

Constitutional & Non-Constitutional Bodies

INTRODUCTION

India is a democratic country that is run by the combination of Constitutional and Non-Constitutional Bodies in India. A Constitutional body is a body which is established by the Constitution of India. Such Constitutional bodies can only be created or changed after a Constitutional Amendment bill is passed and not by a regular government bill or a private bill.

The powers and authorities for the Constitutional bodies are derived from the Indian Constitution. These bodies are considered more prestigious, powerful and supreme than any other organisations or institutions present in India. Thus, if any change is to be made in the powers of functions related to such bodies a Constitutional amendment is required.

In India, the Constitutional bodies hold permanent or semi-permanent position within the machinery of the government. These bodies are responsible to carry out executive functions for the proper administration of the Government. The Indian Constitution empowers the President of India to make such Constitutional appointments. Constitutional bodies in India are established in order to assist the government to operate efficiently and effectively.

- Eg. Election Commission, Union Public Service Commission, State Public Service Commission, Finance Commission.

ELECTION COMMISSION

The Election commission of India is a permanent, autonomous, quasi-judicial and constitutional body created under Article 324 in part XV of the constitution. It is the supreme body vested with powers of supervision, control and direction over all aspects of electoral governance in the country.

Background

Since its establishment in 1950 and till 15th October 1989, the Election Commission had functioned as a

single member body consisting of the Chief Election Commissioner.

But on 16th October 1989, the President of India appointed two more election commissioners to cope up with the increased work of the election commission, this was done due to the fact that the voting age had been reduced to 18 years from 21 years.

And in October 1993, the President of India appointed two more election commissioner and since then, to this day, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

Constitutional Provisions:

Part XV (Article 324-329) of the Indian Constitution deals with elections and establishes a commission for these matters.

- **Article 324:** Superintendence, direction and control of elections to be vested in an Election Commission.
- **Article 325:** No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
- **Article 326:** Elections to the House of the People and to the Legislative Assemblies of States to be based on adult suffrage.
- **Article 327:** Power of Parliament to make provision with respect to elections to Legislatures.
- **Article 328:** Power of Legislature of a State to make provision with respect to elections to such Legislature.
- **Article 329:** Bar to interference by courts in electoral matters.

What is the Election commission?

- The Election Commission is an independent and permanent body which is established by the Constitution of India to ensure free and fair elections in the entire nation.
- Article 324 of the Constitution of India provides for the power of superintendence, direction, and

control of the elections for the Parliament, State Legislatures, the office of the President of India and the office of the Vice-President of India, is vested in the Election Commission's jurisdiction. Hence, the election commission is a body which is common to both the Central Government as well as the State Governments.

- The Election Commission is not at all concerned with the elections of Panchayats and Municipalities in the states, for these elections, there is a separate body which is called as the State Election Commission

Mission and the Vision of the Election Commission

The Mission of the Election Commission: The Election Commission of India has to maintain its independence, integrity, and autonomy and it must also ensure ease of accessibility, inclusiveness, and ethical participation. It must also adopt the highest standards of professionalism for free, fair, and transparent elections in India to strengthen the trust which the people have in the electoral democracy and governance.

The Vision of the Election Commission: The Election Commission of India has to be an Institution of excellence by intensifying active involvement through participation and deepening as well as strengthening the situation of Democracy in India.

Composition of the Election Commission

As per Article 324, the Constitution of India has made many provisions with respect to the composition of the election commission, these are,

- The Election commission will consist of the Chief Election Commissioner and any number of other Election Commissioners, if any, as per the President of India's assent.
- The appointments of the chief election commissioner and any other election commissioner will be done by the President of India himself.
- When another Election Commissioners is appointed then in such cases, the Chief Election Commissioner will have the authority to act as the Chairman of the Election Commission.
- The President of India can also appoint regional commissioners as he deems necessary to assist the Election Commission, this can be done after consulting with the Election Commission.

Tenure:

- They hold the office for a period of 6 years or till

they attain the age of 65 years, whichever happens first and they can also resign at any time or can be removed before the expiry of their tenure.

- The tenure and the conditions of the work to be done by the Election Commissioners and the regional commissioners will be determined by the President of India.
- The Chief Election Commissioner and the two other Election Commissioner have equal powers and they also receive equal salary and allowances, these are similar to those of a Judge of the Supreme Court.

Powers of Election Commission of India

The powers of Election Commission of India are:

- Determining the Electoral Constituencies' territorial areas throughout the country on the basis of the Delimitation Commission Act of Parliament.
- Preparing and periodically revising electoral rolls and registering all eligible voters.
- Notifying the schedules and dates of elections and scrutinising nomination papers.
- Granting recognition to the various political parties and allocating them election symbols.
- Acting as a court to settle disputes concerning the granting of recognition to political parties and allocating election symbols to the parties.
- Appointing officers for inquiring into disputes concerning electoral arrangements.
- Determining the code of conduct to be followed by the political parties and candidates during elections.
- Preparing a program for publicising the policies of all the political parties on various media like TV and radio during elections.
- Advising the President on matters concerning the disqualification of MPs.
- Advising the Governor on matters concerning the disqualification of MLAs.
- Cancelling polls in case of booth capturing, rigging, violence and other irregularities.
- Requesting the Governor or the President for requisitioning the staff required for conducting elections.
- Supervising the machinery of elections throughout the country for ensuring the conduct of free and fair elections.

- Advising the President on whether elections can be held in a state that is under the President's rule, in order to extend the period of emergency after 1 year.
- Registering political parties and granting them the status of national or state parties (depending on their poll performance).

The Commission is aided in its function by Deputy Election Commissioners. The Deputy Election Commissioners are taken from the civil services and they are appointed by the Commission. They have a fixed tenure. They are aided by the Secretaries, Deputy Secretaries, Joint Secretaries and Under-Secretaries posted in the Commission's Secretariat.

Functions of Election Commission of India

The functions of Election Commission are as follows:

- To direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
- To decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections
- To decide on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters
- To prepare electoral roll and issues Electronic Photo Identity Card (EPIC)
- To grant recognition to political parties & allot election symbols to them along with settling disputes related to it
- To set limits of campaign expenditure per candidate to all the political parties, and also monitors the same
- To advise in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
- To issue the Model Code of Conduct in the election for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.

Independence of Election Commission

Article 324 of the Constitution of India has made many provisions which safeguard and ensure that the

Election Commission is independent and impartial in its functioning, these are the following provisions,

- The Chief Election Commissioner has been provided with the stable tenure and he cannot be removed from his office except in the manner and grounds on which a Supreme Court's Judge is removed from his office. He can be removed by the President of India on the basis of a resolution passed for such an outcome by both the Houses of the Parliament with a special majority (2/3rd of the members presents and voting) which is either on the grounds of misbehaviour or incapacity to work.
- The conditions of the Chief Election Commissioner's service cannot change to his disadvantage after his appointment is done.
- Any other Commissioner (Election Commissioner or Regional Commissioner) cannot be removed from his office unless it is done on the recommendations of the Chief Election Commissioner himself.

Flaws in the Election Commission

- The Constitution of India has not specified the qualifications of the members of Election Commission.
- The Constitution of India has not specified the term of the tenure of the members of the Election Commission.
- The Constitution of India has not restricted the retiring Election Commissioners from any further appointments by the Government of India.

Challenges

- The years influence of money and criminal elements in politics has increased along with violence and electoral malpractices resulting in criminalization of politics. The Election Commission of India has been unable to arrest this deterioration.
- There has been rampant abuse of power by the state government who at times make large-scale transfers on the eve of elections and posts pliable officials in key positions, using official vehicles and buildings for electioneering, flouting the ECI's model code of conduct.
- The Election Commission of India is not adequately equipped to regulate the political parties. The Election Commission of India has no power in enforcing inner-party democracy and regulation of party finances.

- In the recent years, an impression is gaining ground that the Election Commission is becoming less and less independent of the Executive which has impacted the image of the institution.
- One of the major institutional drawbacks is non- transparency in election of Chief Election Commissioner and other two commissioners and is based on the choice of presiding Government.
- There have been allegations of EVMs malfunctioning, getting hacked and not registering votes which corrodes general masses trust from the institution.

Union Public Service Commission

Introduction

Articles 315 to 323 in Part XIV of the Constitution deals with provisions relating to the Union Public Service Commission as well as the State Public Service Commission. These Constitutional Provisions include guidelines regarding the appointment, composition, removal, functions, and duties, etc. of the Public Service Commissions

The UPSC is a constitutional body. It is a central agency which is authorized to conduct various examinations in India and the list of exams is given below.

- Civil Services Exam
- Indian Forest Service Exam
- Engineering Services Examination
- Combined Defence Services Examination
- National Defence Academy Examination
- Naval Academy Examination
- Combined Medical Services Examination
- Special Class Railway Apprentice
- Indian Economic Service/Indian Statistical Service Examination
- Combined Geoscientist and Geologist Examination
- Central Armed Police Force (Assistant Commandant) Examination

Composition of Union Public Service Commission

- The UPSC consist of a Chairman and other members.
- The Commission consists of 9 to 11 members including the Chairman (though the number is not

defined anywhere, and it changes from time to time and decided by the President).

- The current sanctioned strength of the Commission is 11 (i.e., one Chairman and ten members).

Appointment and Eligibility of members

- Article 316 of the Indian Constitution provides for provisions regarding the appointment of the Chairman and the members of the UPSC and SPSC
- The Chairman and other members of Union Public Service Commission are appointed by the President.
- Although no specific qualification is mentioned in the Constitution, but it mandates that 50% of the members of UPSC should be the ones who have held government office for at least 10 years.
- The President is empowered by the Constitution of India to determine the conditions of service of the Chairman and other members of the Union Public Service Commission at the time of their appointment.
- The person to be appointed as the members of the Union Public Service Commission should not hold any office of profit under the Central or the State Government.

Appointment of Chairman and Acting Chairman

- In case, the office of the Chairman becomes vacant, the President shall appoint another member of the Commission as the acting Chairman to perform the functions of the Chairman in his/her absence, if any of the following conditions prevail:
 - The office of the Chairman of the Commission becomes vacant;
 - The Chairman of the Commission, due to absence or for any other reason, is unable to perform the duties of his office.
- The Acting Chairman will perform the functions of the Chairman until the Chairman returns to its office.

Tenure of the Members and Chairman

- For the Union Public Service Commission, every member can hold office for six years or till the time he attains the age of 65 years, whichever is earlier
 - A member of any Commission can submit his resignation, at any time, to the President of India.
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- The members of UPSC can be removed at any time by the President on various grounds.

Removal of Members of UPSC (Article 317)

The President has powers to remove any member or Chairman of the Commission on the following grounds: -

- If the member of the Commission has become insolvent or bankrupt.
- If any member of the Commission is engaged in paid employment other than his office.
- If the President feels that the member is unfit to continue his office due to the reason of infirmity of mind or body.
- The President may also remove any member of the Commission, including the Chairman, on the grounds of misbehaviour.

Note: But in case of misbehaviour the President has to consult the matter with the Supreme Court for its advice and opinion. Any advice rendered by the Supreme Court shall be binding on the President, and the President is bound to consider the advice.

- The Chairman of the Commission enjoys special privileges that he can be removed only by the President in the manner prescribed in the Constitution and not otherwise.

Independence of UPSC

- The members of the Union Public Service Commission enjoy security of tenure. They cannot be removed from the office on any other ground than specified in the Constitution.
- According to Article 322, the expenses of the Union Public Service Commission and State Public Service Commission, including salaries, allowances, and pensions, payable to any of the members or staff of the Commission, shall be charged on the Consolidated Fund of India and the Consolidated Fund of the State respectively.
- The Chairman of Commission after removal or retirement is not eligible for any other government job. Whereas other members of the Commission are also not eligible to hold any Central or State government office but can become Chairman of the Union Public Service Commission or State Public Service Commission.

Functions of UPSC

Under Article 320 of the Constitution of India, the Commission is, inter-alia, required to be consulted on all matters relating to recruitment to civil services and posts. The functions of the Commission under Article 320 of the Constitution are:

- It conducts examinations for appointments to the services of the union, which includes All India Services, central services and public services of the union territories.
- assists states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required, if requested by any two or more states to do so.
- It is consulted on the following matters:
 - All matters relating to methods of recruitment to civil services and for civil posts.
 - The principles to be followed in making appointments to civil services and posts and in making transfers and promotions from one service to another and on the suitability of the candidates for such appointments, transfers and promotions.
 - All disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters.
 - Any claim of costs incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his official duty.
 - Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
 - Any matter related to personnel management referred to it by the President.
 - It presents annually to the President a report as to the work done by the Commission
- However, the Parliament can confer additional functions to the UPSC relating to the services of the Union. It can also extend the function of the UPSC by placing the personnel system of any local authority or other body corporate constituted by law or of any public institution under it.

- The annual report of the UPSC regarding its performance is submitted to the President. The President then gets this report laid before both the Houses of the Parliament, together with a memorandum explaining the cases where the advice of the Commission was not accepted and the reason for such non acceptance.

Limitations of UPSC

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters:

- While making reservations of appointments or posts in favour of any backward class of citizens.
- While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- With regard to the selections for Chairmanship or membership of Commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.

The President can exclude posts, services and matters from the purview of the UPSC. The Constitution states that the President, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted. But all such regulations made by the President shall be laid before each House of Parliament for at least 14 days. The Parliament can amend or repeal them.

State Public Service Commission

Introduction

The Government of India Act, 1935 provided for the establishment of a state public service Commission at the provincial level. Later, it was given constitutional status by the constitution of India.

Parallel to the Union Public Service Commission in the centre, the State Public Service Commission works at the state level. The same set of Articles (315 to 323 in Part XIV) of the Constitution also deals with the

composition, appointment, and removal of members, power and functions, and independence of a State Public Service Commission.

Composition State Public Service Commission (SPSC)

- A State Public Service Commission (SPSC) comprises of a Chairman and other members appointed by the Governor of the state. One half of the appointed members of the Commission should have held office for at least ten years either under the Government of India or under the Government of a state.
- The Constitution has not specified the strength of the Commission.
- The Governor is empowered to determine the number of members as well as staff of the Commission and their conditions of service.

Appointment of Chairman and Acting Chairman

- The Governor can appoint one of the members of the SPSC as an acting Chairman if:
 - The office of the Chairman of the Commission becomes vacant; or
 - The Chairman of the Commission is unable to perform the duties of his office due to absence or for any other reason.
- Such member functions as an Acting Chairman till a person appointed as Chairman enters on the duties of the office or till the Chairman resumes his duties, as the case may be.

Tenure of the Members and Chairman

- For the State Public Service Commission, every member can hold office for six years or till the time he attains the age of 62 years, whichever is earlier
- A member of any Commission can submit his resignation, at any time, to the Governor.
- The members of SPSC can be removed at any time by the President on various grounds.

Removal of Members of SPSC (Article 317)

The President has powers to remove any member or Chairman of the Commission on the following grounds (though appointed by the Governor): -

- If the member of the Commission has become insolvent or bankrupt.
 - If any member of the Commission is engaged in paid employment other than his office.
 - If the President feels that the member is unfit to
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continue his office due to the reason of infirmity of mind or body.

- The President may also remove any member of the Commission, including the Chairman, on the grounds of misbehaviour.

Independence of SPSC

The Constitution mandates for the following provisions to safeguard and ensure the independent and impartial functioning of the State Public Service Commission:

- The Chairman or a member of the SPSC can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. Thus, they enjoy the security of tenure.
- Article 318 mandates that the conditions of service of the Chairman or the members of SPSC are determined by the Governor. But these conditions of service cannot be varied to their disadvantage after their appointment.
- The entire expenses including the salaries, allowances, and pensions of the Chairman and members of the SPSC are charged on the Consolidated Fund of State and are not subject to the vote of the legislative assembly of the state.
- Article 319 states that the Chairman of SPSC can be made the Chairman of either UPSC or any other SPSC.
- Article 319 also states that a member of SPSC is eligible to be appointed as the Chairman or a member of the UPSC or as the Chairman of the same SPSC or member or Chairman of any other SPSC.
- The Chairman or a member of SPSC is not eligible for reappointment to that office for a second term.

Functions and Power of SPSC (Article 320 and 321)

The duties and functions of the SPSC are follows:

- It conducts examinations for appointments to the services of the state.
- It is consulted on the matters below:
 - All matters relating to methods of recruitment to civil services and for civil posts.
 - The principles to be followed in making appointments to civil services and posts and

in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers.

- All disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters.
- Any claim of costs incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his official duty.
- Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
- Any matter related to personnel management.
- It presents annually to the Governor a report as to the work done by the Commission.
- The State Legislature can confer additional functions to the SPSC relating to the services of the State. It can also extend the function of the SPSC by placing the personnel system of any local authority or other body corporate constituted by law or of any public institution under it.
- The annual report of the SPSC regarding its performance is submitted to the Governor. The Governor then gets this report laid before the state legislature, together with a memorandum explaining the cases where the advice of the Commission was not accepted and the reason for such non acceptance.

Limitation of State Public Service Commission

SPSC isn't consulted in the following matters:

- Appointment for posts taking consideration to claims of backward caste, SC and ST.
 - Governor can exclude posts, services, matters from purview of SPSC. With respect to state services Governor can make regulations specifying matters where consultation of SPSC isn't necessary but such regulations have to be approved by State Legislature within 14 days. Creation of State Vigilance Commission has affected its role in consultation on disciplinary matters.
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Summary of SPSC in tabular format:

| | |
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| Composition | Chairman and other members (Number of other members is not fixed. It is determined by the Governor of the state) |
| Appointment by | Governor |
| Qualification | The qualification of the Chairman and other members is not specified in the constitution. However, there is a condition that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state |
| Term | 6 years or until they attain the age of 62 years (Initially, the retirement age was 60 years. It was extended to 62 years by the 41st Constitutional Amendment Act, 1976) |
| Resign to | Governor |
| Annual Report is submitted to | Governor, who then tables it before the State Legislature for the discussion. |
| Removal of Chairman and members | By President (Although they are appointed by the Governor, only President can remove them from their post) |
| Conditions for removal of the Chairman or other members of SPSC by President | <ul style="list-style-type: none"><input type="checkbox"/> If he is adjudged as insolvent<input type="checkbox"/> If he engages in any paid employment outside the duties of his office<input type="checkbox"/> If he, in the opinion of the President, is unfit to continue in office.<input type="checkbox"/> The President can also remove the Chairman or other members on the grounds of misbehaviour. In this case, the President has to refer the matter to the Supreme Court. |
| Reappointment after retirement | <p>Chairman: The Chairman of the State PSC cannot be reappointed for the next term in the same PSC. However, he can be appointed as the Chairman or member of UPSC or Chairman of other PSC or JPSC</p> <p>Member: A member cannot be reappointed for the next term in the same PSC. However, he can be appointed as the Chairman of that PSC or Chairman or member of other PSC/JPSC or UPSC.</p> |

Difference between UPSC and SPSC

Though many provisions regarding powers and

functions of UPSC and SPSC overlap, there are still certain differences that distinguish both of them. The following table discusses the difference between UPSC and SPSC

| Provisions | UPSC | SPSC |
|-------------------------------------|---|--|
| No. of members | Decided by the President of India. | Decided by the Governor of State. |
| Appointment of Chairman and members | Appointed by the President. | Appointed by the Governor. |
| Conditions of Service | Decided by the President of India. | Decided by the Governor of State. |
| Age of retirement | Until 65 years of age. | Until 62 years of age. |
| Appointment of Acting Chairman | Appointed by the President. | Appointed by the Governor. |
| Suspension for misbehaviour | Suspended by the President. | Suspended by the Governor. |
| Expenses | Charged on Consolidated Fund of India. | Charged on the Consolidated Fund of State. |
| Further employment of Chairman | No further employment. | Chairman or member of U.P.S.C or Chairman of any other SPSC |
| Further employment of Members | Chairman of UPSC or any SPSC | Chairman or member of UPSC or as Chairman of the same SPSC or member or Chairman of any other SPSC |
| Conducting the Examination | All India Examinations and National level examinations. | State-level Recruitment examinations. |
| Submission of report | Submitted to the President. | Submitted to the Governor. |
| Providing advice | Advises the President and the central government. | Advises the Governor and the State legislature. |

Position of the UPSC/ SPSC in India

- radical change has taken place in the constitutional law relating to Services by the 42nd Constitution Amendment Act, 1976, which inserted into the Constitution Art, 323A.
- To take out the Constitution and adjudication of disputes relating to the recruitment the Administrative and conditions of service of the public services of the Union and of the States from the hands of the Civil Courts and the High Courts

and to place it before an Administrative Tribunal for the Union or of a State.

- This provision of the Constitution was to come into effect only if it was implemented by a law made by Parliament. That law has been enacted by Parliament in 1985 and brought into force on October 2, 1985, by setting up a Central Administrative Tribunal.
- According to this Administrative Tribunal Act, 1985 (as amended in 1990), the Central Administrative Tribunal will adjudicate disputes and complaints with respect to the 'recruitment and conditions of service of persons appointed to public services in connection with the affairs of the Union', except for:
 - Members of the Defence Forces.
 - Officers and servants of the Supreme Court or of any High Court
 - Members of the secretarial staff of Parliament or of any Legislature of any State or Union Territory.
- Excluding the above categories, any public servant of the Union who is aggrieved, in the matter of his appointment, removal or reduction in rank or the like, shall have to be contented with administrative justice by a Tribunal instead of by a Court of law. The only Court to which the aggrieved person might run, as a last resort, is the Supreme Court.
- The decisions of the Administrative Tribunal can, therefore be challenged only before the Supreme Court and the High Court shall not be competent to interfere. But subsequently, the position turned out to be otherwise as the Supreme Court declared the "exclusion of Jurisdiction" clauses in all the legislations enacted in pursuance of these Articles, unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court.

Joint State Public Service Commission

The abbreviation JSPSC stands for Joint State Public Service Commission. The Government of India Act, 1935 for the first time provided for the Joint State Public Service Commission for recruitment in two or more Provinces.

This type of Commissions is formed when two or more States request for the assistance of Union Public Service Commission in conducting a joint exam for recruitment to services in all these states. Constitution of India has made provisions regarding the establishment of the Joint State Public Service Commission for two or more states.

For example, Haryana had a JSPSC for a short period at the time of bifurcation of Punjab and Haryana. While the UPSC and the SPSC are directly created by the Constitution, JSPSC is created by the act of Parliament at the request of the concerned state legislatures, and thus it is a Statutory body. The following are the features of a JSPSC:

- Chairman and member of JSPSC are appointed by the President.
- The tenure of the members of JSPSC is of six-year or until they attain an age of 62 years, whichever is earlier.
- They can be removed or suspended by President and they can directly submit their resignation to the President.
- The terms and conditions of their office are determined by the President.
- The number of members in the Commission is decided by the President.
- JSPSC presents its annual performance report to each of the concerned State Governors, who place the report further before their respective State Legislatures.
- UPSC can also serve the needs of a state on the request of the state Governors and with the approval of the President.

Finance Commission

Introduction

Finance Commission is a constitutional body for the purpose of allocation of certain revenue resources between the Union and the State Governments. It was created to define the financial relations between the Centre and the states. It was formed in 1951. The President of India is mandated by Article 280 of the Constitution to appoint a Finance Commission every five years or sooner.

In November 2017, the President of India appointed the 15th Finance Commission, under the chairmanship of N.K. Singh. It will make suggestions for a five-year period, from 2021-22 to 2025-26.

Article 280 of the Indian Constitution

- President after two years of the commencement of Indian Constitution and thereafter every 5 years, has to constitute a Finance Commission of India.
- It shall be the duty of the Commission to make recommendations to the President in relation to the:
 - the distribution between the Union and the States of the net proceeds of taxes which are to be, or maybe, divided between them and the allocation between the States of the respective shares of such proceeds;
 - the principles which should govern the grants in aid of the revenues of the States out of the Consolidated Fund of India;
 - any other matter referred to the Commission by the President in the interests of sound finance
- The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them

Note: President can also constitute Finance Commission before the expiry of five years as he considers necessary

Article 281 of the Indian Constitution

- It is related to the recommendations of the Finance Commission:
- The President has to lay the recommendation made by Finance Commission and its explanatory memorandum before each house of Parliament

Composition

The Finance Commission consists of the following members:

- Chairman
 - He is the leading member of the Commission and directs its activities. He ought to have previous experience in public affairs.
- Members
 - number of members, apart from the Chairman are four.

The qualifications of the Commission members,

as well as their criteria, are statutorily determined by Parliament.

Appointment and Qualification of the Chairman and Members

Appointment

According to Article 280 of the Constitution, the President appoints the Finance Commission. The Chairman of the Commission is chosen from among talented experts in public affairs, and the four other different individuals are chosen from among individuals who have the required qualifications.

Qualification

- Are or have been, or the right fit for the appointment of Judges of any High Court; or
- Have an exceptional mastery of Government funds and records; or
- Have expansive learning of monetary issues and organizational arrangement; or
- Have an intensive comprehension of financial matters.

Grounds for disqualification of the Chairman and Members

If any member of the Finance Commission is found to be:

- of an unstable mind,
- involved in a heinous crime,
- If a conflict of interest arises,
- Such a member is disqualified.

Functions of Finance Commission

The Finance Commission makes recommendations to the President of India on the following issues:

- The net tax proceeds distribution to be divided between the Centre and the states, and the allocation of the same between states.
- The principles governing the grants-in-aid to the states by the Centre out of the consolidated fund of India.
- The steps required to extend the consolidated fund of a state to boost the resources of the panchayats and the municipalities of the state on the basis of the recommendations made by the state Finance Commission.
- Any other matter referred to it by the President in the interests of sound finance.

- The Commission decides the basis for sharing the divisible taxes by the centre and the states and the principles that govern the grants-in-aid to the states every five years.
- Any matter in the interest of sound finance may be referred to the Commission by the President.
- The Commission's recommendations along with an explanatory memorandum with regard to the actions done by the government on them are laid before the Houses of the Parliament.
- The Finance Commission evaluates the rise in the Consolidated Fund of a state in order to affix the resources of the state Panchayats and Municipalities.
- The Finance Commission has sufficient powers to exercise its functions within its activity domain.
- As per the Code of Civil Procedure 1908, the Finance Commission has all the powers of a Civil Court. It can call witnesses, ask for the production of a public document or record from any office or court.

Advisory Role of Finance Commission

- The government is not required to abide by the Finance Commission's recommendations because they are solely advisory in nature. The Government must put its suggestions for giving money to the states into action.
- In other words, "It is nowhere stipulated in the Constitution that the Commission's recommendations shall be binding upon the Government of India or that it would amount to a legal right favouring the recipient States to receive the money proposed to be provided to them by the Commission."

15th Finance Commission

The Finance Commission (FC) is a constitutional body, that determines the method and formula for distributing the tax proceeds between the Centre and states, and among the states as per the constitutional arrangement and present requirements. The 15th Finance Commission was constituted by the President of India in November 2017, under the chairmanship of NK Singh. Its recommendations will cover a period of five years from the year 2021-22 to 2025-26

15th FCI Report 2021-26

The important points about the latest report of the 15th

Finance Commission of India that was tabled on 1st February 2021 are listed down below:

Maintaining vertical devolution at 41 per cent:

- The commission has suggested that while maintaining the vertical devolution at the same rate suggested in the report 2020-21; it would help in maintaining predictability and stabilizing the resources, especially during COVID times.

On GST:

- GST accounts for 35 per cent of the gross tax revenue of the Union.
- GST accounts for around 44 per cent of own tax revenue of the States.

On Gross Tax Revenue:

- There is a drop of 1.7 percentage points in the gross tax revenue after excluding GST cess collection in comparison to 2016-17 figures. The impact of this drop could be seen in the tax devolution to states.
- Gross Tax Revenue Assessment 2021-26: It is expected to be 135.2 lakh crore, out of which the divisible pool is estimated to be 103 lakh crores.

On Horizontal Devolution:

The criteria and the weights assigned for horizontal devolution are:

- Population – 15%
- Area – 15%
- Forest & Ecology – 10%
- Income Distance – 45%
- Tax and Fiscal Efforts – 2.5%
- Demographic Performance – 12.5%
- The commission has assigned a 12.5 per cent weight to the demographic performance criterion in the horizontal devolution. The commission has also re-introduced tax effort criterion to reward fiscal performance.

On Revenue Deficit Grants (RDG):

- It has recommended total revenue deficit grants of around Rs 2.94 crore over the award period for seventeen States.
 - **Local Governments:** Rs. 4,36,361 crore is the total grant given to the local governments for the period of 2021-26. Out of the total grant; Rs.450 crore is dedicated to the shared municipal services.

- **Grants to Rural Local Bodies:** Total sum of Rs. 2,36,805 crore is a grant for the rural local bodies.
- **Grants to Urban Local Bodies:** Rs.1,21,055 crore is the total grant for the urban local bodies.
- Grants for Health to be Channelised through Local Governments – Rs. 70,051 crore stands for the health grant to the local governments.

On Health:

- The commission has suggested increasing the state expenditure on health by 8 percent by 2022.
- The commission suggested prioritizing the creation of All India Health Services/All India Medical Services on the pattern of the UPSC Civil Services.
- National Medical Council is suggested to develop small courses on wellness clinic, basic surgical procedures, anaesthesia, obstetrics and gynaecology, eye, ENT etc. for MBBS doctors.
- AYUSH to be encouraged as an elective subject for medicine undergraduates.
- The Allied and Healthcare Professions Bill should be passed at the earliest.

On Higher Education:

- The XV Finance Commission has recommended two subtypes of higher education grants:
 - Promotion of online education – Rs. 5,078 crore is a total sum of grant for the promotion of online education.
 - Development of professional courses in regional languages: The commission's recommendation is in line with the New Education Policy 2020, Rs. 1,065 crores have been allocated for the development of these courses from 2021-26.
 - Two colleges in each state should convert their learning material and pedagogy into the recognized regional language.

On Defence

- Recommendation to create a non-lapsable pool for the defence and internal security sector under the Public Accounts of India.

On Disaster Risk Management:

- The fifteenth Finance Commission recommended maintaining the contribution of states to the State Disaster Risk Fund (SDRF) to be 25 per cent except

by the North Eastern States (10 per cent.) It has seen no changes since 13th Finance Commission recommended the same arrangement.

- Creation of Mitigation Funds both at central and state levels.

Goods and Service Tax Council

Introduction

Goods and Service Tax is one of the biggest tax reforms in India. It is an indirect tax that is levied on the manufacture, sale, and consumption of goods and services at the national level. After its implementation, various indirect taxes such as value added tax, Central excise duty, entertainment tax, luxury tax, etc were abolished. The main reason behind introducing GST was to unify all the indirect taxes and have one indirect tax system. In simple terms, it means “one nation one tax”.

The GST council is the key decision-making body that will take all important decisions regarding the GST. The GST Council dictates tax rate, tax exemption, the due date of forms, tax laws, and tax deadlines, keeping in mind special rates and provisions for some states. The predominant responsibility of the GST Council is to ensure to have one uniform tax rate for goods and services across the nation.

Constitutional Provisions

Article 279A empowered the President of India to constitute a Council named Goods and Services Tax Council (GST Council) within 60 days after the commencement of the 101st Constitution Amendment Act, 2016.

Objective

It shall seek to ensure a uniform system of GST to avoid any conflict or confusion, and the development of a harmonized national market for goods and services.

Composition of GST Council

The members of the council will be as follows:

- The Union Finance Minister of India will serve as the chairperson of this council.
- The respective states will nominate the State Finance Ministers/ or any other Minister as a member of the council.

- The Union Minister of State in charge of revenue or finance will also be a member of this council.
- The representatives of the states shall choose amongst themselves one “Vice-President”.

Quorum

The council shall meet from which one-half of its members will constitute a quorum, which will have the power to make decisions.

Functions of the Goods and Services Tax Council

The Council is required to make recommendations to the centre and the states on the following matters:

- The taxes, cesses, and surcharges levied by the centre, the states, and the local bodies would be merged in GST.
- The goods and services that may be subjected to GST or exempted from GST.
- Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce, and the principles that govern the place of supply.
- The threshold limit of turnover below which goods and services may be exempted from GST.
- The rates include floor rates with bands of GST.
- Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.
- Special provision with respect to the states of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand.
- Any other matter relating to GST, as the Council may decide.
- In addition, the council shall also recommend the date on which the GST may be levied on petroleum crude, high-speed diesel, petrol, natural gas, and aviation turbine fuel.
- For a period of five years following the implementation of GST, the Council must consider compensating the states for any revenue losses. The Parliament sets the compensation in accordance with this recommendation. As a result, in 2017, the law was passed by the Parliament.

The procedure to determine the functioning of the

GST council shall be determined by the council itself. No decision of the council would be termed invalid merely because of any vacancy or defect in the constitution of the council, or because of any defect in the appointment of the member, or if there is any irregularity in the procedure that would likely affect the merits of the case.

Process of decision-making

The decision shall be taken by at least three-fourth majority out of which:

- The vote of the Central Government will have one-third of the weightage.
- The vote of all the State Governments shall account for two-third of weightage.

Dispute Resolution Mechanism

Any dispute arising either between:

- The centre on one hand and a state on the other, or
- The centre and one or state on one hand and one or more state on the other hand,
- Two or more states.

Shall be adjudicated by the GST council.

Process of Ratification

Article 368 of the Indian Constitution has been amended to include Article 279 A within its ambit. It basically implies that to bring any amendments or modifications to Article 279 A, ratification by a two-thirds majority of both the houses and half of the state legislatures will be required.

National Commission for Scheduled Caste

Introduction

Caste-based discrimination has been prevalent in India for ages. Putting relevance on the same with the aim to control, and thereby erase such prejudice, Dr. B.R. Ambedkar, also being the Chairman of the Drafting Committee, along with other members of the Constituent Assembly, wanted to mandate protection to backward classes by means of the Constitution.

Articles 338 mandates the establishment of the national commissions for Scheduled Castes with the aim of improving their living conditions, availability of resources, safeguarding their interests, agricultural

practices thereby accelerating socio-economic growth.

Evolution of the Commission

The events which contributed towards the formation of the National Commission for the Scheduled Castes have been presented hereunder;

- Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working. He was designated as the Commissioner for SCs and STs and assigned the said duty.
- **1978:** By means of a resolution, the Government had set up a non-statutory, multi-member Commission for Scheduled Castes and Scheduled Tribes along with which the Office of Commissioner continued to exist as well.
- **1987:** The previously established Commission in 1978 came to be known as the National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs).
- **1990:** By the 65th Constitutional Amendment, a multi-member National Commission for Scheduled Castes and Scheduled Tribes replaced the Commissioner for Scheduled Castes (SCs) and Scheduled Tribes (STs)
- **2003:** By the 89th Constitutional Amendment, the National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs) got divided into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).
- **2004:** The National Commission for SCs came into existence with a Chairperson, a Vice-Chairperson, and three other members.

There have been 6 National Commissions for SCs that have been constituted between 2004 to 2021 namely;

- The first National Commission for Scheduled Castes (NCSC) was on 24th February 2004.
- The second National Commission for Scheduled Castes (NCSC) on 25th May 2007.

- The third National Commission for Scheduled Castes (NCSC) on 15th October 2010.
- The fourth National Commission for Scheduled Castes (NCSC) on 22nd October 2013.
- The fifth National Commission for Scheduled Castes (NCSC) on 1st June 2017.
- The sixth National Commission for Scheduled Castes (NCSC) on 24th February 2021 with Shri Vijay Sampla as the Chairperson, Shri Arun Halder as the Vice-Chairman, Shri Subhash Ramnath Pardhi, and Dr. Anju Bala as the members.

Composition:

It consists of:

- Chairperson.
- Vice-chairperson.
- Three other members.

It is to be noted that the President by warrant under his hand and seal appoints, and determines the tenure, service conditions of the Chairperson, Vice-Chairman, and the members of the Commission. Their term is of 3 years.

Functions of the Commission

- Monitoring and investigating all issues concerning the safeguards provided for the Scheduled Castes under the Constitution.
- Enquiring into complaints relating to the deprivation of the rights and safeguards of the Scheduled Castes.
- Taking part in and advising the Central or State Governments with respect to the planning of socio-economic development of the Scheduled Castes.
- Regular reporting to the President of the country on the implementation of these safeguards.
- Recommending steps to be taken to further the socio-economic development and other welfare activities of the Scheduled Castes.
- Any other function with respect to the welfare, protection, development and advancement of the Scheduled Caste community.
- The Commission is also required to discharge similar functions with regard to the Anglo-Indian Community as it does with respect to the Scheduled Castes.

Till 2018, the commission was also required to discharge similar functions with regard to the other

backward classes (OBCs). It was relieved from this responsibility by 102nd Amendment Act, 2018.

Powers of the Commission

National Commission for Scheduled Castes being constitutional bodies have the power to regulate their own procedures. Followed by which National Commission for Scheduled Castes have been vested with all the powers of a civil court. Taking a cue from the same, the powers of the National Commission for Scheduled Castes have been presented hereunder;

- The National Commission for Scheduled Castes is vested with the power to discover and produce documents that concern the development of the tribal communities;
- The Commission has the power to receive evidence on affidavits as well;
- With civil court powers being vested on the Commission, it has the authority to issue a summons for examination of documents, or witnesses;
- Both the Central and the State governments can seek advice from the Commissions whenever necessary for the purpose of policy-making.
- Along with the above-mentioned powers, there can be add-on powers that will be determined by the President of the nation.

National Commission for Scheduled Tribes

Introduction

The National Commission for Scheduled Tribes is a constitutional body that was established by the Constitution (89th Amendment) Act, 2003. The Commission is an authority working for the economic development of Scheduled Tribes in India. The NCST is dealt with Article 338A.

Earlier, there was only one commission, which was for both the scheduled tribes and scheduled castes. In 2004, after the 89th Constitutional Amendment Act, the NCST was established by bifurcating the National Commission for Scheduled Castes and Scheduled Tribes into the NCST and the National Commission for Scheduled Castes.

This amendment replaced the National Commission for Scheduled Castes and Scheduled Tribes with two distinct commissions which are:

- National Commission for Scheduled Castes (NCSC)
- National Commission for Scheduled Tribes (NCST)

Definition of Scheduled Tribes:

According to Article 366(25) of the Constitution, Scheduled Tribes are those communities that are scheduled in accordance with Article 342 of the Constitution. Also, Article 342 of the Constitution says that: The Scheduled Tribes are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification.

Scheduled Tribes in India

According to the 2011 Census, the Scheduled Tribes account for 104 million representing 8.6% of the country's population. These Scheduled Tribes are spread throughout the country largely in forest and hilly regions.

The essential characteristics of these communities are: -

- Primitive Traits
- Geographical isolation
- Distinct culture
- Shyness to contact with the community at large
- Economically backwards

As in the case of the SCs, the Plan objective of empowering the tribals is being achieved through a three-pronged strategy of social empowerment, economic empowerment, and social justice. Working in the same line the NCST till the present date has been constituted three times which was the result of the 89th Amendment Act, 2003, namely;

- The first commission was formed on 19th February 2004.
- The second commission commenced on 14th June 2007.
- The third commission was formed on 21st July 2010.

Dr. Rameshwar Oraon has been re-appointed as the Chairperson of the Commission for the 2nd time followed by this, Shri Ravi Thakur was designated to the Vice-Chairperson position. But the members who were appointed, due to their sudden demise, have left the two members' seats vacant for the current commission.

Composition of National Commission for Scheduled Tribes

National Commission for Scheduled Tribes consists of:

- Chairperson.
- Vice-chairperson.
- Three other members.

It is to be noted that the President by warrant under his hand and seal appoints, and determines the tenure, service conditions of the Chairperson, Vice-Chairman, and the members of the Commission. Their term is of 3 years.

Functions of the National Commission for Scheduled Tribes

The functions of the National Commission for Scheduled Tribes are laid down hereunder;

- The National Commission for Scheduled Tribes carries out an evaluation of the progress in the planning process for social, and economic up-gradation of the Scheduled Tribe Community.
- Just like the National Commission for Scheduled Caste, the National Commission for Scheduled Tribes also has been vested with the responsibility of inquiring into complaints brought before it that concern the impoverishment of the rights available for the Scheduled Tribes, and to investigate the working of the constitutional safeguards provided for this community.
- The Commission must keep track of the status of the development of the Scheduled Tribes at both Union and provincial levels.
- The Commission is obligated by the President's orders and therefore, has to perform all such functions which the President specifies.

Along with these functions, there are certain measures that are to be adopted by the Commission in respect to ownership rights of the tribes in association with forest areas;

- The Commission must ensure that certain measures need to be taken to protect the rights of the Scheduled Tribes with regard to natural resources.
- For the tribal groups who have been displaced due to unavoidable circumstances, then it is the responsibility of the Commission to take steps to

improve the standards of living for them thereby facilitating them with minimum necessities for living.

- Prevention of alienation of the tribal groups, and those who have already been alienated is the sole responsibility of the Commission, and therefore, measures should be adopted to ensure the same.
- The Commission should be in charge of protecting the forests by means of undertaking social afforestation and involving the tribal communities to take an active part in the same for better functioning of the social, and environmental policies undertaken. These policies should also work towards erasing shifting cultivation practiced by several tribal communities which is responsible for degrading both the land and the environment.
- The provisions of Panchayats (Extension to Scheduled Areas) Act, 1996, must be implemented so as to provide adequate benefit to the Scheduled Tribes.

A check on the above-mentioned functions of the Commissions is carried out by the President of India after the Commissions submit their reports which must be accompanied by a memorandum whose purpose is to explain the actions adopted on the Commission's recommendations. The report is further forwarded to the State Government, and the Governor by the President, after which the governor places the same before the State Legislature.

Powers of the Commission

National Commission for Scheduled Tribes being constitutional bodies have the power to regulate their own procedures. Followed by which National Commission for Scheduled Tribes have been vested with all the powers of a civil court. Taking a cue from the same, the powers of the National Commission for Scheduled Tribes have been presented hereunder;

- The National Commission for Scheduled Tribes is vested with the power to discover and produce documents that concern the development of the tribal communities;
 - The Commission has the power to receive evidence on affidavits as well;
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- With civil court powers being vested on the Commission, it has the authority to issue a summons for examination of documents, or witnesses;
- Both the Central and the State governments can seek advice from the Commissions whenever necessary for the purpose of policy-making.
- Along with the above-mentioned powers, there can be add-on powers that will be determined by the President of the nation.
- In pursuant to these directions' Parliament passed National Commission for Backward Classes Act in 1993 and constituted the NCBC.
- 123rd Constitution Amendment bill of 2017 was introduced in Parliament to safeguard the interests of backward classes more effectively.
- Parliament has also passed a separate bill to repeal the National Commission for Backward Classes Act, 1993, thus 1993 act became irrelevant after passing the bill.
- The bill got the President assent in August 2018 and provided the constitutional status to NCBC.

National Commission for Backward Classes

Introduction

National Commission for Backward classes (NCBC), 1993, recognized as a constitutional body under the 123rd Amendment Bill, 2017 and 102nd Amendment Act, 2018 which inserted 338B in the Constitution of India. NCBC comes under the Ministry of Social Justice and Empowerment. This Commission was formed as an initiative for investigating the conditions and difficulties of the socially and educationally backward classes and thus making appropriate recommendations

Background

- The first backward class commission was pointed on January 29, 1953, known as Kaka Kalelkar Commission. The central government was not satisfied with the approach adopted by the commission in determining the criteria for identifying the backward classes.
- On January 1, 1979, the President appointed another Backward Class Commission known as The Mandal Commission with Shri B.P. Mandal as its chairperson.
- In 1987, an executive body was instituted as a national commission for Scheduled Castes and Scheduled Tribes after that in 1990, 65th amendment was introduced which added Article 338 in the Constitution and made a national commission for Scheduled Castes & Scheduled Tribes as a constitutional body.
- In Indra Sawhney case of 1992, Supreme Court had directed the government to create a permanent body to entertain, examine and recommend the inclusion and exclusion of various Backward Classes for the purpose of benefits and protection.

Composition of NCBC

- The Commission include five members:
 - A Chairperson who is or has been a judge of the Supreme Court or of a High Court.
 - Vice-chairperson.
 - Three other members.
- Among the members, there should be:
 - At least two persons, who have special knowledge in matters relating to backward classes,
 - At least 1 woman,
 - A social scientist,
 - A Member-Secretary, who is or has been an officer of the Central Government in the rank of a Secretary to the Government of India.
- Their term is of Three years.
- President by warrant under his hand and seal appoints, and determines the tenure, service conditions of the Chairperson, Vice-Chairman, and the members of the Commission.

Powers and Functions

- The Commission investigates and monitors all matters relating to the safeguards provided for the socially and educationally backward classes under the Constitution or under any other law to evaluate the working of such safeguards.
 - It participates and advises on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.
 - It annually presents the reports based on the working of the safeguards to the President. The President laid such reports before each House of Parliament.
-

- If any of those reports relate to any matter which is concerned with the State Government, a copy of that report is forwarded to the State Government.
- Where any such report or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government.
- NCBC has to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.
- It has all the powers of a civil court while trying a suit.

Salient features of the 102nd Constitutional Amendment Act

It inserted two new articles –

- Article 338 B and
- 342 A.
- It also made certain changes in Article 366.

Article 338 B – empowers NCBC to examine complaints and welfare measures regarding socially and educationally backward classes.

Article 342 A – empowers the President to specify/ assign socially and educationally backward classes in different states and union territories. He can do this with the advice of the Governor of the respective state. But a parliamentary law is required for amending (inclusion/ removal) the list of backward classes.

- In addition to reservations, the 102nd Amendment Act recognizes that BCs also need development in addition to reservations. There is provision in the act for development of Socially and Educationally Backward Classes (SEdBCs) and the new NCBC's role in the development process.
- With the power of the civil court, the new NCBC may effectively address the problems of the backward classes. NCBC is now on par with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes, according to the Act.
- The addition of at least two people with special understanding of backward classes, as well as one woman, to the NCBC, is a positive step toward

making the commission more democratic and effective in advancing the interests of SEdBCs.

- The new NCBC is entrusted with the additional function of grievance redress of backward classes.
- Article 342(A) introduces greater transparency as it made mandatory to take the concurrence of Parliament for adding or deleting any community in the backward list.
- Apart from list-inclusion and reservation, it requires comprehensive and holistic development.

Special Officer for Linguistic Minorities

Introduction

Article 350 B deals with the provision for Special Officer for Linguistic Minorities.

It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Definition of Linguistic minority:

A linguistic minority is a class of people whose mother tongue is different from that of the majority in the state or part of a state. The Constitution provides for the protection of the interests of Linguistic Minorities.

About 36.3 million of India's 1.2 billion strong population (as per the Census of 2011) speak an "absolute minority language", a language which in every of India's 28 States forms a minority.

Constitutional Provisions

State's Reorganization Commission (1953-55), made a recommendation regarding Special Officer for Linguistic Minorities. Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350- B in Part XVII of the Constitution. This article contains the following provisions:

- There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.
 - It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.
-

- He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the Governments of the states concerned.
- His seat is at Allahabad.
- He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal). Each is headed by an Assistant Commissioner.
- He is assisted by Deputy Commissioners and Assistant Commissioner.
- He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.
- The commissioner falls under the ministry of Minority Affairs at central level.
- He submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities

Objectives of the Special Officer for Linguistic Minorities

- The objective behind the functions of the Commissioner is to provide and ensure equal opportunities, and platforms to the linguistic minorities for their development and overall national integration.
- The Commissioner must spread awareness amongst the linguistic minorities about the safeguards that are available to them by means of the Indian Constitution.
- The Commissioner must make it certain that effective implementation of the safeguards provided for the linguistic minorities in the Indian Constitution will take place, as have been agreed by the States / Union Territories.
- The Commissioner must be responsible to handle the representations appointed for grievance redress in relation to shielding the linguistic minorities.

Function of the Officer:

- To investigate all matters related to safeguards provided to linguistic minorities.

- To submit to the president the reports on status of implementation of constitutionally and nationally agreed safeguards to linguistic minorities.
- To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, etc.
- To take up all the matters pertaining to the grievances arising out of the non-implementation of the Constitutionally and Nationally Agreed Scheme of Safeguards provided to linguistic minorities that come to its notice or are brought to its knowledge by the linguistic minority individuals, groups, associations or organisations at the highest political and administrative levels of the state governments and union territory administrations and recommends remedial actions to be taken.
- To promote and preserve linguistic minority groups, the Ministry of Minority Affairs has requested the State Governments / Union Territories to give wide publicity to the constitutional safeguards provided to linguistic minorities and to take necessary administrative measures.
- The State Governments and Union Territories Administrations were urged to accord priority to the implementation of the scheme of safeguards for linguistic minorities.
- The Commissioner launched a 10-point programme to lend fresh impetus to Governmental efforts towards the preservation of the language and culture of linguistic minorities.

Comptroller and Auditor General

Described as by the Dr Bhimrao Ambedkar, the Comptroller and Auditor General of India (CAG) is an independent authority established of the Indian Constitution. CAG of India or the “Guardian of the Public Purse” is essentially vested with the responsibility of inspecting and auditing all the expenditure and receipts of both the Central and the State Governments as well as of those organizations or bodies which are significantly funded by the Government.

Article 148: Appointment and Term

- The President of India appoints the CAG by a warrant under his hand and seal.
- Before taking over the office, the CAG makes

and subscribes before the President an oath or affirmation:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India;
- to duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of his office without fear or favour, affection or ill-will;
- to uphold the Constitution and the laws.
- The CAG holds office for a period of six years or up to the age of 65 years, whichever is earlier.
- The salary and other conditions of the CAG's services shall be specified in the of the Constitution until determined by the Parliament.
- His salary and rights shall not be varied to his disadvantage after his appointment to the office.
- Moreover, the determination of the service of persons working in the IAAD (Indian Audit and Accounts Department) as well as the administrative powers of the CAG shall be done by the President upon consultation with the CAG and shall be prescribed in rules.
- The administrative expenses of the CAG which incorporate salaries, allowances and pensions are charged from the Consolidated Fund of the Constitution.

Removal of the Comptroller and Auditor General

- CAG can be removed from his office by the President on the grounds of proven misbehaviour or incapacity on an address by Parliament in the manner provided in Article 124 (4) of the Indian Constitution.
- He/she can resign any time from his office by addressing the resignation letter to the President and can also be removed by the President on the same grounds and in the same manner as a Judge of the Supreme Court.
- A Presidential order passed after an address by the Parliament supported by a total membership majority of the House and two-thirds of members present and voting.
- However, this can only be executed after sufficient proceedings of investigation and proof.

- After the retirement or resignation from his office, he is no longer eligible for any jobs or offices under the Central or State Governments.
- That is, he can be removed by the President on the basis of a resolution passed to the effect by both the Houses of Parliament with the special majority, either on the ground of proven misbehaviour or incapacity.

Independence

To safeguard and ensure the independence of CAG, the Constitution has made the following provisions:

- He/she is provided with the security of tenure and can be removed by the President, only in accordance with the procedure mentioned in the Constitution. That is, even though CAG is appointed by the President, he/she does not hold office till the pleasure of the President.
- The CAG is not eligible for further office, either under the Government of India or of any state, after he/she ceases to hold the office.
- The Parliament determines the salary and other service conditions of the CAG. His/her salary is equal to that of a judge of the Supreme Court.
- Neither the CAG's salary nor the rights in respect of leave of absence, pension, or the age of retirement can be altered to his/her disadvantage after the appointment.
- ❑ The conditions of service of persons serving in the Indian Audit and Accounts Department as well as the administrative powers of the CAG are prescribed by the President after consultation with the CAG.
- ❑ The administrative expenses including all salaries, allowances, and pensions of persons serving in the office of the CAG, are charged upon the Consolidated Fund of India, which means they are not subject to the vote of Parliament.
- ❑ Also, CAG cannot be represented by any minister in both the houses of the Parliament and no minister can be called upon to take any responsibility for any actions done by the CAG.

Duties and Powers

- ❑ Article 149 of the Constitution authorizes the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and

of the states and of any other authority or body.

- ❑ In accordance with that, the CAG's (Duties, Powers and Conditions of Service) act, 1971 was enacted by the Parliament.
- ❑ The duties and functions of the CAG as laid down by the Parliament and the Constitution are:
 - To audit the accounts related to all expenditure from the Consolidated Fund of India, Consolidated Fund of each state, and Consolidated Fund of each union territory with a Legislative Assembly.
 - To audit all expenditure from the Contingency Fund of India and the Public Account of India and also the contingency fund of each state and the public account of each state.
 - To audit all trading, manufacturing, profit and loss accounts, balance sheets, and other subsidiary accounts kept by any department of the Central Government and State Governments.
 - To audit the receipts and expenditure of the Centre and each state.
 - To audit the receipts and expenditure of all bodies and authorities substantially financed from the Central or state revenues, Government companies, other corporations, and bodies, when so required by related laws.
 - To audit all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts, and remittance business. He also audits receipts, stock accounts, and others, with approval of the President, or when required by the President.
 - To audit the accounts of any other authority (For example, the audit of local bodies) when requested by the President or Governor.
- ❑ **Article 150-** To advise the President with regard to the prescription of the form in which the accounts of the Centre and the states shall be kept.
- ❑ **Article 151-** To submit his audit reports relating to the accounts of the Centre to the President, who shall, in turn, place them before both the Houses of Parliament and also to submit audit reports relating to the accounts of a State to the Governor, who shall,

in turn, place them before the state legislature.

- ❑ **Article 279-** To ascertain and certify the net proceeds (the proceeds of a tax or a duty minus the cost of collection) of any tax or duty and the CAG's certification will be final.
- ❑ Act as a guide, friend, and philosopher of the Public Accounts Committee of the Parliament.
- ❑ To compile and maintain the accounts of State Governments (audit, that is, departmentalization of accounts).

Main audit reports of CAG

The audit reports of the CAG can be classified into the following four headings as discussed below:

- ❑ **CAG Local Bodies Audit Reports:** The CAG Local Bodies Audit Report is prepared by the State Accountant Generals of every state of Union of India and is sent to CAG for approval. After this procedure is completed, the local bodies Audit Reports are subsequently categorized into two groups, namely "Tabled in the Legislature" and "Issued to the State Government".
- ❑ **CAG State Audit Reports:** After the Accountant General audits the expenditures and accounts of a state from the Consolidated Fund of that state, the Comptroller and Auditor General then submits the findings of the report to the state legislature. The norm that is followed is the presentation of the reports during the budget season wherein the audit findings of the previous financial year are presented. At the state level, in a way similar to the Central level, the audit is conducted in two streams, which are Performance Audit and Regularity Audit. Nonetheless, in the majority of the cases, the reports of both of these audits are presented simultaneously.
- ❑ **CAG Union Audit Reports:** The Union Audit Report is prepared by Comptroller and Auditor General of India and is primarily focused on presenting the findings of the transactional and performance audit in the following areas:
 - Civil Audit

- Audit of Autonomous Bodies
- Defence Services
- Railways
- Government Receipts
- Central Commercial

The CAG Union Audit Report incorporates the audit performed under two categories namely, Performance Audit and Regularity (Compliance) Audit.

- ❑ **CAG Audit of Government - owned Corporations:** The Comptroller and Auditor General of India are also vested with the power of auditing the corporations owned by the government, central or state, and also conducting the supplementary audit of those firms in which the Union Government have more than 51% equity shares.

Comptroller and Auditor General and Corporations

The role of CAG in the auditing of public corporations is limited and his/her relationship with the public corporations falls into the following three categories:

- ❑ Some corporations are audited totally and directly by the CAG such as the Damodar Valley Corporation, Oil and Natural Gas Commission, Air India, Indian Airlines Corporation, and others.
- ❑ Some corporations are audited by private professional auditors, appointed by the Central Government in consultation with the CAG. The CAG can also conduct a supplementary audit, if necessary. Examples are Central Warehousing Corporation, Industrial Finance Corporation, and others.
- ❑ Some corporations are totally subjected to private audits (audit is done exclusively by private professional auditors and the CAG does not have any role) and submit their annual reports and accounts directly to the Parliament. The Life Insurance Corporation of India, Reserve Bank of India, State Bank of India, Food Corporation of India, and others belong to this category. (The role of the CAG in the auditing of Government companies is also limited which are audited by private auditors, appointed by the Government on the advice of the CAG)

Role of Comptroller and Auditor General

- ❑ The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration.

- ❑ The audit reports of the CAG secure the accountability in the sphere of financial administration of the executive, that is council of ministers, to the Parliament.
- ❑ The audit report on appropriation accounts, audit report on financial accounts, and audit report on public undertakings are the three audit reports submitted by CAG to the President, which the President lays before both the Houses of Parliament.
- ❑ The Public Accounts Committee examines the CAG's reports and points out its findings to the Parliament.
- ❑ The CAG is responsible only to the Parliament because he acts as an agent of the Parliament and conducts audits of expenditure on behalf of the Parliament.
- ❑ The CAG has more freedom with regard to the audit of expenditure than with regard to the audit of receipts, stores, and stock.
- ❑ The CAG can look into the wisdom, faithfulness, and economy of government expenditure and comment on the wastefulness and extravagance of such expenditure through propriety audit. But the propriety audit is discretionary in nature.

Problems faced by CAG

- ❑ Since the CAG has no control over the issue of money from the Consolidated Fund and many departments are authorized to draw money by issuing cheques without specific authority from the CAG, he/she is just fulfilling the role of an Auditor-General only and not that of a Comptroller.
- ❑ **Lack of decentralization of duties:** Audit reports of the state governments being made in regional languages creates an added problem of translation and of understanding the original reports. It overburdens the duties of the office, making the auditory system less efficient and audits hardly being presented on time.
- ❑ **Appointment procedure of the CAG:** The appointment procedure of the CAG is dubious such that the involvement of the executive in the CAG's appointment is hugely problematic as he/she is supposed to audit the executive.

Recent Issues

- ❑ Recently, one of the former CAG's has said the Central Government has held back a report that he had submitted to the President of India, to end what

he called “a nightmare of accounts that militates against good governance”. He submitted the report under Article 150 of the Indian Constitution to the President in April 2020 and it is still not in the public domain.

- ❑ Audit Reports got delayed in the Parliamentary sessions of 2019 and 2020 which showed the inefficiency as well as lack of manpower in the office of CAG.
- ❑ In January 2021, the CAG announced that the office would begin evaluating procurement and availability of drugs and paramedics, as well as review the vaccine distribution scheme for issues related to transparency. But no report has been yet released. Thus, a meaningful and timely audit appears likely to be a utopian dream.

Despite having such importance in the parliamentary setup of a democracy like India, the institution of the Comptroller and Auditor General of India has, time and again, suffered due to the less general public awareness about the significance of this authority. A major fallacy that exists in modern-day polity is the less popularity of many CAG reports and the fact that not all of these reports are deliberated upon in the Parliament.

To expedite the efficiency of the Comptroller and Auditor General of India as a constitutional officer charged with the responsibility of maintaining and upholding the accountability and liability of the ones in power, it is important to popularize the audit reports released by the CAG and open up opportunities for more general public discussion about them. Controversies like the Commonwealth Games, 2G Spectrum and Rafale Deal brought forth the importance of CAG reports in a democracy like India and helped ignite public discourse.

Attorney General of India

The Constitution (Article 76) has provided for the office of the Attorney General for India. He is the highest law officer in the country

Appointment and Eligibility

- ❑ The Attorney General is appointed by the President on the advice of the Executive.
- ❑ He/she must be a person who is qualified to be appointed as a Judge of the Supreme Court.

- ❑ In other words, he/she must be a citizen of India and must have been a Judge of some High Court for five years or an advocate of some High Court for ten years, or an eminent jurist, in the opinion of the President.
- ❑ The term of office of the Attorney General is not fixed by the Constitution.
- ❑ Further, the Constitution does not contain the procedure and grounds for his/her removal.
- ❑ Thus, he/she holds office during the pleasure of the President which means that he may be removed by the President at any time.
- ❑ He/she may also quit his office by submitting his resignation to the President.
- ❑ The remuneration of the Attorney General is not fixed by the Constitution and receives such remuneration as the President may determine.

Duties and Functions

- ❑ To advise the Government of India upon such legal matters, which are referred by the President.
- ❑ To perform such other duties of a legal character that are assigned to him/her by the President.
- ❑ To discharge the functions conferred by the Constitution or any other law.
- ❑ Apart from these, the President has assigned the following duties to the Attorney General:
- ❑ To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- ❑ To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- ❑ To appear (when required by the Government of India) in any High Court in any case in which the Government of India is concerned.

Rights of Attorney General

- ❑ In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India.
- ❑ Also, he/she has the right to speak and to take part in the proceedings of both the Houses of

Parliament or their joint sitting and any committee of the Parliament of which he/she may be named a member, but without a right to vote.

- ❑ He/she enjoys all the privileges and immunities that are available to a Member of Parliament.
- ❑ He/she should not advise or hold a brief against the Government of India.
- ❑ He/she should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
- ❑ He/she should not defend accused persons in criminal prosecutions without the permission of the Government of India.

Limitations placed on the Attorney General

- ❑ He/she should not accept an appointment as a director in any company or corporation without the permission of the Government of India.
- ❑ He/she should not advise any ministry or department of Government of India or any statutory organization or any public sector undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.
- ❑ However, the Attorney General is not a full-time counsel for the Government and does not fall in the category of government servants.
- ❑ Further, he/she is not debarred from private legal practice.
- ❑ The Attorney General is not a member of the Central Cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level.
- ❑ The Delhi High Court has ruled that the office of the Attorney General of India (AGI) does not come under the ambit of the Right to Information (RTI) Act as it is not a public authority.

Solicitor General of India

In addition to the Attorney General, there are other law officers of the Government of India. They are the solicitor general of India and additional solicitor general of India. They assist the Attorney General in the fulfilment of his official responsibilities.

It should be noted here that only the office of the Attorney General is created by the Constitution. In other words, Article 76 does not mention about the Solicitor General and Additional Solicitor General.

The Attorney General is not a member of the Central Cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level.

Advocate General

Introduction

Under the Constitution of India, Article 165 has provided for the office of the Advocate General for the states. He is the highest law officer in the state. Thus, he corresponds to the Attorney General of India.

Appointment of Advocate General of the State:

The Advocate General is appointed by the Governor. He must be a person who is qualified to be appointed a judge of a high court. The person who is eligible to hold the office of advocate general in India must meet the following criteria:

- ❑ He must be an Indian Citizen
- ❑ He should be eligible to be appointed as the judge of the High Court; i.e., he must meet one of the following eligibility criteria:
 - An advocate having experience of more than 5 years.
 - A civil servant with an experience of more than 10 years along with an experience as a servant in Zila Court for at least 3 years.
 - A pleader over 10 years in any high court
- ❑ He shouldn't be more than 62 years of age, as is the age of qualification for a High Court Judge.

In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

Term of office of Advocate General of the State:

- ❑ The term of office of the Advocate General is not fixed by the Constitution.
- ❑ The Constitution does not contain the procedure and grounds for his removal.
- ❑ He holds office during the pleasure of the Governor. This means that he may be removed by the Governor at any time.

- ❑ He may also quit his office by submitting his resignation to the Governor. Conventionally, he resigns when the Government (Council of Ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the Governor may determine.

Duties and functions of Advocate General of the State:

As the chief law officer of the Government in the state, the duties of the Advocate General include the following:

- ❑ To give advice to the government of the state upon such legal matters which are referred to him by the Governor.
- ❑ To perform such other duties of a legal character that is assigned to him by the Governor.
- ❑ To discharge the functions conferred on him by the Constitution or any other law.
- ❑ In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state. Further, he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of the state legislature.

Rights of Advocate General of the State

Following are the rights of the Advocate General:

- ❑ In the performance of his official duties, he has the right of audience in any court in the State.
- ❑ He has the right to speak or to take part in the proceedings of state legislature, but without a right to vote.
- ❑ He has the right to speak or to take part in the meeting of any committee of the state legislature of which he is named as a member, but without a right to vote.
- ❑ He enjoys all the privileges and immunities that are available to a member of the state legislature.

Articles related to Advocate-General of the state under Constitution of India:

- ❑ **Article 165:** Advocate-General of the State.
- ❑ **Article 177:** Rights of Advocate-General as respects the Houses of State Legislature and its Committee.

- ❑ **Article 194:** Powers, privileges and immunities of Advocate General.

Non-Constitutional Body

A Non-Constitutional body is an organization or institution which is not mentioned in the constitution of India. Unlike a constitutional body, a non-constitutional body does not derive its powers from the Indian constitution. Usually, a non-constitutional body derives its powers from corresponding laws passed by the Indian Parliament. There are also non-constitutional bodies that derive power based on Indian government orders called executive resolution. Based on how the body derives its power, non-constitutional bodies can be broadly classified into two:

- ❑ **Statutory Bodies** – They get the power from a statute i.e., an act enacted by the legislature.
 - Eg: National Investigation Agency, National Human Rights Commission, Lokpal, and Lokayukta, etc.
- ❑ **Non-Statutory Bodies** – They usually get the power from an executive order.
 - Eg: NITI Aayog, National Development Council, etc

Statutory Bodies can be further classified into two based on their roles and responsibilities. They are –

- ❑ **Regulatory Bodies** – A regulatory body is a government agency that is accountable for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity. However, their regulatory interventions are outside executive observation.
 - Eg: Biodiversity Authority of India, Pension Fund Regulatory and Development Authority, etc.
- ❑ **Quasi-Judicial Bodies** – Quasi-Judicial bodies are non-judicial bodies like commissions or tribunals which can interpret the law. They are different from judicial bodies in that their field is limited compared to a court.

- Eg: National Green Tribunal, National Human Rights Commission, Central Information Commission.

NITI AAYOG

The NITI Aayog replaced the Planning Commission that had been running for 65 years. NITI Aayog works as a think tank and as an advisory body of the government. It provides advice to the government on matters related to strategic policy at the Centre and the States. Further, it also includes economic issues of domestic as well as international importance.

Evolution of the NITI Aayog

On 1st January 2015, the Union Government announced the establishment of the NITI Aayog. The resolution was passed by the Parliament to replace the Planning Commission of India with the NITI Aayog.

The Planning Commission of India used to perform two main duties-

- Implementation of the five-year plan.
- Providing Finances to the states.

The NITI Aayog does not provide finances to states, the function of allocating funds is now transferred to the Finance Ministry. It aims at constructing a strong state that will boost India to develop as a major economy in the world and to create a strong and dynamic nation.

The NITI Aayog's creation has two hubs known as:

- ***The Team India Hub:*** It leads the participation of the Central government with the States.
- ***The Knowledge and Innovation Hub:*** It helps in building the institution's think tank capabilities.

NITI Aayog is developing itself into a State-of-the-Art Resource Centre, which has all the essential skills, knowledge, and that will empower it to act with advanced research, speed, and innovation. It will bestow the government with crucial policy and help in managing unforeseen issues.

Composition of NITI Aayog

The composition of the NITI Aayog is as follows:

- ***Prime Minister of India:*** He is the Chairperson of NITI Aayog.

- ***Governing Council:*** Consists of Chief Ministers of all the States and Lieutenant Governors of Union Territories.
- ***Regional Councils:*** These are created to address particular issues and possibilities that affect more than one state. The regional councils are formed for a fixed term and the Prime Minister summons the council. It consists of the Chief Ministers of States and Lieutenant Governors of Union Territories. The Regional Council is chaired either by the Chairperson of the NITI Aayog or a person nominated by the Chairperson.
- ***Special invitees:*** The Prime Minister nominates the eminent professional and experts who have relevant domain knowledge.

The full-time organizational framework- it will include the

- Prime Minister as the Chairperson and
- Vice-Chairperson who is appointed by the Prime Minister.
- ***Members:***
 - Full-time members
 - ***Part-time members:*** The Maximum number of members is 2 from leading research organizations, foremost universities, and other innovative organizations that are in an ex-officio capacity. The part-time members are selected on a rotational basis.
- ***Ex Officio members:*** Includes a maximum of 4 members of the Council of Ministers who are nominated by the Prime Minister.
- ***Chief Executive Officer:*** The Prime Minister will appoint the CEO for a fixed tenure. He will be in the rank of Secretary to the Government of India.

Objective of NITI Aayog

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States.
 - To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation.
 - To develop mechanisms to formulate credible plans at the village level and aggregate these progressively
-

at higher levels of government.

- ❑ To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
- ❑ To pay special attention to the sections of our society that may be at risk of not benefiting adequately from economic progress.
- ❑ To design strategic and long-term policy and programme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learned through monitoring and feedback will be used for making innovative improvements, including necessary mid-course corrections.
- ❑ To provide advice and encourage partnerships between key stakeholders and national and international like-minded think tanks, as well as educational and policy research institutions.
- ❑ To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.
- ❑ To offer a platform for the resolution of inter-sectoral and inter departmental issues in order to accelerate the implementation of the development agenda.
- ❑ To maintain a state-of-the-art resource centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.
- ❑ To actively monitor and evaluate the implementation of programmes and initiatives, including the identification of the needed resources so as to strengthen the probability of success and scope of delivery.
- ❑ To focus on technology upgradation and capacity building for implementation of programmes and initiatives.
- ❑ To undertake other activities as may be necessary in order to further the execution of the national development agenda, and the objectives mentioned above.

Features of NITI Aayog

- ❑ NITI Aayog is developing itself as a state-of-the-art resource centre with the necessary knowledge and skills that will enable it to act with speed, promote

research and innovation, provide strategic policy vision for the government, and deal with contingent issues.

- ❑ It is supported by an attached office, Development Monitoring and Evaluation Organisation (DMEO), a flagship initiative, Atal Innovation Mission (AIM) and an autonomous body, National Institute of Labour Economics Research and Development (NILERD).
- ❑ NITI Aayog's entire gamut of activities can be divided into four main heads:
 - Policy and Programme Framework
 - Cooperative Federalism
 - Monitoring and Evaluation
 - Think Tank, and Knowledge and Innovation Hub

Seven pillars of effective governance envisaged by NITI Aayog

The NITI Aayog is based on the 7 pillars of effective Governance. They are:

- ***Pro-people:*** It fulfils the aspirations of society as well as individuals
- ***Pro-activity:*** In anticipation of and response to citizen needs
- ***Participation:*** Involvement of the citizenry
- ***Empowering:*** Empowering, especially women in all aspects
- ***Inclusion of all:*** Inclusion of all people irrespective of caste, creed, and gender
- ***Equality:*** Providing equal opportunity to all especially for youth
- ***Transparency:*** Making the government visible and responsive

Aims of NITI Aayog

- ❑ To provide a critical strategic and directional input in the development process of India.
- ❑ To serve as a think tank of both Centre and State-level Government. Also, to provide relevant technical and strategic advice on key policy matters.
- ❑ Try to replace the centre-to-state, one-way flow of policy with an amicably settled policy with a continued and genuine partnership of state frames.
- ❑ It seeks to put an end to the slow and tardy policy implementation. This is possible through better state-to-state and inter-Ministry coordination.

- ❑ To help in evolving a shared vision of development of national priorities and foster cooperative federalism. That is to work with the view that: strong states = strong nations.
- ❑ To develop mechanisms at the village level to formulate credible plans, to ensure that special attention is paid to those sections of society which carry the risk of not being benefited from the overall economic progress of the country.
- ❑ To evaluate and monitor the implementation of programs and also focus to upgrade the technology and building capacity.
- ❑ The NITI Aayog tries to accomplish the following opportunities:
 - To create a productive administration paradigm where the Government is an enabler rather than being a provider of the first and last resort.
 - To attain progress from food security, by focussing on agricultural production and the actual returns that farmers receive from their produce.
 - To ensure that India is an active participant in global deliberations and debates.
 - To ensure that the economically active middle-class is actively engaged and is utilized to its full potential.
 - Leveraging India's pool of scientific, entrepreneurial and intellectual human capital.
 - To incorporate the geopolitical and geo-economic strength of the NRI Community.
 - To use urbanization as an opportunity for creating a secure habitat via modern technology.
 - To use technology in reducing potential and ambiguity for misadventures in governance.
 - To leverage the demographic dividend of India and realize the potential of young men and women, which is done by imparting education, skill development, eliminating gender bias, and providing employment opportunities.
 - To eliminate poverty and to offer Indians a better chance to live a life with dignity and respect.
 - To redress inequalities that are based on gender bias, caste, and economic disparities.
 - To integrate villages into the development

process of the country.

- To provide policy support to more than 50 million businesses that are a major source of employment generation.
- To safeguard our ecological and environmental assets.

NITI AAYOG 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 taken 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.

Criticism of NITI Aayog

- ❑ A deeply unequal society cannot be transformed into a modern economy by the NITI Aayog, that ensures the welfare of all the citizens, irrespective of their social identity.
- ❑ NITI Aayog has no role in influencing private or public investment.
- ❑ NITI Aayog does not seem to influence policy-making with long-term consequences. For example, demonetization and Goods and Services Tax.
- ❑ If NITI Aayog is a think-tank, it should be maintaining a respectable intellectual distance from the government. Instead, what we see is uncritical praise of the Government-sponsored schemes and programs.
- ❑ NITI Aayog has not been able to answer some specific questions, like why 90% of the workers are still working in an unorganized sector and more informalisation is taking place in an organized sector.
- ❑ Women's labour force participation rate is also decreasing when our neighbours like Bangladesh are registering an increase in women's labour participation.
- ❑ Though things are working in the NITI Aayog, but not with the pace that is required, which should not be the case.
- ❑ To make it relevant, NITI Aayog has been bestowed with too many powers but bestowing too many powers in a single body is not a good idea for governance.
- ❑ The work of NITI Aayog includes to keep listening to the demands of the states and fulfil their needs which NITI Aayog has not been able to do till now.
- ❑ The intention behind setting up NITI Aayog was to encourage participation in the economic policy and

public involvement, it has done neither.

- ❑ The Prime Minister himself is of the view that the NITI Aayog has not been able to do enough in promoting initiatives like Swachh Bharat Mission, Make in India, and Smart City projects in the states.
- ❑ It does not have the power to analyse the performance of various government scheme

Co-operative Federalism by NITI Aayog

Cooperative Federalism in India reflects an ideology of a stable relationship between the centre and other units. It guides all the governing bodies to come forward and cooperate to resolve common social, political, economic and civic problems.

NITI Aayog has been constituted to actualise the important goal of cooperative federalism and to enable good governance in India. On the premise that strong states make a strong nation, NITI Aayog acts as the quintessential platform for the Government of India by bringing States together as 'Team India' to work towards the national development agenda.

In view of this, a number of steps have been taken by NITI Aayog to foster cooperative federalism through structured support initiatives and engagement with the States/UTs on a continuous basis. These includes:

- ❑ meetings between the Prime Minister/Cabinet Ministers and all Chief Ministers;
 - ❑ subgroups of Chief Ministers on subjects of national importance;
 - ❑ sharing of best practices;
 - ❑ policy support and capacity development of State/UT functionaries;
 - ❑ launching of the Aspirational Districts Programme for development of backward districts;
 - ❑ theme-based extensive engagements in various sectors;
 - ❑ framing model laws for land leasing and agriculture marketing reforms; and
 - ❑ area-specific interventions for the North-Eastern and Himalayan States and island development.
 - ❑ providing relevant technical advice to the Centre, States and UTs
 - ❑ Centre-state partnership model Development Support Services to States and Union Territories (DSSS);
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- ❑ and the Sustainable Action for Transforming Human Capital (SATH) programme.

Erstwhile Planning Commission

The erstwhile Planning Commission was established in March 1950 by an executive resolution of the Government of India, (i.e., the Union Cabinet) on the recommendation of the Advisory Planning Board constituted in 1946, under the chairmanship of K.C. Neogi. Thus, the erstwhile Planning Commission was neither a constitutional body nor a statutory body.

In India, it was the supreme organ of planning for social and economic development.

Functions

The functions of the erstwhile Planning Commission included the following:

- ❑ To make an assessment of material, capital and human resources of the country, and investigate the possibilities of augmenting them.
- ❑ To formulate a plan for the most effective and balanced utilisation of the country's resources.
- ❑ To determine priorities and to define the stages in which the plan should be carried out.
- ❑ To indicate the factors that retard economic development.
- ❑ To determine the nature of the machinery required for successful implementation of the plan in each stage.
- ❑ To appraise, from time to time, the progress achieved in execution of the plan and to recommend necessary adjustments.
- ❑ To make appropriate recommendations for facilitating the discharge of its duties, or on a matter referred to it for advice by Central or state governments.

The Allocation of Business Rules had assigned the following matters (in addition to the above) to the erstwhile Planning Commission:

- ❑ Public Co-operation in National Development
- ❑ Specific programmes for area development notified from time to time
- ❑ Perspective Planning
- ❑ Institute of Applied Manpower Research
- ❑ Unique Identification Authority of India (UIDAI)
- ❑ All matters relating to National Rainfed Area

Authority (NRAA) Earlier, the National Informatics Centre was also under the erstwhile Planning Commission. Later, it was brought under the Ministry of Information Technology.

It should be noted that the erstwhile Planning Commission was only a staff agency—an advisory body and had no executive responsibility. It was not responsible for taking and implementing decisions. This responsibility rested with the Central and State Governments.

Composition

The following points can be noted in context of the composition (membership) of the erstwhile Planning Commission:

- ❑ The Prime Minister of India was the Chairman of the Commission. He presided over the meetings of the commission.
- ❑ The commission had a Deputy Chairman. He was the de facto executive head (i.e., full-time functional head) of the commission. He was responsible for the formulation and submission of the draft of Five-Year Plan to the Central cabinet. He was appointed by the Central cabinet for a fixed tenure and enjoyed the rank of a cabinet minister. Though he was not a member of cabinet, he was invited to attend all its meetings (without a right to vote).
- ❑ Some Central Ministers were appointed as part-time members of the commission. In any case, the finance minister and planning minister were the ex-officio (by virtue of) members of the commission.
- ❑ The commission had four to seven fulltime expert members. They enjoyed the rank of a minister of state.
- ❑ The commission had a member-secretary. He was usually a senior member of IAS. The state governments were not represented in the commission in any way.

Thus, the erstwhile Planning Commission was wholly a Centre-constituted body.

National Development Council

On the 1st of January, 2016, it was reported that the Modi government is also going to abolish the National Development Council (NDC) and transfer its powers to the Governing Council of the NITI Aayog. However, till now, such a resolution has not been passed.

The National Development Council (NDC) was established in August 1952 by an executive resolution of the Government of India on the recommendation of the First Five Year Plan (draft outline). Like the erstwhile Planning Commission, it is neither a constitutional body nor a statutory body.

Composition

The NDC is composed of the following members.

- ❑ The Prime Minister of India (as its chairman/head).
- ❑ All Union Cabinet Ministers (since 1967).¹⁷
- ❑ The Chief Ministers of all the states.
- ❑ The Chief Ministers/administrators of all union territories.
- ❑ Members of the Planning Commission (now NITI Aayog).
- ❑ The secretary of the Planning Commission (now NITI Aayog) acts as the secretary to the NDC.

It (NDC) is also provided with administrative and other assistance for its work by the Planning Commission (now NITI Aayog).

Objectives

The NDC was established with the following objectives.

- ❑ To secure cooperation of states in the execution of the Plan.
- ❑ To strengthen and mobilise the efforts and resources of the nation in support of the Plan.
- ❑ To promote common economic policies in all vital spheres.
- ❑ To ensure balanced and rapid development of all parts of the country.

Functions

To realise the above objectives, the NDC is assigned with the following functions:

- ❑ To prescribe guidelines for preparation of the national Plan.
- ❑ To consider the national Plan as prepared by the Planning Commission (now NITI Aayog).
- ❑ To make an assessment of the resources required for implementing the Plan and to suggest measures for augmenting them.
- ❑ To consider important questions of social and economic policy affecting national development.
- ❑ To review the working of the national Plan from

time to time.

- ❑ To recommend measures for achievement of the aims and targets set out in the national Plan.

The Draft Five-Year Plan prepared by the Planning Commission (now NITI Aayog) is first submitted to the Union Cabinet. After its approval, it is placed before the NDC, for its acceptance. Then, the Plan is presented to the Parliament. With its approval, it emerges as the official Plan and published in the official gazette. Therefore, the NDC is the highest body, below the Parliament, responsible for policy matters with regard to planning for social and economic development.

However, it is listed as an advisory body to the Planning Commission (now NITI Aayog) and its recommendations are not binding. It makes its recommendations to the Central and state governments and should meet at least twice every year.

Comparison between NITI Aayog and Planning Commission

| <i>NITI Aayog</i> | <i>Planning Commission</i> |
|--|--|
| It serves as an advisory Think Tank. | It served as extra-constitutional body. |
| It draws membership from a wider expertise. | It had limited expertise. |
| It serves in spirit of Cooperative Federalism as states are equal partners. | States participated as spectators in annual plan meetings. |
| Secretaries to be known as CEO appointed by Prime- Minister. | Secretaries were appointed through usual process. |
| It focuses upon 'Bottom-Up' approach of Planning. | It followed a 'Top-Down' approach. |
| It does not possess mandate to impose policies. | Imposed policies on states and tied allocation of funds with projects it approved. |
| It does not have powers to allocate funds, which are vested in Finance Minister. | It had powers to allocate funds to ministries and state governments. |

Human Rights Commission

The Protection of Human Rights Act of 1993 provides for the creation of National Human Rights Commission at central level and State Human Rights Commission at the state level.

National Human Rights Commission

The National Human Rights Commission was established through an Act of Parliament in the year 1992 by the

Protection of Human Rights Act, 1993 for protection and promotion of Human Rights in India. This is the most important development in India. This development is the result of an ordinance that was promulgated by the President.

What is the National Human Rights Commission (NHRC)?

The National Human Rights Commission (NHRC) established in 1993, is an independent statutory body as per the provisions of the Protection of Human Rights Act of 1993 which was amended in 2006.

- ❑ Human Rights are an indispensable part of society and Human Rights in India are watched by NHRC.
- ❑ NHRC acts as a watchdog of human rights in the country.
- ❑ For 27 years it has served the needs of the people of India, to protect the 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants.
- ❑ They are guaranteed by the Constitution of India, embodied in the international covenants and are enforceable by the courts of India as well.

NHRC History

- ❑ In 1948, the UN adopted the UDHR (Universal Declaration of Human Rights).
- ❑ In 1991, the Paris Principles were established by the National Human Rights Institutions (NHRIs).
- ❑ In 1993, the UN adopted these Paris Principles at its General Assembly.
- ❑ In 1993, India enacted the Protection of Human Rights Act.
- ❑ The Commission was established on 12th October 1993 and sits at its headquarters, in New Delhi.
- ❑ The Protection of Human Rights Act also allowed state governments to establish the State Human Rights Commission.

Composition of the National Human Rights Commission

The National Human Rights Commission (NHRC) is composed of a Chair-person and eight other members. The Chairperson should be a retired Chief Justice of India.

Apart from above mentioned members, there are four other members. These are:

- ❑ There should be one Member who is, or has been, a Judge of the Supreme Court.
- ❑ There should be one Member who is, or has been, the Chief Justice of the High Court.
- ❑ Two other members should be there who have the knowledge or practical experience in matters related to human rights.

The ex-officio members of the Commission can be:

- ❑ The Chairpersons of the National Commission for Minorities,
- ❑ The Chairpersons of the National Commission for Women,
- ❑ The Chairperson of the National Commission for Scheduled Castes, and
- ❑ The Chairperson of the National Commission for Scheduled Tribe.

Appointment of the Members

On the recommendation of a committee, the President of India appoints the Chairperson and the members of the National Human Rights Commission. The committee consists of the following members:

- Prime Minister of India [Chairperson]
- Home Minister of India
- Speaker of Lok Sabha
- Leader of Opposition [Lok Sabha]
- Leader of Opposition [Rajya Sabha]
- Deputy Chairperson of Rajya Sabha

Resignation

The Chairperson or other members may in writing submit his/her resignation to the President of India.

Removal

The Chairperson or other members can be removed from the office on the ground of proved misbehaviour or incapacity by the President of India but before doing so, the President is required to refer the matter to the Supreme Court, which will hold an enquiry into the matter. On the basis of the reply of the Supreme Court, the President is required to take the decision.

There are five grounds provided on which President may remove the Chairperson or any other member from his office. These are-

- ❑ If that person has been declared as insolvent,
- ❑ If that person engages during his term of office in any other paid employment outside the duties of his office,

- ❑ If that person is unfit to continue because of the infirmity of the mind or body,
- ❑ If that person is of unsound mind as declared by a competent Court,
- ❑ If that person has been declared as guilty of criminal offence and is sentenced to the imprisonment and if in the opinion of the President it involves moral turpitude.

Term of Office of Chairperson and Members

- ❑ Term of the office of Chairperson and members of the National Human Rights Commission is for a period of three years or until the Chairperson reaches 70 years of age, whichever is earlier the Chairperson can hold the office.
- ❑ For a period of three years, the members that are appointed can hold the office. These members are also eligible for re-appointment for another term provided, that member should cease to hold the office after attainment of 70 years of age.
- ❑ Under the Government of India or the State Government, the person who holds the office of the Chairperson or a member will be eligible for further employment as per recent amendment of 2019.

Functions of the NHRC

The NHRC, along with its basic motive of safeguarding the wellbeing and rights of every individual in the country, has certain niche functions, which are enumerated under Chapter III of the Act.

General Functions:

The NHRC amongst other facets of its existence, has the authority to undertake the following:

- ❑ Take suo motu cognizance, or intervene, in any matter presented before it, or in any other court after due permission of such court, involving the gross violation of human rights and/or the negligence in the prevention of such violation of rights.
- ❑ Visit any jails or other institutions to keep a check on the treatment of detainees, and make recommendations to the respective Government for the same.
- ❑ Review the Constitution of India and all other laws prevailing at the present time, and suggest methods of making the same at par with current human right standards
- ❑ Keep a check on and provide recommendations for

unemployment in India, and measures to reduce the same.

- ❑ Ensure precise implementation of international human rights standards in accordance with international treaties
- ❑ Undertake and promote research, and spread awareness through myriad sources of multimedia, to ensure maximum knowledge of the field in maximum people in the country
- ❑ The members of the NHRC have the power to take up the office or duties of the Chairperson, in an event such Chairperson is incapacitated, or the members are directed to do so by the President of India.
- ❑ The NHRC can send recommendations to the concerned Government authority for the payments related to compensation of damages to victims in cases
- ❑ It can recommend the initiation of action against a guilty public servant, to the respected authorities
- ❑ It can recommend the grant of interim relief to a victim, to the concerned government authority

Powers related to Inquiries:

- ❑ In inquiring into complaints filed under the Act, the Commission is granted powers of a Civil Court in trying a suit as per the directions of the Code of Civil Procedure, 1908, in specific matters as prescribed to them, including but not limited to:
 - Summoning and examining witness under oath
 - Production of documents
 - Receiving affidavits as proofs
 - Issuing orders for examining witnesses and documents
- ❑ In addition to these powers, the NHRC has the power to legally bind an individual to furnish information that the Commission deems expedient in a case, and to enter into any premise where they have reason to believe certain documents may be found, which according to them is expedient to a case, and to seize and make copies thereof.
- ❑ Powers related to Investigation: The NHRC has the power to utilize agencies in undertaking investigations in relation to any inquiry filed with them, after due permission from the Central or State Government.

- To satisfy itself with the quality and authenticity of data received, the NHRC can also make any inquiry, and examine any witness as it requires, to fulfil such a need. Further, if the NHRC considers it necessary to examine any individual, and is of the opinion that the reputation of such individuals might serve as a bias either for or against them in a trial, it has the authority to give such individuals an opportunity to defend themselves, and to be heard in the proceedings.

Limitations of the NHRC

Although being a governmentally associated principal advocate for human rights in our country, the NHRC does have certain misgivings that limit the authority it seems to have.

- **Insufficient powers for rendering relief:** The recommendations given by the NHRC are not binding on any authority, be it legislative or executive. The Commission cannot penalize any authority or department for not following its orders or directions. The NHRC cannot actually give pragmatic and complete judgments to aggrieved parties, like courts, and is thus falling short in giving practical relief to the victims. Further, the time limit given to each inquiry is 1 [One] year from the date of its admission in the Commission. The NHRC can only entertain one case for a maximum period of 1 [One], which could affect the quality of justice.
- **Lack of Jurisdiction:** As a safeguard for human rights throughout India, the NHRC is failing at primarily reaching all the parts of the country. The State of Jammu and Kashmir is not within the jurisdiction of protection and review by the NHRC, which invalidates the country-wide scope of the Commission. Jammu and Kashmir, as evidently proved on regular occasions, is the epicentre of gross human rights violations, by government authorities, armed forces, law enforcement, etc., and the NHRC not being given the jurisdiction of this state clearly shows the back seat that the Commission has in the practical aspect of things. Further, the NHRC does not have means to mitigate human right violations between private parties, unless such parties come to the forefront.
- **Armed Forces:** The NHRC does not have the jurisdiction to question and ask information from the National Government, on matters relating to the

working of the Armed Forces, this severely limits the scope of ensuring human rights in all sectors, as they have to rely solely on the Human Rights report submitted by the Centre in this regard.

- **Shortcomings in Investigations:** The NHRC does not have the means to carry out any investigations with its own agenda and mode, but has to redirect such a request to the Central or State Government so that they can appoint an Officer to undertake such an investigation. Further, the time limit placed on the investigation hampers the working of the NHRC, since they can only investigate a case for one year after its admission in the Commission. This affects the work and quality of investigation undertaken by the NHRC, and a great number of grievances may go unaddressed.
- **Ceremonial Figure:** The NHRC is considered to be a place for judges to go to, once they retire, or feel their tenure as judges ending soon, and is commonly treated as a post-retirement platform for judges, officers and bureaucrats. Further, the inadequacy of funds delegated to its functioning, also severely compromises its activities.
- **Other Limitations:** In addition to all the above-mentioned limitations, the majority of the Commission comprises judges of the Supreme Court and the High Court, which gives the NHRC a more judicial and legal touch. The lack of human right experts and civil liberty experts is concerning, and can cause problems in judgement of certain inquiries. Further, its functioning is bureaucratic, as most of the members in it are there due to their political clout.

State Human Rights Commission

The Protection of Human Rights Act of 1993 provides for the creation of State Human Rights Commission at the state level. A State Human Rights Commission can inquire into violation of human rights related to subjects covered under state list and concurrent list in the seventh schedule of the Indian constitution. In order to exercise the powers or to perform functions that are assigned to the State Commission, the State Government may constitute a body known as the Human Rights Commission of that state.

Composition of the State Human Rights Commission

State Human Rights Commission consists of three

members including a Chair-person according to the Human Rights Amendment Act, 2006. Retired Chief Justice of the High Court can be the Chairperson of the commission.

The other members include:

- ❑ A present Judge of the High Court or the District Court can be a member of the commission. The person should have a minimum experience of seven years as a District Judge.
- ❑ A person who has practical experience as well as knowledge related to the issues of human rights.

The Governor on the recommendation of the committee appoints the Chairperson and other members. If the state has a Legislative Council, then the Chairman and the leader of the opposition of Legislative Council will also be the members of the committee.

The committee consists of:

- ❑ Head – Chief Minister.
- ❑ Legislative Assembly speaker.
- ❑ The Home Minister of the State.
- ❑ Leader of the opposition from the legislative assembly.

The Chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the Chairperson and members are not eligible for further employment under a state government or the Central government.

Resignation

The Chairperson or other members may in writing submit his/her resignation to the Governor.

Removal

The Chairperson or other members can be removed from the office on the ground of proved misbehaviour or incapacity by the President of India but before doing so, the President is required to refer the matter to the Supreme Court, which will hold an enquiry into the matter. On the basis of the reply of the Supreme Court, the President is required to take the decision.

There are five grounds provided on which President may remove the Chairperson or any other member from his office. These are:

- ❑ If that person has been declared as insolvent,
- ❑ If that person engages during his term of office in

any other paid employment outside the duties of his office,

- ❑ If that person is unfit to continue because of the infirmity of the mind or body,
- ❑ If that person is of unsound mind as declared by a competent Court,
- ❑ If that person has been declared as guilty of criminal offence and is sentenced to the imprisonment and if in the opinion of the President it involves moral turpitude.

Functions of the Commission:

According to the protection of Human Rights Act, 1993; below are the functions of State Human Rights Commission:

- ❑ Inquire suo motu or on a petition presented to it, by a victim, or any person on his behalf into complaint of violation of human rights or negligence in the prevention of such violation by a public servant.
 - ❑ Intervene in any proceeding involving any allegation of violation of human rights before a Court with the approval of such Court.
 - ❑ Visit any jail or any other institution under the control of the State Government where persons are detained to study the living conditions of the inmates and make recommendations thereon
 - ❑ Review the safeguards provided by or under the constitution of any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
 - ❑ Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
 - ❑ Undertake and promote research in the field of human rights.
 - ❑ Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights.
 - ❑ Encourage the efforts of non-Governmental organizations and institutions working in the field of human rights.
 - ❑ Undertake such other functions as it may consider necessary for the promotion of human rights.
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Working of the Commission

- ❑ The commission is vested with the power to regulate its own procedure.
- ❑ It has all the powers of a civil court and its proceedings have a judicial character.
- ❑ It may call for information or report from the state government or any other authority subordinate thereto.

It has the power to require any person subject to any privilege which may be claimed under any law for the time being in force, to furnish information on points or matters useful for, or relevant to the subject matter of inquiry. The commission can look into a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

- ❑ It may suggest that the victim's compensation or damages be paid by the state government or authority.
- ❑ It may suggest to the state government or authority that criminal charges or other actions be brought against the state government.
- ❑ It may suggest to the state government or authority that the victim be granted prompt interim relief.
- ❑ It may seek direction, order, or writs from the Supreme Court or a state high court.
- ❑ The state government receives the Commission's annual or special reports. These reports are presented to the state legislature, together with a memorandum of action taken on the Commission's recommendations and the reasons for rejecting any of them.

Criticism:

- ❑ State Human Rights Commission has limited powers and its functions are just advisory in nature. The commission does not have power to punish the violators of human rights. It cannot even award any relief including monetary relief to the victim.
- ❑ The recommendations of State Human Rights Commission are not binding on the State Government or authority, but it should be informed about the action taken on its recommendation within one month.

National Human Rights Commission (NHRC) – Key Differences

| | Protection of Human Rights Act 1993 | Protection of Human Rights (Amendment) Act 2019 |
|--------------------|--|--|
| Chairperson | The commission shall consist of a Chairperson of NHRC who has been a Chief Justice of the Supreme Court. Under the Act, the Chairperson of an SHRC is a person who has been a Chief Justice of a High Court. | Chief justice of the Supreme court or the Judge of the Supreme Court shall be the Chairperson of NHRC. The Bill amends this to provide that a person who has been Chief Justice or Judge of a High Court will be Chairperson of an SHRC. |
| Other Members | NHRC must consist of two members to be appointed from among the persons having knowledge of, or practical experience in the matters relating to Human Rights. | The bill amends this to allow three members to be appointed of which at least one will be a woman. |
| Ex-Officio Members | The Chairpersons for National Commission for Minorities, National Commission for Scheduled Castes and scheduled Tribes and National Commission for Women shall deem to be Member of the Commission. | The Bill provides for including the Chairpersons of the National Commission for Backward Classes, National Commission for the protection of Child Rights and the Chief Commissioners for Persons with Disabilities as the members of NHRC. |
| Term | The Act states that the Chairperson and members of the NHRC and SHRC will hold office for five years or till the age of seventy years, whichever is earlier. | The bill reduces the term of Office to 3 years or till the age of 70 years whichever is earlier. |
| Reappointment | The act allows for the reappointment of the member of NHRC for the term of five years | The bill removes the five-year limit of reappointment |

| | | |
|--|--|---|
| Powers of Secretary-General | The act provides for a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise powers as may be delegated to them. | The Bill amends this and allowed the Secretary-General to exercise all the administrative and financial powers (except Judicial functions) subject to Chairperson's control. |
| Union Territories | | The Bill provides that the central government may confer on an SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC. |
| The Protection of Human Rights (Amendment) Bill, 2019 has been passed in both Lok Sabha and Rajya Sabha in 2019. | | |

Central Information Commission

The Chief Information Commission (CIC) is the authorized body in India to act upon complaints received from individuals who have been unable to submit requests of information to a Central or State Public Information Officer due to either the officer not having been appointed, or the respective officer refused to entertain the application under the Right to Information Act (RTI Act). The Central Information Commission is not a constitutional body.

The CIC was constituted with effect from 12th October 2005 under the RTI Act 2005. Its jurisdiction extends to all central public authorities.

Objectives

- ❑ To empower the citizens
- ❑ To promote transparency and accountability
- ❑ To contain corruption
- ❑ To enhance people's participation in democratic process.

Composition

Members in CIC – The CIC is headed by the Chief Information Commissioner and not more than ten Information Commissioners are there for the assistance of CIC. The Chief Information Commissioner holds office for five years.

At present, the Commission has seven Information Commissioners apart from the Chief Information Commissioner.

Appointment of the commissioner in CIC – The commissioners are appointed by the President on the recommendation of a committee consisting of the

- ❑ Prime Minister as Chairperson,
- ❑ the Leader of Opposition in the Lok Sabha, and
- ❑ Union Cabinet Minister nominated by the Prime Minister.

Tenure

- ❑ The Chief Information Commissioner and an Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier (RTI amendment 2019).
- ❑ Chief Information Commissioner are not eligible for reappointment.
- ❑ The Information Commissioner is eligible for appointment as Chief Information Commissioner but cannot hold office for more than a total of five years including his term as Information Commissioner.
- ❑ The salary, allowances and other service conditions of the Chief Information Commissioner and an Information Commissioner shall be such as prescribed by the Central Government (RTI amendment 2019)
- ❑ They cannot be varied to his disadvantage during service.

Qualification:

- ❑ Qualification for membership to commission are persons should person of eminence in public life with experience in field of law, science and technology, governance, social service, management, journalism, mass media or administration.
- ❑ They should not be MP / MLA's or connected to any

political party, doing some business/ profession or holding office of profit.

Removal

- ❑ Removal is done by President on grounds of bankruptcy, unsound mind, infirmity of body or mind, sentenced to imprisonment for a crime, or engages in paid employment.
- ❑ He can also be removed for proved misbehaviour or incapacity if Supreme Court inquiry finds him guilty.
- ❑ They can resign by writing to President.

Role of the Central Information Commission

- ❑ Order enquiry into any matter on reasonable grounds only (suo-moto power).
- ❑ Secure compliance of its decisions from any public authority.
- ❑ Receive and inquire into a complaint from any person:
 - Who has not received any response to his request for information within a specified time?
 - Who deems the information given to him/her incomplete, false or misleading, and any other matter related to securing the information?
 - Who has been unable to submit a request for information due to the non-appointment of an officer?
 - Who considers the fees so charged unreasonable
 - Who was refused the information requested?
- ❑ The commission has the power to examine any record under the control of the public authority. All such records have to be given to the Commission during the examination and nothing shall be withheld.
- ❑ During inquiries, the CIC has the powers of a civil court, such as the powers to:
 - Summon and enforce the attendance of persons, and compel them to give oral or written evidence on oath and produce documents or things
 - Require the discovery and inspection of documents
 - Receive evidence on affidavit

- Requisition public records or copies from any office or court
- Issue summons for the examination of documents or witnesses
- Any other matter that may be prescribed

- ❑ The CIC also submits an annual report to the Government of India on the implementation of the provisions of the Act. This report is then placed before both the Houses of Parliament.
- ❑ The Commission has the power to secure compliance of its decisions from the public authority. This includes:
 - providing access to information in a particular form;
 - directing the public authority to appoint a Public Information Officer where none exists;
 - publishing information or categories of information;
 - making necessary changes to the practices relating to management, maintenance and destruction of records;
 - enhancing training provision for officials on the right to information;
 - seeking an annual report from the public authority on compliance with this Act;
 - requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
 - imposing penalties under this Act; and
 - rejecting the application.

Benefits

- ❑ Citizen empowerment as their participation will increase in knowing about working.
 - ❑ Better functioning of the Government.
 - ❑ More accessibility to getting information with ease.
 - ❑ Public records will be maintained efficiently.
 - ❑ Efficiency of the Government's functioning will be known.
 - ❑ Best example of Rights Approach.
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Issues with CIC:

- ❑ No adequate authority:
 - The Act did not give adequate authority to the ICs to enforce their decisions.
- ❑ Inadequate Trained PIOs and First Appellate authority:
 - results in breaking the 30-day timeline for providing information as due to lack of proper training PIOs are not able to provide the information in time bound manner
- ❑ **Impact of Covid-19:**
 - During the pandemic, most of the CICs offices were not working. Most even do not have their websites working.
- ❑ **Delays and Backlogs:**
 - On average, the CIC takes 388 days (more than one year) to dispose of an appeal/complaint from the date it was filed before the commission.
 - A report released last year has pointed out that more than 2.2 lakh Right to information cases are pending at the Central and State Information Commissions (ICs).
- ❑ **No Penalties:**
 - The report found that the Government officials hardly face any punishment for violating the law.
 - Penalties were imposed in only 2.2% of cases that were disposed of, despite previous analysis showing a rate of about 59% violations which should have triggered the process of penalty imposition
- ❑ **Vacancy:**
 - Despite repeated directions from the court, there are still three vacancies in the CIC.
- ❑ **Lack of Transparency:**
 - The criteria of selection, etc, nothing has been placed on record.
- ❑ Non-availability of User Guides for RTI implementation for information seekers:
 - Under Section 26 of the RTI Act, the appropriate Government is expected to publish and distribute user guides (within eighteen months of enactment of the Act) for information seekers.

- However, it was highlighted in the information provider survey that Nodal Departments have not published these guides.

❑ **Low awareness levels:**

- People are not much aware about RTI, especially the lower strata of society. They are not able to enjoy their right of asking for information for their own betterment.
- An awareness survey was held and as per the survey it was revealed that only 15 per cent of the respondents were aware of the RTI Act.
- It was further observed that awareness level is low among the disadvantaged communities such as women, rural population, OBC/SC/ST categories, etc.

❑ **Government's Plan:**

- The Government is planning to do away with the equal footing of CIC and CEC, which only suggests that fair elections are more important than transparency of working.
- The Government is also planning to reduce the 5-year tenure period to one which will majorly impact the independent nature of the institution.

Key Changes of Right to Information (Amendment) Bill, 2019

| Provision | RTI Act 2005 | RTI (Amendment) Bill 2019 |
|-------------------|--|---|
| Term (Section 13) | 5 years or the age of 65 whichever is earlier | Now Centre Govt. will notify tenure. (Now 3 years as notified by Centre) |
| Salary | Following Equivalents in Salaries were to be paid: Under Section 13 of RTI Act 2005: CIC = Chief Election Commissioner (CEC) ICs = Election Commissioners (ECs) Under Section 16 of RTI Act 2005: State level CIC = ECs State Level ICs = Chief Secretary of State govt. | Now, the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government. (No power to State Governments) |

| | | |
|----------------------------------|--|--|
| Deduction in Salary (Section 27) | Salaries of CIC and ICs will be deducted by an amount equal to the pension or retirement benefits being received by them if any. | Bill has removed these provisions. |
| Appointment | Earlier by 3-member committee comprising PM, Leader of Opposition and One Minister nominated by PM. Similarly at State Level, 3 membered committee will comprise of CM, Leader of Opposition in State and any Minister in State. | Now, these powers have been delegated to the Central Government. |

STATE INFORMATION COMMISSION

The Right to Information Act of 2005 provides for the creation of not only the Central Information Commission but also a State Information Commission at the state level. Accordingly, all the states have constituted the State Information Commissions through Official Gazette Notifications.

The State Information Commission is a high-powered independent body which inter-alia looks into the complaints made to it and decide the appeals. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the concerned state government.

Objectives

- ❑ To empower the citizens
- ❑ To promote transparency and accountability
- ❑ To contain corruption
- ❑ To enhance people's participation in democratic process.

Composition

The SIC is headed by the state Information Commissioner and not more than ten Information Commissioners are there for the assistance of SIC. The number of State Information Commissioners varies from one state to another state.

The Governor appoints the commissioners on the advice of a committee that includes

- ❑ Chief Minister as Chairperson,

- ❑ the Leader of the Opposition in the Legislative Assembly and
- ❑ a State Cabinet Minister nominated by the Chief Minister

Tenure

- ❑ The State Chief Information Commissioner and a State Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier (RTI amendment 2019).
- ❑ State Chief Information Commissioner are not eligible for reappointment.
- ❑ The State Information Commissioner is eligible for appointment as State Chief Information Commissioner but cannot hold office for more than a total of five years including his term as State Information Commissioner.
- ❑ The salary, allowances and other service conditions of the State Chief Information Commissioner and a State Information Commissioner shall be such as prescribed by the Central Government (RTI amendment 2019)
- ❑ They cannot be varied to his disadvantage during service.

Qualification:

- ❑ Qualification for membership to commission are persons should person of eminence in public life with experience in field of law, science and technology, governance, social service, management, journalism, mass media or administration.
- ❑ They should not be MP / MLA's or connected to any political party, doing some business/ profession or holding office of profit.

Removal:

- ❑ Removal is done by Governor on grounds of bankruptcy, unsound mind, infirmity of body or mind, sentenced to imprisonment for a crime, or engages in paid employment.
- ❑ He can also be removed for proved misbehaviour or incapacity if Supreme Court inquiry finds him guilty. They can resign by writing to Governor.

Powers and Function

- ❑ It is the duty of the Commission to receive and inquire into a complaint from any person:
- ❑ who has not been able to submit an information request because of non-appointment of a Public Information Officer (PIO)
 - who has been refused information that was requested;
 - who has not received response to his information request within the specified time limits;
 - who thinks the fees charged are unreasonable;
 - who thinks information given is incomplete, misleading or false;
 - any other matter relating to obtaining information.
- ❑ The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).
- ❑ While inquiring, the Commission has the powers of a civil court in respect of the following matters:
 - summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
 - requiring the discovery and inspection of documents;
 - receiving evidence on affidavit;
 - any public record from any court or office; issuing summons for examination of witnesses or documents; and
 - any other matter which may be prescribed.
- ❑ All public records must be given to the Commission during inquiry for examination.
- ❑ The Commission has the power to secure compliance of its decisions from the public authority. This includes:
 - access to information in a particular form;
 - directing the public authority to appoint a Public Information Officer where none exists;
 - publishing information or categories of information;
 - making necessary changes to the practices relating to management, maintenance and

destruction of records;

- enhancing training provision for officials on the right to information;
 - seeking an annual report from the public authority on compliance with this Act;
 - requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
 - imposing penalties under this Act; and
 - rejecting the application.
- ❑ The State Information Commission submits an annual report to the State Government on the implementation of the provisions of this Act. The State Government places this report before the State
 - ❑ When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.

CENTRAL VIGILANCE COMMISSION

The need to set up CVC

The Central Vigilance Commission was set up by the Government in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K. Santhanam, to advise and guide Central Government agencies in the field of vigilance.

CVC is an apex Indian governmental body. It addresses governmental corruption. In 2003, the Parliament enacted a law conferring statutory status on the CVC. It

- ❑ has the status of an autonomous body
- ❑ is free of control from any executive authority
- ❑ charged with monitoring all vigilance activity under the Central Government of India
- ❑ advises various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.

The main purpose for which this important body had been established was to ensure all sorts of corruptions in government sector could be well prevented and addressed minutely.

Central Government of India formed CVC in the year

1964 as an important body that could take into account the measures and steps to prevent all the corruptions especially the governmental ones for a better system and governance.

The Government of India has authorized the Central Vigilance Commission as the "Designated Agency" to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.

Present status of the CVC

The CVC Bill was passed by both the houses of Parliament in 2003 and the President gave its assent on September 11, 2003. Thus, the Central Vigilance Commission Act 2003 came into effect from that date.

Before Central Vigilance Commission can take up investigations into corruption cases against government officials, it has to be approved by the government. The Central Vigilance Commission also publishes list of corrupt officials and recommends punitive action against them.

Composition of CVC

The Commission shall consist of:

- ❑ A Central Vigilance Commissioner - Chairperson;
- ❑ Not more than two Vigilance Commissioners - Members;

CVC is headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners.

The Vigilance Commissioner shall act as Central Vigilance Commissioner in the following circumstances:

- ❑ If the office of Central Vigilance Commissioner is vacant due to his death, resignation or otherwise
- ❑ The Central Vigilance Commissioner is unable to discharge his functions due to him being absent on leave.

Appointment of Central Vigilance Commissioner and Vigilance Commissioner

The President of India appoints the Central Vigilance Commissioner and the Vigilance Commissioners on the recommendation of the Prime Minister, Home Minister and the leader of the opposition in the Lok Sabha.

The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

- ❑ Who have knowledge and experience in the matters relating to vigilance, policy making and

administration including police administration and have been or are in-

- an All-India Service;
 - any civil service of the Union;
 - a civil post under the Union;
- ❑ Who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations.

A Secretary shall be appointed to the Commission on terms and conditions to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

Removal of Central Vigilance Commissioner and Vigilance Commissioner

Any Vigilance Commissioner can be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court has been referred the matter and an inquiry is conducted. The result of the inquiry is such that the Central Vigilance Commissioner or any Vigilance Commissioner needs to be removed.

The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

The President may, by order, remove Central Vigilance Commissioner or any Vigilance Commissioner from office if such person

- ❑ is adjudged an insolvent;
 - ❑ has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;
 - ❑ during his term of office engages in any paid employment outside the duties of his office;
 - ❑ is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body;
 - ❑ has acquired financial or other interest as is likely
-

to affect prejudicially his functions.

Functions and Powers

Functions and Powers mentioned under 2003 Act are as follows:

- ❑ Exercise superintendence over the functioning of the Delhi Special Police Establishment (CBI) insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988; or an offence under the Criminal Procedure Code for certain categories of public servants.
- ❑ Give directions to the Delhi Special Police Establishment (CBI) for superintendence insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.
- ❑ To inquire or cause an inquiry or investigation to be made on a reference by the Central Government
- ❑ To inquire or cause an inquiry or investigation to be made into any complaint received against any official belonging to such category of officials specified in sub-section 2 of Section 8 of the CVC Act, 2003.
- ❑ Review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence under the Criminal Procedure Code.
- ❑ Review the progress of the applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
- ❑ Tender advice to the Central Government and its organizations on such matters as may be referred to it by them.
- ❑ Exercise superintendence over the vigilance administrations of the various Central Government Ministries, Departments and Organizations of the Central Government.
- ❑ Shall have all the powers of a Civil Court while conducting any inquiry.
- ❑ Respond to Central Government on mandatory consultation with the Commission before making any rules or regulations governing the vigilance or disciplinary matters relating to the persons

appointed to the public services and posts in connection with the affairs of the Union or to members of the All-India Services.

- ❑ The Central Vigilance Commissioner (CVC) is the Chairperson and the Vigilance Commissioners (Members) of the Committee, on whose recommendations, the Central Government appoints the Director of Enforcement.
- ❑ The Committee concerned with the appointment of the Director of Enforcement is also empowered to recommend, after consultation with the Director of Enforcement appointment of officers to the posts of the level of Deputy Director and above in the Directorate of Enforcement.
- ❑ The Central Vigilance Commissioner (CVC) is also the Chairperson and the Vigilance Commissioners (Members) of the Committee empowered to recommend after consultation with Director (CBI), appointment of officers to the post of the level of SP and above except Director and also recommend the extension or curtailment of tenure of such officers in the DSPE (CBI).

Proceedings of CVC

- ❑ The Commission shall be deemed to be a civil court. Every proceeding before the Commission shall be deemed to be a judicial proceeding. Hence the Commission has the power to
 - summon and enforce the attendance of any person;
 - require discovery and production of any document;
 - receive evidence on affidavits;
 - requisition any public record or a copy from court;
 - issue commissions for examination of witnesses etc.
- ❑ The proceedings of the Commission shall be conducted at its headquarters.
- ❑ The Commission shall abide by the rules of procedure in regard to the transaction of the business as provided by regulations.
- ❑ If the Central Vigilance Commissioner is for any reason unable to attend any meeting of the Commission, the senior most Vigilance Commissioner present at the meeting, shall preside at the meeting.

- ❑ No act or proceeding of the Commission shall be invalid merely by reason of-
 - any vacancy in, or any defect in the constitution of, the Commission; or
 - defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or
 - any irregularity in the procedure of the Commission not affecting the merits of the case.

Jurisdiction

The jurisdiction of the CVC extends to the following:

- ❑ Members of All India Services serving in connection with the affairs of the Union and Group A officers of the Central Government.
- ❑ Officers of the rank of Scale V and above in the Public Sector Banks.
- ❑ Officers in Grade D and above in Reserve Bank of India, NABARD and SIDBI.
- ❑ Chief Executives and Executives on the Board and other officers of E-8 and above in Schedule 'A' and 'B' Public Sector Undertakings.
- ❑ Chief Executives and Executives on the Board and other officers of E-7 and above in Schedule 'C' and 'D' Public Sector Undertakings.
- ❑ Managers and above in General Insurance Companies.
- ❑ Senior Divisional Managers and above in Life Insurance Corporation.
- ❑ Officers drawing salary of ₹8700/- per month (pre-revised) and above on Central Government D.A. pattern, as may be revised from time to time, in societies and local authorities owned or controlled by the Central Government

Limitations of CVC

The CVC is not an investigating agency. The only investigation carried out by the CVC is that of examining Civil Works of the Government which is done. There are certain limitations to CVC. These are

- ❑ CVC is only an advisory body. Central Government Departments are free to either accept or reject CVC's advice in corruption cases.
- ❑ CVC does not have adequate resources compared with number of complaints that it receives. It is a

very small set up with sanctioned staff strength of 299. Whereas, it is supposed to check corruption in more than 1500 central government departments and ministries.

- ❑ CVC cannot direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above on its own. Such permission has to be obtained from the concerned department.
- ❑ CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary cases.
- ❑ CVC has supervisory powers over CBI. However, CVC does not have the power to call for any file from CBI or to direct CBI to investigate any case in a particular manner.
- ❑ CVC cannot make direct appointments as it is indirectly under the control of Govt. of India. Though the leader of the Opposition (in Lok Sabha) is a member of the Committee to select CVC and VCs. But the Committee considers candidates put up before it.
- ❑ Corruption investigations against government officials can proceed only after the government permits them.

As a result, although CVC is relatively independent in its functioning, it has neither resources nor powers to inquire and take action on complaints of corruption that may act as an effective deterrence against corruption.

Hence, CVC is often considered a powerless agency as it is treated as an advisory body only with no power to register criminal case against government officials or direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above.

Whistle Blowers Protection Act (2014)

The salient features of the Whistle Blowers Protection Act (2014) are as follows:

- ❑ The Act provides a mechanism for protecting the identity of whistle blowers (a term given to people who expose corruption). People who expose corruption in Government or irregularities by public functionaries can now be free of any fear of victimization.
- ❑ The Act also provides for a system to encourage people to disclose information about corruption or the wilful misuse of power by public servants, including ministers.

- ❑ As per the Act, a person can make a public interest disclosure on corruption before a competent authority - which is at present the Central Vigilance Commission (CVC). The government, by notification, can appoint any other body also for receiving such complaints about corruption.
- ❑ The Act, however, lays down punishment of up to two years in prison and a fine of up to ₹30,000 for false or frivolous complaints.
- ❑ The Act says that every disclosure shall be made in good faith and the person making the disclosure shall provide a personal declaration stating that he reasonably believes that the information disclosed by him and the allegation contained therein is substantially true.
- ❑ Disclosures can be made in writing or by email message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents, or other material.
- ❑ However, no action shall be taken on a disclosure if it does not indicate the identity of the complainant or public servant or if “the identity of the complainant or public servant is found to be incorrect.”
- ❑ The Act is not applicable to the Special Protection Group.

CENTRAL BUREAU OF INVESTIGATION

CBI stands for Central Bureau of Investigation. It is the premier investigating police agency in India, which works under the Ministry of Personnel, Pension & Public Grievances, Government of India. The Ministry comes under the direct purview of the Prime Minister’s Office.

History of the Central Bureau of Investigation (CBI)

During World War II, a Special Police Establishment (SPE) was formed in the Department of War of British India, in 1941. The SPE was to enquire into allegations of bribery and corruption in the war-related procurements.

Later, the SPE was formalized as an agency of the Government of India to investigate allegations of corruption in various wings of the Government of India by enacting the Delhi Special Police Establishment (DSPE) Act, 1946.

In 1963, the SPE was renamed by the Government of India to CBI with a view to investigating serious crimes.

The Santhanam Committee on Corruption Prevention recommended the formation of the CBI. The CBI was then established by a Home Affairs Ministry resolution.

CBI now works under the Ministry of Personnel, Pension & Public Grievances, Government of India, and coordinates the investigation on behalf of the Interpol Member countries. For investigation of offences under the Prevention of Corruption Act, CBI vests superintendence to the Central Vigilance Commission.

What is CBI?

CBI is the premier investigating police agency in India. It is an elite force playing a major role in the preservation of values in public life and in ensuring the health of the national economy. The conviction rate of CBI is 65 to 70%, and that’s why it can be tagged as one of the best investigation agencies in the world. It is not a statutory body.

The CBI derives power to investigate from the Delhi Special Police Establishment (DSPE) Act, 1946 and is headquartered in New Delhi, India. The CBI is involved in major criminal probes and is the Interpol agency in India.

Central Bureau of Investigation has emerged as a premier investigating agency of the country which enjoys the trust of the people, Parliament, Judiciary and the Government. In the last 75 years, the organisation has evolved from an anti-corruption agency to a multi-faceted, multi-disciplinary central police law enforcement agency with the capability, credibility and legal mandate to investigate and prosecute offences anywhere in India.

Motto and Vision of CBI

The Motto of CBI is - Industry, Impartiality, Integrity.

Vision of CBI

- ❑ CBI aims to develop transparency, professionalism, and adaptability to change and the use of technology and science in its work.
 - ❑ It curbs corruption in public life, violent crimes, and economic and violent crimes through investigation and prosecution.
 - ❑ Help fight cyber and high technology crime.
 - ❑ Evolve effective systems and procedures for successful investigation and prosecution of cases.
-

- ❑ Play a lead role in the war against national and transnational organized crime, and uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization.
- ❑ Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavour and achievement.

Organization Structure of CBI

- ❑ The CBI is headed by a director, an IPS officer with a rank of Director General of Police or Commissioner of Police (State). The director is selected based on the CVC Act 2003, and has a two-year term. The CBI is subject to five ministries of the Government of India:
 - **Ministry of Home Affairs:** For Cadre clearance
 - **Department of Personnel and Training (DoPT):** For Administration, budget, and induction of non-IPS officers
 - **Union Public Service Commission:** For the selection of Officers above the rank of Deputy Superintendent of Police
 - **Law and Justice Ministry:** For Public prosecutors
 - **Central Vigilance Commission:** For Anti-corruption cases
- ❑ In 2014, the Lokpal Act provided a committee for appointment of CBI Director:
 - Headed by Prime Minister
 - Other members - Leader of Opposition/Leader of the single largest opposition party,
 - Chief Justice of India/ a Supreme Court Judge.
- ❑ Home Ministry sends a list of eligible candidates to DoPT. Then, the DoPT prepares the final list on basis of seniority, integrity, and experience in the investigation of anti-corruption cases, and sends it to the committee.
- ❑ Director of CBI has been provided security of two-year tenure, by the CVC Act, 2003.

Divisions under CBI

The Central Bureau of Investigation has the following divisions:

- ❑ Anti-Corruption Division (Delhi Special Police Establishment)

- ❑ Economic Offences Division
- ❑ Special Crimes Division
- ❑ Directorate of Prosecution
- ❑ Administration Division
- ❑ Policy & Coordination Division
- ❑ Central Forensic Science Laboratory

The Investigation & Anti-Corruption Division (Delhi Special Police Establishment) was entrusted with the following mandate in the resolution although it continued to derive its jurisdiction and powers from DSPE Act, 1946.

Cases Handled by CBI

The cases that can be handled by the CBI are mentioned below.

- ❑ Cases in which public servants under the control of the Central Government are involved either by themselves or along with State Government servants and/or other persons.
- ❑ Cases in which the interests of the Central Government, or of any public sector project or undertaking, or any statutory corporation or body set up and financed by the Government of India are involved.
- ❑ Cases relating to breaches of Central Laws with the enforcement of which the Government of India is particularly concerned, e.g.
 - Breaches of Import and Export Control Orders
 - Serious breaches of Foreign Exchange Regulation Act,
 - Passport frauds
 - Cases under the Official Secrets Act pertaining to the affairs of the Central Government.
 - Cases of certain specified categories under the Defence of India Act or Rules with which the Central Government is particularly concerned
- ❑ Serious cases of cheating or fraud relating to the Railways, or Posts & Telegraphs Department, particularly those involving professional criminals operating in several States.
 - Crime on the High Seas
 - Crime on the Airlines
- ❑ Important and serious cases in Union Territories particularly those by professional criminals.
- ❑ Serious cases of fraud, cheating and embezzlement

relating to Public Joint Stock Companies.

- ❑ Other cases of a serious nature, when committed by organised gangs or professional criminals, or cases having ramifications in several States including Union Territories, serious cases of spurious drugs, important cases of kidnapping of children by professional Inter-State gangs, etc. These cases will be taken up only at the request of or with the concurrence of the State Governments/Union Territories Administrations concerned.
- ❑ Collection of intelligence about corruption in the public services and the projects and undertakings in the public sector.
- ❑ Prosecution of cases investigated by this Division.
- ❑ Presentation of cases before Enquiry Offices in which departmental proceedings are instituted on the recommendation of this Division.

Functions of CBI

The CBI serves as India's point of contact with INTERPOL. CBI investigates cases involving violations of economic and fiscal laws, such as customs and central excise, export and import control, income tax, foreign exchange regulations, and so on. However, cases of this nature are investigated by the CBI either at the request of the department concerned or in consultation with the department concerned. Other function include:

- ❑ Coordination of the activities of various state police forces and anti-corruption organisations.
- ❑ Investigate any case of public importance at the request of a state government.
- ❑ Investigate serious crimes with national and international ramifications that are committed by professional criminals or organized gangs.
- ❑ Keeping crime statistics and spreading criminal information.
- ❑ CBI will no longer require government's prior sanction to launch investigations against officers of joint secretary rank and above in corruption cases.

Powers of CBI

The legal powers of investigation of the CBI are derived from the DSPE Act 1946, which confers powers, duties, privileges and liabilities on the Delhi Special Police Establishment (CBI) and officers of the Union Territories. The central government may extend to any area (except Union Territories) the powers and

jurisdiction of the CBI for investigation, subject to the consent of the government of the concerned state. The CBI can investigate only with notification by the central government.

The High Courts and the Supreme Court have the jurisdiction to order a CBI investigation into an offense alleged to have been committed in a state without the state's consent.

Sources of Powers of CBI

- ❑ The CBI is the Government of India's primary investigative agency. It is not a statutory body; its powers are granted by the Delhi Special Police Establishment Act of 1946.
- ❑ Its critical role is to prevent corruption and maintain administrative integrity.
- ❑ In matters pertaining to the Prevention of Corruption Act, 1988, it works under the supervision of the CVC (Central Vigilance Commission).
- ❑ However, the Central Government can extend its jurisdiction to other areas, including railway areas and states, if the State Government consents.
- ❑ Because many of its investigators come from the Indian Police Service, the agency relies on the Home Ministry for staffing.
- ❑ The CBI also relies on the Ministry of Law for lawyers and lacks some functional autonomy.

What is General Consent in an investigation by the CBI?

- ❑ The CBI which is under the Delhi Special Police Establishment (DSPE) Act, 1946, will now have to approach the State government for permission for investigation on a case-by-case basis.
- ❑ It is not the first time. Over the years, several states had also withdrawn consent for some time. The CBI would still have the power to investigate old cases registered when general consent existed.
- ❑ Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of that state.
- ❑ Moreover, cases registered anywhere else in the country, but involving people stationed in Andhra Pradesh and West Bengal would allow CBI's jurisdiction to extend to these states.
- ❑ If the Supreme Court or a High Court directs that a particular investigation be handed over to the CBI, there is no need for any consent under the DSPE Act.

- ❑ Given that the CBI has jurisdiction only over Central govt departments and employees, it can investigate a case involving state government employees or a violent crime in a given state only after that state government gives its consent. Thus, it gets a general consent instead of a case-specific consent to avoid taking permission each time.
- ❑ The general consent is normally given for periods ranging from six months to a year.
- ❑ CBI has claimed that this has tied its hands.
- ❑ In November 2021, the Supreme Court expressed concern over CBI's submission that 78% of its 150 requests for sanction to investigate cases were pending with State Governments that had withdrawn consent to the CBI.

Jurisdiction of CBI v/s State Police

Law and Order is a state subject and the basic jurisdiction to investigate crime lies with State Police. Besides, due to limited resources, the CBI would not be able to investigate crimes of all kinds. CBI may investigate:

- ❑ Cases which are essentially against the Central Government, employees or concerning affairs of the Central Government.
- ❑ Cases in which the financial interests of the Central Government are involved.
- ❑ Cases relating to the breaches of Central Laws with the enforcement of which the Government of India is mainly concerned.
- ❑ Big cases of fraud, cheating, embezzlement and the like relating to companies in which large funds are involved and similar other cases when committed by organised gangs or professional criminals having ramifications in several States.
- ❑ Cases having interstate and international ramifications and involving several official agencies where, from all angles, it is considered necessary that a single investigating agency should be in charge of the investigation.

Challenges associated with CBI

Here are some concerns associated with CBI:

- ***Police Agency:*** Since the police is a State subject under the Constitution, and the CBI follows the procedures outlined in the Code of Criminal Procedure (CrPC), it is classified as a police agency.
- ***Manipulation by Government:*** The CBI is

also vulnerable to the government's ability to manipulate senior officers because they rely on the Central government for future postings.

- ***Consent of State:*** The CBI needs the permission of the State administration in issue before it can make its presence in that State. As a result, certain situations may go un-investigated, resulting in a quiet standoff.
- ***CBI and RTI:*** CBI is listed under the Right to Information Act's Second Schedule, it specifies that the statute "does not apply to certain organizations." However, the CBI made the point that they are investigating all types of cases, including ones of strategic importance to India, and that if they were submitted to RTI, much of that material would be released into the public realm.
- ***Corruption and politically biased:*** The politicization of the Central Bureau of Investigation (CBI) has been ongoing for several years. This was emphasized in Supreme Court criticism for being a caged parrot speaking in the voice of its master.
- ***CBI Autonomy:*** The Supreme Court questioned the issue of the bureau's independence in the infamous Coalgate corruption case, saying that "the CBI has become the state's parrot." Only screams, echoing the master's voice" The Supreme Court then directed the Centre to make the CBI impartial and to guarantee that it operates free of any extraneous pressures.

CBI Academy

The CBI Academy is located at Ghaziabad, Uttar Pradesh and started functioning in 1996. Earlier, training programmes were being conducted at the CBI Training Centre, New Delhi.

Vision – "Excellence in Training in the Fields of Crime Investigation, Prosecution and Vigilance Functioning"

Beside the CBI Academy at Ghaziabad, there are three regional training centres imparting training at regional levels at –

- ❑ Kolkata
- ❑ Mumbai
- ❑ Chennai

Two types of training courses –

- ❑ Short Term In-service Courses: For officers of the

CBI, state police, central para-military forces and central government undertakings

- ❑ Long Term Basic Courses: For directly recruited deputy superintendents of police, sub-inspectors and constables of CBI

Supreme Court over Autonomy of CBI

The landmark judgment in Vineet Narain v. Union of India in 1997 laid out several steps to secure the autonomy of CBI. The Court directed –

- ❑ the CBI director shall have a “minimum tenure of two years, regardless of the date of his superannuation”.
- ❑ the Central Vigilance Commission (CVC) “shall be responsible for the efficient functioning of CBI”.
- ❑ the CVC chief shall be selected by a panel comprising the prime minister, home minister and the leader of the opposition from a panel of “outstanding civil servants”.

Most importantly, the Vineet Narain judgement stated that the “transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the selection committee”

CBI: A Caged Parrot?

- ❑ Politicisation of the Central Bureau of Investigation (CBI) has been a work in progress for years.
- ❑ Corruption and politically biased: This was highlighted in Supreme Court criticism for being a caged parrot speaking in its master’s voice.
- ❑ CBI has been accused of becoming ‘handmaiden’ to the party in power, as a result high profile cases are not treated seriously.
- ❑ Since CBI is run by central police officials on deputation hence chances of getting influenced by government was visible in the hope of better future postings.

Saradha Chit-Fund scam

- ❑ It is a major financial scam caused by collapse of Ponzi scheme, a collective investment scheme, run by Saradha group.
- ❑ The group collected around Rs. 20,000-30,000 crores from over 17 lakh people in various areas of West Bengal. The scheme collapsed in 2013.

Issues with the Case

- ***Conduct of CBI:*** West Bengal Government has

alleged that CBI is working on the behest of central government to derail government in West Bengal. CBI must seem to work more transparently and independently.

- ***Conduct of West Bengal Government:*** The CBI while filing the contempt plea in Supreme Court said that it was stopped from performing its lawful duty by the state police and state administration. An independent and transparent investigation is needed to book the perpetrators and state government should cooperate with the agency instead of blocking it from functioning.

LOKPAL AND LOKAYUKTAS

An ombudsman means a commissioner or an agent. While the Swedish are typically credited with having the first legislative ombudsman, ombudsman-like roles were popular in other nations and traditions. In first nations communities in North America, for example, disputes were frequently decided by an elder – someone who understood the people and could make choices that were far-reaching on a personal basis.

The Constitution of India came into force on January 26, 1950, which established a Parliamentary democratic framework. Accordingly, the Indian government has implemented measures to combat corruption and the establishment of the institution of an ombudsman has become a sine qua non to reduce corruption and maladministration.

Origin and Meaning

The term ‘Ombudsman’ is of Scandinavian origin literal translation of the Swedish word is “representative” or “agent”. Ombudsman is defined as -

“A public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government”; and, furthermore, “a neutral, independent intermediary between the complainant and the agency, who investigates complaints and objectively determines if an agency acted in a mistaken, unfair, arbitrary or illegal manner.”

The ombudsman was first established in Sweden in 1713, when a “chancellor of justice” was appointed by King to protect the Kings rights.

For example, when King Charles XII was at a war the

ombudsman would make sure everything was in order while the king was abroad. Lars Augustin Mannerheim, the first government ombudsman, was appointed by the Swedish Parliament to protect the people's rights rather than preserve the king's rights.

In 1809 Sweden became the first nation to establish the institution of the ombudsman, but the ombudsman has appeared in various other countries over the century. Since 1920, Finland has had the institution of a Parliamentary ombudsman. More than 130 countries now have similar institutions of ombudsmen.

Evolution of Lokpal and Lokayukta in India

Evolution of Lokpal and Lokayukta in India can sum up as follows:

- **1963:** L.M. Singhvi has coined the word Lokpal
- **1963:** The concept of an ombudsman first came up in Parliament during a discussion over the Law Ministry's budget allocation.
- **1966:** The First Administrative Reforms Commission recommended that two independent authorities be established- at the Central and State level, to look into complaints against public servants, including M.P.s.
- **1968:** The Lok Pal Bill was introduced eight times in Parliament but was never passed.
- **1971:** The Maharashtra was the first Indian state to establish a corruption watchdog, The Maharashtra Lokayukta
- **2002:** The Commission to Review the Working of the Constitution (headed by Shri M.N. Venkata Chilliah)) advocated the appointment of the Lok Pal and Lokayukta, as well as the exclusion of the Prime Minister from the jurisdiction of authority.
- **2005:** The second Administrative Reforms Commission (headed by Shri Veerappa Moily) advised establishing the Lok Pal office as soon as possible.
- **2011:** The popular Anna Movement for Lokpal.
- **2013:** Both Houses of Parliament passed the Lokpal and Lokayukta Bill, which was introduced in 2011.
- **2014:** The Lokpal and Lokayukta Act, 2013, came into force on January 16, 2014.
- **2016:** The Lokpal and Lokayukta Act, 2013, was

amended by Parliament to address minor issues.

- **2018:** Meetings of the Selection Committees as per section 4(1) of the Lokpal and Lokayukta Act, 2013 were held in March and April 2018 following the intervention of the Supreme Court.
- **2019:** On March 19, 2019, Justice (Retd) Pinaki Chandra Ghose was appointed as the first Lokpal of India, along with eight judicial and non-judicial members, following judicial intervention.
- **2020:** Rules and format for filing complaints with Lokpal issued.

Salient Features of the Lokpal and Lokayukta Act, 2013

In India the establishment of an Ombudsman institution has happened through The Lokpal and Lokayukta Act, 2013 which was enacted in the year 2014. The act provides the following key details:

Structure

- Lokpal is a multi-member body, that consists of
 - one Chairperson and
 - maximum of 8 members.
- Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- Out of the maximum eight members, half will be judicial members and minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.
- The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- The term of office for Lokpal Chairman and

Members is 5 years or till the age of 70 years.

- ❑ The members and the Chairman of Lokpal are appointed by the President on the recommendation of a selection committee. The selection committee consists of-
 - The Prime Minister of India (chairperson);
 - The Speaker of Lok Sabha;
 - The Leader of Opposition in Lok Sabha;
 - The Chief Justice of India or any Judge nominated by Chief Justice of India;
 - One eminent jurist.
- ❑ For selecting the Chairperson and the members, the selection committee constitutes a search panel of at least eight persons.

Condition of Office

- ❑ The Salary allowances and other conditions of service of the chairperson and members are equivalent to that of Chief Justice of India and Judge of the Supreme Court respectively.
- ❑ They are not eligible for reappointment, cannot hold any constitutional or governmental office.
- ❑ They cannot contest any elections for a period of 5 years.

Investigative powers

The Lokpal on the receipt of a complaint may order a-

- ❑ Preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter.
- ❑ Investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case jurisdiction
- ❑ A Lokpal may inquire or start an investigation on the allegation of a complainant against the following people:
 - Prime Minister, and the other Ministers,
 - Members of Parliament,
 - Groups A, B, C and D officers,
 - Officials of Central Government.
 - Every person who is or has been in charge (director/ manager/ secretary) of a body or a society set up by the act of central government,

- Any society or body financed or controlled by the central government,
- Any person involved in act of abetting, bribe giving or bribe-taking.

- ❑ The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there.
- ❑ Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
- ❑ It has the powers to superintendence over, and to give direction to CBI.

Exception for Prime Minister

- ❑ If a complaint is filed against the Prime Minister, the Lokpal shall inquire or cause an inquiry to be conducted into the allegation of corruption.
- ❑ However, the Act does not allow a Lokpal inquiry if the allegation against the Prime Minister relates to-
 - International relations
 - External and internal security
 - Public order
 - Atomic energy
 - Space
- ❑ Also, complaints against the Prime Minister are not to be probed unless the full Lokpal bench considers the initiation of an inquiry and at least 2/3rds of the members approve it.
- ❑ Such an inquiry against the Prime Minister (if conducted) is to be held in camera.
- ❑ If the Lokpal concludes that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

Powers

- ❑ It has Superintendence over the Central Bureau of Investigation and can give directions to it. If a case is referred to CBI by Lokpal, the investigating officer in such a case cannot be transferred without the approval of Lokpal.
 - ❑ Lokpal will have an Inquiry Wing and Prosecution Wing. The Inquiry Wing has the powers of a Civil Court.
-

- ❑ It can confiscate assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
- ❑ It can transfer or suspend public servants connected with allegations of corruption.
- ❑ It has the power to give directions to prevent the destruction of records during the preliminary inquiry.

Functions

- ❑ A complaint can be made to the Lokpal for an offence under the Prevention of Corruption Act.
- ❑ The Lokpal may order a preliminary inquiry by its Inquiry Wing or refer it any investigation agency like CBI.
- ❑ However, the Lokpal should establish that a prima facie case exists after seeking an explanation from the public servant as well as his competent authority.
- ❑ With respect to Central Government Servants, it may refer cases to the Central Vigilance Commission.
- ❑ Preliminary Enquiry report should be done within 60 days. The preliminary investigation should be normally completed within 90 days.
- ❑ A Lokpal bench of not less than 3 members considers it and after giving an opportunity to the public servant, decides on a further investigation – it may dismiss, initiate a full investigation or start departmental proceedings.
- ❑ The trials will be held in special courts, which must complete them within one year.
- ❑ Extensions can be made but the total period cannot exceed two years.

Lokpal and Lokayukta Amendment Act, 2016

This bill also amended Section 44 of the Lokpal and Lokayukta Act 2013. Section 44 of the Act dealt with the provisions of furnishing of details of assets and liabilities, within 30 days of joining the government service, of any public servant.

This amendment replaced the time limit of 30 days. It stated that the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the Government.

In the case where any non-governmental organization receives funds of more than Rs. 1 crore

from government or receives foreign funding of more than Rs. 10 lakhs then the assets of the trustees and board members were to be disclosed to the Lokpal. The bill provided an extension to the time limit given to trustees and board members to declare their assets and those of their spouses.

Lokpal (Complaint) Rules, 2020:

The notification, under Section 59 of the Lokpal and Lokayukta Act, lays down the rules called the Lokpal (Complaint) Rules, 2020.

- ❑ According to the complaint forms, published as part of the notification, a complainant has to give a valid proof of identity, as specified therein.
- ❑ Foreign nationals can also lodge complaints. Only a copy of their passports will be accepted as proof of identity.
- ❑ The complaint can be filed electronically, by post or in person. In case the complaint is filed electronically, its hard copy has to be submitted to the Lokpal within 15 days.
- ❑ No complaints can be filed against a public servant under the Army Act, Navy Act, Air Force Act and the Coast Guard Act.
- ❑ A complaint may ordinarily be made in English, provided that the Lokpal may also entertain a complaint in any of the languages referred to in the Eighth Schedule to the Constitution.
- ❑ Apart from the details of the accused official(s), allegation and the evidence relied upon, the complainant or the authorised signatory will also have to submit an affidavit.
- ❑ Registration/incorporation certificate of the organisation, on whose behalf the complaint is made and copy of authorisation certificate in favour of the signatory, if the complaint is on behalf of a board, body, corporation, company, limited liability partnership, authority, society, association of persons or trusts, has to be furnished.
- ❑ The Lokpal bench will decide the complaint in the first instance at the admission stage. The Lokpal may seek other details or affidavit, if necessary.
- ❑ The identity of the complainant or the accused official will be protected by the Lokpal till the conclusion of inquiry or investigation. However, the protection will not be applicable in cases where the complainant herself reveals her identity to

any other office or authority while making the complaint to Lokpal.

- ❑ The complaints, whose contents are illegible, vague or ambiguous, which are trivial or frivolous, do not contain any allegation, are not filed within the limitation period of seven years, or are pending before any other court, tribunal or authority, will have to be disposed of within 30 days.

Lokayukta

Overview about Lokayukta

- ❑ Even much before the enactment of the Lokpal and Lokayukta Act (2013) itself, many states had already set up the institution of Lokayukta.
- ❑ It must be noted that the institution of Lokayukta was first established in Maharashtra in 1971.
- ❑ Although Odisha had passed an Act in this regard in 1970, it came into force only in 1983.
- ❑ Till date 20 States and 2 Union Territories (Delhi, Jammu and Kashmir) have established Lokayukta.

Salient Features of Lokayukta

The following are the features of Lokayukta:

Structural Variations:

The structure of the Lokayukta is not the same in all states. Some states like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the Lokayukta and as well as Upalokayukta while Himachal Pradesh, Bihar and Uttar Pradesh have created only the Lokayukta. There are states like Punjab and Orissa that have designated officials as Lokpal. This was not as per recommendations of the ARC report

Appointment:

The Lokayukta and Upalokayukta are appointed by the governor of the state. While appointing them, Governor in most of the states consults:

- ❑ The Chief Justice of the State High Court
- ❑ The Leader of the Opposition in the state legislative assembly

Qualification:

Judicial qualifications are prescribed for the Lokayukta in the States of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Gujarat, Orissa, Karnataka and Assam. But no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan.

Tenure:

In most of the states, the term of office fixed for Lokayukta is of 5 years duration or 65 years of age, whichever comes first. He is not eligible for reappointment.

Jurisdiction:

There is no uniformity regarding the jurisdiction of Lokayukta in all the states. The following points can be noted in this regard:

- ❑ The Chief Minister is included within the jurisdiction of Lokayukta in the states of Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while he is excluded from the purview of Lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan, Bihar and Orissa.
- ❑ Ministers and higher civil servants are included in the purview of Lokayukta in almost all the states. Maharashtra has also included former ministers and civil servants.
- ❑ Members of state legislatures are included in the purview of Lokayukta in the States of Andhra Pradesh, Himachal Pradesh, Gujarat, Uttar Pradesh and Assam.
- ❑ The authorities of the local bodies, corporations, companies and societies are included in the jurisdiction of the Lokayukta in most of the states.

Investigations:

In most of the states, the Lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or suo moto. But he does not enjoy the power to start investigations on his own initiative in the states of Uttar Pradesh, Himachal Pradesh and Assam.

Scope of Cases Covered:

The Lokayukta can consider the cases of 'grievances' as well as 'allegations' in the States of Maharashtra, Uttar Pradesh, Assam, Bihar and Karnataka. But, in Himachal Pradesh, Andhra Pradesh, Rajasthan and Gujarat, the job of Lokayukta is confined to investigating allegations (corruption) and not grievances (maladministration).

Other Features:

- ❑ The Lokayukta presents, annually, to the governor of the state a consolidated report on his performance. The governor places this report along with an explanatory memorandum before the State Legislature. The Lokayukta is responsible to the state legislature.

- ❑ He takes the help of the state investigating agencies for conducting inquiries.
- ❑ He can call for relevant files and documents from the State Government departments.
- ❑ The recommendations made by the Lokayukta are only advisory and not binding on the State Government.

Limitations

- ❑ The institution of Lokpal has tried to bring a much-needed change in the battle against corruption in the administrative structure of India but at the same time, there are loopholes and lacunae which need to be corrected.
- ❑ Years have passed since the Lokpal and Lokayukta Act 2013 was passed by Parliament, but not a single Lokpal has been appointed till date indicating the lack of political will.
- ❑ The Lokpal act also called upon states to appoint a Lokayukta within a year of its coming to force. But only 16 states have established the Lokayukta.
- ❑ Lokpal is not free from political influence as the appointing committee itself consist of members from political parties.
- ❑ The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity.'
- ❑ The 2013 act did not provide concrete immunity to the whistle blowers. The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining.
- ❑ The biggest lacuna is the exclusion of judiciary from the ambit of the Lokpal.
- ❑ The Lokpal is not given any constitutional backing and there is no adequate provision for appeal against the Lokpal.
- ❑ The specific details in relation to the appointment of Lokayukta have been left completely on the States.
- ❑ To some extent, the need for functional independence of the CBI has been catered to by a change brought forth in the selection process of its director, by this Act.

- ❑ The complaint against corruption cannot be registered after a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

NATIONAL INVESTIGATION AGENCY

The 26th November 2008 Mumbai terrorist attack had given rise to the formation of the National Investigation Agency Bill 2008 to create the National Investigation Agency to investigate matters affecting the sovereignty and the security of the country. It deals with the offences of terrorism, counterfeit currency, human trafficking, narcotics, etc. The divisions of NIA are Investigation Division, Policy Research and Coordination Division and the Administrative Division. The NIA is a counter-terrorism agency in India. Officers of NIA also have powers similar to that of the police

As of now NIA has 15 Branch offices across the country. The headquarters of the NIA is at New Delhi. The branch offices of the NIA are located at Hyderabad, Guwahati, Mumbai, Lucknow, Kochi, Kolkata, Jammu, Raipur, Imphal, Chennai, Ranchi, Chandigarh, Bengaluru and Patna. In addition, the NIA has a separate specialised cell known as TFFC Cell dealing with the subjects of fake currency notes and terror funding. NIA maintains the most wanted list.

The NIA is headed by a Director-General. He is appointed by the Central Government. His powers are similar to the powers exercisable by a Director-General of Police in respect of the police force in a state.

The NIA works under the administrative control of the Ministry of Home Affairs, Government of India. The state government extends all assistance and co-operation to the NIA for investigation of the offences specified under the NIA Act

Vision of National Investigation Agency (NIA)

- ❑ The National Investigation Agency aims to be a thoroughly professional investigative agency matching the best international standards. The NIA aims to set the standards of excellence in counter terrorism and other national security related investigations at the national level by developing

into a highly trained, partnership-oriented workforce. NIA aims at creating deterrence for existing and potential terrorist groups/individuals. It aims to develop as a storehouse of all terrorist related information.

Mission of National Investigation Agency (NIA)

The stated missions of the NIA are as follows:

- ❑ In-depth professional investigation of scheduled offences using the latest scientific methods of investigation and setting up such standards as to ensure that all cases entrusted to the NIA are detected.
- ❑ Ensuring effective and speedy trial.
- ❑ Developing into a thoroughly professional, result oriented organization, upholding the constitution of India and Laws of the Land giving prime importance to the protection of Human Rights and dignity of the individual.
- ❑ Developing a professional work force through regular training and exposure to the best practices and procedures.
- ❑ Displaying scientific temper and progressive spirit while discharging the duties assigned.
- ❑ Inducting modern methods and latest technology in every sphere of activities of the agency.
- ❑ Maintaining professional and cordial relations with the governments of States and Union Territories and other law enforcement agencies in compliance of the legal provisions of the NIA Act.
- ❑ Assist all States and other investigating agencies in investigation of terrorist cases.
- ❑ Build a data base on all terrorist related information and share the data base available with the States and other agencies.
- ❑ Study and analyse laws relating to terrorism in other countries and regularly evaluate the adequacy of existing laws in India and propose changes as and when necessary.
- ❑ To win the confidence of the citizens of India through selfless and fearless endeavours.

Probe by National Investigating Agency

- ***Referral:***
 - ***State government:***
 - As provided under Section 6 of the Act, State

governments can refer the cases pertaining to the scheduled offences registered at any police station to the Central government (Union Home Ministry) for NIA investigation.

- After assessing the details made available, the Centre can then direct the agency to take over the case.
- State governments are required to extend all assistance to the NIA.
- ***Central government:***
- In India: When the Central government is of the opinion that a scheduled offence has been committed which is required to be investigated under the Act, it may, suo motu, direct the agency to take up the probe.
- ***Outside India:***
- Where the Central government finds that a scheduled offence has been committed at any place outside India to which this Act extends, it can also direct the NIA to register the case and take up investigation.
- ***Sanction:***
 - For prosecuting the accused under the Unlawful Activities (Prevention) Act, 1967 (UAPA) and certain other scheduled offences, the Agency seeks the sanction of the Central Government.
 - The sanction is granted under the UAPA based on the report of the 'Authority' constituted under section 45 (2) of the UAPA.
- ***Other:***
 - is an exclusive Left wing extremism cell to effectively deal with cases related to terror financing aspects of Naxalite groups.
 - While investigating any scheduled offence, the agency can also investigate any other offence which the accused is alleged to have committed if the offence is connected to the scheduled offence.
 - After investigation, the cases are placed before the NIA Special Courts.

Special Courts of National Investigating Agency

- ❑ The Central Government for the trial of Scheduled Offences constitutes one or more Special Courts under Section 11 and 22 of the NIA Act 2008.

- **Composition:**
 - The Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court.
 - The Central Government may, if required, appoint an additional judge or additional judges to the Special Court, on the recommendation of the Chief Justice of the High Court.
- **Jurisdiction of Special Courts:**
 - The Special Courts have all powers of the court of sessions under the Code of Criminal Procedure, 1973.
 - Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.
 - The Supreme Court can transfer a case pending before a Special Court to any other Special Court within that State or any other State in some exceptional cases where it is not feasible to conduct a peaceful, fair, impartial and speedy trial.
 - ☞ Similarly, the High Court has the power to transfer a case pending before a Special Court in a State to any other Special Court within that State.

Jurisdiction

- ☐ The agency has been empowered with all the powers and privileges to conduct investigations under the various acts specified in the Schedule book of NIA act. State government authorities can request an investigation by NIA upon approval of Central government within the limits of law specified under the NIA Act.
- ☐ The Central Government can handover cases for investigation to NIA anywhere in India and the officials involved in the handling of these cases are from the IPS and IRS cadre.
- ☐ The law under which the agency operates extends to the whole of India and also applies to Indian citizens outside the country.
- ☐ Persons in the service of the Government wherever they are posted.
- ☐ Persons on ships and aircraft registered in India

wherever they may be.

- ☐ Persons who commit a scheduled offence beyond India against the Indian citizen or affecting the interest of India.

NIA (Amendment) Act, 2019

The NIA (Amendment) Act 2019 was passed by the Parliament and received the presidential assent in July 2019. This Act has made a few major changes to the original NIA Act of 2008. The changes are discussed below:

- ☐ The amendment allows the agency to investigate the following new offences as well:
 - Human trafficking
 - Counterfeit currency or bank notes related offences
 - Sale or manufacture of prohibited arms
 - Offences under the Explosive Substances Act, 1908
 - Cyber terrorism
- ☐ The amendment also expands the jurisdiction of the NIA. Now, it has the authority to investigate offences that are committed outside Indian territory subject to international treaties and domestic laws of other nations.
- ☐ The amendment also allows the central government to constitute Special Courts to conduct trials of scheduled offences.
 - Accordingly, the government will have the power to designate Sessions Courts as Special Courts, after consulting with the Chief Justice of the High Court (under which the Sessions Court functions).
 - Act also authorises the state governments to designate Special Courts.
 - The Government can appoint more than Special Court in an area.
 - Currently, there are 38 Special NIA Courts across the states and 7 across the Union Territories.
 - The Special Courts' judges are appointed by the Government of India in consultation with the High Court Chief Justices of the area.
 - The trials of the NIA Special Courts have precedence over the trial of the accused in any other case in any other court.

Significance of National Investigating Agency

- ❑ The NIA professionally investigates the scheduled offenses using the most up-to-date scientific methodologies.
- ❑ It allows for a quick and efficient trial.
- ❑ The NIA is developing into a goal-oriented and professional organization that defends the Indian Constitution and the law of the nation while placing a premium on human rights and dignity.
- ❑ The NIA develops a professional workforce through regular training and exposure to best practices.
- ❑ While performing their tasks, it displays a scientific mindset and a spirit of advancement.
- ❑ It helps in having friendly relations with the country's federal and state governments, as well as other law enforcement agencies.
- ❑ It assists states and other agencies with terror-related case investigations.
- ❑ The NIA creates a database of all information about terrorists and shares it with states and other entities.
- ❑ It analyses and assesses terrorism-related laws in India on a regular basis, as well as suggesting any necessary revisions.

Criticism of National Investigating Agency

- ❑ The preservation of public order and police forces are listed as matters of state in Schedule VII of the Constitution.
- ❑ Criminal law, on the other hand, is included in the concurrent list, while national security is included in the realms of the union list.
- ❑ The NIA is given the ability to take over the investigation of crimes including charges of human trafficking, offenses under the Explosives Act, and certain offenses under the Arms Act by the Central government.
- ❑ However, not every criminal offense listed in the above statute poses a threat to national security or sovereignty, and governments have the authority to address them.
- ❑ Section 66F of the Information Technology Act is added to the Schedule of Offenses by the

Amendment Bill. Cyber terrorism is addressed in Section 66F. However, India lacks data protection laws and no definition of cyber terrorism.

- ❑ The NIA Act has been amended to allow the agency to investigate crimes committed by foreigners against Indian citizens or acts "affecting the interest of India". However, the word "affecting India's interest" is unclear, and governments might use it to restrict freedom of speech and expression.

NATIONAL DISASTER MANAGEMENT AUTHORITY

The National Disaster Management Authority (NDMA), headed by the Prime Minister of India, is the apex body for Disaster Management in India. Setting up of NDMA and the creation of an enabling environment for institutional mechanisms at the State and District levels is mandated by the Disaster Management Act, 2005. NDMA is mandated to lay down the policies, plans and guidelines for Disaster Management. India envisions the development of an ethos of Prevention, Mitigation, Preparedness and Response.

Evolution of NDMA

- ❑ In August 1999, the Government of India established a High-Powered Committee (HPC) to make recommendations on the preparation of Disaster Management plans and suggest effective mitigation mechanisms, in recognition of the importance of Disaster Management as a national priority.
- ❑ After the Gujarat earthquake (2001), the Government of India established a National Committee to make recommendations on the preparation of Disaster Management plans and suggest effective mitigation mechanisms.
- ❑ For the first time, a thorough chapter on disaster management was included in the Tenth Five-Year Plan document.
- ❑ The Twelfth Finance Commission was also tasked with reviewing the disaster management funding arrangements.
- ❑ On 23 December 2005, the Government of India

enacted the Disaster Management Act, which envisaged the creation of National Disaster Management Authority (NDMA), headed by the Prime Minister, and State Disaster Management Authorities (SDMAs) headed by respective Chief Ministers, to spearhead and implement a holistic and integrated approach to Disaster Management in India.

- ❑ The National Disaster Management Authority (NDMA), headed by the Prime Minister of India, is the apex body for Disaster Management in India. Setting up of NDMA and the creation of an enabling environment for institutional mechanisms at the State and District levels is mandated by the Disaster Management Act, 2005.

NDMA Vision

"To build a safer and disaster resilient India by a holistic, pro-active, technology driven and sustainable development strategy that involves all stakeholders and fosters a culture of prevention, preparedness and mitigation."

Important Provisions under the Disaster Management Act, 2005

This Act establishes various authorities and bodies for the effective management of disasters at all three levels- national, state, and district. It also provides the 'plan' for each level.

National level

National Disaster Management Authority (NDMA)

The Act authorises the establishment of the National Disaster Management Authority. It shall consist of the following members-

- ❑ The Prime Minister of India as a Chairperson of the National Authority, and
- ❑ Other members not exceeding nine, are to be nominated by the Chairperson.
- ❑ One of these nine members nominated the Chairperson to be designated as Vice-Chairperson of the National Authority.

NDMA, as the apex body, is mandated to lay down the policies, plans and guidelines for Disaster Management to ensure timely and effective response to disasters.

Towards this, it has the following responsibilities: -

- ❑ Lay down policies on disaster management.
- ❑ Approve the National Plan.
- ❑ Approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan.
- ❑ Lay down guidelines to be followed by the State Authorities in drawing up the State Plan.
- ❑ Lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the Purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects.
- ❑ Coordinate the enforcement and implementation of the policy and plans for disaster management.
- ❑ Recommend provision of funds for the purpose of mitigation.
- ❑ Provide such support to other countries affected by major disasters as may be determined by the Central Government.
- ❑ Take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with threatening disaster situations or disasters as it may consider necessary.
- ❑ Lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

Advisory committee

The National Authority may constitute Advisory Committee to advise or make recommendations on various aspects of disaster management, which may consist of-

- ❑ Experts in disaster management, and
- ❑ Persons having practical experience in disaster management at any level- national, state or district.

National Executive Committee

The National Executive Committee is constituted by the Central Government to assist the National Authority in discharging its functions. Additionally, the National Executive Committee may constitute one or more sub-communities to discharge its functions smoothly.

The National Executive Committee may consist of the following members-

- ❑ The Secretary to the Government of India in the Ministry or department of Central Government, having control over the disaster management as an ex-officio Chairperson,
- ❑ The Secretaries to the Government of India in the Ministries or departments of atomic energy, agriculture, defence, drinking water supply, finance, health, power, rural development, environment and forest, science and technology, space, telecommunication, urban development, water resources and the Chief of the Integrated Defence Staff of the Chiefs of Staff Committee, as ex officio members,
- ❑ Any other officer of the Central or State Government may be invited by the Chairperson.

The powers and functions of the National Executive Committee are as follows: -

- ❑ To act as a coordinating and monitoring body for disaster management,
- ❑ Preparing the National Plan to be approved by the National Authority,
- ❑ Monitoring the implementation of the National Policy,
- ❑ Making guidelines for plans,
- ❑ Providing technical assistance to State Governments and authorities for carrying out their functions,
- ❑ Monitoring the implementation of the National Plan and the plans prepared by other departments and ministries of Central government,
- ❑ Evaluating the preparedness of government at all levels,
- ❑ To organise a specialised training programme for disaster management,
- ❑ To require the Government to provide such men and material resources in case of emergency response, rescue and relief, to the National Authority,
- ❑ To advise, assist and coordinate activities of the concerned authorities, NGOs and others engaged in disaster management,
- ❑ To promote general education and awareness about disaster management, etc,
- ❑ To perform such other functions as the National Authority may require it to perform.

National Plan

National Executive Committee shall prepare the 'National Plan' which should be reviewed and updated manually, and which shall include-

- ❑ Measures for prevention of disasters,
- ❑ Measures for integration of mitigation measures in the plans,
- ❑ Measures for preparedness and capacity-building to fight disaster situations, and
- ❑ Duties and responsibilities of ministries and departments of the Government of India.

National Institute of Disaster Management (NIDM)

The Central Government shall constitute this institute and prescribe its members, terms of office and vacancies.

The main functions of this institute are as follows-

- ❑ Develop training modules and undertake research and documentation,
- ❑ Formulate and implement a comprehensive development plan,
- ❑ Assist in the formulation of national policies,
- ❑ Assist the state governments and state training institutes,
- ❑ Promote awareness among college students or school teachers,
- ❑ Organise study courses, conferences, lectures, and seminars within and outside the country, etc.

National Disaster Response Force (NDRF)

Under section 44 of the Act, the National Disaster Response Force shall be constituted to provide a specialised response at times of threatening disaster situations with the help of trained professionals, which includes medical staff, engineers, technicians, dogs squads, rescuers, etc. NDRF has played a major role in rescuing people in many situations like the Kosi breach in Bihar in 2008, the Kashmir Flash Floods, in 2014, and the Kerala Floods in 2018.

State level

State Disaster Management Authority (SDMA)

The Act authorises the establishment of the State Disaster Management Authority. It will consist of the members as follows-

- ❑ The Chief Minister of the State or the Lieutenant Governor of the Union Territories as an ex-officio Chairperson of the State Authority,

- ❑ Other members not exceeding eight to be nominated by the Chairperson of the State Authority,
- ❑ One of these nominated members to be designated as Vice-Chairperson of the State Authority,
- ❑ The Chairperson of the State Executive Committee is the Chief Executive Officer of the State Authority.

In the case of Union Territories having a Legislative Assembly except for Delhi, the Chief Minister will be the Chairperson of the State Authority. In the case of Delhi, the Lieutenant Governor shall be the Chairperson and the Chief Minister will be the Vice-Chairperson of the State Authority.

Section 18 of the Act specifies the powers and functions of the State Disaster Management Authority like –

- ❑ Laying down the state policy on disaster management,
- ❑ Approving the state plan, and plans by other departments,
- ❑ Laying down guidelines for different departments of state,
- ❑ Monitoring the implementation of the state plan for disaster management,
- ❑ Recommending funds for mitigation measures,
- ❑ Reviewing the developmental plans of different departments of the state,
- ❑ Review the measures taken for mitigation, capacity building and preparedness by the departments of the state and issue necessary guidelines.

Advisory Committee

The State Authority may constitute an advisory committee to make recommendations on disaster management which shall consist of experts in disaster management having practical experience.

State Executive Committee

The State Executive Committee is constituted by the State Government to assist the State Authority in discharging its functions. Additionally, the State Executive Committee may constitute one or more sub-communities to discharge its functions smoothly.

The State Executive Committee may consist of the following members-

- ❑ The Chief Secretary to the State Government as an ex-officio Chairperson,

- ❑ The four Secretaries to the State Government of such departments which it thinks fit,
Section 22 specifies the powers and functions of the State Executive Committee like-

- ❑ Monitoring the implementation of the National and state plan,
- ❑ Testing the vulnerability of different parts of the state to different forms of disasters,
- ❑ Laying down guidelines for preparing plans,
- ❑ Providing technical assistance for carrying out their functions,
- ❑ Coordinating the implementation of the plans and guidelines,
- ❑ Evaluating the preparedness at both governmental and non-governmental levels,
- ❑ Arranging response in the event of any threatening disaster situation,
- ❑ Assisting and coordinating activities of the concerned authorities, NGOs and others engaged in disaster management,
- ❑ Promoting general education, awareness and community training about disaster management, and
- ❑ Advising the state government regarding financial matters,
- ❑ Ensuring communication systems are in order, etc.

State Plan

It shall be prepared by the State Executive Committee, which shall include-

- ❑ The vulnerability of different parts of the state to different disasters,
- ❑ Measures to be taken for prevention and mitigation,
- ❑ The manner in which these measures shall be integrated with plans,
- ❑ Measures to be taken for capacity building and preparedness,
- ❑ Roles and responsibilities of different departments of the state government.

District level

District Disaster Management Authority (DDMA)

The Act authorises the establishment of the District Disaster Management Authority. It shall consist of the following members-

- ❑ The Collector or District Magistrate or Deputy

Commissioner of the district as an ex-officio Chairperson of the District Authority,

- ❑ The elected representative of the local authority as the Co-Chairperson,
- ❑ The Chief Executive Officer of the District Authority,
- ❑ The Superintendent of Police,
- ❑ The Chief Medical Officer of the district,
- ❑ Not exceeding two other district-level officers, to be appointed by the State Government.

In the case of tribal areas, as referred to in the Sixth Schedule of the Constitution, the Co-Chairperson will be the Chief Executive Member of the district council of an autonomous district. The powers and functions of the District Authority are as follows:

- ❑ Preparing a disaster management plan for the district,
- ❑ Monitoring the implementation of plans and policies,
- ❑ Identifying the areas vulnerable to disasters,
- ❑ Giving directions to district authorities and laying down the guidelines,
- ❑ Assessing the state of capabilities for responding to any disaster and the preparedness measures,
- ❑ Examining the construction in the district to check the standards for the prevention of disaster, and if have not been followed, directing the authorities to take action,
- ❑ Identifying buildings or places which can be used as relief centres or camps at the time of the disaster,
- ❑ Establishing stockpiles of relief and rescue materials and ensuring preparedness,
- ❑ Organising specialised training programmes for officers or voluntary rescue workers,
- ❑ Facilitating community training and awareness programmes, etc.

Advisory Committee

The District Authority may constitute one or more advisory committees and other committees for the efficient discharge of its functions.

District Plan

‘District Plan’ shall be prepared by the District Authority, which shall include the following-

- ❑ Areas vulnerable to different disasters in the district,
- ❑ Measures to be taken for prevention and mitigation of disaster,
- ❑ Measures for capacity building and preparedness,
- ❑ Response plans and procedures,
- ❑ Other matters as required by the state authority.

Shortcomings of the NDMA

- ❑ The role of NDMA was questioned during the Uttarakhand floods of 2013, where it failed to timely inform people about the flash floods and landslides.
- ❑ The post-disaster relief response had been equally poor due to poor planning of NDMA that lead to unfinished projects.
- ❑ A Comptroller and Auditor General (CAG) of India report in 2013 noted that the NDMA had no information and control over the progress of disaster management work in the states, neither could it successfully implement various projects it had initiated for disaster preparedness and mitigation.
- ❑ There were huge delays in the completion of river management activities and works related to border areas projects which were long-term solutions for the flood problems of Assam, north Bihar and eastern Uttar Pradesh.
- ❑ Misutilization of expenditure and several critical posts in NDMA are vacant.

NATIONAL COMMISSION FOR WOMEN

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 to:

- ❑ review the Constitutional and Legal safeguards for women;
- ❑ recommend remedial legislative measures;
- ❑ facilitate redressal of grievances and
- ❑ advise the Government on all policy matters affecting women.

Constitutional Provision of National Commission for Women

There are no provisions in the Indian Constitution

that specifically mention the National Commission for Women, although there are several safeguards for women's safety that are mentioned in Article 14, Article 15 (3), Article 16(4), Article 23, Article 38, 39(a), 39(b) and 39(e), 42, 44 and 45 deals with the welfare and development of women.

Brief History

- ❑ The Committee on the Status of Women in India (CSWI) recommended nearly two decades ago, the setting up of a National Commission for women to fulfil the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women.
- ❑ Successive Committees/Commissions/Plans including the National Perspective Plan for Women (1988-2000) recommended the constitution of an apex body for women.
- ❑ During 1990, the central government held consultations with NGOs, social workers and experts, regarding the structure, functions, powers etc of the Commission proposed to be set up.
- ❑ In May 1990, the Bill was introduced in the Lok Sabha.
- ❑ In July 1990, the HRD Ministry organized a National Level Conference to elicit suggestions regarding the Bill. In August 1990 the government moved several amendments and introduced new provisions to vest the commission with the power of a civil court.
- ❑ The Bill was passed and received assent of the President on 30th August 1990.
- ❑ The First Commission was constituted on 31st January 1992 with Mrs. Jayanti Patnaik as the Chairperson.

Mission

To strive towards enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through suitable policy formulation, legislative measures, effective enforcement of laws, implementation of schemes/policies and devising strategies for solution of specific problems/situations arising out of discrimination and atrocities against women.

Vision

The Indian Woman, secure in her home and outside, fully

empowered to access all her rights and entitlements, with opportunity to contribute equally in all walks of life.

Composition

The Commission shall consist of: -

- ❑ A Chairperson, committed to the cause of women, to be nominated by the Central Government.
- ❑ five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry potential of women, women's voluntary organisations (including women activist), administration, economic development, health, education or social welfare;
 - Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;
- ❑ a Member-Secretary to be nominated by the Central Government who shall be: -
 - an expert in the field of management, organisational structure or sociological movement, or
 - an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

Tenure of National Commission for Women

The Chairperson and every Member shall hold office for such a period, not exceeding three years, as may be specified by the Central Government on this behalf.

Removal of National Commission for Women

- ❑ If a person becomes an undischarged insolvent, the Central Government may remove him or her from the position of Chairperson or member. Or,
 - gets convicted and sentenced to prison for an offence that the central government considers to be morally reprehensible.
 - becomes mentally ill and is declared as such by a full-court.
 - refuses to act or loses the ability to act.
 - is absent from three consecutive commission

meetings without receiving leave of absence from the panel.

- ❑ The central government believes that the Chairperson or members have abused their positions to the point where their continued service is detrimental to the public interest.
- ❑ No individual shall be removed under this provision unless and until he or she has been given a reasonable opportunity to be heard in the issue.

Objective

The notable achievements of the National Commission for women are that they prepared gender profiles. Then they took initiative into the creation of the Parivarik Mahila Lok Adalat to take proactive steps regarding the rights of women. They evaluated and reviewed laws concerning Indian Penal Code 1860, Pre-Conception and Pre-natal Diagnostic Technique Act, 1994 and The Dowry Prohibition Act, 1960 and so on. To take more effective actions against violations under the National Commission for Women Act 1990. Set up and organise awareness workshops and consultations outlets. The objectives of NCW are as follows:

- ❑ To suggest the government regarding policies regarding women,
- ❑ A platform to redress the grievances,
- ❑ To make recommendations relating to legislation measures,
- ❑ To review legal and constitutional safeguards for women.

Working

It acts as a statutory body and takes measures to safeguard and protect women. It works under the National Commission for Women Act, 1990. It derives the vital guidelines from the commission to make recommendations and suggestions to make strategic plans for the well-being of women and their rights.

Powers of NCW

- ❑ Provide consultation on all major policy matters that affect women.
- ❑ Issuing summons for the examination of documents and the witnesses.
- ❑ It has the power to make any public record.

- ❑ Receiving evidence on affidavits.
- ❑ Discovery and production of documents.
- ❑ Summoning and enforcement.

Function of National Commission for Women:

The functions of the National Commission for Women are as follows:

- **Presentation of Reports:** Table reports should be submitted to the Central Government every year. When the commission feels it's appropriate. The reports upon the functioning and working of the safeguards.
- **Investigation and Examination:** There should be proper investigation and examination made under the Constitution and other laws. This is related to the protection of the rights of women.
- **Review:** Constantly all laws are reviewed and scrutinised. And necessary amendments and alterations are made to meet the needs of the current world. This is to meet any break, incapacity or any inadequacies in the legislation.
- **Cases of Violation:** Ensure there is no violation against women and taking due care of such cases.
- **Suo Motu Notice:** It takes care of complaints and also suo motu matters about the deprivation of rights of women. Implementation of laws favouring the welfare of women.
- **Evaluation:** Assessing the development and the progress of the women community under the Centre and State level.
- **Recommendation:** To suggest the wellbeing of women and their rights.
- **Special studies and investigation:** To understand the limitations in the system and curb it with strategic plans and mechanisms.
- **Research:** To make research and study to understand the needs of women, healthcare and such related components. This is to make a proper support system to help the women in need.
- **Participation in all spheres particularly in planning:** Take measure to facilitate economic and social development and improvement of women by recognising their rights.

- **Inspection:** Inspect the jail, remand home to ensure that the women staying here are not exploited as they are vulnerable.
- **Funding and Reporting:** Ensure there is a fund for litigation of matters relating to women rights. There should be periodical reports made under the difficulties faced by women daily.

Challenges of National Commission for Women:

In spite of positive aspects of Women Commission and great achievements, there are also some shortcomings:

- ❑ The commission is dependent on the grant from the Union Government.
- ❑ The commission does not have the power to select own members.
- ❑ The power is vested with the Union Government.
- ❑ The commission has no right to concrete legislative power.
- ❑ It has only to power recommend amendments and submit reports which are not binding on state or Union Government.
- ❑ The Commission's Jurisdiction is not operative in Jammu and Kashmir.
- ❑ Financial assistance is so less that it is difficult make awareness of legal program.
- ❑ The National Commission for women in India seizes women's cause only when it is brought to light. Unreported cases of oppression and suppression of women are not attended to.
- ❑ In rural sector, there is lack of mindfulness education, opportunities and basic facilities for women for economic of empowerment.

NATIONAL COMMISSION ON MINORITIES

The National Commission for Minorities was originally titled Minorities Commission. In 1978, setting up of the Minorities Commission (MC) was envisaged in the Ministry of Home Affairs Resolution.

In 1984, the MC was detached from the Ministry of Home Affairs and placed under the newly created Ministry of Welfare, which excluded linguistic minorities from the Commission's jurisdiction in 1988.

With the enactment of National Commission for Minorities Act 1992, the Minorities Commission (a non-statutory body) was renamed as National Commission

for Minorities.

Who constitutes of minority?

- ❑ The central government notifies the status of minorities to a religion in India.
- ❑ Constitution has not defined the term minority neither laid down procedures to notify a community or religion as a minority community
- ❑ However, article 29 recognizes religious and linguistic minorities while article 30 provides the right to establish and administer educational institutions maintained by them.
- ❑ Initially five religions viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minorities by the Union government in 1993.
- ❑ After that, Jain was notified as a minority community in 2014.

Constitutional provisions for minorities

Constitutional provisions related to minorities can be seen in Fundamental Rights (FR), Directive Principles of State Policy (DPSP), and Fundamental Duties (FD).

Fundamental Rights:

- **ARTICLE 14:** people's right to 'equality before the law' and 'equal protection of the laws'
- **ARTICLE 15:** prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth
- **ARTICLE 16:** citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth;
- **ARTICLE 25:** people's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights;
- **ARTICLE 26:** the right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law'
- **ARTICLE 27:** the prohibition against compelling any

person to pay taxes for promotion of any particular religion’

- **ARTICLE 28:** people’s ‘freedom as to attendance at religious instruction or religious worship in educational institutions’ wholly maintained, recognized or aided by the State.

Directive Principles of State Policy

DPSP under Part IV, includes the following provisions having significant implications for the Minorities: –

- ❑ The obligation of the State ‘to endeavour to eliminate inequalities in status, facilities and opportunities’ amongst individuals and groups of people residing in different areas or engaged in different vocations; Article 38 (2)
- ❑ The obligation of State ‘to promote with special care’ the educational and economic interests of ‘the weaker sections of the people’ [Article 46]

Fundamental Duties

- **Article 51A:**
 - ❑ citizens’ duty to promote harmony and the spirit of common brotherhood amongst all the people of India ‘transcending religious, linguistic and regional or sectional diversities; and
 - ❑ citizens’ duty to value and preserve the rich heritage of our composite culture.’

Composition of National Minorities Commission

- ***It has seven members:***

- ❑ A Chairperson
- ❑ A Vice-Chairperson
- ❑ 5 members

Total of 7 person, to be nominated by the Central Government should be from amongst persons of eminence, ability and integrity and all of them shall be from amongst the minority communities.

Term of Members of National Commission for Minorities: Each member of the commission holds the office for three years from the date of assumption of the office.

Removal Process of Office of Chairperson

The Central Government shall remove a person from the

office of Chairperson or the member if

- ❑ Becomes undischarged insolvent.
- ❑ Unsound mind and stand so declared by a competent court.
- ❑ Refuse to act or become incapable of acting.
- ❑ Convicted and sentenced to imprisonment for an offense which in the opinion of the Central Government involves moral turpitude.
- ❑ Absent from three consecutive meetings without obtaining leave of absence.
- ❑ Abused the position of chairperson or member in the opinion of the Central Government.
- ❑ Detrimental to the interest of minorities or public interest.

Note: No person shall be removed under this clause until the person has been given a reasonable opportunity of being heard in the matter.

Functions of National Commission on Minorities

The National Minorities Commission performs the following functions:

- ❑ It evaluates the progress of the development of minorities under both central and state governments.
- ❑ It monitors the working of the constitutional laws enacted for the welfare of minorities, both by central and state governments.
- ❑ It makes recommendations for the implementation of protective safeguards for the minorities.
- ❑ It is the authorized body to look into complaints regarding deprivation of the rights and safeguards of the minority communities.
- ❑ Its initiatives include studies concerning minorities’ issues arising from discrimination.
- ❑ It conducts studies, research and analysis concerning issues related to the socio-economic and educational development of minorities.
- ❑ It presents periodic or special reports concerning minorities and their issues to the central government.
- ❑ It governs matters which the central government refers to.