controlled by respective ministries**. These officers work through out the country and serve in 10 to 12 states. Because they are transfered to so many states, they can be called more All India in character than AIS. Officers of AIS serve only in their state cadres and central govt.

**However even if CCS officers serve in 10 to 12 states, they cannot be considered AIS because**
1. They do not directly deal with challenges of regionalism, naxalism, seperatism etc
2. They don't serve in fields especially local level
3. They don't deal with law and order.

**The main reason why AIS were created was to protect unity and integrity of India and to provide adminsitrative leadership at the field level.**

## Lateral entry in Civil Services

It **refers to entry of persons from outside bureaucracy into bureaucracy**. It was already practiced in some non-bureaucratic organisations. **For ex – appointment of RBI governor, SEBI chairman, boards of PSUs, deputy chairperson, planning commission, etc;** These organisations are not part of regular bureaucratic structure and not governed by civil services conduct rules. In India, civil services are rank based and therefore it becomes difficult for an outsider without the relevant rank to hold a particular post in bureaucracy.

## Need for lateral entry

1980s onwards policy making, regulation and implementation have become highly specialised, technical and complex. This calls for a need for specialists,especially in certain sectors like telecom, PPP, cyber security, environment, financial governance etc; While there is a need of specialists in these sectors , Indian bureaucracy is dominated by generalists IAS. Since there is rank classification along with career bureaucrats, the work culture does not focus on performance, innovation and efficiency. **Thus lateral entry has been recommended by**
a. First ARC
b. Second ARC
c. Sixth pay commission
d. NITI Aayog

**In 2018, central govt notiified certain positions at the level of joint secretary to be filled by lateral entry.**
**Advantages of lateral entry**
1. Will bring the much needed **specialisation, expertise, professionalism and result orientation** in bureaucracy.
2. **Right person at right position.**
3. Promote competition as recommended by NPM philosophy and meritocracy
4. Will address the issue of vacancies in bureaucracies
5. Will bring fresh ideas and perspectives
6. In times of LPG, Govt deals with a massive private sector. **Lateral entrants from private sector can improve govt's negotiation skills with private sector.**

**Disadvantsges of lateral entry**
1. **Conflict between outsiders and insiders i.e can be demoralising for career bureaucrats**. Even if the career bureaucrats perform well, govt can bring lateral entrants for higher positions.
2. Joint secretary is a senior position in bureaucracy and contributes in policy formulation. Lateral entrants without necessary field experience may not be able to effectively contribute in policy formulation.
3. Work culture in Govt sector is different from other organisations and therfore lateral entrants may find themselves as misfit in govt.
4. The current terms and conditions of contract are considered not attractive enough to get the best talent.
5. **Lateral entrants may lack loyalty, service motive, political neutrality and may use their authority to extend favours to their parent organisations.**

## Threats of lateral entry
1. Since Indian bureaucracy is **career based and based on weberian bureaucracy**, the features of loyalty, service motive and nuetrality can be achieved only by a long term contract and not by a short term lateral entry.
2. If not executed impartially, it **can become spoils system rather than merit based system.**

3. If conduct rules are not clearly specified
4. if relationship between insiders and lateral entrants is not hormonious and not clearly defined.
5. can make bureaucracy more elitist and alienated from reality of society

**Lateral entry is not a panacea and there are other pending reforms in bureaucracy**. Succesful professional in private sector may not be equally succesful in public administration. Also the career bureaucrats should be encourage for specialisation.

**Employer- Employee relationship**
Employer and Employee relationship became an area of concern in times of industrialisation when thousands of workers were employed in industries. Often the interest of workers and managers was conflicting resulting in strikes, restricted output, soldiering (Taylor)
**Taylor suggested a mental revolution and cooperation. In public sector, Govt is the employer and the employees consist of officers and subordinate staff.** For officers there is a seperate grievance redressal mechanism. The subordinate staff can have their unions and associations. **In UK, Govt setup Whitley committee in 1917 on whose recommendations labour relations were reformed.** In 1919, Ramsay and Bunning committee was setup for civil servants and on its recommendation Whitley councils were created. **Whitley councils have following structure**
Whitley council ---→ Board of Admin --→Parliament
Whitley council has equal num of members from govt side (officers) and employee side (non offices)

**Powers and functions of Whitley councils**
Grievances related to recruitment, posting, transfer and administrative reforms. It **deals with collective grievances and not individual matters. Decisions are taken on basis of consensus.**

**Objectives of Whitley councils**
- promote peace and harmony between govt and employees
- promote deliberation and discussion (**Mayo's ventilation therapy)**
- to promote adminsitrative reforms on basis of participation, consulation and integration (MP Follett)
- **In India , this mechanism is known as JCM – Joint Consultative Mechanism.** It was created in 1946 on recommendation of first pay commission. But it was not effective and on recommendation of third pay commission, it was reorganised on the pattern of Whitley council.

**Structure of JCM**
JCM--→Ministry of Labour ----→ Parliament
- **Cabinet secretary is the head of national level JCM.** Although JCMs are not as effective as Whitley councils, still they have performed better for addressing collective grievances of employees than administrative tribunals.

**Problems faced by JCMs**
- Administrative reforms are necessary, can be delayed but not stopped.
- Technology has led to reduction in traditional jobs.
- On one hand, Govt wants to rightsize the administration for cost cutting and reducing unproductive revenue expenditure. On the other hand there is a demand for social security and safety in form of govt jobs. In recent times, there have been protests by PSU employees against disinvestment, protests by ex service men for OROP

**Staff Associations**
**It is extension of employer – employee relationship**. It is about association of govt staff with internal and external organisations and groups. It is about forming or joining associations which promotes
a) Ventilation therapy of Mayo by giving a vent or outlet for grievances.
b) Abraham Maslow's self actualisation by providing a platform for ego satisfaction
c) provides a platform for discussion, participation and promoting administrative reforms
d) staff associations are regulated by govt and civil servants cannot join any association except service association like IAS officers association, etc;

**Role of IAS and IPS associations**
They have become active in recent years and take up the grievances of officers. They pass resolutions criticising or supporting civil servants. **For ex – IAS association came in support of Durga Shakti Nagpal, it opposed posting of state civil servants as DCs, on the issue of lateral entry and the argument of IAS being generalist,** IAS association appealed to govt to allow them to pursue higher education and become specialists.

However IAS associations has been criticised for not speaking on critical issues and selectively supporting officers. Nevertheless, these associations are informal groups and provide a platform to officers to express/ventilate their grievances.

**Civil Services neutrality**
It simply means that **bureaucracy should remain impartial, non partisan, a political, impersonal and rational**. A neutral bureacracy from citizen's point of view means no discrimination with any citizen. A neutral bureaucracy works without any political aspirations, favours or expectations. **The concept of neutrality has two dimensions –**
a) **Legal rational perspective of Weber** – Weber wanted bureaucracy to be an impersonal and value nuetral instrument for maximum rationality
b) **Civil Services anonymity and Ministerial responsibility** – Civil Servants remain anonymous because of ministerial responsibility. **Constitution of India provides for ministerial responsibility in Art 75 clause 2 (individual) and Art 75 clause 3 (collective)**. Civil servants are not directly answerable to people or parliament.

Since 1950s the value neutrality as recommended by traditional scholars was rejected. NPA rejected value neutrality and recommended bureaucrats to be value oriented in order to bring socio-economic change and solve critical problems of society. **The concepts of good governance, transparency, citizen friendliness, social justice, demands a value laden bureaucracy and not a neutral bureaucracy.** In general, concept of Weberian neutrality is considered outdated and unsuitable for developing countries.

**Evolution of neutrality in India**
**It has evolved in four phases.**
**1. Nehru Era**
Institution building era on the basis of diffracted society where politics and administration have a dichotomy and mutual non interference. **Nehru and Patel both encouraged a neutral bureaucracy.** Sardar Patel remarked "If my secretary does not give me neutral advice, I will have him go and get a new secretary"

**2. Indira Gandhi Era**
- Politicisaiton of bureaucracy
- Bureaucrats were asked to support in elections
- Talked of committed bureaucracy (committment to govt)
- Shah commission observed – when bureaucracy was asked to bend, they were ready to crawl

**3. Coalition Era**
- Politicisation of bureaucracy continues
- **Mandalisation of bureaucracy (reservation to OBC's)**
- **Corruption, nexus with politicians**. N.N.Vohra committee for the first time documented nexus amongst politicians, bureaucrats and criminals
- Change of civil servants with change of party in power

**4. Present Era**
- Present Govt amended AIS conduct rules and the term neutrality was explicitly added
- Present Govt is trying to have a **professional bureaucracy by steps such as lateral entry, compulsory retirement, perforn/perish culture**

In general, there is a view that Indian bureaucracy is politicised. Many civil servants even before retirement joined politics. However there have been successful examples of neutral bureaucracy. **For ex – free and fair conduct of elections, the conduct of UPSC, CAG, CIC etc**; Today bureaucracy is expected to remain policy neutral since policy making demands long term perspective and therefore policy advice should remain neutral. Once policy is made, bureaucrats should be committed to implement the policy and hence there should be program commitment but policy neutrality (here program commitment means involvement, enthusiasm and pro activeness).

**Civil Services Activism**
Civil Service Activism is when **civil servants play an active and assertive role in policy formulation, implementation to bring transformaiton in society**. What is judicial activism in context of judiciary is civil service activism in context of civil services.

**Need for Activism**

If civil servants perform their routine functions and duties, it will merely maintain status quo and stability but it will not be enough to solve problems of society and bring positive change. **The role of peoples representatives, corporate sector, civil society etc will not be enough to tackle following challenges.**

1. Development and governance
2. Social issues and problems such as covid 19
3. Emerging challenges of climate change, terrorism, human rights violation and pandemics.

Thus merely routine operations of enforcement of law and order and implementation of policies will not suffice. Civil Servants need to be pro active and change agents. **New Public Administration also calls for values, equity and change orientation in pub ad.** Similarly development administration also advocated role of bureaucracy in socio-economic development. When more than a quarter of country's population is below poverty line, the status quoist and value neutrality role as recommended by Weber and traditional pub ad will not be sufficient. **In India, some civil servants have brought positive change by activism.**

Ex – a) TN Seshan for reforms in ECI

b) **Kiran Bedi for reforms in Tihar jail**

c) Lakhina experiments in Maharastra to make collectorate more efficient

d) Prashanth Nair, DM of Kozhikode district launched initiative for hunger free district

e) **Armstrong Pamei for building a road using local resources as well as his personal finance.**

In all the above examples, civil servants performed their functions beyond official duties. **There are two view with respect to activism by civil servants**

a) **Civil service activism should be within conduct rules**. The conduct rules give enough space for activism. Ex – whereever law or rules are silent or unclear, civil servants are allowed to act in their best judgement. This allows activism within conduct rules.

b) The opposite view is that civil service activism can go beyond conduct rules**. Some civil servants are of the view that it is not possible to be activist without going outside conduct rules**. This view is considered unacceptable because it may give rise to more problems than solutions. If civil servants are allowed to go beyond rules, they may start challenging decision making role of people's representatives**. People may start approaching civil servants for grievance redressal rather than their representatives. This can disturb civil service neutrality and minister – civil servant relationship.**

**Does Civil Service activism affect neutrality?**

It affects neutrality only when the activism is outside conduct rules because civil servants may act in arbitrary manner, with political motivation, aim to get attention and popularity, to remain in news and media. Activism is not permissible for personal gains. Nevertheless, civil service activism is acceptable as long as it is within the rules, not for personal gain and for bringing postiive change in the society.

# 15 | Administrative Reforms Since Independence

**CHAPTER**

According to Caiden, administrative reform is an artificially induced administrative transformation against resistance.

Administrative reforms are brought deliberately to bring positive change in administration so that administration remains relevant with changing time and circumstances.

### Reforms vs change

Change is natural and takes place in organic systems (e.g. — human body). Reform is artificially induced. Change can be good or bad but reforms refer to positive changes. Reforms are meaningful only when they have a moral purpose. Reforms face resistance because it is artificial and external and people by nature resist changes. They are status quoist.

### Need for reforms

Since society experiences changes on multiple fronts, administration needs to change to remain relevant. For example:
(a) Technological changes
(b) Policy changes
(c) Emergence of new issues
(d) Need for improving quality of governance

Usually, society changes faster while administration lags behind and therefore, externally induced reforms are necessary.

### Types of reforms

Reforms can be categorised as **structural, procedural and behavioural.**
1. **Structural reforms:** Changing physical structure of the organisation. For example, hierarchy, departmentalisation etc. Classical theories focused on structural reforms. In India, most reforms have been structural.
2. **Procedural reforms:** Rules, regulations, laws, budgetary system etc.
3. **Behavioural reforms:** Attitude and values of bureaucracy. Behavioural reforms focused on attitudes and values. Example: citizen charter, service motive, citizen friendliness, commitment to work.
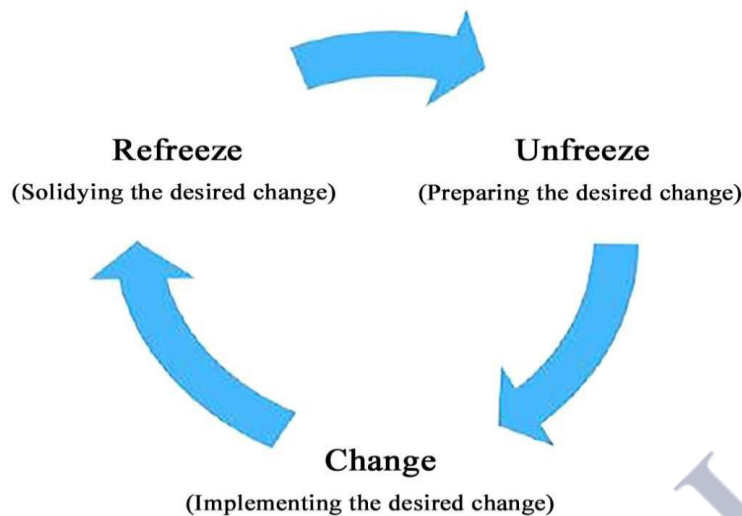
Reforms can also be classified into following categories based on quantum of reforms and time taken for implementation.
1. **Incremental reforms:** based on idea of less pain less gain. Less pain means more acceptance and less resistance. Influenced by **Charles Lindblom and Aaron Wildevsky**. Example: Panchayati raj reforms from 1947 to 1992 (up till 73rd and 74th CAA)
2. **Radical reforms:** Bringing paradigm change. AKA big bang reform. Big pain big gain. Example: 73rd and 74th CAA, GST, demonetisation, dismantling Planning Commission, NEP 1991 etc.
3. **Periodic and episodic reforms:** by Paul Appleby. Periodic means incremental reforms in periods.

### Kurt Lewin's change model:

In India, it is found that reforms are introduced by unfreezing the system but refreezing doesn't take place because of change of government / officer. Reforms aren't continued in long term.

**Change management model Lewin** — toolshero

**Refreeze** (Solidying the desired change)

**Unfreeze** (Preparing the desired change)

**Change** (Implementing the desired change)

**Reasons for failure of reforms in India:**

1. Administrative reforms aren't implemented sincerely because most administrative reforms have political cost. For example, many reforms pending in police aren't implemented because those reforms would mean deduction of political control over police.
2. Administrative behaviour has been a failure because we never really defined moral objectives of reforms. Therefore, reforms can't even be called reforms. For example, e-governance as a reform was meant to deliver better services to citizens but the focus has been on 'e' and not governance.
3. **For public policies in India, elite mass model is followed**. Thus, radical changes are difficult to introduce.
4. Reforms result in decentralisation of power. Usually, power to make decisions is concentrated at top. Therefore, reforms lead to transfer of powers and thus, resistance by top levels. This was observed by participative management thinkers.
5. Administrative reforms can be initiated either from supply side or demand side. In India, both are weak. Supply side is weak because political leaders and bureaucracy has vested interests. Demand side is weak because of lack of awareness in people.
6. Reforms can be successful when introduced in many dimensions and not uni-dimensional. Usually, in India, reforms are episodic and uni-dimensional. For example, electoral reforms without political reforms or vice versa will only be partially successful.
7. Reforms increase transparency but bureaucracy resists it.
8. Radical or big bang reforms if don't succeed; parties may have to pay a political cost.
9. In India, most reforms are reactive, that is, a response to any crisis. Whereas, reforms should be pro-active (NPM).
10. **Reforms are imposed from above in a centralised top down manner.** This creates resistance by middle and lower levels.
11. **According to 2nd ARC, reforms in India have been superficial as they touch the periphery of administration, the core remains the same as it was during colonial times**. Therefore, it will not be wrong to say that reforms in India are mere superficial changes to govern the 21st century India by an administration of 19th century.
12. Lack of people's participation in introducing and implementation of reforms.
13. Lack of coordination between center and states in amount and type of reforms. There is usually a unitary bias in implementation of reforms. Reforms are imposed by the union on the states.
14. Lack of proper evaluation to see whether reforms are successful or not. There is no specialised agency or institution to study the performance of reforms introduced.
15. In India, reforms are always a response to a crisis situation. Since, reforms are introduced during crisis; there is lack of time and resources to make reforms successful. Once situation is back to normal, reforms are ignored by the government. For example, 1991 economic reforms were a result of crisis.
16. There have been many committees and commissions since independence to suggest administrative reforms. These are appointed often not to suggest reforms but to delay reforms.

Whenever there is any demand for reform, government appoints a committee. With time, the demand goes away.

17. Implementation of reforms is under the charge of bureaucracy. The bureaucracy has vested interests in status quo and therefore, reforms are not sincerely implemented. For example, since long time, it is recommended that pay of civil servants should be linked to performance but not implemented.

18. In India, people are still struggling to fulfil their lower order needs and according to Maslow, higher order needs like administrative reforms will arise only after lower order needs are satisfied.

### What is to be done?

1. Reforms to be implemented with participation of people.
2. **Reforms to be multidimensional – political, economic, electoral etc**.
3. **Political reforms to be top priority** because without reforms at higher level, lower order reforms will remain partially successful.
4. Reforms must have moral objectives, clearly defined goals, roles an responsibilities.
5. Reforms implemented must be evaluated for their success or failure.
6. Harmony between union and states for reforms rather than imposition from union.
7. Reforms to focus not only on periphery but the core of administration.
8. Reforms should be continuous and not one time.
9. Reforms should be **pro-active and not reactive.**
10. Training should be given to make reforms successful.

### Reforms since independence

Since independence, many reforms have been introduced, sometimes incremental and sometimes big bang. Reforms in India are introduced enthusiastically but with change of party in power, reforms may not be continued. Therefore, reforms have become symmetrical or coterminous with term of government.

### 1950s or Nehru era

* Nascent / newly born government
* Era of new India
* Era of institution building
* Focus on making administration indigenous and make it suitable for welfare administration.

### Major committees:

(a) Gopal Swamy Iyengar committee, 1950, on reorganisation of government machinery. It recommended Home (services) department in Ministry of Home Affairs to implement recommendations.

(b) AD Gorwala committee, 1954, recommended to setup O&M in government (O&M – organisation and methods).

(c) Central government setup secretariat reorganisation committee under Girija Shankar Vajpayee. It recommended to divide ICS between center and states in ratio of 2:1.

(d) 1954, Paul Appleby submitted 2 reports on Indian administration. It **recommended to setup O&M which was setup in cabinet secretariat and considered a radical reform**. IIPA (Indian Institute of Public Administration) was setup in Delhi for policy research and administrative reforms.

(e) **Santhanam committee on prevention of corruption (1962-64).** It was setup in the backdrop of increasing corruption. Corruption wasn't only at lower levels but also higher levels of administration. Administrative discretion was the main reason of corruption. Discretion is given for public welfare and local requirements but often misused.

Power – accountability = corruption.

### Recommendations:

o CVC and CBI should be constituted. CVC setup by executive resolution of GOI. Later, Parliament enacted CVC act, 2003. CBI was setup in 1964 by executive resolution of MoHA.

o Civil servants performance review after 15 years of service - If unsatisfactory, give warning. Second review on 25 years or 50 years of age – if still unsatisfactory, terminate services.

o Conduct rules to be changed to regulate conduct. Civil services conduct rules were changed – Central Civil Services Conduct Rules, 1964.

### Mid 1960s or Lal Bahadur Shastri:

Short tenure but known for setting up **first ARC** inspired by Hoover Commission in the US.
(a) Entire Indian administration was its ToR (terms of reference).
(b) It submitted 25 reports and 581 recommendations.
(c) Gave many radical reforms ranging from political reforms, economic reforms, administrative and civil services reforms.
(d) Number of cabinet ministers: 14-15 and CoM: 40-45 to keep size of government small.
(e) Separation of accounts from audit.
(f) Domain specialisation of generalist officers.
(g) Performance budgeting.
(h) Reforms in secretariat such as level jumping, desk officer system.

However, with the change in government, these reforms were slow in implementation. Later, the O&M division was upgraded to a full department of administrative reforms under MoHA. In 1970, department of personnel was setup in cabinet secretariat. It took over functions of services wing of home ministry.

### Indira Gandhi
• Kothari committee, 1969
• LK Jha – economic reforms commission
• Rajmannar committee of 1973 by TN government.
• Sarkaria commission (1983-87).

During this period, reforms were brought in civil services recruitment but also known for politicisation of administration.

### Janta government or Morarji Desai:

• **Shah commission was setup to examine excesses during internal emergency**. It showed that Indian administration wasn't neutral and rather politicised.

• **National police commission (reports in 1981) under Dharamveer was considered Bible of police reforms.**

### Mid 1980s or Rajiv Gandhi:

• Era of ICT, technological revolution, recommendations were given by Sarkaria Commission, Satish Chandra commission.

### Early 1990s or Rao-Manmohan Singh:

Radical reforms — NEP, 73rd and 74th amendment, LPG, Golden Handshake, 5th pay commission gave recommendations to cut 30% of central government's size, training policy of GOI.

### NDA or Vajpayee era:
• YK Alagh committee
• Surendra Nath Committee
• PC Hota committee
• Freedom of information act passed but not implemented
• Age for entry to civil services increased from 28 to 30 and attempts from 3 to 4 for unreserved category.

### UPA I and II:
• 2nd ARC
• Center-state relations commission (Punchhi commission)
• RTI act
• New training policy, 2012
• Model police act
• Introduction of social audit

- National e-governance plan (NEGP)

**Present government (Modiji):**
- **PM – a transformational leader**
- Introduced **structural and behavioural reforms**, incremental as well as big bang
- NITI aayog replaced planning commission
- NDC abolished
- **Lateral entry in civil services**
- Perform or perish culture
- Minimum government – maximum governance
- No interviews for lower services

**2nd ARC recommendations:**
- **Impact assessment of laws** so that necessary amendments can be made.
- Every single law bring burden on administration and judiciary.
- **Redefine and recreate ministries** and departments.
- **Principle of subsidiarity** to be adopted where central government focuses only on major functions — external affairs, defence etc. while welfare and development functions to be decentralised. Too many ministries and departments in India. According to this principle, power should be exercised where it is exercised the best. If functions are devolved to lower levels, it will increase people's participation, ownership and responsibility.
- **Level jumping** such that a file shouldn't go through more than 3 levels in hierarchy.

Most reforms in India have been structural and procedural and slow in nature. At the same time, political, judicial and other reforms have also remained slow. Reforms can be successful when they are multi-dimensional and address the deficiencies at multiple levels.

# 16 CHAPTER

# Unit-11 (P1): Techniques of Administrative Improvement

**ORGANISATION AND METHODS (O&M)**

O&M is a productivity technique with its origins in scientific management of early 20th century by scholars like Taylor, Gantt, Gilbreth. Core idea was to eliminate wastages, inefficiency and unnecessary aspects of work. O&M is also called saner (wise) approach to administration.

O&M aims at higher efficiency, lesser cost and better quality. **Its sub-techniques or sub-elements are:**

**(a) Organisational restructuring and reengineering:** Structure can be reengineered like right sizing, flattening and hierarchy, improving communicational pattern, decentralising decision making. Similarly, processes can be reengineered to make them simplified, better sequencing and citizen friendly.

**(b) Better records management:**

In every government office, records are preserved, stored and retrieved as and when required. It is an important function because government functioning is often based on written records. Better records management serves as evidence value. However, as a support service, records management can't be a costly affair. **Thus, under O&M, records management is done as follows:**

  I.  Storage which is cost and space saving. E.g.: using compactors rather than standard almirahs.
  II.  Systematically storing records by **filing, indexing, colour coding**.
  III.  **Paper-less offices**: In modern times, concept of PLO is encouraged in public administration where huge volumes of data can be stored electronically or as soft copies.
  IV.  A system of regularly weeding out old records, so as to create a rolling stock of relevant and necessaryrecords.

**(c) Better correspondence management:** Every government office receives huge amount of correspondence daily. **There is inward correspondence as well as outbound correspondence**. Every government office has DAK (post) tracking systems for sorting and marking the correspondence. It allows prioritisation of Dak. For outbound correspondence, pre-formatted letters, window envelop and franking machines are used. All these O&M techniques make correspondence time and cost effective.

**(d) Office layout and environment:** Very often, the physical interface between government and people is depressing and demoralising because of illogical, unhygienic and harassing office conditions and layout. Therefore, O&M emphasises on making the offices citizen friendly, comfortable where work is done in a logical sequence.

**(e) Work study and procedural simplification:** Work study is an examination of work of a single individual and of an office as a whole so as to find out avenues for saving resources – human and material.

**(f) Office automation:** Even before computers and ICT, office automation was an aspect of O&M on thelogic that one time investment is desirable if it leads to long term savings. Ever since the days of first ARC, government has adopted many O&M initiatives for office automation. For example, photocopiers, microfilming, franking machines, EPBS etc.

**Today, e-governance has become a separate sub-field for administrative improvement.**

**Work study:**

- Origins in **scientific management movement of Taylor**.
- **Goal:** standardisation and efficiency so as to save resources, increase productivity, improve quality, least fatigue.
- **Work study is considered an important technique of administrative improvement in government because:**
    - (a) It doesn't involve much capital expenditure.
    - (b) It is a universal tool, that is, can be applied in many departments.
    - (c) It acts as self-appraisal system because there is self-improvement continuously by questioning yourown work methods.

- **Work study has 2 sub-parts:**
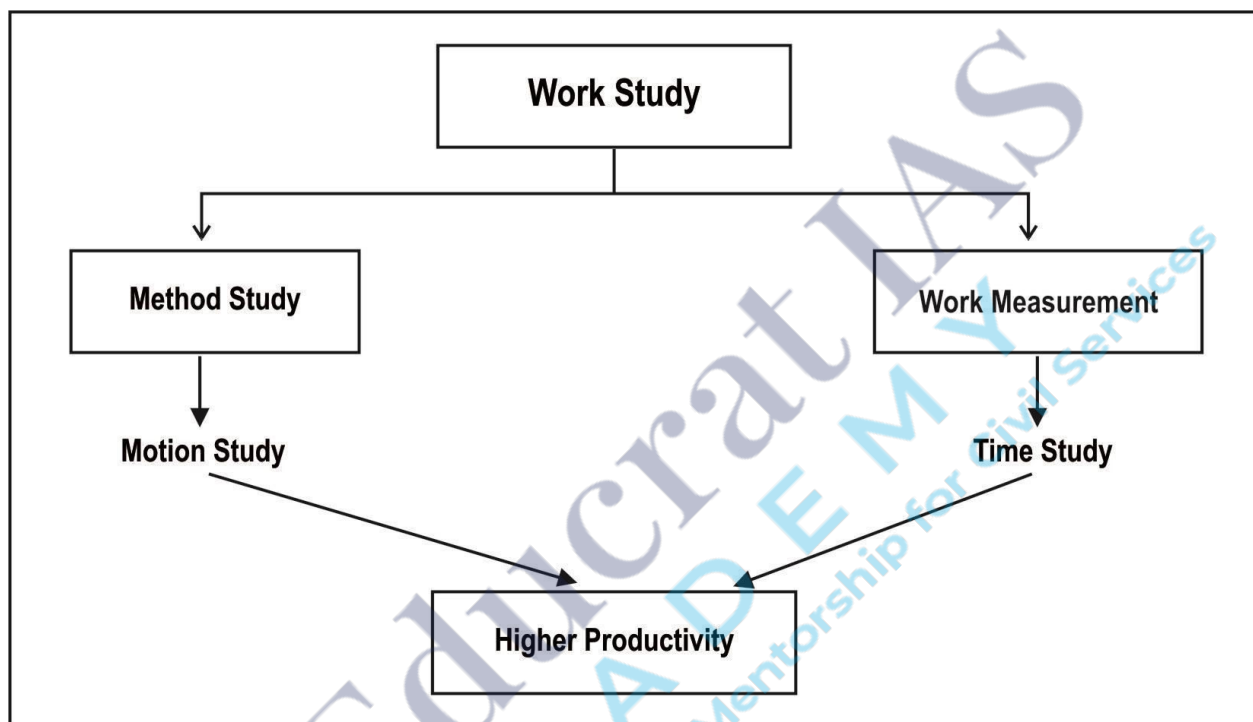


**(a) Method study:** aims to provide best method of performing a function with efficient use of resources. **It involves BPR (business process reengineering), work sequencing and fatigue study.** It also provides safetyby reducing risks from hazards.

**(b) Work measurement or time study:** aims to find out the quantitative and qualitative work load in a public office, **it aims to provide:**
   I. Time targets for every tasks.
   II. Work load management.
   III. Right sizing
   IV. Improved performance evaluation.

Time study as a simple business management tool is being increasingly used in government. **It was introduced in 1950s-60s on the recommendations of Paul Appleby and 1st ARC.** Work measurement along with method study aims to abolish unnecessary processes, formalities and documentation to reduce delays and red tape. It leads to a question that is this process or documentation necessary and if yes, the bestpossible way to do it.

**Work management**
**It refers to better planning, organisation and control of work with the aim of:**
(a) Timeliness and promptness.
(b) Economy and cost control.
(c) Quality enhancement in work.
(d) Client satisfaction.

**Within work management, there are 2 concepts:**

1. **Time management:** it is a modern day management technique which seeks prompt action and prioritisation. **Often, in government offices, time management is the weakest link. There is red-tapism, poor prioritisation, procrastination.**

    As a result, citizens are harassed. In this context, business management uses a tool called time management matrix.

# Time management matrix
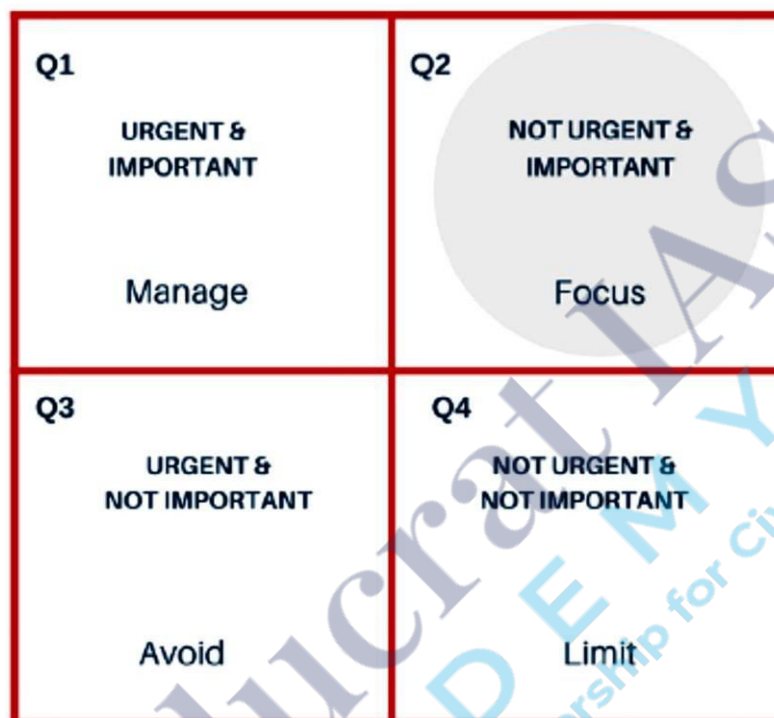


Best administrators will manage their work mostly in Q2, that is, attend the high priority important work before it becomes urgent. Thus, this time management improves prioritisation and leads to timely or preventive action. It creates a habit of 'do it now' rather than procrastinating.

2. **Total quality management:** this technique evolved in 1980s and focuses on holistic improvement in quality of services from clients' point of view. In other words, the client of the business organisation is considered supreme and focus is on client satisfaction. In public administration, the **TQM approach aims at:**
    (a) Make government administration efficient in terms of value for tax payers' money.
    (b) Perform services such that the user gets the value for the charges that he pays.
    (c) The state society relationship isn't just economic relationship and therefore TQM has a much broader connotation in public administration. GOI runs a special training program in LBSNAA in association with the British council and department of international development, UK. This program seeks to train government bureaucrats in the need and various dimensions of TQM.

**Management information system (MIS)**

MIS is defined as a **planned and integrated system for gathering relevant data, converting it into right information and supplying it to the concerned persons, that is, policy makers or the policy implementors**. MIS is an important part of decision support system to provide right information at right time to right people. It originated in 1960s and soon became popular in management jargons. It has developed as first and second generation MIS.

**1st generation of MIS**

Focus on 'capturing' information, that is, collection and storage of information. Information seen as commodity to be possessed. **Focus on mega-technology assets and sophisticated DBMS** (database

management system).

### 2nd generation of MIS

Information is considered a process rather than a commodity, emphasis shifts from technological fixation to development, evaluation and usage of information. Information is developed and made useful rather than just captured. **Thus, focus shifts on 'S' rather than 'I'.**

### Advantages of MIS:
- Facilitates planning by providing planners and decision makers the right information support. In government, this point has special relevance because planners are often hierarchically and territorially detached from the scene of action.
- Allows sensible management of information overload as recommended by March and Simon, prominent management thinkers.
- **Encourages decentralisation:** modern MISs are created and planned such that they allow multi-point access and therefore, different quantity of access is given to different levels of officials.
- **MIS improves coordination and control:** government departments are often scattered functionally as well as territorially. MIS can improve intro-organisational and inter-organisational coordination.

### Problems in functioning of MIS:
- In government, transfers of key officials like DCs, SPs, CMOs are frequent. As a result, the experience andinformation stored in the personal memory of these officers is lost.
- **Taxation on quantitative information:** in governmental MIS, often the reporting is mechanical and of irrelevant nature. In this process, the qualitative and non-measurable aspects are left out. For example, the information of number of FIRs in a police station may not reflect the actual position of law and order.
- **The problem of filtration of information especially in upward communication:** information is often window dressed or doctored. Performance is artificially inflated.
- Government often receives too much information from different sources. This leads to information overload and MIS collapse. For example, India has multiple intelligence agencies like IB, RAW, Narcotics intelligence, Military intelligence etc.
- Delayed information, that is, information isn't often provided at right time because of hierarchical and bureaucratic hurdles.

### Networking (PERT / CPM)

Network analysis or networking is the core technique for project planning and project controlling. Public administration involves initiation and operation of many long term projects like plants, highways etc. and therefore, networking has emerged as an important technique of administrative improvement. **Networking isa common term for 2 similar techniques namely PERT — Program evaluation review technique and CPM — critical path method**. Both techniques evolve around same time in late 1950s and are similar except a minordifference. PERT was developed in 1958 by US Navy. CPM was also developed in 1958 by 2 big private companies *Du Pont* and *Remington Rand.*

**The main difference between PERT and CPM is that PERT handles activities with uncertain time frames whereas, CPM is used where time frames are known**
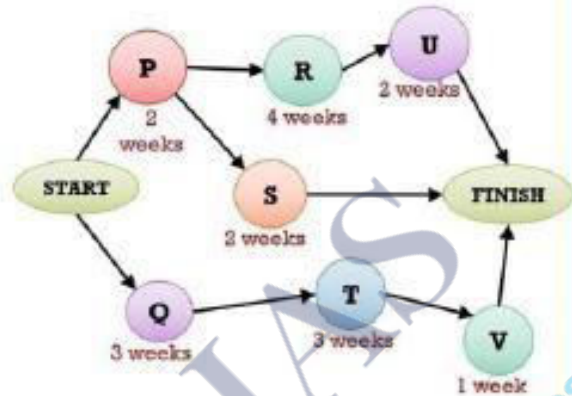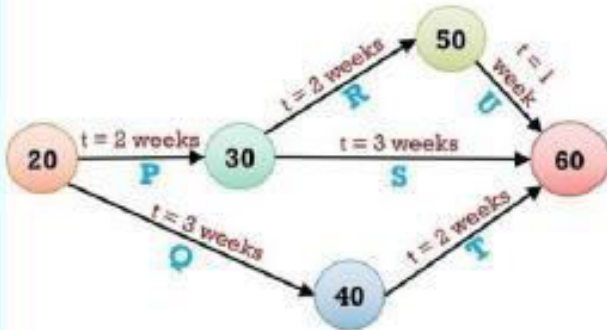
Key Differences

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PERT was an innovation over CPM as PERT gives time dimension of project and a formula which calculates total expected time in completion of project. Otherwise, it is similar to CPM. PERT says:

$$T_{expected} = (T_{optimal} + 4.T_{most\ likely} + T_{most\ pessimistic}) / 6$$

The essential idea behind networking is to find the correct path of activities, that is, sequence in which various activities involved in a project would be performed so as to improve efficiency and timeliness in project completion.

**It is called networking because it visualises and diagrammatically represents the inter-relationships and interdependencies in one project.** It mainly seeks to find out that which activities can be performed in parallel and which have to be run sequentially. This gives the critical activities in the network, which if delayed,entire project will be delayed. Non-critical activities are those which run parallel to other activities and if delayed, overall project won't be delayed.

**Management by Exception (MBE)** allows concentration on critical activities. It prevents time and costoverruns. It also ensures that quality of project isn't compromised.

Both known and unknown factors can affect the time estimated by PERT and CPM. **Known factors mayinclude:**
- (a) Land
- (b) Labour
- (c) Machines
- (d) Raw material etc.

**Unknown factors:**
- (a) Protests
- (b) Health pandemic
- (c) Political instability
- (d) Global recession

When unknown factors are unfavourable, the slope shifts towards right. When they are favourable, slope shifts towards left. (Graph below) the critical path is ironically the longest path and shortest time to complete project
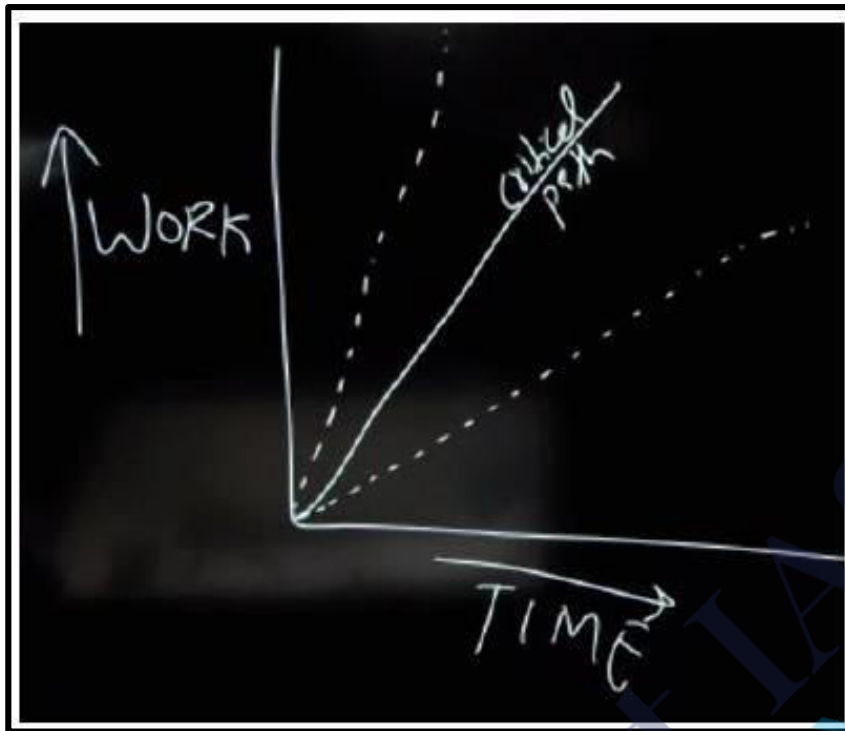
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**Advantages of PERT or CPM**
1. **Efficient project monitoring:** Nature of dependencies between activities and sub-activities is taken into consideration.
2. Avoids time and cost overrun because once critical activities are identified, project managers know where to have monitoring and control. Also, if there are signals of delays, project manager can take decisions such as to get extra manpower or extra work shifts etc.
3. It **facilitates MBE (management by exception):** non-critical activities may be delegated to lower levels.
4. **Crashing decisions can be taken:** cost overrun is preferable over time overrun, so, crashing decisions like extra resources may be deployed.
5. It facilitates optimisation of budgetary allocations because allocation of resources is done logically.

In India, all major projects use these techniques. NTPC pioneered this technique in India in government.

**Disadvantages:**
1. Not able to consider external variables which create uncertainties such as disaster, environmental challenges etc.
2. Less helpful in repetitive projects.
3. Works only for complex projects and not simple ones.

**E-governance**

Traditionally, public administration provided services to citizens by a physical interface. **This traditional bureaucratic system was known for red-tapism, inefficiency, too many hierarchical levels (tall structure), complicated rules**. This led to role displacement because bureaucracy instead of focusing on service delivery, emphasised only on implementing rules and regulations. Since the functioning of bureaucracy is secretive, there is no accountability of bureaucracy towards citizens, e-governance is one of the solutions to make bureaucracy — accountable, efficient, responsive.

**World Bank defines e-governance as use of information and communication technology in public administration to make administration efficient, accountable and responsive. E-governance has revolutionised the way government operates.**

**Stages in e-governance:**
1. Computerisation: use of technology, computers, hardware, software etc. for internal administration.
2. Interconnection of government agencies by **LAN, WAN** etc.
3. **Online presence:** all ministries and departments have websites from where the citizens can seek

information, download forms, that is, G2C communication (government to citizen).

4. **Online interaction:** final stage of 2 way communication, that is, G2C as well as C2G. Citizens can not only download forms but also upload their data, files, forms, feedback etc.

### Objectives or advantages of e-governance:

1. Administration is highly complicated and cumbersome. It is difficult for common people to get even simple things done like paying taxes, getting certificates like birth certificates, licenses etc. E-governance has made it easy and convenient.
2. Increased accessibility for people.
3. Faster and cost-effective service delivery.
4. To make administration efficient, accountable and responsive by cutting down red-tape, by reducing unnecessary hierarchical levels and eliminating colonial laws, rules and regulations.

### Hurdles / challenges / reasons for failure:

1. The government never defined the objectives of e-governance clearly. In the name of e-governance, government departments focused only on computerisation and e-government.
2. Therefore, the resources invested in e-governance didn't improve the good governance. In this context, it can be said that scarce resources of government can't be blocked in the name of e-governance without actually improving quality of governance. The focus in e-governance should be on 'governance' and not 'e'
3. **E-governance has created a digital divide. There is a gap between digital have(s) and digital have not(s).** A large number of people don't have access, knowledge or affordability of e-governance. **One of the objectives of good governance is that it should be participatory and inclusive** but e-governance has resulted in exclusion of masses. **E-governance is available only to urban middle class and literates.** Less than 20% people in India have access to internet. India is still not e-ready, that is, basic electronic infrastructure like number of computers per lakh population, broadband connections, regular power supply etc.
4. Lack of awareness among people about benefits of e-governance which leads to non-participation.
5. Lack of sufficient cyber security measures discourages people to use online services especially financial transactions.
6. **E-governance can't ensure good governance because a problem with technology is that technology is value neutral. E-governance has resulted in recentralisation of power rather than decentralisation** which is a feature of good governance. Participation of citizens in governance is possible only with true decentralisation of power to lowest levels but e-governance does the opposite. With the help of technology, higher officials are able to control ground level officials even if there is a geographical distance between them. For example, an SP of a district is geographically away from all police stations in the district but with technology, every crime reported is updated in the system on real time basis. This keeps the SP informed but on the other hand, empowers him to control the ground level police officials
7. The government doesn't have enough resources to update the technology use in e-governance because technology changes very fast.

# UNIT 9 and 11 of Paper 1 and UNIT 8 and UNIT 10 of Paper 2

Unit 9 – Personnel administration
Unit 11 – techniques of adminsitrative improvement
Unit 8 – civil services
Unit 10 – administrative reforms

## Human Resource Development

- After industrial revolution, many theories of organisations were given.
- Objective was to maximise efficiency and economy
- **Taylor's SMT considered humans as machines and human motivation as uni dimensional (monetary)**
- Elton Mayo expanded the scope of human motivaiton by his HRT. It emphasised on socio-psychological aspects **of motivation.**
- **Chester Barnard and Herbert Simon who were behavioural thinkers improved upon HRT and defined organisations from the perspective of workers.** Later behavioural thinkers like Rensis Likert, Chris Argyris and MC Gregor recommended participative management**. It was MC Gregor who popularised the concept of Human Resource Development.** Before him, organisations treated workers as one of the factors of production. It was only MCGregor who considered them as human resource through his participative management approach.
- With the emergence of service sector, concepts such as participative management, decentralisaiton, democratic functioning etc have increased the importance of human resource development for organisations to sustain in long term. HRD inlcudes many aspects like recruitment, training, performance evaluation, career advancement etc

## Recruitment

- Finding right kind of personnel and assigning them to right positions in the organisation. **There are two kinds of recruitment –**
  - **Direct** – from outside the organisation, brings fresh blood, fresh ideas, checks stagnation, suitable for technical and professional fields.
  - **Indirect or from within** – promotions to higher levels, they require less time and resources for training.
- **Civil Services in India follow both methods**. In All India Services, 1/3$^{rd}$ seats are by promotion from state civil services and 2/3$^{rd}$ by direct recruitment.
- Historically civil servants have been recruited not only by open merit based system but also spoils system. Spoils system is based on political patronage, nepotism, proximity to king. It is usually found in non-democratic countries
- **Recruitment by open competitive exam is done by elimination and selection**. UPSC in India follows both. Preliminary examination is to eliminate non sincere candidates. From the remaining ones selection of right candidates is made by main exam and interview
- Best recruitment process is one which selects candidates who fulfill the needs of organisation. Recruited people should help the organisation to achieve its objectives. Therefore merit becomes important. In Government recruitment is merit as well as equity based (affirmative actions like reservation)
- During times of East India Company recruitment was not merit based, friends, relatives of director were appointed to covenated civil services. **Lord Cornwallis sugggested merit based recruitment**. Covenanted civil services were given attractive salary, promotions, pensions and symbols of status (many big buildings like forts were converted to residences of civil servants.
- After Independence**, UPSC was given the responsibility of recruiting civil servants**. Initially, different exams were held for different services. Gradually maximum age was increased.
- **1970s – number of candidates increased**. Therefore suggestion of conducting prelims, two optional subjects and importance to interview was considered. Changes were implemented in 1979.
- **1987 – Pub Ad was introduced as optional.**
- **1989 – Government (V.P.Singh) announced implementation of Mandal commission report**. Y.K.Alagh committee was set up to suggest reforms. **Recommendations were:**
  a) remove optional from prelims

b) introduce aptitude test
c) testing of morals and ethics
d) remove optional from mains and replace it with GS paper only
e) increase weightage of personality test and its structure similar to army

**In 1990 – Essay paper included, marks of personality test increased, science subjects introduced as optionals.**

## 2nd ARC on UPSC
- It examined recruitment system in other countries and found system in France as the best.
- Recruitment after class 12th. In present system average age of entry is high. At that age, thought process, values and personality are already developed. Difficult to train them, which results in failure. After class 12 candidates will be admitted to civil services training college. At the end of 3yrs, toppers shall be inducted into civil services and others are given a degree and may find jobs in open market. This system may not be suitable for India because of rural urban divide. It will result in bias against rural candidates.

## Recommendations of 2nd ARC
1. reduce upper age limit to 26yrs
2. remove optional paper
3. 5 GS papers common for all
4. Pub Ad and Law to be compulsory papers
5. Ethics paper to be included
6. 2011 onwards UPSC started implementing them in gradual manner
7. Optional subject removed from prelims
8. Aptitude paper introduced
9. One optional from main exam removed in 2013
10. revised syllabus of general studies
11. **Aptitude Paper was considered biased against rural and regional language students. Therefore in 2015 it was made qualifying in nature.**

## 2017 – Baswan Committe
o Removal of CSAT
o Age limit 21 to 25yrs
o Maximum attempts 3 (youth is spending their productive years in preparation. Lesser age allows candidates to get other jobs)
o remove optional and make pub ad and law compulsory
o different exams for different services to select officers with right aptitude. In present system, officers in IPS, IRS etc are not selected for the services but are rejected from IAS.
o Reduce the syllabus becoz it is difficult for working professionals
o In India the recruitment process is not really fulfilling the needs of organisation because the officers must have a sense of public service, empathy and compassion but it is difficult to check these values in recruitment process.

## Training

### Why Training?
- To familiarise the new recruits about the organisation, its objectives, rules, hierarchy and work culture.
- In case of unsatisfactory performance by employees.
- Training is required if the employees and organisation failed to achieve their objectives.
- required when the organisation adopts new methods, technology or machines
- to change attitude, values and behaviour
- To update employees with changing political, social and economic circumstances in society so as to keep them relevant and avoid status quoism.

### Types of Training

**1. On job training -**
o used for lower level employees
o does not require any special skills or knowledge
o employees learn the job while performing the job ex – poens, office assistants etc

## 2. Vestibule training
- used in industrial organisations
- workers are trained in using machines and equipments in a training room and later they work under the supervision of a superviser. After that they are given the work independently.

## 3. Training through demonstrations and examples

## 4. Apprenticeship
- new recruits learn the tricks from seniors and there after work independently. Ex – lawyers, CAs
- IAS probatitioner for a short period act as apprentices under DCs or DMs

## 5. Classroom method
- lecture method – foundation course in LBSNAA
- group discussion
- syndicate training – a class study is given and all trainees have to come up with an unanymous solution within a given time.
- case study method – individual solutions are given to the case.
- conference method

## 6. Sensitivity training
- it is aimed at improving the attitude, behaviour and values of employees. They are allowed to freely express their feelings, emotions and grievances.

## Training during British times
- **Lord Cornwallis suggested scientific training for civil servants.**
- Initially in Calcutta
- ICS officers were mostly European
- Training in regulatory funcitons, law and order and revenue.
- knowledge of local language, local traditions and customs.
- Training in horse riding, weapons etc
- Training to implement rule of law by remaining value neutral
- Britishers ensured that Indians in civil services are trained in British customs, values so as to convert them into elite bureaucrats of British.
- to inculcate colonial attitude.
- **Pandit Nehru famously observed that ICS in India is complete misnomer – neither Indian, nor civil nor service oriented.**

## Present Training
Ffoundation course at LBSNAA and other places (Bhopal, Nagpur and Hyd) simulataneous in case of higher number of officer trainees
- Training in constitution, economy, pub ad, civil law and criminal law.
- **combined training aims to inculcate espirit de corps.**
- after the foundation course, officers go to respective training academies. **Ex – IPS to hyd, IFS to Delhi, IRS to Nagpur, IRS customs to Gurgaon, IAS in LBSNAA**
- **Bharat Darshan or winter study tour for about a month to make civil servants familiar with customs of India**. It is followed by calling upon the President and attachment to parliament.
- **After first phase of training, All India Service officers go to their state cadres.**
- Serve as assistant collector for 8 to 9 months. 2 to 3 months at state secretariat, back to LBSNAA for one to two months to share experiences.
- Attachment with central Government – **PMO and central secratariat**
- officers go back to state cadres and hold independent charge at district level as SDM or deputy collector

## Weakness of training in India.
- **Ivory tower approach** i.e training not according to ground realities.
- training is considered a paid holiday
- Whatever is the performance in training, little effect on career advancement.
- focus more on theoretical aspects and academic training i.e. not practical in nature
- Behavioural aspects not sufficiently emphasised upon
- **For IAS officers, training is mostly general in nature because they perform multiple functions. This also**

**makes performance appraisal difficult.**

- Opportunities of foreign training are only for senior civil servants but they do not have a stable tenure to implement their learnings. For ex – 90 percent of police force is made up of constables but more than 90 percent of expenditure on police training is on IPS officers who are less than 1 percent.
- Training is not sufficient to improve their performance in present job and not at all sufficient to make them capable for higher positions.
- Training is given to wrong people for wrong reasons. For ex – good and honest officers may be removed and sent for compulsory training. Training positions are considered punishment postings by civil servants. It is recommended to give incentive for posting to training institutions. Also training is mostly ad hoc in nature i.e no permanent policy of training.

**Performance Appraisal**
**Why perfomance Appraisal?**
1. To know the **strengths and weakness of personnel in organisation** i.e to know the quality of human resource
2. To exercise supervisoin and control
3. To give promotions
4. To plan training

**Methods and Techniques**
1. **Efficiency rating**
- It was practiced in US where civil servants were rated on **15 pre determined parameters**.
2. **Graphic scale system**
- performance is evaluated according to a scale. For ex -20 percent is for bad and so on
3. **Narration method**
- Here, a descriptive method is used to narrate performance of civil servants

Indian System – Annual Confidence Report (ACR)
It is used in India where a report is prepared on basis of set criteria like below avg, avg, good, better etc. Their integrity is also tested in terms of doubtful, credible and integrity beyond doubt. Such annual reports are made by designated superior officers like DM writes ACR of SP

**Weakensses in traditional methods**
- They lack **scientific validity**
- Ratings were questionable due to subjectivity
- Lack of standardisation
- In India, it became a cooercive tool to exercise control over subordinates.
- **The appraisee has to chase the appraiser to get the ACR written**. Also as the name suggests, it was a confidential exercise.
- ACR has a negative approach as it was finding faults rather than finding facts. **According to MPFollet, control should be fact finding and not fault finding exercise**. There is also lack of professionlaism in ACR writing, depends on extending favours and also north south divide (South Indians give conservative ratings)

**Recent Reforms**
**1. MBO (Management by Objectives) (by Peter Drucker)-** it is **a participative management technique and also a tool for budgeting and performance appraisal**. Here the rater and the ratee have an interface**. This system is participative, transparent and positive**. It aims to improve performance rather than punishing for under performance.
**2. 360 degrees appraisal-** implemented in US, UK, Australia in public as well as private sector. I**n India it was recommended by Surendranath Committee and second ARC**. It is already implemented in central govt. All round appraisal of appraisee by superior, colleagues, subordinates and clients/citizens**. It is more balanced rating because of participation of different stake holders.**
**3. 720 degrees appraisal**- **It is 360 degrees two times**. It is improvement over 360 degrees appraisal. **First 360 degrees appraisal is of performance at current level. Next 360 degree appraisal is done after promotion to understand whether the official is performing as per expectation**. If not, necessary intervention can be made. For ex- training. Generally appraisal is done for past performance and hence there is no guarantee of good performance at next level after promotion. 720degreees appraisal is in private sector and yet to be implemented in public sector.

   **In India, performance appraisal is done department wise**. Although Ministry of Personnel is over all

responsible. Traditionally uniform parameters were used by union and states irrespective of the nature of functions performed. Since there is time based or seniority based promotion, perfromance appraisal remains a formal exercise. After LPG and NPM, there is increased focus on performance orientation and competition. Many countries have linked the pay of civil servants with their performance. **In recent times, govt of India has introduced some reforms like**

a) A scale **of 1 to 10 for rating against 20 parameters**
b) Normalisation method as used by UPSC to address the north south divide
c) Inclusion of new criteria like ability to perform and integrity
d) **360 degreess appraisal has been introduced along with annual performance review**. It is done online at the portal of **SPARROW – Smart Performance Appraisal Report Recording Online Window.**
e) **The govt wants to inculcate a culture of perform or perish**. The govt has pension rules which allow the govt to terminate the services of the officers who are inefficient
f) Santhanam committee on prevention of corruption recommended first review on completing 15 yrs of service and second review on 25yrs of service or 50yrs of age. Second Arc recommended first review at 13 – 14yrs of service and second at 23 – 24yrs of service. **UPA govt under Dr.Manmohan Singh in 2013 introduced first review after 15 yrs along with warning and second review on 25yrs of servci**e. If found unsatisfactory, compulsory retirement. Current govt is pursuing this concept more aggressively by using online portals such as SPARROW and PROBITY. For board level functionaries, another initiative called SOLVE has been taken.

Although these initiatives have been taken, India has a long way to go to match global standards**. It is time to link the pay of civil servants with performance as recommended by 6$^{th}$ and 7$^{th}$ pay commission**. Indian bureaucracy has been ranked most corrupt in Asia. **Hong Kong has performance based bureaucracy – In Brazil, 60 percent of salary of civil servants is based on performance.**
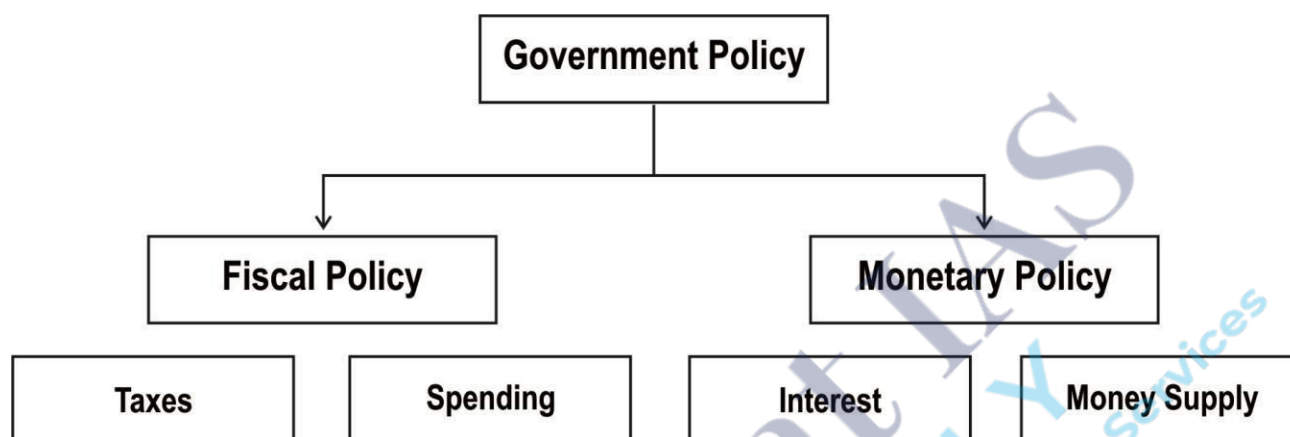
# Unit 12 (P1) & Unit 9 (P2) Financial Administration & Financial Management

**FISCAL POLICY:**



Up to great depression of 1930s, monetary policy was considered as the main element of economic policy. But during great depression, monetary policy was found inadequate to initiate process of economic recovery. **In this context, Keynes' general theory brought out that the economic depression was mainly caused due to deficiency of aggregate demand which can be stimulated by increasing government expenditure**. It meant that fiscal policy could play an important role in initiating recovery.

FISC means finance. Fiscal policy means the policy which affects finances of the government. It includes taxes levied and expenditure incurred by the government.

### Objectives of fiscal policy:
1. To raise revenue to meet the expenditure.
2. To achieve goals of national economic policy, that is, economic stability, price stability and full employment.

Government expenditure and taxation are 2 instruments by which fiscal policy operates:
1. **Expenditure:** If government expenditure increases, PDI (Personal Disposable Income) of people increases and consequently, aggregate demand of consumer products goes up. Therefore, increased government expenditure expands economic activity in the country.
2. **Taxes:** taxes are levied on people to meet government's expenditure but taxes reduce PDI as well as corporate **income. It reduces capital formation as well as demand in the economy. Taxes** are of 2 types:
   (a) **Direct taxes:** when tax incidence and tax impact/burden is on same person, that is, tax burden can't be shifted. E.g. – income tax, corporate tax, wealth tax. Direct taxes are progressive in nature – directly proportional to the income.
   (b) **Indirect taxes:** tax incidence and tax burden are on different people. It is regressive in nature as a rich man and a poor man would pay similar indirect tax.

Tax revenue policy of government can be considered progressive only if direct taxes are more than indirect taxes in overall revenue of the government.
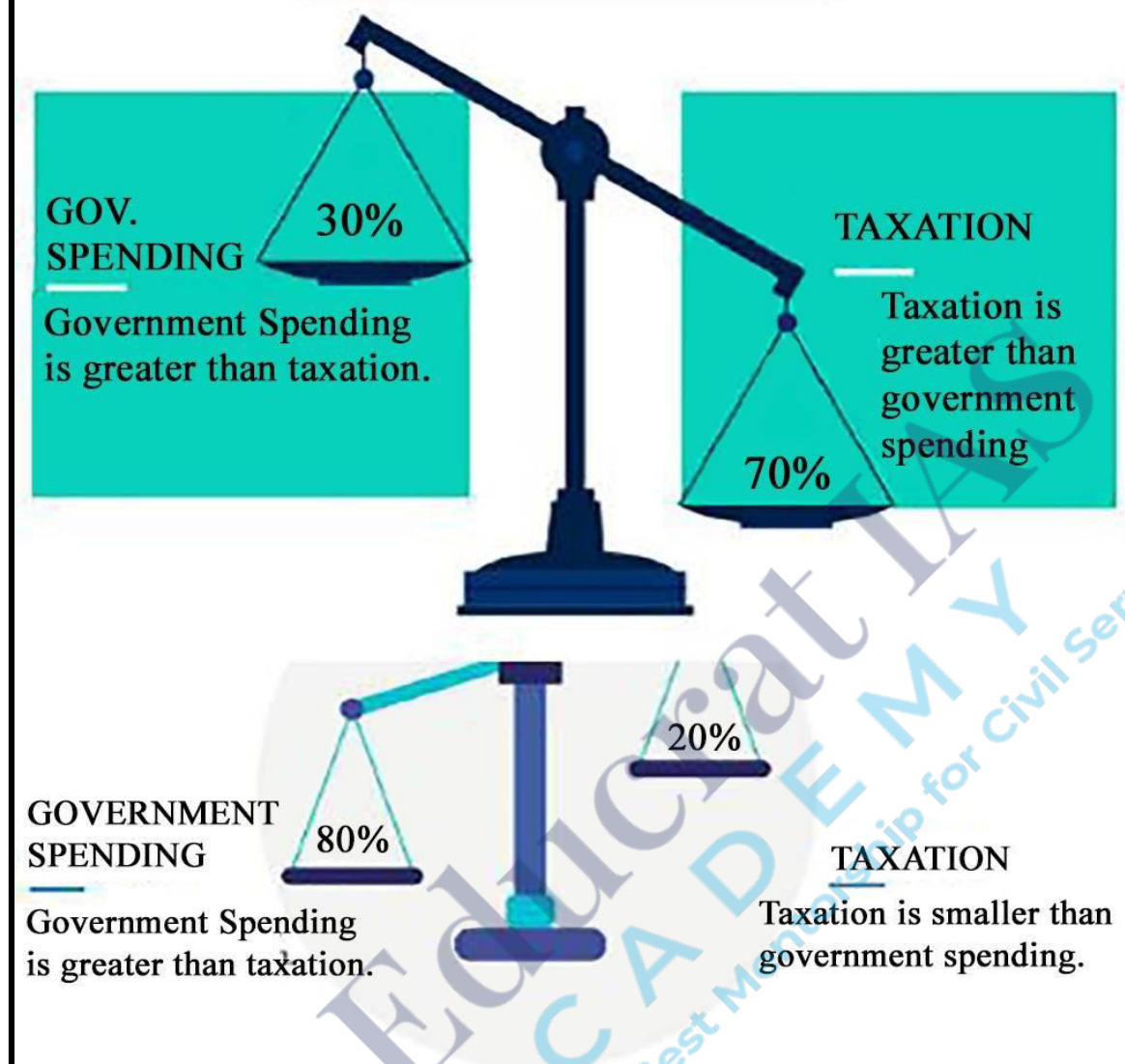
**Fiscal policy and inflation:**

**During inflation**, the government adopts a fiscal policy where tax collection exceeds government expenditure so that money in circulation comes down and thus, reduces inflation. Government budget is in surplus.

**During recession**, the government aims to generate demand in the economy by adopting expansionary fiscal policy. The spending by government increases while taxes are reduced. Government's budget is in deficit.

**Role of fiscal policy in economic growth:** Fiscal policy plays important role in economic stabilisation, that is, in controlling business cycles. Economic growth requires savings and investment which can be ensured by both taxation policy and expenditure policy by creating a favourable climate for savings and investment. For example, taxes can be increased or reduced to maintain price stability; more expenditure on infrastructure, government may try to spend more on capital expenditure rather than revenue expenditure.

**Monetary policy:** It deals with supply of and demand for money. It is controlled by central bank of the country

**Objectives:**
1. Ensure price stability (inflation)
2. Ensuring sufficient supply of credit to industrial sector at reasonable rate of interest.
3. In times of globalisation, objective is also to ensure exchange rate stability.

**Instruments of monetary policy:**
1. Bank rate: rate at which banks borrow from RBI in long term.
2. CRR
3. SLR
4. Repo and reverse repo: rate at which short term cash requirements by banks from RBI.

**Fiscal policy more effective than monetary policy**
1. Impact of fiscal policy on economy is direct and immediate whereas effect of monetary policy takes time, that is, there is a lag. Example: RBI may change monetary policy but banks may transfer the changes with a lag.
2. Fiscal policy is more effective in times of recession and depression. Also, monetary policy affects different rate of interests differently. For example, interest to agricultural sector, SHG, housing etc.

**Public borrowings and public debt**
Government mobilises resources for performing its functions from within the country and outside the country. If the government's income is less than its expenditure, it resorts to borrowings. Public debt refers to loans raised by government within or outside the country which has to be repaid along with interest.
Banks prefer to give loans to government because of higher security.

High borrowing by government → less money available for private sector → high cost economy → decreasedexports → low forex → BOP crisis → high borrowing by government.
In such case, government has to ask international community for loans and this is called **Sovereign DebtCrisis**.

India's 1991 crisis is because of high revenue deficit, fiscal deficit and low forex reserves. External debt is more dangerous than internal because external debt is to be paid back in foreign currency.
Regarding borrowing, more than the borrowing itself, what is more important is the purpose of the borrowingand how it is spent, that is, quality of government expenditure.
**Revenue deficit = revenue expenditure – revenue income**.

**Ideally, revenue deficit should be zero.** FRBM act aimed at 0 RD but it is still not achieved because of political populism.

**Types of debt:**

| Internal debt | External debt |
|---|---|
| From residents of the country | From foreign institutions or individuals |
| Overall resources available within a country doesn't increase. Simply, transfers resources from people togovernment. | Increases total availability of resources because wealth is transferred from creditor nation to the debtor nation. |

| Productive | Unproductive |
|---|---|
| Debt used for projects which yield income to the government. | Spent on unproductive purposes like salary, day today business. |
| No burden on taxpayers as repayment is through income generated. | Final burden on taxpayers. |

**Objectives of public debt**

1. Maintenance of balance between expenditure and revenue.
2. Fighting inflation, that is, by government debt, money can be mopped up from the market and therefore, total demand of the market can be reduced. But this will be a burden if not used for productive purpose.
3. Fighting depression, that is, to boost aggregate demand.
4. Economic development: in third world countries, government lack capital resources and therefore, government borrows for capital formation and economic development.
5. Governments prefer to borrow rather than to raise taxes because it is politically more preferable.
6. In countries with problem of ageing population, government may borrow for sectors such as health, social security, housing etc.
7. **Raising war finance:** during war, defence expense increases up to many times and taxpayers capacity to pay taxes will be limited and therefore, governments have to resort to borrowing.

**Borrowing in India**

In India, government's capacity to raise revenue to raise taxes is limited because people have less capacity to pay tax. Like taxes, borrowings should also be regulated by legislature as in US and UK. In India, this power lies with executive**. Article 292 says that executive power of Union extends to borrowing upon the security of CFI within such limits as prescribed by Parliament from time to time**. Also, Union can give guarantees for borrowings by states. States can't borrow from out of India on their own. Also, if any state has borrowed from union, it can't borrow further from anywhere else without Union's permission.

**Union Budget**

Union budget is formulated by Department of Economic Affairs in Ministry of Finance. It contains estimates of expenditure and receipts of the coming financial year. **According to article 112, President causes to be laid before both houses of parliament, the annual financial statement of GOI (word 'budget' not used in constitution).** Budget formulation is a long process. MOF demands estimates of demands for grants from all ministries and departments. Thereafter, MOF consolidates all the demands for grants of entire GOI. Any disputes are resolved by cabinet meetings chaired by PM. The expenditure as well as receipts are calculated using last year's actual figures and estimates and revised estimates of current financial year. PM can make last moment changes in budget. Along with budget, economic survey is also released

### BUDGET AS A POLITICAL INSTRUMENT

**Budget can be seen from 3 dimensions:**

1. As accounting exercise, that is, information about revenues and expenditure of the government.
2. Economic dimension, that is, information about allocation of resources to different sectors of economy as well as different sources of government's revenue.
3. Political dimension, that is, political parties before elections make promises to the people by offering them certain promises and programs. Once a party comes to power, it is moral responsibility of party to fulfil its promises. For this, budget acts as an instrument. Only when a party fulfils its promises, it can expect to come back to power. For example, in 1971 LS elections, **Congress party came to power on the promise of fighting poverty — *Garibi Hatao.*** In 1998-2004, BJP fought elections on the slogan "India shining". It is **because government spent huge money on infrastructure resulting in 9% growth rate for the first time**. Opposition parties made allegations that the growth wasn't inclusive but only for urban middle class and the rich. In 2004, elections were held 6 months before time in the backdrop of not only economic growth but also nuclear testing and Kargil victory. But it was UPA which came to power by promising to protect interests of common man from the ill effects of market based economy. It opted for a rights based approach, for example, RTI 2005, RTE 2010, Right to food (NFSA 2013). Using this approach, it tried to fulfil promises made during elections. Focus of economic policy shifted from economic growth to redistribution of income and wealth. Many flagship schemes were started for welfare of people. In 2009 elections, budget was used to wave off the farm loans and thus, budget became an effective instrument to retain power. **The current government promised the people 'Acche Din' and 'Sabka Sath Sabka Vikas' (inclusive growth). GOI launched schemes like JDY, MUDRA etc. It was able to retain power in 2019 with a bigger majority**.

**Budget enactment process:**
- Presented by Finance Minister by budget speech in LS. Simultaneously, budget papers are laid before RS.
- General discussion takes place, usually FM replies.
- **Both houses are adjourned for about 3-4 weeks.**
- 24 DRSC examine budget estimates and prepare reports.
- Voting on demand for grants (only LS, discussion in both houses).
- **MPs can move 3 types of cut motions:**
  - (a) **Economy cut**: to cut the expense by a specific amount.
  - (b) **Token cut**: proposes to reduce demand for grant by 100 rupees.
  - (c) **Policy cut:** disapproves the policy, proposes to reduce grant to 1 rupee.

  If these cut motions are passed, it shows lack of majority of government on floor of the house. However, these cut motions aren't passed because government has majority.
- Time allotted for discussion and voting of demand for grants isn't sufficient. **On last day, for the purpose, the speaker puts to vote all pending demands for grants. This is called exercise of Guillotine**. It is an evil because it reduces government's financial accountability but it is a necessary evil. About 80-85% of demands for grants are passed like this.
- **Appropriation bill containing demands for grants voted and charged expenditure on CFI is introduced.** It is a money bill and no amendments can be moved to it because the provisions have already been discussed.
- Last stage is finance act which contains proposals of taxation. It is also a money bill but amendments can be moved to it.

Budget formulation exercise requires coordination amongst various organs like finance ministry, other ministries and departments, RBI, private sector, multilateral institutions and citizens.

**While formulating budget, certain assumptions are made:**

- (a) Estimates of future
- (b) Growth rates
- (c) Global economic situation
- (d) Monsoon (assumption of normal monsoon)
- (e) Domestic political conditions
- (f) Crude oil prices

Therefore, budget making isn't only fact based but also values based (Herbert Simon's concept of bounded rationality).

**Budget reforms**

**Political populism in budget:** government doesn't take good but unpopular decisions in budget. Example: agricultural income tax, revise the user charges, revising railway fares, pressure of wave off farm loans, unwillingness to implement FRBM act, failure to keep low FD, huge amount of non-merit subsidy, unwillingness to close loss making PSUs, failure to increase capital expenditure.

In recent times, government has brought certain reforms like merging railway budget and general budget, advancing budget session by a month so that DRSCs have more time to discuss proposals and also to ensure complete availability of resources to ministries and departments at right time, changing financial year to 1stJan to 31st Dec.

**Types of budget**

**Line item budgeting:** Traditional budget will focus on accountability of government, tries to eliminate corruption, items of expenditure are arranged in a line and therefore, called line item budget. Aim is to ensure that money is spent legally.

**Limitations:**
(a) Expenditure isn't linked to performance/outcome.
(b) Incremental in approach.

**Performance budgeting**
- Term coined by first **Hoover commission in US**. US adopted it in 1950 (President Truman).
- It links expenditure to output. Focus is on purpose of expenditure rather than expenditure itself.
- It ensures better output for a given quantity of input.
- It links next year's allocation with previous year's performance.
- Ensures accountability of administrators to political executive.
- It involves development of refined management tools like work measurement, unit cost, PERT and CPM.
- Helps in performance audit.
- More intelligible to common man who knows the projects and targets of government.

- **Limitations:**
    (a) In governmental activities, there is an absence of clear cut objectives which is a prerequisite forperformance budgeting.
    (b) Governmental activities aren't always quantifiable. For example, defence.
    (c) Can't be applied to research organisations.
    (d) Skilled manpower is required to prepare performance budget.

Adopted in India on recommendation of 1st ARC.

**Planning ProGramming Budgeting System**

**The advantage of performance budgeting was that it improves efficiency** but it is argued that government should be effective first and efficient second because an efficient army is useless if it isn't effective to give security. Performance budgeting didn't take into account long range planning. Therefore, PPBS replaced performance budgeting.

In PPBS, there is integration of government's long term planning, programs to achieve goals and budgetary allocations. PPBS was originally developed in the US by Rand Corporation in California. **The steps followed are:**
(a) Organisation first decides its goals.
(b) For each goal, available activities and programs are identified along with cost.
(c) The alternative which gives maximum benefit for lowest cost is selected and allotted the budget.

**Advantages:**
1. Emphasis on long term benefits and costs and therefore, such programs which can't be included in 1 year are included in PPB.
2. Improves policy options because of elaborate cost benefit analysis.

3. Promotes efficiency and economy in organisation.

**Disadvantages:**
1. Complicated, time consuming, expensive and lot of paperwork.
2. Requires skilled manpower which is usually not available in developing countries.
3. Fails to work in situations of emergency.
4. Requires coordination between the policy making (NITI Aayog / secretariat) and budget making agency (Ministry of Finance).
5. Since, goals and policies are decided at highest level, PPBS leads to centralisation.
6. Because all alternative strategies are analysed, it exposes programs and activities of departments toattack.

**Zero-based Budgeting**
- Developed by **Peter Phyrr.**
- Adopted by **President Jimmy Carter in the US.**
- Here, the **budget making process starts from zero as a base instead of treating current year's budget as a base**. Therefore, it avoids incremental approach and unproductive activities, thereby, resulting in savings.
- **ZBB is an approach and not a fixed procedure which follows following steps:**
    (a) Are current activities efficient and effective?
    (b) Should current activities be eliminated or reduced to allocate funds to high priority new proGrams?

**Therefore, a decision is to be made in a decision package. Steps involved:**
1. Rank all the activities competing for same resource
2. Decide whether to approve or disapprove
3. Evaluate and rank all activities in a decision package

**Advantages:**
1. **More democratic in nature** because it involves managers down the line in identification of objectives of program.
2. Provides useful information to high level executives about activities going on in decision making units.
3. Since it involves justification of expenditure, it is helpful in evaluating effectiveness of administration.
4. It **eliminates and minimises low priority programs.**
5. Makes high impact programs to obtain more finances.
6. Reduces tax burden.

**Traditional budgeting vs zero-based budgeting:**
(a) **TB is accounting oriented, that is, main focus on previous expenditure. ZBB makes a decision oriented approach.**
(b) TB make managers deliberately inflate their budget demands so that after the cut, they still get what they actually want. Whereas, in ZBB, a rational analysis of budget is required.
(c) **TB is top-down, whereas, ZBB is bottom-up** because in ZBB, responsibility to justify expenditure is shiftedfrom top management to the manager of decision unit.

**Disadvantages:**
(a) Complicated because it requires lot of analysis which increases paper work and cost.
(b) Suited for activities where cost benefit relationship can be established.
(c) Many activities of government aren't quantifiable and therefore, cost of one unit is not available.
(d) **ZBB is often not applied on revenue side.**
(e) According to Guy Peters, organisations don't like to allow outsiders to know on how little they can survive and also, it throws open organisations to criticism.
(f) Requires specialists but administrators in India are generalists.
(g) Political populism forces the government to continue even with inefficient programs and activities.

### Target based budgeting (top-down budgeting)

It was initiated by **Ronald Reagan under the philosophy of NPM and neo-liberalism. This budgeting combines line item budget, performance budget, ZBB and sunset legislation** (legislation having an expiry date). Here, budgeting targets are set at national level by top executives and that's why the name top-down budgeting. Traditionally, budgeting is done from bottom-up. Here, managers are given autonomy based on philosophy of NPM the way they want. In UK, this practice was called neo-localism. However, this budgeting is criticised for centralisation. 2nd ARC recommended this for implementation in India.

### Outcome budgeting

Popularised by **Osborne and Gaebler (NPM guys).** Here, budget emphasises on qualitative measurable parameters rather than quantitative (output) parameters**. In India, it was introduced in 2005-06 by a joint venture of Ministry of Finance and Planning Commission in 44 ministries and departments**. PC prepared quantifiable and measurable parameters to evaluate performance / outcome of 44 ministries and departments. In 2007-08, performance budgeting was clubbed with outcome budgeting. In 2017-18, government brought outcome budget for 68 ministries and departments. **Recently, Delhi government has started the practice of outcome budgeting. It even put outcome budget for public view before it was passed.**

### Multi-year budgeting

Followed in some OECD countries.

**Features:**
(a) **Budgeting is for long term – 3, 5 or 7 years whereas traditional budgeting is annual**.
(b) It forces government to **focus on long term policies**.
(c) Bring stability in budgeting.
(d) Prevent populist budget in election year.
(e) Gives clear message to the market about government's fiscal policy.

**Challenges:**
(a) Needs expertise.
(b) Complex exercise.
(c) Reliable data.
(d) Future uncertainties like global recession, pandemic etc.

### Gender budgeting

A contemporary development which reflects gender perspective in public administration. Since independence, budgeting and development schemes were in favour of men. This didn't not lead to women empowerment. 1970s onwards, World Bank, UN, UNDP etc. encouraged for gender budgeting. UNDP remarked "if budget isn'tengendered, it is endangered."

**Gender budgeting is merely allocation of fund for women as a percentage of total budget**. Gender responsive budget is not only budgetary allocation, but also analysing how allocation for women has minimised gender gap. **Since 1997, UN started gender responsive budgeting**.

### Gender budgeting in India

India has serious issue of gender inequality. Indian women suffer threats and challenges from womb to tomb. **Gender budgeting in India was introduced in 2005 by ministry of child and family welfare which is the nodal ministry. 57 gender budgeting cells have been setup in various ministries and departments**. In some schemes, there is 100% allocation for women like **Beti Bachao Beti Padhao**, while in others, there is 30% allocation. On an average, only 5% of budgetary allocation is for the women component. Many times, the budget allotted isn't even used. **For example, Nirbhaya fund.**

### Green Budgeting

After the era of LPG, GDP growth rate has increased but not without causing damage to environment in

form of depletion of non-renewable resources, deforestation, soil degradation, global warming, pollution etc. Impact of GDP growth on environment should be considered while preparing budget. For example, by using chemical fertilisers, agricultural growth rate may increase but causing damage to soil and environment. Thus, green budgeting takes into account the damage caused to environment.

## Budgeting in India

**1950s:**
- estimates committee suggested use of performance budgeting.
- FM started applying performance budgeting.

**1970s:**

- **After US, India adopted ZBB.**

**1987:**

- About 1/3rd of government's budget based on ZBB.

**2006:**
- Outcome budget introduced by UPA-1.
- Gender budgeting adopted in India in 2005 by Ministry of Child and family welfare.

## Accounts and Audit

### Accounting:
- Required for keeping track of financial health or organisation.
- To check corruption and fix accountability.
- It is an executive function and essential part of budgetary process.
- Accounting acts as a budgetary control. It means a systematic record of financial transactions.

- **It performs following functions:**
(a) Determines the integrity of officer.
(b) Ascertains whether money is spent according to budget passed by legislature.
(c) Means to exercise financial control.

### Forms of accounts
The form of government account differs from that of business account because objectives of the 2 are different. **Business accounts are maintained to prepare balance sheet showing profit and loss, assets and liabilities, whereas government accounts furnish data to show whether budgetary provisions as voted by parliament have been observed or not.**

### Types of accounting

**Cash based accounting** records transactions when they are actually done, that is, cash is actually received or disbursed. In **Accrual based accounting**, transactions are recorded at the time when commitment is made. India follows cash based accounting.

### Problems with cash based accounting:
(a) Doesn't provide accurate and correct status of financial health.
(b) Lot of scope of manipulation of accounts.
(c) Government may launch projects or defence deals but may not show entire expenditure because it hasn't been actually made.
(d) Results in mad rush of march resulting in unproductive expenditure.
(e) Limited utility for long term projects.

**Accrual based accounting is followed in European countries; Japan etc. 2nd ARC suggested the same for India. It also allows multi-year budgeting** and can overcome mad rush of march. Punchhi commission also suggested accrual based accounting with multi-year budgeting.

In spite of advantages of accrual accounting, it is not adopted because it is difficult and complicated. Also, tax rates in India are also uncertain. Historically, CAG in India was responsible for accounting and

auditing at both union and state levels which was criticised by many commissions and committees including Simon commission. In 1931, some efforts were taken to separate the 2 in UP and NWFP. After independence, first CAG (Narhari Rao) recommended separation. In 1976, the accounting of union government was separated from CAG.

## Controller General of Accounts (CGA)
- Principal advisor to GOI on accounting matters.
- Responsible for maintaining sound and efficient financial accounting and reporting.
- Apex accounting authority of government of India.

## Exercises powers of President under article 150. CGA is responsible for:
(a) Preparation and consolidation of monthly accounts of GOI.
(b) Preparation and presentation of annual appropriation account and finance account of union government to Parliament.
(c) Ensuring sound and effective internal audit.
(d) Monitoring expenditure by prompt and accurate accounting.
(e) Ensuring effective and close monitoring of government disbursement and banking arrangements.
(f) Responsible for disbursement and accounting of pension payments to retired government employees.
(g) Managing the cadre of ICAS (Indian civil accounts service for CAG).

## Audit

It means making a cross-check on the entries made on the accounts and the actual reality. It means examination of accounts with a view to determine their correctness. It is a means of enforcing accountability and is a part of exercising control over administration.

Accounting is an executive function whereas audit is a quasi-judicial function. **In audit, accounts are checked from viewpoint of:**
(a) Legal availability of money spent.
(b) Whether money spent on the activity / purpose was allowed by legislature.
(c) Whether money was disbursed to the right authority.
(d) Whether rules and regulations of financial administration were observed or not.
(e) Whether economy and wisdom was observed while spending the money.

## Types of audit

### 1. Pre-audit:
- evaluating expenditure even before it takes place.
- Considered most effective.
- Compulsory for large scale projects.

### 2. Concurrent audit:
- Audit is done as and when money is spent.
- Can find out on-going corruption and prevent loss of money.

### 3. Post-audit:
- Auditing after money is spent.
- Aka post-mortem audit.
- Considered least effective.
- The only advantage is to ensure that corruption is not repeated in future.

## Audit in India

Audit of central and state government accounts is done by CAG. **Audit is subject in union list of 7th schedule. Audit in India is mostly limited to expenditure side**. Indian audit is primarily a legality audit and doesn't usually go into the questions of merit of expenditure. However, it can investigate or comment on in-propriety, wastefulness or extravagance of expenditure. **CAG in India audits accounts of both center and states and maintains accounts of states.** Indian CAG doesn't

perform the work of comptroller which otherwise is performed by British CAG. **A unitary CAG is in line with India's quasi federal system. Indian CAG enjoys a constitutional position, that is, he is not considered the arm of legislature** whereas, in UK and USA, the audit authority acts as agent of legislature.

**Article 148 provides for office of CAG**. Term of office is 6 years or 65 years of age, whichever is earlier. He/she may resign to President. Removed on same grounds and procedure like that of supreme court judge.

**Article 149 empowers parliament to prescribe duties and powers of CAG**. Therefore, parliament enacted CAG (Duties, powers and conditions of service) act, 1971 which was amended in 1976 to separate audit from accounts.

**Article 150** assigns responsibility to CAG of giving advice to President for the form of accounts.

**Article 151:** audit report of CAG for union government submitted to President and for state governments to Governor.

**Role of CAG**

**CAG's role is to act as a watchdog of public funds and therefore, he acts as conscience keeper of the natio**n. His role is to enforce accountability of executive to legislature. He has to play the role of independent and informed critique of administrative practices.

**Problems with CAG**

In 1960s, CAG was performing only regulatory and financial audits. Thereafter, CAG started focusing on efficiency cum performance audit. Especially after 1990s, increase in number of scams in India, the CAG started performing investigative role which was evident when irregularities were identified in telecom department in 1990s. In fact, the very first incident of mismanagement of funds in India was highlighted by CAG way back in 1962 by indicting the then finance minister VK Menon for contractual lapse in purchase of army jeeps. Later, CAG's report highlighted the alarming scenario of public debt. Even former Prime Minister Rajiv Gandhi used the critical reports of CAG and PAC to remove his rail minister Ghani Khan Choudhary. These evidences show that CAG is performing its role in satisfactory manner but at the same time, there are some problems in working of CAG. There have been allegations that CAG isn't politically neutral. For example, a former CAG indicted Rajiv Gandhi for lapse in purchase of Bofors artillery guns and thereby, exposing the government and later, CAG contested elections on opposition party's ticket. After losing elections, he was appointed Governor of HP and Karnataka. CAG has started overstepping its limits by entering into role of legislature, executive and judiciary in the form of **audit adventurism**. Also, CAG is over-emphasising on value for money audit, that is, efficiency cum performance audit and neglecting traditional regulatory audit. Thus, often cases of violation of financial rules, overpayment and fraud go undetected.

When we compare Indian CAG and other supreme audit authorities of other countries, it is noted that audit organisation recruits technical personnel and professionals in the field of engineering, medicine, law, environment to make efficiency audit more rational. Whereas, in India, an auditor who doesn't have any background pertaining to a professional job is involved in efficiency audit.

Further, the outlook of auditor in India has to change from fault finding approach to improving the system and procedure. Further, there are some inbuilt constraints on part of audit mechanism. For example, governments sometimes deliberately delay submission of information and accounts. Even unclear budget with so many hidden components make the audit process difficult. Therefore, budget should be clear.

It is also observed that executive doesn't punish the officials indicted by CAG, that is, no serious action on report of CAG. Paul H. Appleby was an administrative expert from US invited to India. **He heavily criticised CAG as follows:**
(a) Indian audit is a colonial legacy and is restricted only for criticising the government and lacks the outlook of offering suggestions.
(b) Indian parliament gives undue importance to the report of CAG. As a result, officials are scared to take initiatives.

(c) The functioning of CAG in India is not according to needs of development or welfare administration. Therole of CAG should be to provide suggestions and not just fault finding.

Appleby recommended to abolish CAG but this was a very radical recommendation. What is needed is to change its outlook.

# Unit-14: Significant Issues in Indian Administration

## NATIONAL HUMAN RIGHTS COMMISSION

Human rights are those which are available to every person by the virtue of the fact that the person is born as human. Every individual is born free and equal and therefore, must enjoy some basic rights equally. To enjoy human rights, nationality isn't needed, that is, the person need not necessarily be a member of a sovereign state. **Human rights are universal in nature. India is a signatory to UNDHR — United Nations Declaration on Human Rights, 1948.**

**Difference between human rights and fundamental rights:**

| Human Rights | Fundamental Rights |
|---|---|
| Difficult to be exhaustively defined | Well defined, exhaustive in constitution of the country |
| Available to any person whether citizen or alien | Available only to citizens |
| Not all of them are enforced by courts | Enforceable by courts |

Thus, both human rights and fundamental rights have different features, although they overlap. **HRs is a broader concept.** Protection of HRs is essential to give people dignity, equality and a sense of worthwhileness (life is worth living).

1980s onwards, there was greater awareness about human rights and many countries adopted human rights commission. **In India, National Human Rights Commission was setup by protection of human rights act, 1993. It has:**
(a) A chairperson (SC judge or ex-CJI)
(b) Supreme court judge (serving or retired)
(c) CJ of High Court
(d) 3 persons of whom at least one woman, having knowledge of HRs.
(e) Apart from this, 5 members and chairperson, it has 7 ex-officio members.

Members are appointed by President on recommendation of PM, Home Minister, Speaker of LS, Chairman of RS and leader of opposition in both houses.

**NHRC is an independent body because:**
1. Statutory body.
2. Judicial members.
3. Security of tenure – can be removed only on grounds mentioned in the law.

## POWERS AND FUNCTIONS OF NHRC

**Main function is to protect human rights of people for which, it has following powers:**
(a) To take action on a complaint or Suo motu for violation of human rights.
(b) To intervene in matters of human right violations.
(c) To visit any place where human rights violation may take place. For example, prisons, persons in policecustody.
(d) To analyse law and provisions of constitution so that they are made favourable for protection of human rights.
(e) Give recommendations to government for action against officials, guilty of violating human rights.
(f) To promote awareness and research in human rights.

(g) To present annual report to government on human rights which should be tabled in parliament.

**In last few years of its existence, NHRC has been successful in following ways:**
- Acting as a watchdog of human rights and creating awareness about human rights.
- Highlighted cases of human rights violation in areas affected by naxalism or where AFSPA is in force.
- Intervened in sectors such as bonded labourers, women and children issues, conditions of widows especially in Vrindavan, conditions in mental hospitals, jails and atrocities against members of SC, ST community.
- Requested judiciary to transfer cases of Gujarat riots from Gujarat to Maharashtra.
- Human rights violation by security forces whether during Khalistan movement or in J&K.

Thus, NHRC has been able to make public officials conscious about human rights and that there is a commission which can hold administration accountable for violation of human rights.

**Weaknesses and criticisms of NHRC:**
- Recommendations aren't binding and therefore, they aren't taken seriously and recommendations aren't implemented. In fact, public officials have learnt as to how to reply to notices of human rights commission.
- **Although NHRC is a quasi-judicial body and has powers of civil court**, it doesn't have the power to enforce its orders.
- With time, more cases of human rights violation are reported but NHRC has inadequate capacity to deal with increasing number of cases. For example, lack of staff, information, trained personnel etc.
- Not able to submit reports annually, rather they are submitted in 2-3 years.
- Delay in appointing members of chairperson.
- Resources available with NHRC aren't adequate.
- There is a bureaucratic resistance in the working of NHRC.

**Coalition politics:** Coalition means a group of parties coming together to form a government. This coalition can be pre-poll or post-poll. In general, post-poll alliances are considered less stable, opportunistic and less ethical.

In India, at state level, coalition politics started in 1967 when in 8 states non-congress coalition governments were formed.

**Causes of emergence of coalition politics:**
- Initially, congress party could give representation to all sections of population and accommodate even the regional aspirations. With time, there was emergence of regional parties due to diversity of India's population.
- Centralised approach of administration by union government which failed to fulfil regional aspirations.
- Lack of intra-party democracy and dissatisfaction due to rising corruption.
- Era of defections and emergence of regional parties like DMK, AIADMK etc.

**Merits of coalition politics:**
- It makes a parliamentary form of government as truly parliamentary in form as against Prime Ministerial form of government.
- It **promotes greater democratisation.**
- Gives voice to diverse section of population.
- Gives representation to regional parties.
- Promotes cooperative federalism because CMs of strong regional parties may reject authoritarian attitude of union government.

**Demerits of coalition politics:**
- Position of PM becomes weak.
- PM may not be first among equal rather lesser than equals.
- Strong decisions may not be taken.
- Administrative reforms are slowed down.
- Makes government unstable and thus, may lead to policy paralysis.

- Also, because of coalition politics, regional issues may dominate national priorities.
- The ministers are loyal to their parties first and not the PM.

In 2014, there is re-emergence of single party rule after almost 25 years. This allows government to bring big bang reforms. Government acts as policy catalyst rather than policy paralysis. With time, it is expected that India's coalition politics will become more mature and stable. It will transition from narrow political gains and self-interest to national interest.

## CORRUPTION

It can be defined as deviation from rules or using public office for private gains. It comes from a Greek word called *Corruptus* which means 'to bend'. According to 2nd ARC,

> **Corruption = monopoly + discretion + secrecy – accountability**

That is, 'monopoly of state' plus 'huge discretionary powers in the hands of executive' plus 'complete secrecy in decision making' and lack of 'accountability mechanisms'.

Elimination of corruption isn't only a moral necessity but also a functional necessity for a country aspiring to be a global power.

### Impact of corruption:
- Impact is felt more severely by disadvantaged sections of population. They already lacked purchasing power and are forced to compromise further.
- It affect image of government and acts a disincentive for potential investors.
- Leads to time and cost overruns in developmental projects.
- **Erodes the faith in system and generates cynicism.**
- Corrupt states ultimately become soft states. Soft state is a state where policies formulated aren't implemented.
- In India and other developing countries, corruption not only has wheels but also, wings (Swiss money).
- Corruption spoils the entire environment preventing/discouraging honest people. Corruption leads to selective implementation of policies.
- Some economists believe that corruption is a rental activity- *'Bureaucrats need to be incentivised, otherwise there is red-tapism'*. This argument is wrong legally as well as morally. Legally, because it violates conduct rules and prevention of corruption act, 1988. Morally wrong because bureaucrats are paid for their functions and they must act according to the rules.

### Causes of corruption
(a) **Psychological factors:** deviation as a norm.
(b) **Fact of opportunity**, that is, one can indulge in corruption and can also get away with it.
(c) Corruption is perceived as low-risk high profit phenomena.
(d) Not simplified processes.
(e) Authoritarian mentality which might lead to patronage and ultimately corruption.
(f) Citizens as a cause. Society's attitude towards corruption is changing. In 1950s, if you see a corrupt person, hang him to the nearest lamp post. It showed intolerance towards corruption. In 1960s and 70s, corruption became a global phenomenon. It showed acceptance. Presently, it is TINA (there is no alternative). It shows permissiveness.
(g) Corruption in public administration can also be examined in 2 time periods:

### 1947-1991 –
(i) Corruption because of monopoly of public sector and bureaucracy led development.
(ii) There was license quota permit Raj.
(iii) Huge bribes were given to political parties and bureaucracy.
(iv) There were high levels of secrecy.
(v) High level of corruption in PSU.
(vi) Loss making PSU despite autonomy.
(vii) Welfare approach led to many schemes and discretion was given to public officials which again led to corruption.

- **Post** 1991 – LPG opted after state-led development failed. LQP Raj and monopoly dismantled but still corruption continued because:
  (i) Increased demand for natural resources while their supply is limited. State retained monopoly in some sectors. Country has seen many scams in defence sector, natural resources like coal block allocation, spectrum allocation etc. Capitalists bribed political parties and bureaucrats to control these natural resources leading to crony capitalism.
  (ii) LPG has changed values system. Meaning of good life has become luxury and comfort. Given rise to conspicuous consumption. Blindly copying western culture. Masses, salaried class can't afford this type of consumption or luxury items leading to corruption.
  (iii) Corruption is no longer a taboo. It has become a norm.

### Types of corruption
1. **Coercive corruption,** where victim is forced to give bribe, otherwise he will face delays or harassment.
2. **Collusive or transactive corruption**: both giver and taker are engaged in a transaction. Bribe giver is as guilty as bribe taker. Examples: cases of distortion of competition, executive sub-standard works, tax evasion, direct harm to people by spurious drugs or safety norms.

### Solutions
1. Multidimensional reforms need to be implemented.
2. **Political reforms** like disqualifying the defectors for a longer term.
3. **Electoral reforms** like transparency in political party funding, political parties to be brought under RTI.
4. **Judicial reforms**: simplifying court processes, removing obsolete laws, All India Judicial Services.
5. **Police reforms**: netter working conditions and pay proportionate to working hours, collar cameras,reducing number of levels in police hierarchy, setting up police complaints authority.
6. **Civil services reforms**: performance based incentive system, reducing discretionary powers, 360 degrees performance appraisal.
7. Separate offence of collusive bribery in prevention of corruption act.
8. Double the punishment in cases of collusive corruption.
9. Burden of proof should be shifted to accused person.
10. Prior sanction not to be needed in cases of officials caught red-handed.
11. Definition of corruption to be widened even when no monetary gain is received, Obstruction in delivery of justice, squandering public money.

### DISASTER MANAGEMENT

### Vulnerability of India:
- About 60% of India's landmass is earthquake prone.
- 40 million hectares is flood prone.
- 8% of area is cyclone prone.
- 68% of area is drought prone.

### Disaster cycle
1. **Mitigation and prevention:** manmade disasters can be prevented.
2. **Preparedness:** can be of 3 types:
   (a) Human preparedness: awareness, skills
   (b) Resources: medicines, food stock, relief
   (c) Technology: to predict disasters, early warning systems, IMD forecasts etc.
3. **Response:** initial few hours are very crucial to save life and property.
4. **Recovery and rehabilitation:** both short term and long term. Short term includes temporary shelters, food provisions etc. Long term includes removing people from flood prone areas and settling them in safer places.

**Why disaster management is a failure in India?**

**It is said that rather than disaster management, there is disaster of management or management of disaster.**
1. Government bureaucracy is slow to respond, has lack of knowledge, experience and attitude.
2. High level of corruption. Poor people are the worst sufferers.
3. Disaster management not an electoral issue and therefore, not a priority for political parties.
4. Citizens don't demand disaster management from state because they believe that disaster is the price fortheir sins.
5. Identification of beneficiaries isn't done in objective manner.
6. Lack of coordination between central government, state government and local bodies.
7. Central government considers disaster management primarily a job of states.
8. **Centralised top down planning focuses more on economic growth and not disaster management.** Only 10th FYP onwards, disaster management was considered (Gujarat earthquake 2001 and tsunami 2004).
9. Lack of long term sustainable strategy to integrate development and disaster management.
10. India being a developing country, government's priority is basic needs of present generation and therefore, for development, environmental rules and regulations are violated, there is deforestation, illegal sand mining, illegal constructions etc.

**Solutions / recommendations:**
1. Increasing awareness in citizens and increasing their active participation in prevention.
2. Systematic preparedness, use of early warning systems and sustainable recovery.
3. **Disaster management should become pro-active rather than reactive.** According to WB, 1 dollar spent on mitigation and prevention is equal to 12 dollars spent on response and recovery.
4. According to 2nd ARC, there is a need to move from fatalism to prevention, from response to preparation.
5. **Centralised and top-down approach should change to decentralised and bottom-up approach.**
6. Technology to be used to predict disasters and information dissemination.
7. Disaster management to be included in school education so that children are aware of basics of disaster management.
8. Strict implementation of environmental laws, construction laws, prevention of deforestation, sustainableagriculture.
9. States to constitute and train the SDRF teams. In 2005, there has been a paradigm shift in disaster management policy where the focus is on efficient management of disaster rather than only response. National disaster management act was passed in 2005 to adopt a holistic and integrated approach to disaster management. There is a paradigm shift from erstwhile relief centric approach to pro-active prevention, mitigation and preparedness so that development gains are conserved while minimising

loss of life and property

### Regulatory authorities

In times of globalisation, the state is playing the role of a regulator. Therefore today not the size of government but the quality of governance is more important. The failure of market during great depression showed that market is vulnerable to failure but in 1980s, it became clear that even Governments can fail. Thus in 1980s philosophy of neo-liberalism was adopted due to failure of welfare state. As per this philosophy, private sector was given significant role in development of country. However unregulated market is vulnerable to failure because market aims only for profit maximisation. Also market may not have concern for people's health, safety and environment. Therefore markets cannot be left unregulated. Also practices like **cartelisation or oligopolies have to be prevented**. However, if state directly intervenes in market, it can be considered violation of principle of free market and capitalism. The solution is in creating independent regulatory authorities. Such authorities are independent of Government. Government only plays the role of appointing their members. They were set up on principle of collegium and they were set up by law. Therefore in terms of their origin, they were statutory. The statute will define their functions, powers and provisions for autonomy.

Globalisation also had a major impact on constitutional values around the world. There is emergence of global constitutionalism which has made people aware and vocal about their democratic rights. To protect these rights, state created regulatory authorities. For ex – **In India, SEBI, RBI, CCI, PFRAI etc (Financial in nature), Non financial like NHRC, NSRC etc.**

In USA a number of regulatory authorities were set up for different sectors like pension funds, commercial banks, transport etc; In 1980s, America had about 12 independent regulatory authorities. Whereas in 2008, at the time of global financial crisis US had more than 1000 independent regulatory agencies but all failed to prevent economic crisis. **Reasons for failure are –**
1. lack of coordination
2. Nexus among these authorities

This led to a question mark on effectiveness of regulatory authorities. One solution proposed was to set up a super regulator to ensure coordination among regulatory authorities and regulate their activities. In India, SEBI was the first regulatory authority. However in India, performance of these authorities have been far from satisfactory. Ex- **Harshad Mehta scam, Satyam scam, Sahara scam.**

### Issues faced by regulatory commissions:
1. There is political populism which often doesn't allow these regulatory bodies to work independently. There is constant interference by state. On one hand, these regulatory authorities have to achieve their objectives and on the other hand, fulfil the populist expectations of state. For example, RBI doesn't have complete autonomy from state to regulate monetary sector.
2. A spoils system prevails in appointment of their members. Non-experts in regulatory bodies lead to inefficiency.
3. The review mechanism to review their performance isn't very robust.
4. Recommendations given by regulatory commissions are rarely implemented.
5. Overlapping powers and jurisdiction. For example, controversy between SEBI and IRDAI over ULIP (Unit Linked Insurance Policy).

### Solutions/Recommendations

1. Appointment of members should be done on the basis of merit and in a transparent manner. Absence of credibility among stake holders is a major reason for lack of effectiveness. Various tribunals, commissions and authorities should not become part of spoils system. For commissions such as NHRC, NCW etc; members should be chosen from NGOs, civil society who have experience in similar field.
2. Powers and functions of these authorities should be clearly defined. They may be given power to initiate contempt action.
3. In case of authorities having quasi-judicial and investigative functions, they should be given seperate

investigation mechanism

4. Too many authorities working in related fields. This leads to duplication of work and wastage of resources. There should be a single authority/commission with different divisions internally.
5. Recommendations should be made binding in nature so that they enjoy credibility among stakeholders.
6. Regular performance appraisal by legislature. The regulatory authorities should be accountable for their performance.
7. The decisions of some of the regulatory authorities should be final so that the matter does not get involved in long judicial processes.
8. Members should be experts in the field.
9. Regular performance appraisal of regulatory commissions

### Public Private Partnerships

It has become a contemporary model of collaborative development to speed up development of society as neither public sector nor private sector along can shoulder the responsibility of development. In times of LPG, PPP have got support from many agencies like UN, World Bank. **In India, NITI Aayog is also promoting PPP.** According to Montech Singh, former deputy chairman, Planning commission, PPP is a public project with private style of development rather than private project with public style of development. Thus **PPP aims at enhancing efficiency and performance of public sector and the quality of services in general**. In India PPP projects have been successful in infrastructure sector especially road sector.

### Problems of PPP in India

1. There is still a lack of PPP policy framework
2. Bureaucracy has not transformed much. Business sector is known for its speed and efficiency but in a PPP project, private player has to deal with traditional bureaucracy. Hence there is an asymmetrical relationship.
3. Project approval time is very high
4. **Risk factor** – There is always a risk involved in any project. For ex – due to any natural or man made disaster. The private partner in the project has a tendency to get profits but not bear the risk. Lack of continuity in PPP policy which is subject to change with change of Government.
5. lack of dispute resolution mechanism to address the disputes which arise during a PPP project implementation.
6. Bureaucracy does not have the flexibility to review and rewrite the projects if project is not running as expected
7. Private partner of a PPP project have the mentality of profit rather than public service. Private partner force the Government to review the project and even threaten to withdraw. If project is delayed, its cost goes up.

### Accountability vs Efficiency dilemma in PPP

Government is ultimately accountable to people through parliament. Parliament via CAG holds Government financially accountable. **There are other mechanisms also like RTI.** If a project is largely a public project, it will come under audit of CAG. This upholds accountability but may compromise speed and efficiency, may lead to project delay, checks and balances and bureaucratic hurdles. **PPP is promoted because of efficiency of private sector and hence there should be flexibility and a facilitating environment (ease of doing business).** Accountability mechanism should be relaxed. However without accountability, even PPP projects may not ensure quality.

**In India, NITI Aayog is promoting PPPs by many reforms. Even Government has taken steps such as GST, perform or perish culture in bureaucracy, use of ICT etc;** World Bank highlighted problems of PPP such that the cost of PPP projects is 40% higher than the cost if only Government had implemented the project. **On accountability, following is recommended**

1. PPP should become PPPP, fourth P is People
2. PPP projects should come under under audit of CAG
3. A seperate PPP regulator

**Values in public service:** Public administration is expected to be a guardian of values and ethics in largersociety. It can at least create an environment in which values can develop in society.

The crux of administrative morality is ethical decision making. Thus, the science of administration should getintegrated with values of administration.
**The following are the values expected in public administration**

**(a) Legality and rationality:** an administrator will follow the law and rules. He/she should be rational in decision making.

**(b) Responsibility and accountability:** an administrator would not hesitate to accept responsibility for his decisions and actions. He would be willing to be held accountable to higher authorities as well as ordinary citizens. LBS offered resignation as railway minister accepting responsibility for a train accident first in Andhra and then TN. In 1962, Gen. Thapar resigned as Indian army chief accepting responsibility for defeat in war with China.

**(c) Work commitment:** an administrator would be committed to his duties and perform his work with involvement, intelligence and dexterity. It includes respect for time, punctuality and fulfilment of promises. Work isn't considered a burden but an opportunity to serve the society.

**(d) Excellence:** an administrator would ensure highest standards of his work and not compromise with standards because of convenience or complacency. In times of NPM, there is a need for good governance rather than more governance.

**(e) Fusion:** an administrator would rationally bring about a fusion of individual and organisational goals. In situation of conflict, ethics should govern decision making.

**(f) Responsiveness and resilience:** an administrator would respond effectively to demands from people and environment. In situations of deviation from ethical norms, he would show resilience and bounceback on ethical path at first available opportunity.

**(g) Utilitarianism:** while making and implementing policies and decisions; an administrator will lead to greatest good of greatest number.

**(h) Compassion:** an administrator, without violating the laws and rules, would show compassion for poor, weak, disabled. At least, he wouldn't grant any benefit or favour to stronger sections of society.

**(i) National interest:** an administrator while performing national duties would have at the back of his mind a concern and respect for his nation. This would automatically raise the level of service.

**(j) Justice:** an administrator would ensure equality, equity, fairness, impartiality and objectivity in his behaviour and decisions.

**(k) Transparency:** an administrator will work in a transparent manner so that those affected by his work understand the reasons behind his decisions and actions.

**(l) Integrity:** an administrator would hold himself to same standards as he expects from others. Also, there would be synergy in his thoughts, words and actions.

**Conclusion:** This list of values in public service can't be universal. Such values should be made by involving administrators. There should be a balance between ought and possible. What is ideal may not be achievable in practical administration