

4. Union Govt & Admⁿ (Part)

Executive (Pres, PM + C.O.M)

President

Art 52 - "There shall be a President of India"

Art 53 - Exec power

Art 54 - Election of Pres; Art 55 - Manner of election

Art 58 - Qualifⁿ Art 71: Matters relating to election of Pres, V. Pres.

39th A. Act - put election disputes relating to Pres, V. Pres, Speaker beyond J.R.

44th AA - Status quo ante restored i.e. SC will have final say in Pres, V.P. disputes

Evolution of office of Pres

1. Dr. Rajendra Prasad: unopposed, Congress party dominant, rapport with Nehru
Hindu Code Bill - disagreement
2. S. Radhakrishnan - S. India, regional balance; precedent of appointing V. Pres as Pres set.
3. Zakir Hussain - Era of PM's Pres ✓
4. V.V. Giri - (I. Gandhi Camp vs. Syndicate (Kamraj camp)) - 1st time 2nd pref votes counted
notion of conc. vote emerge
5. Fakhruddin Ali Ahmed - Endorsed Emergency w/o enquiring ✓
6. U. Sanjeeva Reddy
7. G. Zail Singh - Skirmishes with Rajiv ✓
8. Venkatraman - nominated on account of diff b/w Zail Singh, Rajiv
9. Shankar Dayal Sharma
10. K. R. Narayanan - 1st Dalit Pres - >91% votes; Era of Coalition Govt
Pres role acquired new dimensions

11. APJ Kalam - backed by BJP (NDA) : left parties raised Govt
 12. Pratibha Patil - momentous, women Prez to admⁿ
 13. Pranab Mukherjee - quite active; sent messages during Delhi protests on gang.
 (Note: IE article on 1yr of Pranab) da
 (Dec. 16)

Vacancy of Prez Office

- 1) Death 2) Resignⁿ 3) Impeachment 4) Expiry of term 5) SC quashes election

V. Prez communicates about resignⁿ of Prez to Speaker of LS.

Art 61 - Impeachment of Prez by P[']ment $\left\{ \begin{array}{l} \text{RS} \\ \text{LS} \end{array} \right.$ [Pre condⁿ: 1st house (either)
 14-day notice
 $\frac{1}{4}^{\text{th}}$ total strength \rightarrow sign]

1st house: debates resⁿ & passes by $\frac{2}{3}$ spl. majority

2nd house: investigating house - Prez given an opportunity to defend himself

If 2nd house passes - spl. majority \rightarrow Prez stands impeached.

Powers & Duties of Prez

We follow Westminster model - Prez: titular head, acts @ com advice

3 schools of thought reg Prez :

- a) Prez - merely a Cⁿ head ~ English crown : ✓ Granville Austin
 ✓ M.C. Setalrad
- b) Powerful view (literal view) - not a figurehead but powers are supra ministerial
 ✓ K.M. Munshi
- c) Middle view (held by majority) - Prez reqd to preserve, protect & defend the Cⁿ
 & has to serve people of the country.
 i.e. They hold Prez has unspecified reserve of powers as the guardian of the Cⁿ.

edkar - Posⁿ of Prez ~ Crown in Eng. He can do nothing w/o the advice of CO.M, infact he can do nothing about w/o it'

SC view (Rem)

U.N. Rao

"U.N. Rao vs. Indira Gandhi (1971)": [Even after dissolution of LS, COM continues to exist in care-taker format so that Prez shall not exercise his powers w/o aid, advice of COM.]

Evidence of binding nature of advice

- ✓ Art. 74
- ✓ Art. 361 - (Prez personally not liable for any act in course of discharge of duty)
- ✓ Art. 78 - PM duty to furnish info
- ✓ 44th A.A - can send back advice only once.

Discretionary Power of Prez

Venkataraman, S.D. Sharma → invited leader of opⁿ in case of hung p^{mt}; K.R.N - asked for letters of supp

K.R.N - asked Vajpayee govt (1999) to prove majority on floor of house → he had to resign

K.R.N did not yield to advice of COM (lost majority) to dissolve LS (Vajpayee govt - 13 days)

Veto examples

Prez: gets advice from EC - disqualif of MP

Discretionary powers of Prez

- 1) Choosing party to form govt in a hung p^{mt}
- 2) Returning advice once (44th A.A)
- 3) Seeking info (A. 78)
- 4) Not bound by advice of PM - who has lost majority in LS
- 5) Suspensive veto / Pocket veto
 - ↓ Sending bill back
 - ↓ Inaction
- 6) Add views of 3rd school of thought (prev page), 2nd school of thought (K.M. Munshi)
- * 7) ~~Discretionary~~ reserve of unspecified powers.

Rem. Post office → pocket → V.K. Ramiah Zail

Recent Ordinance on convicted lawmakers, Prez asked the need for such urgency. (discretionary power)

Rajendra Prasad - absolute veto - Pepsu Appⁿ Bill

Venkataraman - Salary, Pension, Allowances of MP Bill - absolute veto

G. Zail Singh - Indian Post office Amend^t Bill - pocket suspensive veto

Kalam, - Office of Profit Bill - suspensive veto

Prez Activism:

Returning advice, Seeking too much info, PURA, Pan Africa e-network receiving state heads etc. Some examples - Kalam

Panab da: Dec 16, sent msg to govt; received women govt; His Excellency dropped; R. Ghosh opened to public

Record from 1950-2011 : estd following principles

eg. ve
Art

- Prez is entitled to questⁿ govt bill, app^t in a limited manner
- Can comment on state affairs, but criticism must be muted & should be in nature of raising alarm
- Can admonish / show displeasure to PM in pvt
- Art 78
- Practice of receiving oppⁿ leaders in recent times. Offers no comment but forwards protest to PM. Even state CMs can invoke Prez moral authority as guardian → to safeguard federal character
- Art 75(2) cannot be invoked as long as Art 75(3) is fulfilled
COM at Pleasure of prez COM req → LS
- Prez entitled to insist PM that he obtains vote of Conf in LS within stipulated period.
Prez : within the 4 walls of Cⁿ.

Powers :

→ Leg ^{ve}	→ Judicial	→ Military
→ Executive (adm ^{ve})	→ Emergency	

Exec powers

- All exec action under his name - A.53
- All Union officers (AIS) - enjoy office during his pleasure
- Art 77 : Allocation of Biz, Transaction of Biz rules (1961)
- Art 78
- Appoints : UPSC, ISC, CAG, EC, SC, HC, CJI, FC
- Int^l accords. under his name, Concludes war & peace

But A.76 → doesnot bestow exec-powers on Prez. It only helps in indirect way.

∴ Seeks info → highlighted in media → influences public opinion

Military powers ✓ (Supreme Commander)

Leg've powers

→ Art 79: Prez part of P'ment

→ Power to Summon, pro-rogue, dissolve, send messages to P'ment

→ Prez address (1st session of every year, 1st session of newly elected LS)

→ 12 mem nomination RS

→ Annual reports (PAC, UPSC, FC)

→ Appoints Protem Speaker

→ Assents to bills, vetoes bills (eg:

Rajendra Prasad - Hindu Code Bill

APJ Kalam - Suspensive veto - Office of Profit Bill

Zail Singh - pocket veto - Post office Amend Bill

R. Prasad - absolute veto - PEPSU appropriation bill

V. Raman - absolute veto - Salaries, Pension of MP bill

→ Art. 200.

→ Art. 123 - Ordinances on all subjects under jurisdiction of P'ment

Issues with Ordinances

A.K. Roy

R.C. Cooper - 1970: Said Ordinance - Subject to J.R (malafide)

D.C. Wadhwa - 1987 (250 ordinances 1967-81; 14 yrs; will be struck down)

✓ highly undemocratic, not available in most of the dev'd democracies

✓ Abuse: PoTA → repromulgated w/o an effort at legislating.

Wadhwa case vs. State of Bihar - Ordinance use malafide

SC observed: repromulgation of ordinances for decades → violation of C[?]

Judicial Powers

Clemency - Art. 72

- Pardon - free of all penalties
- Commute - changes character w/o change in duration
- Remit - reduce sentence w/o change in character
- Respite - special fact → reduction in sentence
- Reprieve - stay on exec

SC view (guidelines issued)

Kehar vs Union of India, 1989:

- 1) Prez may examine evidence afresh ✓
- 2) Petitioner cannot demand oral help ✓
- 3) Prez do not act as court of appeal, powers are independent ✓
- 4) Prez to exercise this on aids advice of COM ✓

→ P Courts cannot interfere with decision of Prez but a limited J.P. ANUDEEP KURISHETTY AIR 1, CSE, 2017

✓ to ensure Prez considers all relevant material before coming to conclusion

Vedanta Guru Venkata Reddy case

- J can examine wisdom behind the decision ✓ J.R.
- Clemency cannot be shown on caste, religious grounds. ✓
- Clemency → not a private act of grace: primary criteria interest of the society

Emergency Powers

K.T. Shah: Liberty & Democracy will remain only in name because of these provisions

H.V. Kamath: By this single chapter, we are laying the foundⁿ for a totalitarian state

A 352:
1962₋₆₈: Indo-China; Indo-Pak war
1971: Est. aggression - B'desh liberation war
1975: int. disturbance

A 19 gets automatically suspended - war/ext aggression as per A 358

Art 359: Others except A 21 can be suspended by a Prez order ✓

Punchhi recommended localised emergency ✓

A 356 - C^{nal} emergency

When state is being run by govt contrary to prov of Cⁿ, C^m emergency exists.

State govt dismissed, SLA suspended/dissolved. Law making → P^{ment} → Prez
↓
Govt

1967 - Year of great divide; regional parties rise in states

1950-65 : A.356 ~ 10 times

1965-80 : 60 times - abuse of article

Sarkaria observed: A 356 was imposed in 13 cases though State ministry enjoyed confidence.

- * 1965 : Kerala dismissed (blot on democratic credentials of Nehru)
- * 1976 : TN govt dismissed → mal admⁿ ✓
- * 1977 : J. Party dismissed all 9 CMs in Congress ruled states on grounds Congress lost all seats in LS ✓
- * 1980 : Indira Gandhi - dismissed Janata party CMs ✓
- * 1992 : 3 BJP govt dismissed after Babri masjid demolition (HP, UP, RJ) ✓ ^{by Cong.}
- * 2005 : Butta Singh recommended Prez rule in Bihar (Abuse)

Sarkaria on A.356

- A.356 sparingly used: as a measure of last resort
- warning before imposition
- If L&O problem, Art 355 should be exhausted first
- Gov^t should explore possibilities of forming alternative govt. If fresh elections are inevitable → care taker govt should be formed
- Gov^t report asking for A.356 - must be a speaking document not vague & must be given wide publicity.
- Gov^t - outrider
- No dismissal before ratifⁿ by p^{ar}ment (is no simultaneous & immediate dismissal)

Some more impermissible of Prez dissolution

Kalyan Singh
Rabbi Devi

- * Prez K.R. Narayanan declined to sign A.356 imposed on Kalyan Singh's UP govt after it won a vote of Confidence (220-0) in 1997
- * K.R. Narayanan also returned Cabinet resⁿ to dismiss Rabbi Devi govt in Bihar - 1998

SC View in SR Bommai vs UoI, 1994

- Art 356 imposition → J.R.
- No dismissal on the grounds that state ruling party lost heavily in LS election (as has done in '77, '81)
- A. 356 - C^{ml} power not absolute power; existence of material evidence pre-condⁿ for imposⁿ of A.356.
SC can investigate this material evidence
- Can restore Status Quo Ante if reqd (ie if found unreasonable)
- A 356 & dissolution of assembly → cannot take place simultaneously.

No. A356 on following grounds:

- ✓ mal admⁿ
- ✓ SG resigns, Gov^r recommends A356 w/o exploring installing alt-gov^t
- ✓ No floor test
- ✓ No prior warning
- ✓ Corruption, fin. problems

Suggested Occasions by SC

- A. 365 - failure to comply
- SG resigns after losing majority, no other govt can be formed

✓ NCRWC reco: must mention

Floor test mandatory before A356

Proclamation + annexure specifying grounds/

Where state is not acting in accordance with provⁿ of Cⁿ.

Problems:

- 1) Avg no. of sittings - Continuous decline :
(LS) 1952: ~~127~~ 103
1963: 122
2011: 73
- 2) Time lost : 5% - 1985
41% - 2011
House of Elders passed Budget w/o debate.
- 3) No. of bills passed: 82 - 1952
118 - 1976
36 - 2011
- 4) No. priv mem bill has been passed since 1970, (14 passed so far out of which 6 passed in 1953 alone)
- 5) Time spent on Budget: 135 hrs - 1985
32 hrs - 2011 (Guillotine, Kangaroo) ✓
- 6) Unfortunately,
H. Ansari - "The ability to debate is being measured in terms of ability to shout"
- 7) Avg age 1st LS: 46.5 15th LS ~ 56 (Old age does not mean ↑ wisdom)
- 8) UK has a very robust Youth P'ment & conducts debates annually among ~~in~~ motivated, young students/children. Our Youth P'ment's f'ing has been ineffective.
- 9) % Women repⁿ < 10% , S. Asia including Pak > 12% , World Avg - 14%.
- 10) Quality of debates Q. hour, Quorum - dwindled
- 11) Disruption added to 3 DL of democracy - debate, dissent, dialogue
- 12) Corruption & Criminalisation in MPs (ADR - 30% of all legislators - accused)
MPLAD Scam, Cash for vote scam

Reqd Reforms

- 1) Electoral reforms — Women ↑ ✓
Paid news ✓
check CP, PC ✓
introduce -ve vote ✓
- 2) Code of Conduct — for MPs (Nolan cmt - std in public life recommended a Code of Conduct for both MP & Civ Servants) [Rem]
- 3) Penalise unruly behaviour, Ethics cmt should be strengthened + A P'mentary Commisⁿ to enforce COE (as recommended by Nolan cmt)
- 4) Constructive vote of conf ✓
- 5) Sch to Coalition (ARC-2) ✓
- 6) NCRWC - reco 120 sittings for LS, 100 - RS ✓
- 7) More respect to priv mem bill ✓
- 8) Televising P'ment cmt proceedings — Std cmt on Fin, PAC
- 9) Enable PIL in P'ment too
- 10) Youth P'ment must be empowered on the lines of UK

Innovative solⁿs.

J:

Stat: judge / popⁿ ✓ - 10.5 / million India
 ✓ - 107 / million - US
 ✓ - 50 / million - UK

Police:

Solⁿ:

- Operationalisⁿ of AIJS
- evening courts, e-technology
- ↑ judge / popⁿ ratio
- ARJ: Code of Conduct for judges: a Senior judge → enforces
- Popularise plea bargaining (currently applicable to cases > 7yr sentence)
- ADR, LokAdalat, GN. Panchayats
- J.A.C: good step but need some tweaks

✓ A. 74 :

91st C.A.A : C.O.M - $\leq 15\%$ of Strength of LS

→ Gopalaswamy Ayyangar → 3 fold classifⁿ : Cab. min
↓
did not recommend
Pment Secy. classif category
Mos
Dy min

ARC-1 on C-O-M

Cab. min - dual resp^{ty} < own portfolio
imp govt decisions

- ARC-1 said Dy min should not be viewed as consolation prize but as training ground for future min.

In case of Hung Pment Prez should follow following convⁿ.

- Invite LoP if govt is defeated in a no-confidence motion
- Invite leader of coalition formed prior to elections
- Invite leader of single largest party
- Invite leader of coalition formed after elections.

ARC-2

Current ministers or equivalent orgns - 57

Ministers carved out to accomodate politicians

Gave 2 res: i) Concept of Co-ordinating / joint minister - to head closely related ministers

ii) Clubbing closely related min on drawing cue from Dept Related Std Combs

M^y of Transport < Civil Aviation
Shipping
Roads, railways

M^y of Energy < Coal
petroleum

ARC-2:- thus the no. of ministers can be ↓ to 25

Cabinet

- Supreme exec. authority. we have a cabinet govt.
- Prime leg've body
- Agenda of Pment Sessions
- Summon, proroguing, dissolving Pment
- Prez address
- Ordinance promulgation
- Co-ordinating body for excellence — Supra ministerial
- Accepts 5 yr plans, budgets
- Appointments @ J. Secy x above + Nat. Security issues + crisis mgt.

"Cabinet's dominance is a stark reality." ✓

Checks on Cabinet

- Nat. Commisⁿ on SC/ST } views cannot be ignored
- Nat Commisⁿ on women }
- FC, EC, .
- Judicial checks
- Prez : Art 78, Suspensive veto
- Media — FDI in retail, Bt Brinjal opposⁿ.
- Civil Society

Challenges facing Cabinet today

- Open airing of differences (Agr. Min vs. Env't Min — on Bt crops. (Env. Min vs. Home/Defense min)
- Corruption at highest levels
- Cabinet — as a dumping ground for rejected CMs.
- Capability / Merit — called into question
- E-GOM : Govt decides on a matter, revisory jurisdiction is only with PM. ie, Cabinet has no role
- Undermining Cabinet's authority in a recent incident on ~~an~~ Corrupted MP ordinance.

Cabinet Committees

Adv.

- Saves the time of Cabinet - Quick d-m, more focus, more effective debate/discussion
- C.C. also has C.O.M, Dy min → Safeguards Collective responsibility
- Supra ministry / objective view : so that ministers do not miss forest for trees.
- Inter-dept co-ordⁿ (Fayol)
- Sustained focus on key aspects of admⁿ.

* G.W. Jones (British politician) - "Cab Cmtes have saved Cab sys of govt which otherwise would have cumbled under the pressure of work."

Ex: App^t comt, C.C. on Security, C.C. on Prices, Pol. Affairs (most imp Super cabinet)
C.C. on trade & invest, C.C. on Law^s, C.C. on eco affairs.

Criticisms of CC

- 1) Wide variation in strength : 2-12 (no coherent policy)
- 2) PM as chairperson ⇒ fait accompli is compromises advisory authority
- 3) Often doesnot include min concerned with subject matter
- 4) App^t done on personal/pol consideration
- 5) MoS rarely appointed, Dy min never app^d.
- 6) Trivial matters (C.C. on location of offices in Delhi)
- 7) Several Subjects neglected
Eg: Women emp^t, Env^t

8) Coalition Compulsions
& problems

ARC-1 reco

- 11 std C.C. ~
 - ✓ defence
 - ✓ Ext affairs
 - ✓ Social Services
 - ✓ Eco affairs
 - ✓ App^t etc,
- membership ≤ 6 (min concerned with subject matter must be included)
- Std C.C. supported by Cmt of Secys
* to cover matters in advance
- Should cover all imp areas
(env^t, w. emp^t etc)

Art 74, 75, 78 75(2)
75(3)
Primus Inter Pares : In view of the overarching influence, we are witnessing
Prime-ministerial govt / Cabinet govt instead of Parliamentary govt.

- Death or resignation dissolves the C.O.M.

Role of PM vis-a-vis :

Remember heads

- 1) Prez ✓
- 2) COM, Cabinet ✓
- 3) P'ment ✓
- 4) Pol. party ✓
- 5) People ✓
- 6) Int'l affairs ✓
- 8) Eco-Fin Mgt (20 pt prog NREGA)
- 7) NDC, ISC, NW, etc, PC *

Harold Laski calls observes on A'ship b/w PM & Cabinet - "PM is central to its formation, central to its life and central to its death."
Ivor Jennings - "He is the Sun around which planets revolve. He is the Key-stone of the arch"

PM - Prez

app'td by Prez, Art 74, 78

H.M. Secrecy: info not limited to necessary for scandals, but pub order. 6 months to P'ment session
3) Link b/w Prez & govt; 4) Prez not bound by advice in certain circumstances

PM - COM, Cabinet

Harold Laski - "PM is central to the birth of COM, its life & its death"

- Key portfolios with himself
- PM's decision carries a lot of weight in C-Comt/Cabinet; Reshuffles C.O.M.
- PM as head of Personnel, DAE, DoS
- "Inter stella luna Minores" ✓
- Sometimes PM's inner council decides major decisions ~ colloquially: Dehradun Brigade (Rajiv) Kitchen Cabinet (Indira)
- Co-ordinator; Teamwork; majority in all cabinet decisions (Kitchen cabinet) called

↓
"Compos"
Dizzy heights of Power.

PM - P'ment

elaborate w/ cabinet for *

- leader of the house
- dates of summoning, prorogation
- agenda of P'ment session
- Policy announcements
- nominated members chosen on his advice
- Mediator role in case of dispute b/w 2 houses
- Participates in Biz Advisory Cmt ✓
- Pay attⁿ to Oppⁿ; grievances

Politics: R. Gandhi ~ 2/3rd majority in LS, ∴ ignored P'ment → bad precedent
Mammohan - not able to cultivate intimate r/ship with P'ment

- Policy decisions forced by extra-Cⁿ bodies Eg: NAC

- PM should draw Lakshman Rekha of coalition regime. (No Coalition Dharma)

PM & The People

PM & Institutions :: NDC, ISC
heads coms that club NHRC
CVC etc,

✓ Leadership

✓ Spokesperson of govt.

PM & Eco Fin Mgt :: 20 pt prog - Indira
Jawahar Rozgar Yoj : Rajiv

PM & Intl Affairs

End with Triv Jinnings quote.

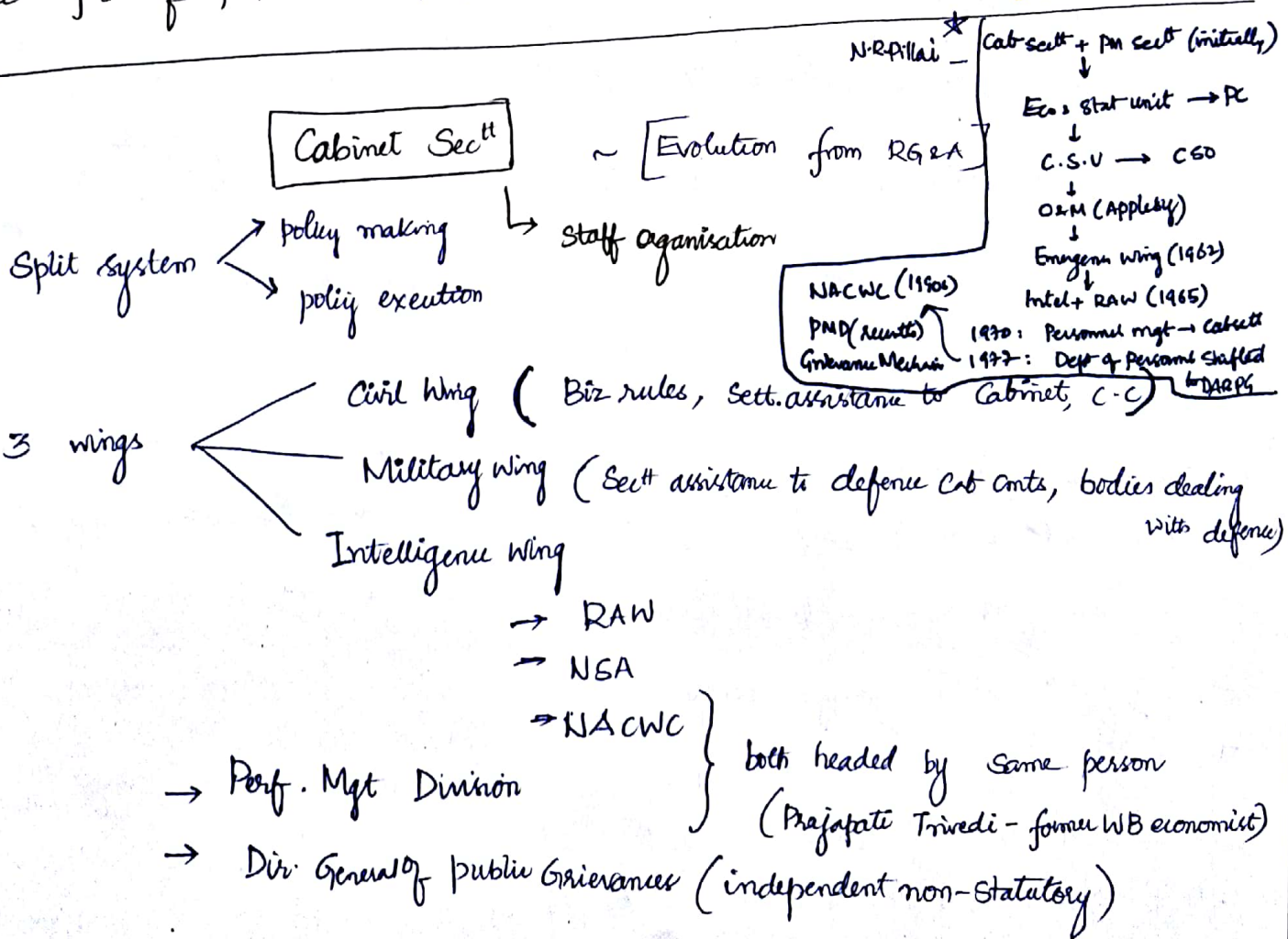
- Chief repⁿ of the country in Int' arena

- Nehru - NAM ; Rajiv : disarmament ; Manmohan - respected in G-20 circles

Gujrat doctrine, Bus diplomacy, Modi - Neighborhood first policy

Exec. fⁿs of PM: P O S D C O R B

★ Evolution

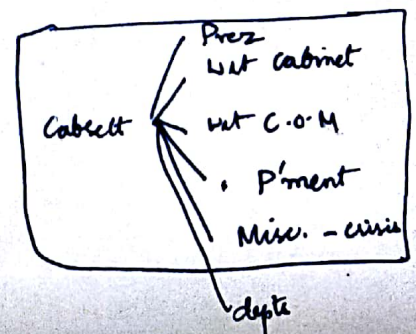


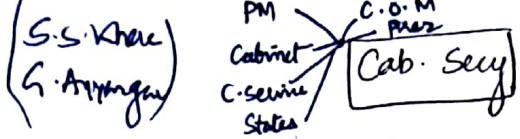
- 1) Provide Sec^t assistance to C.O.C:
 - arrangement of oath taking ceremony
 - Communicate portfolios
 - agenda circulation (prepared under direction of PM)
 - recordings of minutes
 - entertains objections of ministers
 - 2) Custodian of papers of Cab meetings
 - 3) watches over implementⁿ
 - 4) deals with decision modifⁿ, objections; - Committee of Secy h/ by Cab secy to thrash out differences
 - 5) Ensures Cabinet fns on the basis of collective resp.
 - 6) Responsible for Rules of Biz - PF & PI [A. 77] (3)
(Transacⁿ 1961 Allocation)
 - 7) Co-ordinating agency par excellence, crisis manager
 - 8) Prez, V. Prez, Min are kept informed on major initiatives - via monthly Summaries
- ; Secy of various depts need to keep Cab Secy posted.

* Misc - Deals with

- Ordinances
- Prez address to P^rment
- Summoning, prorogue, dissⁿ
- Negotiation with foreign countries
- Appts
- Cmte of Inquiry / Commissions *
- Proposal to withdraw prosecⁿ initiated by Gov.
- PMD, NACWC, [O&M mutually, non DARPS]
RFD Grievance Redressal (CPGRAMS)

2nd ARC: There is a need to ensure that the two coordinating mechanisms of G.O.M & C.O.S fⁿ effectively & help in early resolution





Despite the enormity of the floods, ~~Abhishek Dhillon~~ AIR 1, CSE 2017 shown by Ajit Kumar Sethi in co-ordination & relief work is exemplary in UK floods / Sikkim earthquake in 2011

- 11th in table of precedence

1) Head of Civil Service of India :

- Trouble shooter
- Path breaker
- Conscience keeper - friend, philosopher, guide
- Morale booster

* Chief of Civil Services Board → app^t : JS, DS, USecy (based on Cab Secy reco)

Naresh Chandra, T. N. Seshan, B. G. Deshmukh ✓

2) Principal adviser to PM :
2. Head of Cab Sec^{ty} Exec.

- Eyes & ears of PM ; responsible to PM.
- Keeps him posted on imp dev^t in ^{all} ministry (ies)
- informs him about any conflicts
- Ensures PM, Cab decisions are carried out
- Mediator : Prez msg to PM
- agenda of Cab meeting under direction of PM.

Gopalakrishna Ayyangar
- "He should be an adobe offering the highest rank"
Cab. Secy - staff fⁿ not a line fⁿ. His purpose to help not to oversee
: (S.S. Khare, former Cab Secy)

- * - Serves as general factotum to PM eg: C-Conts on prices - Cab Secy advise C.C on Invest - Cab Secy advises
- advises on major policy decisions

3) Presides over annual conf. of chief Secys (C. Secy - states)

4) Extended arm of PM, must possess leadership, grit, gumption, team builder.

- Qualities reqd :
- 1) pol-neutrality esp in coalition era *
 - 2) working through diff (co)
 - 3) Team builder, Crisis manager
 - 4) Not a watchdog / invigilator but a staff functionary whose biz

(Req & A) lies more in assisting & overseeing.

* Minister launching defamation case against editor - Sanction of Cab. Secy
- Cab Secy general factotum, but PM should involve him in political matters. Occasionally he may be sandwiched b/w 2 min & sometimes min may not be following PM instructions. He is not supposed to acquire pol overtones. must be "Shock Absorber"

election manifestos
separate staff needed
P.N. Dhar
Quote (2) PMO (Staff Agency)

PMO ≡ PM + MoS
Principal Secy (P.K. Mishra + Nripender Mishra)
NSA - Ajit Dorad
Media Adviser
Add. Secy, Joint Secy, Private Secy, 12 directors
PMEAC
"Backroom Boys"

F's & Role

P.N. Dhar: PMO - plays crucial role in conv. election manifestos
→ reality

- deals with all references which have to come to PM,
- Maintains Liaison with union ministers & State govt
- Helps PM in his exec. duties - NDC, PC, PM Nat Relief Fund, P'ment Qs, imp speeches, think tank!
- PR relations (Media Adviser)
- helps in dealing with dept under his direct incharge ^(P.C., C.C.I) fulcrum of eco activity
- Residual Legatee w.r.t P'ment duties
PMO monitoring projects → overpowering ministers
GoM firing under direction of PMO through ests by cabinets
- PMO helps PM in his duties as head of Cabinet, C.C

"Referent Power"

Conclusion: In addition to above, role, status, posⁿ, authority of PMO depends to a large extent on incumbent PM.

PMO role; P.K. Chatterjee
Evolution of PMO: RGA, NAC
Recent: NAPEC, Skill Dev Unit, Delivery Monitoring Unit etc;

PMO is salvation of PM ∴ ↑ Complexity, Globalisⁿ, shorter tenures of cab Secy

P.N. Dhar: " ↑ Complexity of GoI makes PM deal with Int affairs, Socio-econ dev & all such complexities. They cannot be dealt by him with cab secy w/o a group of specialised advisers on the pattern of US Prez executives office" - P.N. Dhar + election manifestos

PMO - should'nt encroach on domain of ministers, cab secy.
It must work through the sys, not bypass it.

Split system. - India

Westminster: Sect^r - responsible for both PF, PI.

M'y = Min + Secy + Heads of directorates/field agencies
(Brain) (Limb)

- Adv of Split sys:
- Specialisⁿ in respective roles (G&U) [PF - Cerebral exercise need a spl. body]
 - Objective, national concerns are kept in mind (does not miss forest for trees)
 - **Delegation** $\checkmark \Rightarrow$ morale \uparrow for field agencies
 - Unbiased PE & Correction possible

Role & Fⁿs

- PF, PI, PE: repository of data, Brain of M'y - data, statistics, material
- adv - advises Min.
 - undertakes Sectoral planning
 - Co-ordination among dept
 - PI, PE

Sect^r - P^rment

- Prepares answers to P^rment Qs.
- Draft bills prepared / takes birth in ~~at~~ Sect^r
- **Delegated Legⁿ**
- Prepⁿ, Execⁿ, control of Budget

- Min: \star Serves as institutionalised memory, lends consistency to govt.
- examines issues & cases in light of past precedents \star - importance of sect^r
 - **Channel of Commⁿ with States**
 - **Measures to \uparrow admin^e skill, Capacity building**

Tenure System

Initiated by Curzon - 1905

Simon, Wheeler, Llewellyn Smith comt, ARC-1

endorses Tenure Sys.

Adv:

- Prevents monotony
- ground realities reflected in PF
- helps get rid of incompetent officers
- (AIS - tenure) are repugnant, but tenure sys facilitates coordⁿ b/w C-S
- As motivⁿ for officers - close to corridors of power
- Officer Career dev^t, learning, helps nation

Dis adv

- does not favour spec: Jack of all, master of none
- PF is specialised skill
- Stay of T-Sys strengthens Office at the expense of the officer

Problems Currently:

- Stay of officers protracted
- Babus - trained incapably by staying in Sect.
- C-S tussle (States unwilling to part with their best officers)
- Scope of tenure sys ↓ (no. of posⁿs are declining)
- results in evaluation of Civ. Servant (∵ wide varied work)

* Problems of Central Sect^t (Transaction of Biz Rules/A BR)

Proliferation

- Parkinsons law at work, disguised unemp^t in GoI
- Dept creation to accommodate ministerial aspirants
- Many Sect^t ministries deal with State list Subjects *
- Geethakrishnan (Expenditure comt) said → "disguised unemp^t in GoI"

Fragmented admⁿ.

Over Centralisⁿ

- 1/3rd Staff - house-keeping work: Sixth Pay Commisⁿ - 'Grp D ^{to} eliminated.'
- Sectⁿ arrogated to itself PF & PE roles by unduly exercising Supervision.
- It is partly Confessed: 20% of total Sectⁿ work can be readily passed to field officers
- Dominance/overbearing role
- **Efficiency**
- Dilatory, time consuming, Red tape
- Poor co-ordⁿ, no integrⁿ Eg: M'y of U. dev^t & M'y of U. Housing & Poverty Alleviation
 (What is the need of having 2 min?)
 M'y of P. Raj & M. of Rural Dev^t - fragmented.
 IGMSY (MWCD) & JSY (MoH) - fragmented
- Tendency of **reverse delegation** (pushing files upward), Obfuscation
 ↳ risk averse
- Absence of team work. (12th Fyp - M'y's working in **Silos** far removed from reality)
 ↳ Solo-mentality

Suggestions

(A) Cutting down Red Tape

ARC-1: Desk Officer System recommended - **Cuts down red tape**

Now in vogue:

Under this: work of M'y categorised into final desks at lowest level

↓
Each desk manned by Usecy / Sec Officer (+ stenographic assistance, clerical help so that officer disposes off case himself)

However, serious policy matters are sent to higher level for disposal.

ARC-2 - No. of levels of d-m < 3

PF, Structure, Behaviour, Staff-ratio, Emoluments etc

- In case minister approval reqd, file initiation @ Dy Secy level

- Secy approval reqd - 2 levels only: U. Secy, director.

*
imp - Dept should lay down - a detailed scheme of delegation & reviewed & audited

- Digitisation must be pursued.

ⓑ Improving Policy-making :

Lateral Entry, Specialists reqd (Eg: Nilekani)

Domainisⁿ (Hota, ARC-1, ARC-2)

Recently Govt approved an Independent Evaluation Office for objective assessment, better PI of Schemes

ARC 1: Recast allocation of biz rules & make focus on Goals & outcomes

ARC 2: ABR - must provide statement of mission/objectives

ARC 2: PE @ regular intervals & modifⁿ thereto.

Ⓒ Promoting & Incenturising Perf:

1) PAR → PMS (ARC-2)

2) PRIS (6th Pay Commisⁿ, now set to kick in from 2013)

3) RFD, Perf Mgt Div → Strengthened

Ⓓ Checking undue encroachment on state

domain :

ARC-1 gave following guidelines for Sec^l ministries dealing with State Subjects.

- 1) Providing initiative, leadership, - a clearing house / repository / Brain
- 2) Drawing up nat^l. plan for dev of key sectors
- 3) Training programmes to ↑ Org. dev^t
- 4) Co-ordⁿ

Ⓔ Rationalising fⁿs & Structure of GoI :

ARC-2: ✓ Union govt should primarily focus on defence, HRD, Infra, Macro mgmt
Social Justice

- ✓ Follow principle of Subsidiarity

- ✓ Revamping ministries based on pattern of DRSC of P^lment (Transport, Energy, etc)

- ✓ Flatten Orgzⁿ

Rationalising Govt Staff

- 6th Pay Commisⁿ - Abolish Grp. D
- Currently Top heavy - needs rationalisⁿ ✓
- Emphasis on training @ all levels (ARC-2) in view of emerging challenges
Cyber Security, GN, CC, Terrorism, RTI, PPP, NPM etc,
ethos
Regulatory bodies - TRAI, SEBI etc,

Directorates & Field Orgns - Refer from Notes

Problems :

- Sec^y : overbearing role in PF, PI, Superiority complex
- Generalist supervision over specialist advice - anachronism
- no principle of subsidiarity
- Field views not given much weightage in PF.

Solⁿs :

3 methods :

- Status Quo Approach
- HOD = ex officio Secy status
- Amalgamate Sec^y + directorate (eg. Railway Board under M^y of Rail)

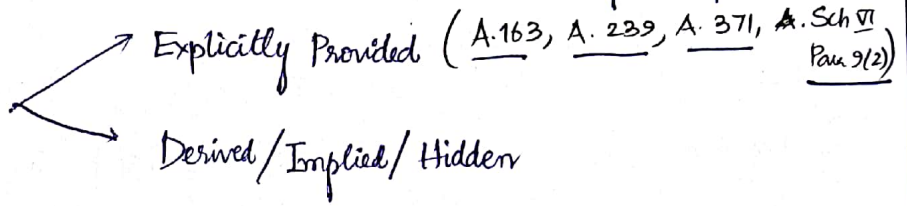
ARC-2 : 1st method ✓ : Said :

- Principles of split Sys must be scrupulously followed
- HOD - Should have control over personnel working under him
- P Sec^y concentrate on : PF, P.E
Planning, long term
budgeting, p^rsent work
appt of key field personnel
Co-ordinator

Governor

Art 153, 155

Discretionary Power of Gov^r



Explicit

- Art 163(1) - There shall be a C.O.M with CM at the head to aid and advise Gov^r except in so far as he is by or under this Cⁿ reqd to exercise his fⁿs in his discretion.

Sch VI - Para 9(2): The gov^r of Assam shall determine amt. payable by the State of Assam to the dist. Council as royalty received from grant of licence for exploration of mineral in the state.

Art 239 - as adm^r of UT - no need of COM advice
239AA

Spl. Responsibilities: Art 371 - Prez may direct Gov^r of MH, GJ to have special resp for dev^t of certain backward areas Vidharbha, Saurashtra

Art 371A - Gov of NG - L & O

A.P (TG area t) - A.371D

Art 371C - Gov of Manipur - Secure fⁿ of Cmrs of SLA consisting of members ~~Art~~ elected from the hill areas of the state

Art 371F - Gov of Sikkim - peace & Socio eco dev^t

Implied - A.356, A.200, A.363
↳ Send back admin, Ap. Dismissal of SG

A. 356 - adverse report

A. 200 - reserving bills for Prez

- A-163 - Sending back advice for reconsideration
- Dismissal of state govt / dissolution of state Assembly

Powers of Gov^r (~ Prez)

- Exec
- Leg^{'ve} Similar to prez mutatis mutandis
- Judicial
- Emergency

Issue Areas wrt Office of Gov^r

(A) **Appt**: Nominated vs directly elected (Give arguments on both sides)
 Finally we accepted nomination - on the ^{pattern} basis of Canada.

1967: Year of great divide in politics of India.

Sarkaria: Consultⁿ with CM was not done, in some cases gov^r was appointed even when CM outrightly rejected the nominee.

- Said that A-155 must be amended to mandate consultⁿ process - A-155 amend^t
 Rev. by various bodies on Gov^r Appt:

SC: observed:

- 1) defeated candidates (~ V.V. Giri, V. Gadgil) were appt^d as Gov^r
- 2) Ministers who resigned following stricture being passed by courts are appt^d
- 3) Men from ruling party at Centre - are appt^d
- 4)

Shriraj Patel

ARC-1

- Burnt out politicians should not be appointed
- Men of low integrity, men who lost elections - should not be appt^d
- Oppⁿ Leader in LS be consulted
- Prez should exercise this power in his own discretion.

Sarkaria - echoed Nehru's views

- An outsider ✓
- Eminent in some walk of life ✓
- should be a detached figure not intimately connected to local politics ✓
- should be a person not deeply involved in politics in the recent past ✓
- Speaker, LS ; Vice prez be consulted.

NCRWC

- App't by a comt revo : consisting of PM, Speaker of LS, State CM, HM
- Consult - transparent
- No civil servants / defence chiefs ✓

ⓑ While app't of Gov't in hung assembly

- Sarkaria, SC, Punchhi :**
- 1) Pre-poll alliance
 - 2) Largest single party with support of others
 - 3) Post-poll alliance with everyone & joining gov
 - 4) " " " with some outside support.

ⓒ Dismissal of C-M

1969
WB - Dharamveera dismissed Ajoy Mukherjee (CM) where CM refused to prove majority. Butta Singh revo. Per rule in Bihar. — Abuse

K.R.N. refused to dismiss (on cabinet admin) → Ramesh Dasi → Kalyan Singh

- S.R. Bommai - Ktk :
- ✓ 1) SC said - no dissolution if gov enjoys majority
 - ✓ 2) Must conduct floor test first.
 - ✓ 3) Subject to J.R to check mala fide intentions.

Also Gov't should not dismiss Gov't if there are allegations of corruption; prosecution should be started

D) Editing speech - Govt not entitled to edit speech unless it is in its own conduct.

E) A356 report - Sarkaria: must be a speaking document, corroborated by evidence
Punchi: To avoid doctoring of Govt report, Bommai guidelines - ^{govt dir} in c?

F) Discretionary power: Art 163(2) 's impression of discretionary power - must be dispelled
Punchi said: Govt's discretion is limited must be narrowly construed
"Exercise must be dictated by reason, activated by good faith, tempered by caution."

G) Removal of Govt: Govt continuance in office depends on sweet will of the Centre, whims & fancies.

Rem * Hargovind Pant vs Raghukul Tilak: SC -> Govt not an employee of Union

Rem. BP Singhal Case - SC:

-> Govt cannot be removed on grounds

- i) C-Govt lost Confidence
- ii) ideology mismatch

* iii) A. 156 does not warrant reason but warrants fairness & reasonableness (Term of Govt)

iv) If removal is actuated by mala fide intentions Courts can step in. (J.P)

add examples of pol. dog fight b/w Janata Govt & Indira Govt

- Govt dismissals en masse
- Bad precedent.

Sarkaria on removal of Govt

- Govt tenure 5 yr should not be normally disturbed except in compelling situations
- Govt must be apprised of grounds of proposed action ~ ^{be} afforded an opportunity to Show cause
- Prez - must get explanation examined by Group: V. Prez, LS speaks/CSI ret'd

√ Circumstances leading to termination should be laid before both houses.

Punchhi :

Fixed tenure of 5yr, echoed NCRWC

- Removal of Govt mutatis mutandis Prez removal procedure

C.M. ~ (PM)

C.M vis-a-vis :

- Prez Govt
- COM/Cabinet
- SLA
- Party
- People, Media
- +
→ PM (NDC, PC, ISC)

The adage
"To see Naples and die" twisted to

"To see Delhi and survive"

(CMs as mere adjuncts)

↓
(CM lobbies for central assistance)

+ CM Adm'ive role

- head of SPD, Gen Adm Dept (GAD)

- CMO role much inferior to PMO, Chief Secy is the King pin.

Posⁿ of CM - A Reality check

- CM vested with many powers, but his real posⁿ depends upon →

personality
pol exp

adm'ive capability

Central L'ship backing.

- CM with a comfortable majority → strong & available posⁿ

Eg: Nitish - Bihar

~~N. Patnaik~~

N. Patnaik - Odisha

- CM though enjoy majority but are nominated by Central L'ship, ~~are~~ their fate is decided by Central Party L'ship

Eg: - Telangana bifurcation decision taken by UPA-2 despite Kiran Reddy's displeasure.

- P. Raj Chavan (MH) → also weak

Coalition govt - hamstringing CM authority: battle for pol survival
accommodation (Jharkhand - 2 deputy CMs)
placating defectors

Chief Secy

- CS vis-a-vis
- 1) CM
 - 2) Cabinet
 - 3) Planning & Socio eco dev of state
 - 4) Emergencies
 - 5) Civil Service
 - 6) Centre-state
 - 7) Inter-state relation

1) CM: Principal adviser in adm'v & pol matters
extended arm of CM

2) Cabinet: ~ Cab Secy: agenda, co-ordⁿ, monthly report

3) Planning & Socio eco dev:
- Gets funds for state
- SPD under Chief Secy
- Consults with PC
- Receives integrated picture from all districts collector
- Conduit b/w CM & devt in field

4) Emergency:
- R³, P³ in dis-mgt
- Secy of SDMA
- Chief adviser to Govt after ABFB is imposed ~ (only in adm'v frs)

5) Civil Service:
- head of Civil Service of state
- Secy to all Secys of state
- heads GAD, Personnel, SPD
- Trouble shooter
- Consensus keeper
- framing rules of Conduct,
Allocation of Biz

G) CS & Centre : - Represents Centre ∴ AIS

- as channel of Commⁿ b/w C & S
- Contact with Cab Secy, Home Secy, Planning Secy
- Represents State in ~~the~~ chief Secy meeting

F) CS and interstate : ZC, NDC, CS Conference presided by Cab Secy.

CS - keystone of adm'v arch, Kingpin, protagonist behind the state's actions

Eg: Leadership skill displayed by Minnie Mathew, chief Secy of AP in holding CBD Conf in Hyd is exemplary.

- ✓ CSecy - test of leadership, tact, grit & gumption
- * not only technical but human r'ship, interpersonal skills are tested.

Cab. Secy vs Chief Secy (Similarities ✓)

Diff:

- Chief Secy - head of ^{state} Sect, Cab Secy is not
- Chief Secy - heads GAD, SPD, Personnel | NO such dept under Cab Secy
- Chief Secy - Residual Legatee | PMO's principal Secy - residual legatee

Chief Secy = Cab Secy + Home Secy + Personnel + Fin Secy

ARC-2 : CS - min tenure 2 yrs

Collegium : incumbent Chief Secy ✓

LOP - SLA ✓

Minister nominated by CM. ✓

New devt : Slow Rise of CMO

Mayawati - additional Chief Secy

app of pol favourites - Nepotism.

Role of the FC

[Art. 280]

FC - Chairman + 4

fin & acct
fin admⁿ
Spl knowledge eco
nomics

FC shall make reco to Prez as to

- i) distbⁿ of net proceeds of taxes b/w C-S & b/w states
- ii) Principles governing grants-in-aid of states out of CFI
- iii) measures to ^{augment} Consolidated F. of state, ↑ resource of States
(On basis of SFC reco)
- iv) any other matter referred by Prez.

14th FC TOR: (additional T.O.R.) A280(3)

- To review present arrangement ~ Dis mgt w/ funds under NDMA & make appropriate reco.
- To review state of finances deficit & debt levels of C & S. Suggest steps to maintain a stable fiscal env^t, consistent with FRBM. Commisⁿ is to consider incentives, disincentives for states for observe FRBM regulation (~ overbearing)
- In making reco Commisⁿ is reqd to consider:
 - level of subsidies for inclusive growth
 - need for making PSU- competitive, mkt oriented
 - listing disinvest +
 - need to balance ecology, env^t c.c.
 - Sust eco-devt.
 - impact of proposed GST.
- Commisⁿ to look to budgeting & accounting standards, linking outlays → outcomes, best practices within the country & make appropriate reco.

Over-arching

Issues with FC

- Deficiencies in institutional arrangement (PC v FC)
msg rep in FC
- T.O.R Constraint
- Non-implementation of imp reco.
- Problems arising out of methodologies of FC
- FC reco valid for 5 yrs: But meanwhile factors like inflation adversely affects states.

Suggestions

- FC scope ↑. It should consider plan transfers
annual review of fisc part of CBS
- FC: permanent body
- more FC-PC coordⁿ (time sync)
- Sect^t should be provided

→ Cⁿ doesnot differentiate b/w plan/non-plan Capital & Revenue grants. 1st FC even said that FC can take up plan/capital grants. But importance of planned eco dev^t is very high ⇒ implementⁿ expert body is reqd ⇒ PC ∴ justified.

- Also FC - periodic / PC - permanent. In dynamic situation, net resources available - will be known only on a yearly basis ∴ PC must deal with plan grant.

- **FC-PC**: Can sync timing of operation ✓
more co-ordⁿ @ Fora like NDC ✓
State gov^t must be represented in FC ✓

FC cell in PC should monitor State finances continuously & monitor behaviour of State finances. This provides co-ordⁿ for plan formulation.

- **Permanent FC?** Currently we have FC cell in PC
FC cell in Fin Min } no need of overhaul. disturbs estd structure.

Composⁿ of FC - SG must have repⁿ. Record of FC has been exemplary, but repⁿ helps.

Mechanism followed - Inflation argument (rem well) + Pay Commisⁿ argument

→ Gap-filling approach is leaving rich states with more funds while poor states neglected
(more taxes ↑ surplus after dev, not in poor states)

→ Gap-filling approach → induced system of indiscipline among states esp poorer ones @ the cost of better performing states.

Raghuram Rajan: CDI : Add this.

Union - State Adm'ive, Leg'ive, Financial Relations
(Rg 2 A)

K.C. Wheare - 'Quasi-federal term'

SRC 1 - "States are but limbs of the Union, while we recognise limbs must be strong, it is the strength & stability of the Union & its capacity to develop must be governing considerⁿ of all changes in the country'

Leg'ive Relations [A. 245 - 255] ~ (Weave answer on leg'ive relation quoting doctrines & articles side by side)

✓ A. 245 - P'ment may make laws for whole / any part of territory of India while State legislature → State.

✓ A. 246 - Subject matter : List I, II, III ; State can delegate leg'ive powers to P'ment (A. 252)

Restrictions on P'ment, State L.A — Art. 286, 301, 303 (taxation, trade & Commerce)
List in Sch 7
Part III - FR

✓ A. 249 - RS resⁿ State's jurisdiction restricted in boundary of State.

A. 250 - P'ment can legislate when emergency is in operation

A. 252 - 2 or more states delegation

A. 253 - ✓ Int'l agreement

A. 254 - if conflict arises, b/w C & S law in Concurrent, former prevails

A. 356 - ✓ P'ment legislates instead of SLA.

✓ **Non obstante clause** — Supremacy of P'ment in all matters of legislation > sg.

✓ **Doctrine of Harmonious interpretⁿ** — (wrt entries in union, state list is must be interpreted w/o restriction to a narrow sense)
if not possible, Non obstante clause karkin

✓ **Doctrine of pith & Substance** : When conflict b/w 2 entries in lists, Courts will examine enactment as a whole, its main objects. If pith & Substance falls within one list, encroachment upon another list — incidental & not invalidated hence.

A. 248 — residuary power of P'ment

A. 249 — RS - 2nd - P'ment can enact law on any entry in State list

A. 250 — ~ A. 353 : N. Emergency \Rightarrow P'ment legislates on all lists. (Law stays for period of emergency + 6 months beyond)

A. 251 — Conflict b/w (State law & Union law) \Rightarrow prevails

A. 252, 253 ✓

A. 254 — Concurrent list conflict \Rightarrow P'ment law prevails ✓

✓ **Doctrine of Severability** — When state act repugnant to union law — only that repugnant part becomes invalid, not the whole one

Fin. Relations [A. 264 - 290]

A. 265 — no taxation w/o P'ment approval.

A. 268 — duties .

All taxes, proceeds go to Consolidate Fund of India

A. 275 — says : Union govt can give grants-in-Aid to States . Union usually (FC)

uses this to bring about equitable devt. States cannot demand them as a matter

of right . Union divides on the basis of FC reco.

Add A. 282 — FC transfer

FC — ✓ A. 280 : 4 f^{ns}.

M V Pylee — "FC acts as a buffer b/w U & states, checking finance hungry states bent upon applying pol. pressure on Union & gives as much as possible to needy states."

Adm'ive Relations

A. 256 - 263 ; A. 312 ; A. 352 ; 356, 360.

A. 256 : Exec power of State so exercised — to ensure compliance with laws made by P^{ment}.
Exec of state
w/ P^{ment} laws
 Goes further — Union can give directions to state

A. 257 : Exec. power State so exercised as not to impede exercise of union power.
Exec of state
w/ Exec of C
 power of directions — (✓ maintenance of Commⁿ)
 (✓ Railways protection) Union pays any extra cost incurred on acct of such direction

: Union can confer duties on state

✓ A 258 : Gov^r with consent of GoI, can entrust f^{ns} to Union.

✓ A. 261 — full faith credit clause

✓ A 262 — P^{ment} deals with water disputes

✓ A. 263 — ISC (P^{rez} created Central Council of LSG, Health under this article)

✓ A. 350 — P^{rez} instructions, mother-tongue + 352, 356, 360 ✓

✓ A. 312 — AIS @ P^{ment} prerogative

✓ + PC too exercises adm'ive control.

Sarkaria, Punchhi — note down elsewhere.

Conclusion (on Fed'sm)

- State of WB v. Union of India - SC said Indian cⁿ did not propound principle of absolute fed'sm
- "A fresh SRC can be set up to give reco on whole issue. This can certainly help in containing misgivings & helps lay down - objective criteria" - R.K. Arora
- NDC must become more active (ARC-1 said ~ 2 sittings needed/yr). NDC has potential to make federal eco. structure more potent. NDC } (Morarka Study group of ARC-1, Sitalwad Study team on C-S rel.)
- Regarding planning - "planning from below" must be the accepted norm.
DPC → SPD → PC
- Dev't Progs: NREGA, NRHM: Conceived w/o State Consultation. R.K. Arora says - process of consultⁿ b/w C & S concerning massive nat' progs → ought to be systematic & regular
Collaborative r/ship b/w the two will strengthen spirit of fed'sm
- GST, VAT issue: Current collaborative effort ~ hallmark of fring federalism.
- Need to devise an acceptable mechanism that'd ensure more equitable liberal sharing of eco resources - to do away with dependency syndrome of states.
- Rising challenges GN/CC/Terrorism/Naxalism → calls for rejuvenated C-S r/ship.
NCTC ✓
- Reg A. 355/356: Punchhi, Sarkaria → said to lay down Bommai guidelines in cⁿ.
(~ Gov' action dictated by reason, tempered by caution") Coalition era ⇒ ↓ A356.
- ZC, ISC, NDC should become effective channels of collaboration.
- Concurrent list - Union legⁿ - an irritant: Criticism against Centre: need for

formal institutional structure facilitate mandatory consultⁿ b/w U & S before legislating

on matters falling within ambit of conc list.

Centre - State Relations (Puri)

L, E, F

Part XVIII - deals with C-S relations.

246: Subject matter in lists

L

Why Centre L power > States

A. 245

- State laws → only to State jurisdiction ; Union laws → whole Country. Even Union can make laws wrt citizens outside - Extra territorial (A. 245).

- U. List : 97 | State - 66 | C.C - 47 (A. 246)

- Govt Act, 1955: Subjects divided for the 1st time.

Doctrine of Severability

- Residuary power → Centre (A. 248); law repugnant → State law = null & void (A. 251, A. 254)

- Expansion of Union L' power: under → A. 249, A. 250, A. 252, A. 253, A. 356, A. 200, A. 360, 201

A. 304(b) - Permission of Pres

as it affects inter state trade.

Interpretation of Lists → Non obstante clause ✓

D. of Pith & Substance ✓

D. of Severability ✓

D. of Colourable Legn ✓

D. of Harmonious interpretⁿ ✓

Full faith credit clause. ✓ - A. 261

Views of States ^{givants} ~~As~~ per Sarkaria ^{views}: con list residuary A. 201

A. 200: assent to bills

A. 201: Gov^r reserving bills for Pres

- Over Centralisⁿ: Union monopolised C. list ✓

✓ Powers under A. 201 abused (i.e. Gov^r reserving, Pres not returning them)

- Some states - abolish or ↓ CL & transfer to SL

- " " - residuary power to States (A.248)

- Union : should restrict to 4 fⁿs : Defence, Ext Affairs, Currency, Commⁿ

Sarkaria

- 1) Residuary power wrt taxation → Union ; rest → ~~state~~ Conc list
- 2) C.L be retained, Centre ordinarily occupy - only that much (nationwide uniformity)
- 3) Fear of abuse of A.249 → not true
- 4) That union should restrict itself to a few fⁿs → neither desirable nor feasible.

Punchi

- Broad agreement b4 introducing bill on C.L Subject . ISC must be used in this regard
- Transferred Subjects (42nd AA) : a) Forest, Edu, Wildlife Protecⁿ, Admⁿ of Justice, Weights & Measure in the greater flexibility to States.
- ~~Exo~~ b) Examine if transferred Subject achieved objective - Else restore back to S.L.
- ↳ Union - occupy - only that part - nat. uniformity ✓
- ↳ A. 253 - greater involvement & consensus ✓

- Misuse of A. 35B
- Govⁿ
- Problem wrt AIS :
- CAD - A. 256, 257(1)(2)(3), 339, 350A (States: resent them) Punchi → tools of last resort
- Commisⁿ of Enquiry Act, 1952 (any Commⁿ with powers of Civil Court can be setup)
Punchi → this power must normally be exercised by states

→ Punchi reco on CAD

- Cⁿ provided limited insti arrangement for coordⁿ even these are not utilised.
- ISC - strengthened, evolve as a forum for consensus building
- ZC - atleast twice meeting/yr
- Empowered comt of fin - new VAT, now GST } great example
- Similarly Emp comt on health, Edu, food be set up to evolve nat-wide policies
- Asked for new AIS - Health, Edu, Engg, J.

Financial Rⁿ

- fin relⁿ doesnot envisage a water tight divⁿ of resources but a fair, equitable distbⁿ

Distribⁿ: Union P: tax laws on union list Subject
State LA: " " State " "

Residuary - P^lment

I) Limitations on state powers to levy taxes:

- a) A. 276 - Prof. tax: max ₹ 2500/annum (cⁿ limit)
- b) Limitation on taxes on Interstate trade → Central Sales Tax.
- c) Sales tax
 - AP spl. states
 - GST
- b) States can't impose on inter-state trade, Ex-Im
- c) Even when Sale not intertrade, State taxⁿ subject to restrictions imposed by Union if Sale declared as of Spl importance → Sugar, Cotton etc
- d) A. 287: States can't levy tax on Sale of electric where Consumer is GOI.
- e) Immunity of instrumentalities - A. 285, 289
 - (Union incomes property exempted from state taxation vice versa)
 - Art 304(1): Prez permission reqd interstate trade

II) Fiscal Scheme under cⁿ:

- A. 269 - Central Sales Tax. what is it?
- 10th FC → Alternate Scheme of Devⁿ ie, all taxes except Inc tax - divided
- Divisible pool will not extend to A. 268, 269, 268A → grudge of states
- and does not include Cess, Surcharge

Principles of Fis. Fed'sm

- Independence & Responsibility (ie. independence/autonomy be co-terminus with respⁿ of state)
- Adequacy & Elasticity (GOI has Captive mkt - RBI (TBills) - no such thing for states)
- Efficiency & Economy (A. 268 - grudge of states, any tax has an ideal level where revenue is max)
- Integⁿ & Coordⁿ (Taxⁿ, Grants, Borrowings, Expenditur) - must be integrated.
- Equalisⁿ/Equity wth transfers
- Acc'ty

Fisc. fed'sm 2 approaches $\left\{ \begin{array}{l} \text{RN Tripathi (growth)} \\ \text{Bhargava (welfare) - accepted} \end{array} \right.$

Institutions $\left\{ \begin{array}{l} \text{FC (~ Commonwealth Grant Comm'n in Aus) - A 275 (Statutory Grants)} \\ \text{PC (A 282 - Discretionary Grants)} \end{array} \right.$

PC - Plan Exp $\left\{ \begin{array}{l} \text{Rev} \\ \text{Capital} \end{array} \right.$ via A 282 (Disc. grants)

FC - Non plan $\left\{ \begin{array}{l} \text{Rev} \\ \text{Cap} \end{array} \right.$ - Gap filling approach (Stat. grants)

FC ~ not more than $\frac{1}{3}$ of total transfers coming to the State.

Issues & Irritants

Related to FC

- Composition:
- ✓ no qualifⁿ mentioned for CP of FC (\Rightarrow ruling party members, CMs, Cab ministers)
 - ✓ membership bias towards adm^{rs}.
 - ✓ No repⁿ of States.
 - ✓ 1st 10 FCs - no women mem

T.O.R

States not consulted on T.O.R

✓ 280(2)
↓
normal
T.O.R

✓ 280(3) - choked.
↓
additional
T.O.R

14th FC : Ecology, Sust dev^t, incentives for FRBM, Dis mgt, debt levels

Working of FC

Phase I: Calls for 5 yr estimates of rev exp of States

(unrealistic - 5 yrs - cannot be possible)

Phase II: Tours - (eyewash)

Phase III - prepare & submit.

Poor estimⁿ, Opacity, Earlier FC - destroyed their papers \rightarrow Obsession

4) FC v. PC

from 6th FC : 1 mem of PC → mem of FC + (FC cell in PC to monitor)
 8th FC : wanted permanent Sectt → Fin. Commis Div Setup in Fin Min ✓
 FC cell in Fin Min

Period of FC-PC Sync ✓

Do away with distincⁿ of plan / non-plan exp. ✓

Rajamannar : Scope must be clearly defined by amend^t to Cⁿ } not accepted
 Scope of PC be limited, no powers of disbursement

5) Non-implemⁿ of reco

Reco of 3rd, 7th, 8th FC — not accepted

Sarkaria / Punchi — as far as possible, Centre should accept

FC formula :	Income : 50%	PC (Gadgil M. Kojari) :	Pop ⁿ : 60%
	Pop ⁿ : 25%		P. Income : 25%
	Area : 10%		Tax eff : 7.5%
	4) Fixed dis. : 7.5%		Spl. prob : 7.5%
	5) Tax eff : 7.5%		

Conditional
not imposed by
Cⁿ grudge
States

Centre using FC to am-tuist into fiscal reforms — 4, 5 conditionalities — unconst — say States.

Eg. ✓ 12th FC : Debt consolidating Scheme — only for states enacting FRBM
 ✓ 14th FC TOR : Incentives / disincentives — to States adopt FRBM

This dependancy on PC — led to recent clamour for 'Spl. Status' by State Cms of Orissa, Bihar.

Issues in C-S fin relation

1) Borrowings : - No "justif" one level of govt charging interest - ultimately its for people.
(A. 292, 293) - hiking rates, Skimming rates, not providing loan at once (- C acts like money lender)

Sarkaria - centre must be flexible in giving funds under A 292, 293
(< 1 yr maturity)

2) Balanced Reg. devt : Rich vs Poor state argument

3) Taxation : Centre - buoyant taxes | cess & surcharge - non divisible
States - none | and all charged on 'divisible taxes'
⇒ States lose out

4) Royalty of Minerals : - State list :
- Mines & mineral devt - union govt pays States Royalty
or per quantum of mineral produced
- Revision of Royalty : 4 yrs : Sarkaria → 2 yrs
Punchhi → 3 yrs
- Royalty must be calculated in terms of % of value govt is earning from minerals not per quantum.

5) Central Pay revn : States Suffered :: 6th Pay c'n, [Even 7th Pay Commis' announced] No consulting states

6) Politics of Calamity Relief : (Sarkaria ⇒ Central team must be headed by PC admin to that State)
Not accepted

7) Industrial Devt - Centre monopolised

8) PC - ✓ States annual plans approved by PC
✓ CSS funds - tied, no flexibility
✓ PC interferes in States projects
✓ Too many loans, little grants
✓ Special Status controversy

Gradgil - Pranab formula

↓
Punchhi recom^d to revise this formula also

Punchhi Recom on fin relations ✓

- Reduce CSS. restrict to flagship ✓
- All future Central legⁿ involving State (must provide Cost Sharing as given in RTE existing legⁿ be modified to provide for Sharing of costs in statute)
- T.O.R of FCs include add. burden on States because of Pay Comm awards
- Spectrum Sale proceeds - devolved to state infra projects
- No ceiling of Profes^r tax (₹ 2500/yr)
- State specific FRDM not whole sale
- Fin Comⁿ div in Fin Min → dept as permanent Sect^h of FC
 * Punchhi recommended Permanent Sect^h for FC
- FC must adopt more sophisticated methods to assess state needs
- Multiyear budgeting ✓. This + prov. budget of next year for greater clarity + budget linkage
- Sync timing SFC-~~to~~ Union FC ✓
 SFC-FC } Sync needed
 FC-PC }
- Inter State Commerce Commisⁿ ✓* → INTER STATE COMMERCE COMMISSION
- PC, no detailed approval of state annual plan.
- Punchhi - "PC → role of honest broker, coordⁿ not micis-manager"

13th FC reco * (on GST)

↑ Rem this req PC.
 Quote in all PC-related Qs.

1) Reduce no. of CBS

- increase in GDP of 0.9-1.7%

2) on GST; benefits:

- Common market i.e. India

- Single rate ⇒ assessment more predictable

- would reduce compliance cost, limit evasion.

12% GST (7% - C)
5% - S)

- 3) FRBM - State by state basis
- 4) FRBM - must specify nature of shocks that would require relaxation of FRBM targets
- 5) an independent FRBM monitoring mechanism by all states.
- 6) Nat Calamity Contingency fund → merge ^{with} NDRF.
State Calamity Relief fund → merge _{with} SDRF

Punchhi recommendations

1. Union govt extremely restrained in asserting Pment Supremacy in matters assigned to states. Conc list occupy that much \rightarrow nat. uniformity. Greater flexibility to states req subjects mentioned in state list & "transferred ^{items} ~~list~~" in Conc list [~Leg've] & Conc.
2. Reserved bill under A. 201 \rightarrow 6 months - Consent / return with reco. for modifⁿ
3. Amend Cⁿ - Qualifⁿ for post of Gov^r - Art. 157 (currently - 35 yrs + citizen of India) { app^t }
(Qualifⁿ, impeach^t, Tenure) Bommai guidelines ✓
Nehru "
4. Impeachment of Gov^r \equiv Impeachment of Prez ; [A. 61] { Removal }
5. Gov^r - 5 yr fixed tenure & removal not at whims of CG { Tenure }. - B.P. Singhal ^{Raghul Tilak, not employ}
 Amend [art. 156 (i)]. Decision in this respect \rightarrow fair & dignified manner befitting Cⁿ spirit
6. Scope of discretionary power A. 163(2) - narrowly construed. dictated by reason ✓
 Gov^r should not be burdened with posⁿ, pow^r not envisaged by the Cⁿ activated by good faith ✓
tempered by caution ✓
7. A. 356 - Amend^t to include Bommai guidelines ✓
8. Localised emergency under A. 355, 356 .. Duration \neq 3 months
9. Strengthen ISC, ZC (meet \geq 2 times/yr), Seq of ISC \equiv Seq of ZC
10. AIS - be strengthened. AIS in health, edu, enrgy, judiciary be created ✓
11. ✓ RS must be a chamber to protect State rights.
 ✓ When a ^{Center} policy concerns 2 or more States - Cont of RS discuss, alternatives be suggested

- ✓ RS offers immense potential to suggest sol^{ns} to friction points
 - ✓ Equal seats to all states irrespective of popⁿ. ✓ (~US style)
12. Scope of devⁿ of powers to LB — Constitutionally def^d.
13. "Over the years there has been a tilt in C-S relation towards Union." This can be rectified by an FC.
- ✓ FC — Permanent body.
 - ✓ FC — State pptⁿ in formulation of T.O.R.
14. Plannings role in period of LPG — Coordinator s/t micro manager
States must be given enough freedom in formulation of plans acc to needs & priorities
15. GST — ✓ must have common basis for C & S
- ✓ Concerns of states be objectively examined
 - ✓ rates must be decided by taking into account likely revenue growth of taxes in future
 - ✓ Compensate states for any rev loss in initial yrs.
- SRC — "States are but limbs of country ..."
- SC in "State of WB vs. U. of India" (1963) — "Indian C^d did not propound principle of absolute fed'ism".
- * Need to note down articles pertaining to C-S relation Part XI - 2 attach to this chapter.

PRI & ULB

Entry 5 : State list

"The system of democracy at the top cannot be successful unless one builds on it the foundation from below" - J. Nehru

Evolution in British era

- ✓ 1687 - 1st Mun. Corp. set up in Madras
 - ✓ 1720 - Mayor Court in Presidency towns
 - ✓ 1793 charter Act → LSG - Statutory status ✓
 - ✓ 1842 → Bengal act - set up town comt. for Sanitation ✓
 - ✓ 1870 → Mayo Resⁿ - (emphasised ↑ assocⁿ of Indians in local admⁿ)
 - ✓ 1882 - Ripon resolution (Magna Carta of LSG)
 - ↳ → Greater inclusion of elected members in local bodies (≥67%)
 - App^t of elected mem as chairperson
 - Govt. control of local bodies - Should be indirect
 - Local bodies should be endowed with local sources of rev
 - Local body personnel should operate under control of local body
- This momentum was lost after the entry of L. Curzon.
- ✓ 1907 - Royal Commisⁿ on Decentralisⁿ: Concluded LSG, unsatisfactory because
 - Excessive official control
 - Paucity of resources
 - ~~He~~ Resistant By
 - Peoples Apathy
 - Narrow franchise
 - Lack of edu, awareness

Phase III :

1917 - Montague - recommended

- Complete popular control of local bodies
- Under dyarchy - local bodies - transferred subject

Phase IV

1937 - GoI Act 1935. Congress ministries formed in Centre

28 month Congress rule - enacted laws for emp't of local bodies.

" 1939-45 : WW2 : no steps

1945-47 : Independence. ⇒ no steps

" During B. Raj growth of LSG was neither continuous nor appreciable not even uniform."

Post-Independence

Art 40, [Entry 5, List II, Sch 7]

[1952]: CDP - envisaged grass root ^(purpose) pptⁿ in development progs - ^(outcome) failed

∴ B'y resistant, ↑ Official control, no institutional f/w.

- Blocks as units came into existence ✓

[1957] : Balwant Rai Mehta team set up by NDC to review CDP.

B.R.M - rev : 3 tier PRI : ZP
PS
GP

Yes to MP, MLA in ~~local~~ ZP

DC - Chairman of ZP.

PS - exec body (blocks)

No to pol parties to contest in Pzats.

Yes to MP, MLA in ZP
no to pol parties
∴

BRM viewed LB as dev^t insti not a pol instiⁿ

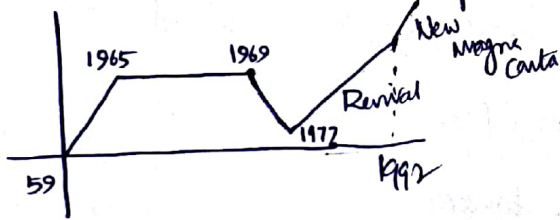
1959: NDC accepted the report

RJ, AP: Set up PRI bodies.

Later various models devd : Eg. MH-(devl) - ZP is exec body
RJ-(udev) - PS as exec body

1965-69: Stagnation: ✓ Period of great instability at nat, state level
✓ Bureaucratic resistance.
✓ LB - faction ridden, petty rivalries.

1969-77: Decline: Era of Centralisⁿ: ITDP, DPAP etc,
Irregularities in holding election
Nationalisⁿ, Emergency
Corruption, B^y resistance



- Ashok Mehta Comt set up:

- 1) 2-tier
- 2) ignored village level.
- 3) Pol^y parties allowed ✓ (Arguments for & against)
- 4) Reservⁿ for SC, ST, Women
- 5) ZP - exec body with a CEO working under ZP.
- 6) Powers of taxation, Social audit.
- 7) M^y of P. Raj

RJ Model

- Block - neither too small, nor too large
- Block already emerged as unit of dev (CDP)
- 60-80K ⇒ ideal popⁿ

MH model

- Admⁿ, tech staff much higher calibre @ ZP
- Dist level - balanced view
- Co-ordⁿ: good for planning & implementⁿ
- larger area ⇒ Supply of utilities & ship.

1985 - GVK Rao (CAARD) :

BDO - redesigned as Asst. Dev Commr

ZP - planning body, CEO - Dist dev Commr.

1988 - LM Singhvi : Cⁿ status

No party elections

Nyaya Panchayats.

Sarkaria : Cent. Govt → model law, Art 263 be used for this.

1992 - 73rd Amend^t Act

SFC, SEC, taxation, Subjects, Elections, ~~also~~ Reservation.
5 yrs

Gram Sabha - [Art. 243.A]

In most states - 2 meetings / yr → mandatory.

- fns:
- considers annual budget and audit report of P^{vt}
 - considers report on admⁿ of preceding year
 - proposals for fresh taxation
 - Selection of Schemes & beneficiaries.

243A - GS
243G - Powers, authority, f ⁿ s
243H - taxes
243X
243K - Elections
243I, Y - SFC
243ZD, ZE - DP, MPC

Some other states give following mandate:

- Promotion of unity, harmony ✓
- Providing assistance in implement^t of dev schemes ✓
- Appointing vigilance coms. ✓
- Procuring voluntary labour. ✓

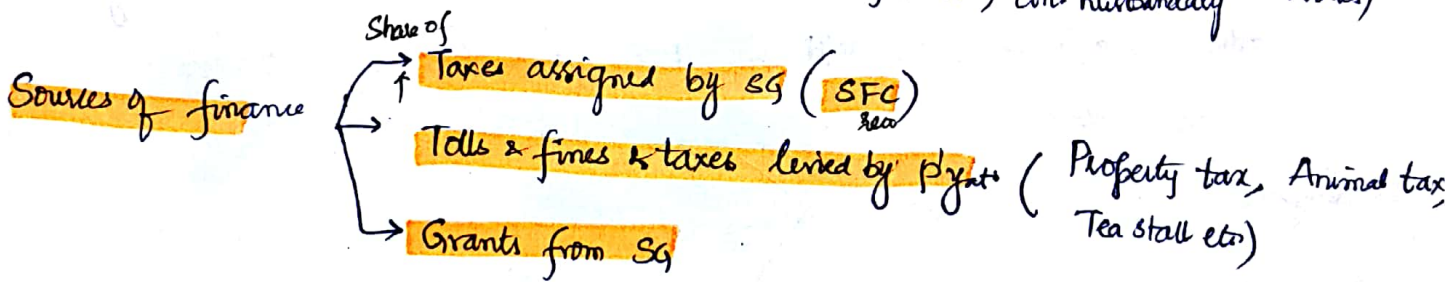
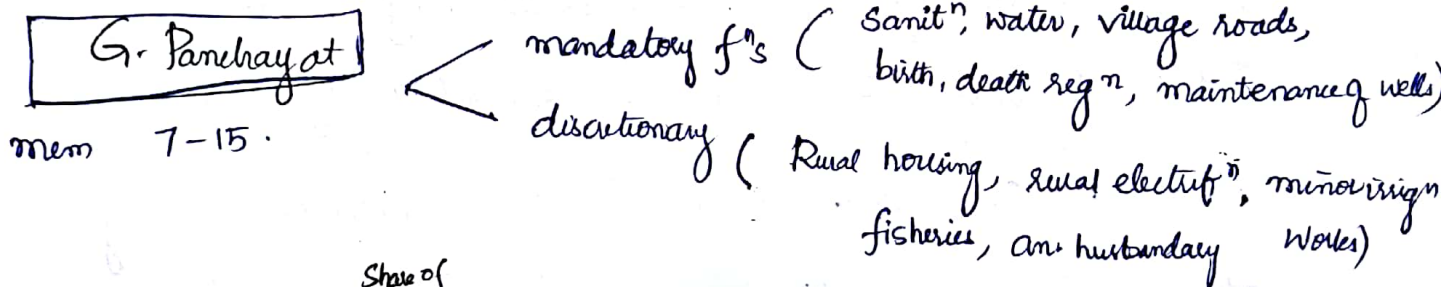
Suggestions - (GS)

- Mandatory meetings ✓
- Powers of Recall ✓
- Awareness of RTI among rural populace ✓
- R^lship b/w GS - G.P^{vt} : must be akin to b/w Pment & C.O.M. ✓
- Ward Sabhas ✓
- Involve NGOs to manage GS meetings ✓

✓ NGO, RTI, e-gov, Mandatory meetings
Power of Recall.

Problems in working of GS

- Large unwieldy body. ARC-2 : **Ward Sabhas**
- Members coming pre-planned with an issue, raising it spontaneously w/o paying heed to the agenda
- Persons abusing mem on dias
- Raising matters that do not fall within powers & duties of P'yat
- CP deny permission to avoid detection of irregularities.
- Domination of elites
- P'yat Secy provides false info to GS, copies of budgets not given prior to meeting to enable GS mem to study them
- Factionalism
- Poor pptⁿ of Women in GS meetings



Annual budget of GP - submitted to GS & forwarded to Block P'yat

Block P'yat -

- Supervising fⁿ of GP
- Approve budget of GP.
- Co-ordinate devⁿ plans prepared by GP & Submit to IP
- Some other fⁿs are assigned by SG (→ inter-state variation)

Finances: Bl. Pyat - Can levy taxes on all at those on allowed to do the same.

BDO is ex-officio CEO of BP.

- f^{ns} of BDO:
- implementing resⁿ of PS.
 - Report of progress to PS
 - maintenance of records of PS
 - annual report on PS to SG.

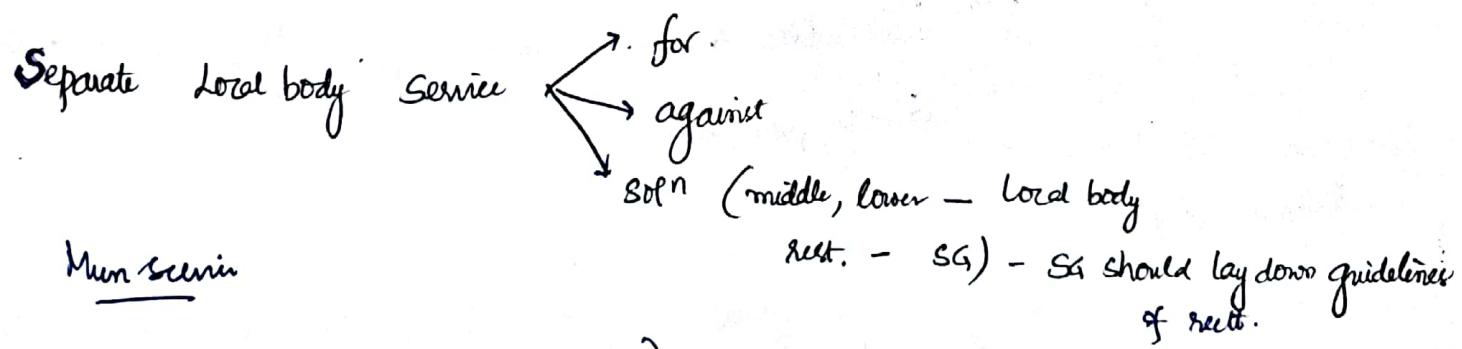
Zilla Parishad

RJ model
(under)

- Approves budget of BP
- * - Issues direction to BP for Ψ performance
- Coordinates interblock activities, dev^t plans prepared by BP
- * - Distributes funds allocated by SG to PRI
- Informs DC & div commⁿ about irregularities in fⁿ of BP
- Collects Stats, advises SG on allocation of work to Pyat, B.P. Jnt

MH model: Over & above aforementioned some substantial fns are given.

AP model: via media (RJ-MH): Exec power shared PS & ZP.



Mun. scenin

- WP, P, RJ - ZP & PS Admin Services
- ~~State Parishad Service~~
- Unified Govt Service Sys upto Supervisory levels, lowest level - rest^d by mun authorities.
- GJ, MH, WB - separate personnel sys - Mun. auth rest their own
- Sⁿ states - Integrated i.e. horizontal transfer / vertical transfer

State Control over PRI

Need: PRI - legal creations of the state \Rightarrow State resp for smooth functioning
Ensure balanced devt
SG can provide tech, admive, fin support to PRI

Means:

- SG officials - power to inspect & supervise working of PRI. Can examine books, records & issue instruction
- Key personnel in all 3 tiers - by SG
- Power to supersede PRIs. Under following circumstances :
 - \rightarrow Negligence of duties
 - \rightarrow Irregularities
 - \rightarrow Mal admⁿ
 - \rightarrow Failure to comply with SG dirⁿ.
- Power to dissolve : Safeguards :
 - \checkmark Elections within 6 months
 - \checkmark Show cause to PRI before dissolution
 - \checkmark dissolⁿ only on grounds & manner as given in State P^lat Act.
- Power to remove personnel (on DC's req^d)
- Power to suspend resⁿ. DC is given the power in most states
- Annual Budget of all 3 tiers accepted by SG
- Annual admⁿ reports of bodies - submitted to SG
- manner of maintenance of accounts, audit done by SG
- SG can order enquiries, invstgⁿ
- SG can issue binding instructions
- SG decides min, max admive fin powers - Controls via tied grants.
- SG

Problems in PRI

recently reported: ^{In} Mallapur Mandal of Karimnagar, AP. elections not held for 2 years! (LOLZ!)

1) Lack of pol-will to implement 73rd AA in letter & spirit
Eg: Bihar - no elections for 8 yrs. Elections conducted in 2000 (after 22 yrs) ^{at under direction of SC}

2) Social envt - major impediment: patriarchy, feudalism, caste sys
[70% landless - 30% control GS, GP]

Pyat martyr - Dhoola Ratnam - AP (E Godavari) ✓

Threats - Tax Pyat farmers

3) Corruption - decentralized corruption.

4) 11th prog's bodies: DRDA, DH & Sanitⁿ Societies. [ARC-2: abolish DRDA].

Under reco. of WB, [World Bank] 'Water User Groups' set up - outside PRI

5) MPLAD, MLALAD

6) Poor delegation of 3F [Elaborate] ← funds, functions, functionaries

7) B'cratic resistance: "Collector Raj" instead of P. Raj' is a reality in many states

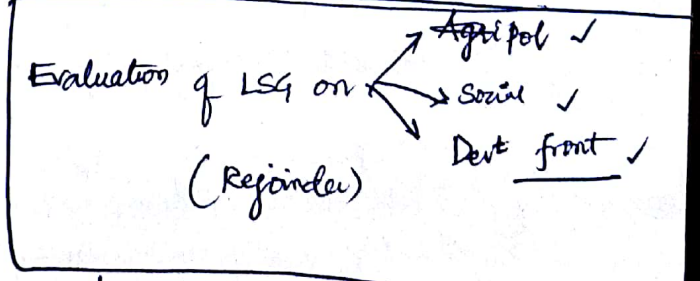
Local services - dumping ground for discarded C-sevats

8) Gram Sabha ineffective

9) Inadequate Capacity building in PRI mem

10) State control - overwhelming

MID-DAY MEAL TRAGEDY in CHAPRA, BIHAR: FOLLY OF Acc'ty



State Control | 73rd, 74th only on Paper | MPLAD, MLALAD | Capacity | Funding |

F's, functionaries | Corruption
↓ | ↓
integrated/unfed | no ombudsman

NCPRI - ~~Pyat~~ PIO in rural areas - 50% unaware.
Social audit by GP in Mallapur Mandal of Karimnagar - Corruption 30% in PDS. (NGO study)

Finances of PRI

- Sources :
 - Taxes ✓
 - fees & fines ✓
 - Grants (SFC) ✓
- Loans : Bulk of loans given by State Govt. Not a recurring source of finance
(No Cap. mkt exposure)
- Budget of PRI : Sarpanch + ASey prepares budget & places before GS. If GP fails to prepare budget, P'yar Samitis are reqd to prepare it & place it before GS.
 - Budget estimates of PS → BDO & sent to ZP
 - Zp budget - SG which has power to modify

SG control over PRI finances

- Taxation powers - Controlled by SG. (approval reqd for ↑ rate or abolish tax)
- Detailed accounting & auditing.
- Every proposal to raise a loan → requires SG approval
- Budgets are prepared in manner prescribed by SG, finally approved by SG.

Why weak fin base

- PRI do not exploit taxation powers fully. Reluctance ✓
- No Cap. mkt exposure ✓
- Grants - insufficient & tied & unsuited to needs. ✓ (CSS - tied with little room)
- Grants rebars subject to pol. considerations
- Inelastic taxes.

-ve reg P'yats PRI : dists of Bihar - Muzaffarpur
MH - Jalna, Latur
UP
AP - Adilabad, K' Nagar

CAG report: MNREGA
POOR in JMKD.

ARC-2 rev on LSG

Recent Initiatives by Govt:

ANUDEEP DURISHETTY AIR 1 CSE 2017

- Shashaktigyan Yojana - Cap. Building
- DRDA - Ramachandra Cmt CSS 166 from 244
- Prof. Evaln. Orgn - dev schemes

- A 243 G 'may' → 'shall'
- Strengthen voice of local bodies → Leg're council consisting of mem elected by local bodies
- Dist Council to serve as dist govt.
- [SEC] : SEC apptd by - CM + speaker LA + LOP ✓
Insti mechanism - sharing b/w CEC, SEC ✓ *
- New laws ⇒ add local gov't memorandum indicating fns to be performed by L.B
- GOI - draft f/w law on principles of Subsidiarity, Dev'n, Citizen centrality, decentr
- Cap building of PRI personnel + [Ind. Council for Soc Sci Research] - encouraged by f/w to conduct research for Capacity Building
Pijar Shashaktikaran Yojana
- [SFC] - delays in constituting SFC
- whimsical attitude towards composition
- Reso not accepted, accepted not notified, notified not implemented.
- Poor sync UFC vs SFC
- Delays in ATR Submission
- ARC rev: ✓
reg SFC - [ARC notes]
- Local body ombudsman
- Planning: Decentralised planning be institutionalised
- Separate Stel Cmt in SLA on Local Body Affairs
- Prov'n of approval of budget by higher level - abolished
- Wound up DRDA, MPLAD, MLALAD
- R. to recruit their own personnel
- Awareness - folk art, media, Street plays.

PEALS (2005-06)

Perf measur in terms of D. I (NCAER)

2 Stages: 1st stage reqt: SEC, SFC, DPC, reg. elections.

2nd Stage: 3Fs - Funds, f., f.

2009-10:

Top 3 - Kerala, KTK, TN

Bottom - Assam, Ar. P.

Bihar, Pb - poorly performing

Rajiv Gandhi Panchayat Sashaktikaran Yojana - as part of 12th FYP

Stats :

Census 2011: 31% - urban; 69% - rural

2035: UN Popⁿ Fund estimates that 50% - urban

65% GDP : urban areas

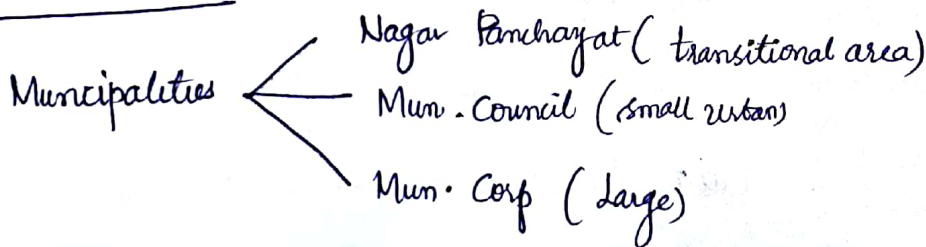
- If cities are to remain principal drivers of eco growth, quality of urban admⁿ and mun affairs has to become a priority.

- Urban gov^t - largely neglected: M'y of Urban dev^t (1985)

↳ Nat. Commⁿ on Urbⁿ (1985) - headed by Charles Correa

most have incorporated in 74th CAA, 1992

74th CAA, 1992



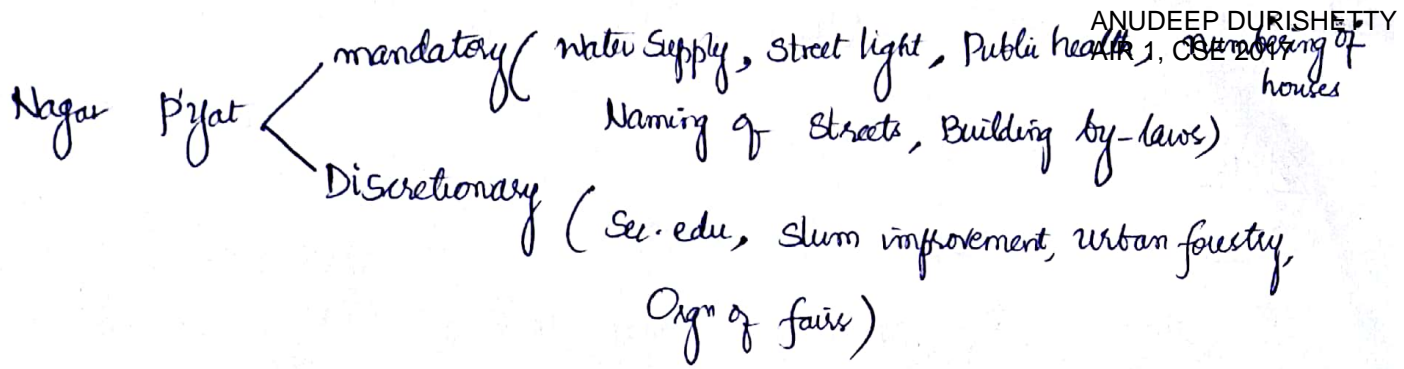
Municipalities do not have hierarchies as PRI's do under Part IX.

Nagar P'ayat - trans-area. Very difficult to identify trans-area

NP - should be set up with utmost care :-

- Cost of admⁿ of NP is higher (compared to PRI)
- In municipal areas, taxes ↑
- No Gram Sabha here
- Denial of benefits of rural dev^t prog (NREGA)
- ~~lack~~ Commercial use of agri land - better facilitated in urban areas

ktk: Popⁿ criteria: >10,000 | MH: Popⁿ >20,000 | TN - revenue >30L



Mun Council

Various criteria on popⁿ

Adm'ive head - Secy / Commis^r : belongs to State Civil Service / Mun. Adm'ive Service (GJ/RJ)

Commis^r - works for a tenure of 3 yrs

↳ Can be recalled if MC passes resⁿ for removal (Spl. majority)

Mun. Corp

Greater status, prestige ∴ - large cities more funds

estd by separate statutes - Pb Mun Corp Act, 1976

(Jalandhar, Amritsar, Ludhiana) JAL
- UP Mahanagar Palika Adhiniyam - 1953
- (KAVAL) cities

- Mun Corp deals directly with SG, while other UBs via DC

- Practically impossible to supersede them.

Models < Bombay model ✓ (Exec-Deliberative dichotomy) - Largely followed

Calcutta/Haurah model (Real exec is Mayor-in-Council head)

Mayor-in-Council - nominates Mayor's Cabinet collectively resp to Corp.

Mayor - Presiding Officer

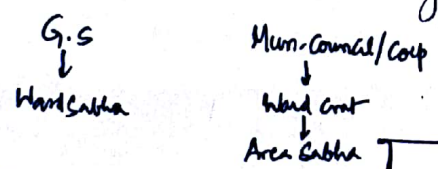
Mun. Comm^r, Subordinate Staff - work under Mayor-in-Council

Problems of Urban Admⁿ

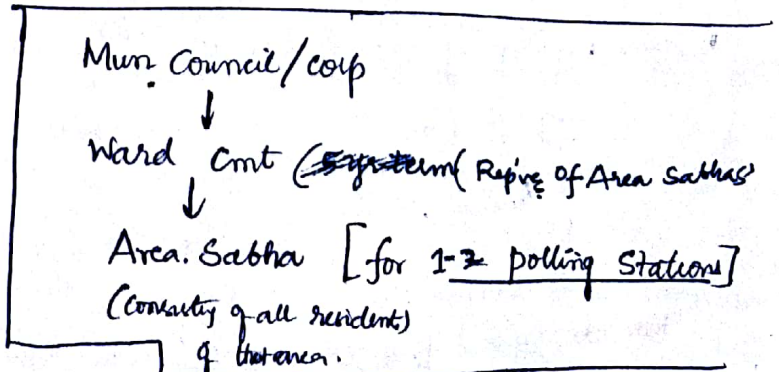
- Rising levels of urbⁿ : (Urban sprawl, crippling infra, slums, crimes against women, pollution, crime related, poverty, unemployment, Power outage (2012: 600mill - no power))
- Corruption (in electricity discoms: theft T&D)
- Poor devⁿ of SFs
- Excessive SG Control,
- Emergence of Special purpose agencies (DDA, Delhi Jal Board, eg: SPCB, CPCB : Both have simultaneous jurisdiction in mun corp
"Institutional Jungle"
Roads: (PPP) ⇒ Govt, MCD, Pvt players
- Very poor fin health (Survey of Ktk Mun corp → ₹ 400/person/yr exp on health ⇒ ₹ 1/person/day - dismal)
- Low capacity building of personnel.
- "Urban villages" ✓

ARC-2

- A new Nat commisⁿ on Urbⁿ to suggest measures to deal with rapid urbⁿ, efficient urbⁿ



- Urban LSG Structure : 3 tier



Every Area Sabha - elects a cmt with 5yr term → Cmt elects a CP who will represent it in Ward Cmt

- Ward coms be given legitimate f^{ns} ^{that can} to be handled at that level
- Mayor - direct election + exec powers vested in him. Mayor shall appoint Mayor's cabinet amongst elected corporators. [US example] city-manager model
- Resp. of selection / appt of Mun Commis^{rs} - be given to Corp. SA must lay down procedures & Cond^{ns}.

Finances - ARCC

- Abolish Octroi
- Complete Property tax reforms ^{tax on} i.e. Annual Rental value → Annual Capital value
- Cost of tax collection need to be ↓, use of GIS
- Mayor to monitor tax collection
- Art 276 → In most states, tax under this to → ULB
- Ceiling on Prof. tax (₹ 2500/yr) - need be reviewed
- Fines for civil offences ↑ Eg: Encroachment
- Periodic upgradation of properties data base: Use GIS.
- Single window facilities
- CC be adopted (citizen charter)

Source of Income

- 1) Taxes : 1) Property tax, Octroi (ARCC: abolish octroi)
 - costly to administer
 - prevents free flow of goods
- 2) Prof tax
- 3) Animal, vehicle tax
- 4) Terminal tax on Goods & passengers (Eg: Bus ^{Inter-State} Terminal)
- 5) Entm^t tax
- 2) Non-tax: fees, fines, Earnings from mun. bodies
- 3) Loans - Borrowings
- 4) Grants from C/S (Eg: JNNURM)

Exp

- 1) Gen admⁿ Expenditure
- 2) Public Instructⁿ - Edu
- 3) Public Health - Vaccinⁿ, Clinical Service
- 4) Water Supply + Sewage + Sanitⁿ
- 5) Mun. Works - dams, bridges
- 6) Public Safety - fire Service

State Govt Control over Urban finances

- Taxation ✓
- Exp ✓
- Budget ✓
- Loans ✓
- Grants ✓
- Acct & Audit ✓

- Tax :
- 1) SGs can exempt any person/property
 - 2) ↑ or abolition require SG approval
 - 3) SGs can suspend/prohibit a tax ^{which is} unfair & injurious
 - 4) SGs can direct to impose a tax on any item or to ↑ rates

Exp : SGs can fix limits on exp. > this ⇒ approval reqd

Budget : in form & manner prescribed by SGs
SGs can modify budget

Loans : fixes mode of borrowing, period of repayment

Grants : SGs gives 2 types of grants

- recurring - every yr (for rev. gap)
- non-recur - financing specific project

Acct & Audit : in manner prescribed ✓
Audited by SGs fransy

Reasons for weak finances

- Entire machinery suffers from - leakages, tax evasion, poor collection
 - Mun. personnel - lack training (no cap building) (ARV → ACV)
 - ULB - not able to tap key taxes - 'property tax' despite real estate boom
(∴ collusion, oppⁿ from propertied class)
- ARC 2 : Annual Rental value
→ A.C.V.
- Audit ineffective, post-mortem - "locking the stable after horse is stolen"
no regularity
 - Inelasticity
 - Reluctance to tax (Good Economics, Bad politics)

- A-285 : prohibits SG to levy taxes on union properties.

- Grants inadequate, tied

- SFC often bypassed.

Reforms needed

- No. of comt have reco: principles of fiscal fed'sm be applied to SG-ULB

- Reluctance need to be overcome SG can provide incentive/disincentive for the same

- Mun personnel - Selected on merit + training ✓

- Root out Corruption - Local Body Ombudsman ✓

- Incentives for prompt payment of taxes: Eg: Delhi - property tax. ✓

- Audit - more regularly

- * Set up a Mun. Fin Corp in each states to provide loans to mun corp.

- SFC needs to be strengthened.

Congestion tax - London / S'pore
PPP mode

Govt Initiatives

- Tax free mun. bonds - may be used for Cap invest exp ✓

- UIDF on the lines of RIDF may be explored ✓

- Govt allowed FDI in urban devt - ✓

- JNNURM ← UIDSSMT
BSUP ✓

Illustrations of New Localism in India

CC/Social Audit/RTI

Time bound delivery

[Purkh folder]

73rd, 74th CAA → GS, Sp: Uniformity wnt f/w
(provided by CG)

Earned Autonomy → PEALS (DI)

flagship prog: NREGA, JNNURM - Global norms
RWA

Q. Fin. Management (P-II)

(1)
TESFAM
Fayol, Kautilya

Budget as political instrument - Dimock & Dimock defⁿ ✓
Lloyd George ✓

Wildawsky: "Budget is a series of goals with prietags attached. Diverse purposes can be a political act, a plan of work, a prediction."

Political instrument:

- a) Budget discerns the priorities of party in power. A democrat party in US have ↑ tax, more govt exp whereas Republican might have tax cuts and min. govt interference
- b) On foreign policy front: ↑ defense exp etc;
- c) Budget often doles out populist schemes - party in power
- d) Budget is a tool after which Oppositions criticism follow.
- e) Budget is a tool to measure effectiveness of govt in power by a common citizen
- f) Budget to showcase political commitments made in a party manifesto
Eg: Common man prog, 20 point prog are given life to by budget
- g) Opposition can put forth their policies by exercising control via PAC, EC, CAG, audit etc,

Financial Acc'ty (P-I) & P'ment Control over Public Expenditure (P-II)

Exercised through following instruments:

- i) General Budget discussion
- ii) Cut motions followed by Debate & voting on demand for grants
- iii) Fin. Bills & Apprⁿ Bill passage
- iv) PAC, EC, CoPU, Dept related std Cmts
- v) Control over other money & fin bills (other than budget)
- vi) Fin. Commission Report.

Constitutional Articles related to it :

- ✓ Art 112 : Annual Fin Statement
- Art 113 : deals with demands for grants
- ✓ Art 110 : money bills
- Art 114 : Apprⁿ bills
- Art 117 : Fin Bills
- ✓ Art 265 : No taxation w/o legislative sanction
- ✓ Art 266 : CFI, PAC
- ✓ Art 267 : Contingency Fund

Steps (i), (ii), (iii) elaborated in "Budgetary process" section

Leg've Control via Committees,

Why? Control ~~over~~ ~~it~~ through other instruments not upto the mark because:

- Legislature - laymen.
 - Discussions purely on party lines even in budget session not on basis of merits
 - Fear of party-whip ⇒ no constructive criticism. In a p'ment sys, govt can always bulldoze its budget via whip despite resistance
 - No time & unwieldy no. of members : { 109 demands have to be discussed
not possible in 30 days. ✓
pol. issues have to be discussed
- Lack of time apparent from freq use of Vote on Acc't, Guillotine, Kangaroo etc.,

Yet add +ves of it on the flipside - as a passing reference.

Control through Comts

Cold light of reason, leaving aside party affiliation.

But -ve: JPC report on 2G
Political colour

- Small in size - < 30 mem : effective d-m.
- Can question civil servants unlike P'ment
- Small body ⇒ more 'expert' nature ∴ it keeps functioning in related areas for a long time : (Add example: P'ment Std Comt on Agri: Sound report on SM Groups
✓ P'ment Std Comt on Finance: Report on FFRDA, DTC, GST)
- Coming together of various parties: sense of pplⁿ for MPs DTC, GST

Estimates Comt - (M.V. Pylee: "EC is in a powerful pos" to influence the activities of govt.)

[ex-ante control]

30 mem - all from LS ; Term 1 yr ; Can be extended ; Life co-terminus with LS
Chairman of comt nominated by speaker (ruling party)

Exercise pre-budgetary control : Examines Part IIB of Budget (i.e. new heads of exp)

Faults if any - are pointed out in EC report [as a std. comt on A.R.]

EC also sees wisdom, prudence, economy behind the policy.

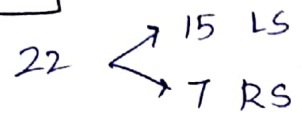
EC gives reco that should be observed next time in order to bring E3

Major flaw in EC: Ideally, EC must check the estimates before they are passed by P'ment. However, due to practical difficulties, committee completes its examⁿ of estimates after Budget is passed i.e. becomes "fait-accompli"

passed by P'ment. However, due to practical difficulties, committee completes its examⁿ of estimates after Budget is passed i.e. becomes "fait-accompli"

Yet, the fear that somebody will be checking the estimates — ^{Keeps} ~~makes~~ dept's stand on their toes.
 → Sometimes may create friction ∴ EC may adversely comment on Govt policy. Eg: Once EC considered app^t of Cab Secy as Secy of PC undesirable — effective check even on admⁿve matters.

PAC



Term 1 yr, Co-terminus with life of LS

Ex-post Control
 Exercises post-budgetary control: examines: whether money spent under proper head?

- Appropriation audit
- Legality audit → audit of accounts
- Proprietary audit

- " " was legal available? (propriety)
- " " - wisdom, E3?
- " " regulations were followed? (legality)

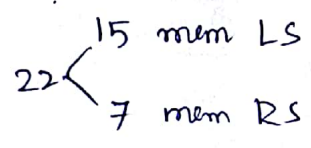
- Assisted by CAG

- Scrutinises & forwards PAC report in P'ment.

+ves: 61% of Recs of PAC - accepted in 1st instance ✓
 +ves: Cross party culture ✓

CoPU

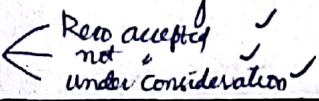
PSUs Created by IPR, 1956 ∴ PAC, EC were overburdened, CoPU was created in 1964.



Functioning of these comts: - Each of these comts has Sect^t to aid them but no expert support is provided.

- They divide themselves into sub-comts, Sends questionnaires, Summons civil servants, ask for info & records.
- Final report discussed by full comt + dissenting note attached.

Govt checks & submits ATR to P'ment



Critique of their functioning (Add genuine +ves)

-ves

- It has been observed — in ATR: too many under "Under Consideration,"
least no. of recs accepted
- Fate of many recs not known for many years. delayed-ATR
no indept info
no expert support
- No expert assistance provided in Sect^{ts} (except CAG for PAC)
- No independent source of info, hence depends on info provided by Govt's civil servants.
Cmt [Can hence check reliability of info but not fidelity/completeness of info].
Cmt Can try Civil Servants for providing false info under rules of contempt of Pment — but nothing can be done if partial info is provided
- Most of the activities: 'post-mortem'^{ex-post} in nature. Cannot control mal-admⁿ at the time when they are about to take place.

Suggestions

Strength ↑ ; Computerisⁿ ↑ ; Govt ATR with reasons within stipulated time limit;

- ✓ → Strengths of Cmts to be ↑ to cope up with ↑ load. ↑ strength ⇒ ↑ frequency of examⁿ
- Computerisⁿ of depts must be speeded up so that info reliability ↑
- Expert assistance — Chief adviser, Comptroller analyst, CA, economic advisers should be attached
- A convention has to be developed where: Govt has to justify every year delay in taking action on recs.
- time limit must be fixed before which recs 'under considerⁿ' are accepted or 'rejected' ✓

Role of Fin Min in Monetary & Fiscal Area

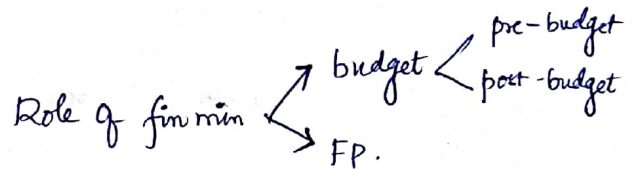
Monetary Policy

Role of Fin Min limited in M.P. But in deciding RBI does not act in isolation, always acts in consultation with MoF. MP & FP must act in tandem to achieve stable eco-policy.

✓ Money & Capital Mkt unit. → Eco div → DEA → MoF : deals with Money and Credit Policy and deals with issues relating to money & capital mkt. It also periodically reviews money supply (M_0, M_1, M_2, M_3) bank credit to govt, commercial sector, deposits, savings etc.

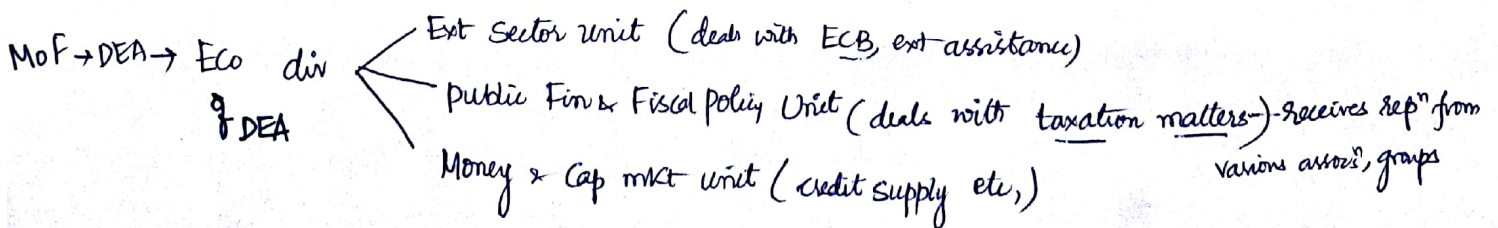
✓ Banking Unit (DEA) - This unit also remains in close touch with RBI.

Thus they can influence F.P.



Fiscal Policy

Major area in FP area done by DEA, (Economic div, Budget div) ✓
Dept of Rev (CBDT, CBEC) ✓
Dept of Exp (Plan I div, plan II div) ✓




Budget div of DEA - (deals with public debt, mkt loans, ways & means etc.)

Dept of Rev / Exp

Budget Div (DEA)

Most crucial fn with regard to FP and budget making is performed by the **Budget division** of DEA

Budget divⁿ prepares **Statements of Revenue (@ current rates)** & **estimates of expenditure (consolidated by preparing)** 
Reg, **Part II B (new heads)** ^{new demands} detailed scrutiny is done by this div examining need, justify, its reqt as part of Govt policy etc,

Plan II - Central Fin dis

Plan Fin II - Central plan

Plan Fin I - Central Assistance to States

Dept of Exp

Pre Budget
→ Plan Fin II division of DoE, deals with matters of Central plan ~~assistance~~ to states.

It scrutinises all new Schemes and submits to Exp Fin Cmt which approves plan Expenditure & creates outlays to various Central ministries

→ Similarly plan Fin I deals with Central assistance to states

Hence DoE exercises great influence on Exp side of the budget. esp part II B of the budgets that entails exp on new heads. ✓

Post-Budget

- DoE monitors exp by formulating guidelines, rules after budget has been passed
- DoE also monitors via IFOs situated in each ministry

Dept of Revenue

✓ Deals with Part I of Budget estimates

✓ DoR exercises Control over CBEC, CBDT.

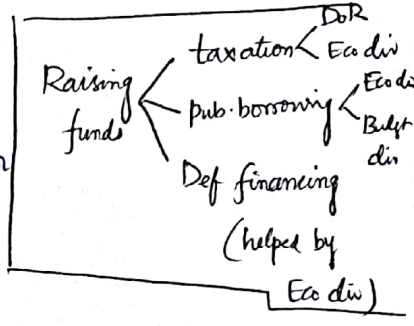
✓ However this doesnot complete the whole picture, As & when revenue falls short of exp, Fin Min plays a crucial role in bridging the gap.

★ Ques Herein lies Fin Min's role in FP. Thus Fin Min decides gap filling via.

→ DoR may advise about ↑ taxation

→ DEA: (Eco div) public Fin & Fiscal Policy Unit → also tenders advice on taxation

Budget division → deals with public debt (internal) way & means mkt loans



Eco division < deals with ext assistance (ECB, foreign assistance) advises safe limits of deficit financing, to keep inflation under control.

Thus it can be discerned that Fin Min is the nerve centre that decides in on fiscal policy area.

Budgetary Control of Fin Min

Pre-budgetary: proposals are sent for inclusion in Budget Estimates.

- Fin Min scrutinises from -
- Technical Approval P.O. ✓
 - Financial Approval P.O. ✓
 - Policy Approval P.O. ✓

- All demands under part II-B must be accompanied by justifⁿ, without which Fin Min rejects its summarily. Budget div decides whether ↑ or new heads is justified

- This way Fin min keeps a close watch over estimates.

Post budgetary control: considers whole demand afresh after budget is passed.

Redundant demands are eliminated

- Release money in Quarterly instalments. Fin Min does not
next quarter unless cut for prev quarter is furnished.

- IFA acts as conduct b/w Fin Min & M'y: They're like internal auditors.

L.D white acct: art of recording, classifying, summarizing transaction in term of money & interpret results thereof

Role of CGA Accounting defⁿ
1970's audit & acct separation

IFA
↓
Principal Acct off
↓
Pay & Acct office

CGA incorporated in (Allocation of Business) Rules, 1961. ✓

- CGA is the principal Accounts Adviser to GoI and is responsible for
establishing and maintaining technically sound mgt of accounting system.

- CGA on behalf of M'y & Depts issues general directions about the system
and form of accounts and procedures for accounting of receipts & payments.

/ - He liaise with Budget Div & CAG in accounting matters -

- CGA has power to inspect offices, ensure accounts are maintained accurately
& comprehensively.

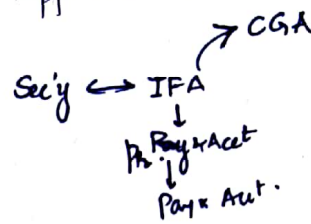
- Railway Act, Defense Act do not come under CGA - they have respective heads

- CGA prepares annual
↙ Apprⁿ Act. (exp) ✓
↘ Fin Act (Revenue) ✓

- CGA exercises budgetary control over exp. via [Pay & Acct office] who
has the authority to release payments of all claims arising out of govt operations.

Apprⁿ acct shows exp incurred against apprⁿ made by D^{ts}, in prev. fy.

- All excesses/savings have to be explained in Appr accts.



Broadly fⁿs of CGA:

- 1) To formulate policy related to general principles, form, procedure of accounting for the entire CG & SG
- 2) Oversee payment, receipts & acct^g matters of Central ^{civil} ministries/dep via Civil Acc^t Orgⁿ.
- 3) To assist introduction of mgt acct sys with a view to optimize utilization of govt resources
- 4) To administer banking arrangements for disbursements of exp & collection of govt receipts and interaction with RBI. → DISBURSEMENTS & RECEIPTS · RBI
↳ GOVT.
- 5) To consolidate monthly & annual acct of CG and put in place a robust fin report system
- 6) Ensure HRD - recth, deployment, Career mgt within Indian Civil Acc^t Orgⁿ.
- 7) Evaluating & processing proposals relating to Capital restructuring of PSU.

- Monthly trends are a handy MIS tool for d-m, In view of transparency & openness monthly abstract is put on "cga-nic.in" ✓ monthly.

- Annually, CGA brings out - 'Accounts at a Glance' of Govt receipts, exp.

Reforms undertaken

- Need for modernisation, IT initiatives taken up. ✓
- 12th FC rec^d: gradual move towards accrual base undertaken ✓
- Developed an advance Internal Control & Audit sys for Govt depts. ✓
- Dev^d a modern, unified, multidim sys of accounting ✓

2nd ARC rec^d:
App^t of a task force for conducting a Cost-benefit analysis to suggest modif^o in Appⁿ & Fin accts.

Role of CAG

CAG (DPC) Act, 1971 — (DPC = Duties, Powers, Conditions of service)

Constituent Assembly:

T. T. Krishnamachari: "added the word Comptroller to Auditor General for reasons which he believed to be fairly simple — CAG's job was not merely to audit but also to exercise control on expenses of the govt."

Ambedkar: Probably the most imp officer of Constⁿ of India.

* When K. T. Shah suggested in Constituent Assembly that CAG should be a registered accountant, it was rejected by T. T. Krishnamachari & remarked

* "CAG's job was not merely a question of arithmetic/accounting but a comprehensive knowledge of admⁿ."

Cm: ✓ Art 148 — There shall be a CAG whose posⁿ equivalent to judge of SC (makes him independent of Exec & Legislature)

150, 149 (duties, powers) ← Art 149, 150 — defines his duties and powers

CAG (DPC), 1971

ART 151 ✓ Art 151 — prescribes that his reports are submitted to President/Gov^t and placed before respective legislatures.

CAG REPORT
→ PMENT!

- independence ensured via:
- 1) 6 yrs, 65 yrs; removed in a manner of SC judge (Special majority)
 - 2) on grounds of proved misbehaviour
 - 3) Salary, Service cannot be varied to his disadvantage + CFI (Salary)
 - 3) No further app^t after he retires.

CAG (DPC) Act, 1971 enlists audit duties :

- Receipts & exp of Union, state accounted for in CFI, Contingency, PAC
- ~~Transac~~ Profit, loss acct & balance sheets of any Govt dept
- Act of stores & stock kept in govt organisations, govt companies, corporations whose statutes provide for audit by CAG
- Authorities & bodies substantially funded by from CFI or receiving loans, grants from govt.
- For PSU's, primary auditors are CA apptd by Govt on advice of CAG. CAG gives directions to CA on manner in which audit is to be conducted.
- CAG Has right to ~~Comp~~ Comment or Supplement the reports of primary auditors
- CAG also constitute Audit Boards comprising field experts to undertake Audit reviews each year.
- * CAG also plays fiduciary role in federal fin relations. Under Art. 279, A-279
FIDUCIA
- Ry
he ascertains and certifies net proceeds of taxes levied and collected by the ROLE
C-S R'shi Union but assigned to States; distributed b/w Union & States.

* Importance of CAG (by Asoka Chandra)

"Audit by CAG is not restricted by any limitations. He is free to bring to the notice of Piment the impropriety of any exec action, even when its legality is not in question."

Some take Extreme view :

(~ Asoka Chandra)

'CAG is the agent of P'ment. He is P'ment. P'ment only

works through him". This emphasises that CAG's role is not merely to ensure that appropriations made by P'ment have not been exceeded but also to satisfy himself on behalf of P'ment - 'Wisdom, faithfulness & economy.'

Ambedkar : "As an auditor, CAG's f's and authority are wider & more comprehensive than those exercised by prof. auditors"

- Being in T.T. Krishnamachari comment here.
Ambedkar
Asoka Chandra

Wider authority: of CAG

- 1) His Oath → (under Sch-3) to uphold Cⁿ & laws ✓ OATH ✓
- 2) Duty to Satisfy himself that Sanctions accorded by authorities - are properly fulfilled the purpose for which money is Sanctioned
- 3) He is an agent of P'ment, accountable to people (Asoka Chandra) - Agent of P'ment ✓
- 4) His role is to maintain the ^{clear ↓} dignity, independence, detachment & fearlessness necessary for a fair, impartial assessment of executive in the fin-field.

Ambedkar Quote ✓

- PAC prepares its report after examination of witnesses is complete.

- Responsibility of CAG doesnot end here. He has to watch whether corrective action as suggested by him is taken or not. In cases where it is not, he reports the matter to the PAC which will take up the matter.

CAG - An Assessment (RG & Arora)

2 schools

R.K. Arora
Paul Appleby

ANUDEEP DURISHETTY
AIR 1, CSE 2017.

Assessment of CAG makes 2 very diverse opinions visible

CAG most useful public servant
Paul Appleby scathing criticism

- Appleby view:
- CAG responsible for widespread & paralysing ~~ind~~ indecision in govt.
 - CAG is a legacy of colonial rule
 - Auditors do not know and are not expected to know much about admⁿ & auditing is a pedestrian frⁿ with a narrow perspective
 - A deputy secy knows more about dept problems than CAG.

Rebuttal to Appleby's view

- ✓ a) → Entire admⁿ was inherited from British not just CAG
- ✓ b) → Govt. is a trustee of public money ⇒ it is audit agency that can safeguard against misuse

Ashok Chandra (former CAG): " In all recognised democracies, audit is not just tolerated as necessary evil, but looked upon as a valued ally " ✓ Quote by Ashok Chandra

Much of criticism of Audit in India due to: absence of condition of audit & admⁿ being complementary. not able to appreciate that audit & admⁿ are Complementary.

R.K. Arora says " Audit in India continues to be considered as something alien, something extraneous and something of the nature of an impediment "

Distrust pervades relationship b/w Audit agency & Admⁿ

Main theme

∴ CAG audit must be in policy domain

Criticism of Audit agency

- Accused of overreach, particularly when audit widens to examine (E-3, propriety)
- Yet, as R.K. Arora opines, since policy process & public exp are inter related it is in-tune with spirit of Cⁿ to go beyond regulatory auditing. ★ Key
- 2nd ARC: - CAG reports are sometimes unduly -ve & fault-finding in nature. ← fault-finding
- Auditing doesnot recognise practical constraints (Appleby). It doesnot discriminate b/w errors arising out bonafide mistakes & malafide intentions. ← bonafide vs malafide
- Auditing has benefit of hindsight & is post-facto unlike govt agencies. ← Benefit of hindsight for CAG
- A Harsh -ve report acts as dampener against new initiatives & d-m. ← Paralysis
- CAG no doubt has got to have a critical eye, but at the same time, intention of criticism must be to educate ✓ intention must be to educate.
- Audit often concerns with trivial matters. As Ashok Chanda says, to balance b/w trivialising report & prioritising audit is a challenge.
- TSR Subramaniam points out - "discussion & debate in PAC is farcical, mostly on party lines. Audit paragraphs, he says, are neglected.

Criticism of admⁿ

- ✓ "Info is not provided to audit dept on time" ⇒ audit reports are not submitted to legislatures on time. ↓ No info provided on time; no recourse. ⇒ report delayed
- Sometimes full facts are not supplied in beginning but later are given in defense before PAC. ↓ full facts not supplied

1958 - system was devised:

Secy of dept aggrieved with objections → meets with Act Gen directly. If discussions failed → he meets CAG himself. Yet it fell into disuse.

Reforms needed

CAG wants amend^t to 1971 act to make auditing meaningful ✓

→ It wants a dept to respond with info within a time-frame ✓

→ Disclosure of audit reports by the govt - be made mandatory. ✓

As 2nd ARC says: CAG's reports should be more constructive and delve into causes of problem detected. Thus CAG must become reform oriented by suggesting desirable best practices. [not fault finding but constructing reformatives]

- CAG must reinvent itself as an agent of change & improvement s/t primarily an instrument for detection of irregularities

Recent initiatives by CAG

✓ Report made more ~~and~~ readable to common man.

✓ Quality of reports ↑, issued on matters of current interest

✓ CAG started giving recs. on improvements in govt system. i.e. moving away

audit paras & indiv irregularities → thematic audits & systemic irregularities. ★

Very Imp
Issues with dept of CAG
Regarding practice abroad in progressive democracies.
Do check Puri Hand-out
Text - 7; Pg 12; Ans: 7b
Ans: UK, US, Japan
INTOSAI

Conclusion: CAG may be criticised on the ground that the audit is too critical but we must remember that ~~CAG~~ CAG is a protector of public funds from the reach of arbitrary power, in that sense, is an imp & useful dignitary of the state.

Q-4 a) Discuss the recommendations of ARC II on financial management. (25)

A. Significance of financial management.

FIS, adhoc projects, budget estimates, Outcome based

B. ARC-II Recommendation:

1. Unrealistic budget estimates ✓

Unrealistic Budget
minimise details vs estimates

- The assumptions made while formulating estimates must be realistic. At the end of each year the reasons for the gap between the 'estimates and actuals' must be ascertained and efforts made to minimize them. These assumptions should also be subject to audit.
- Bottom-up method of budgeting should be replaced by a top-down method by indicating aggregate limits to expenditure to each organization/agency.

ARC-2 reports inclined towards NPM, Criticised by dev economists

2. Delay in implementation of projects

- Projects and schemes should be included in the budget only after detailed consideration.

3. Adhoc project announcement

- The practice of announcing projects and schemes on an ad-hoc basis in budgets and on important National Days, and during visits of dignitaries/functionaries to states needs to be stopped.

4. Outcome budgeting. - *not a good suggestion*

- Outcome budgeting is a complex process and a number of steps are involved before it can be attempted with any degree of usefulness. A beginning may be made with proper preparation and training in case of Flagship Schemes and certain national priorities.

5. Flow of funds relating to centrally sponsored schemes.

- The Controller General of Accounts, in consultation with the C&AG, should lay down the principles for implementing the system of flow of sanctions/approvals from the Union Ministries/Departments to implementing agencies in the States to facilitate release of funds at the time of payment.

Fin. Implementⁿ System (FIS)

6. Financial information system. ✓

- A robust financial information system, on the lines of [SIAFI] of Brazil, needs to be created in the government in a time bound manner. This system should also make accessible to the public, real time data on government expenditure at all levels.

Adhoc
proj
Auton
FIS

Capacity building.

- The capacity of individuals and institutions in government needs to be improved in order to implement reforms in financial management.

8. Accrual system of accounting.

- A Task force should be set up to examine the costs and benefits of introducing the accrual system of accounting.
- Initially a few departments/organizations may be identified where tangible benefits could be shown to be derived within 2-3 years by implementing the accrual system of accounting, especially departmental 'commercial undertakings'.
- The result of this initial implementation may be studied by a committee of experts which would recommend on its further implementation in all departments/organizations at the Union/State level along with exclusions, if any. This may proceed in a phased manner.

9. Internal Audit

- An Officer of the Chief Internal Auditor (CIA) should be established in select Ministries/Departments to carry out the functions related to internal audit. Its independence, duties, functions, mechanism of coordination with the CAG etc. should be provided by a statute.
- CIA's should be directly responsible to the Secretary of the Department.
- An Audit Committees should be constituted in each Ministry/Department. It should consist of a Chairperson and two members to be appointed by the Minister in charge of that Ministry/Department. The Chairperson should be a person of eminence in public life. The two members should be from outside the government.

10. Integrated financial advisor

- The role of the Financial Adviser as the Chief Finance Officer of the Ministry who is responsible and accountable to the Secretary of the Ministry/Department should be recognized and the trend of dual accountability should be done away with.

11. Accountability to parliament

- In order to further strengthen the Parliamentary oversight mechanism, as many audit paras as possible need to be examined by Parliamentary Committees. To facilitate this, the PAC and COPU may decide in the beginning of the year itself, which paras would be examined by them and which by their sub-committees (to be constituted for the purpose). They may consider assigning other paras to the respective Departmentally related Standing Committees. The objective would be to complete the examination of all paras within one year. In exceptional cases, Chairman, PAC/COPU may authorize keeping a para alive for more than one year.

12. There should be balanced reporting by the audit. Audit reports should not focus on criticism alone but contain a fair assessment or evaluation, which would mean that good performance is also acknowledged.

13. External audit needs to be more timely in inspecting and reporting so that their reports can be used for timely corrective action. All audits for the year under review should be completed by 30th of September of the following year. To start with, all Audit reports may be finalized by 31st December and this date may be gradually advanced.

14. IT should be used increasingly and effectively for data collection and analysis.

15. Skewed Expenditure Pattern – Rush of expenditure towards the end of the financial year.

- The Modified Cash Management System should be strictly adhered. This system should be extended to all demands for grants as soon as possible.

16. Improved plan – budget linkage.

- A High Powered Committee may be constituted to examine and recommend on the need and ways for having medium term expenditure limits for Ministries/Departments through the Five Year Plans and linking them to annual budgets with carry forward facility.

17. The plan versus non-plan distinction needs to be done away with.

2nd ARC

Cap building
Rem
Accrual
Chief Int Auditor → CAG
not sound
Audit Paras
not Audit critical
plan vs non plan

Civil Services

History

- 1714 - all posts will be filled by nomination by Court of directors
- 1765 - Grant of Diwani led to the rise of C.S era
- Cornwallis - gets credit for organising C.S on a grand scale
- Reg. Act 1773 - distinct b/w civil & Commercial f's of Company & employees made - Hastings
- Pitts, 1784 - rectt. at level of writer
- 1800 - Lord Wellesley, Fort William for training @ Calcutta, 1806 - Haileybury
- 1833 - Limited competitive exam
- 1853 - (Northcote - Trevelyan influenced) Macaulay - emphasis on generalist superiority open competⁿ (1854)
- By 1909 - 9 AIS created common to federal, provincial level
Montford - 33% 50%
- Islington - recommended indianisⁿ of CS ←
- Lee Comⁿ : FPSC set up (1926)

Rationale behind AIS

- Common Service b/w C & S
- better day-to-day admⁿ
- understanding, co-ordⁿ
- ↓ C-S tensions
- ↑ federalism, nat unity
- Req^d in context of A-35^b
- historical reasons (Centrifugal forces) } contributed to
planned dev^t } AIS idea

States grievances

- Low morale of state personnel
- Brain drain via deputation/cadre policy
- Some of Soil doctrine
- AIS is in union list (entry 17) - should be in conc list
- Hardly consulted - Pay ↑ by Pay comⁿ - States suffer

Sarkaria on AIS

- any more to disband AIS - retrograde
- AIS be strengthened by ↑ "Special"
- Constitute 3 new AIS - Edu, Eng, Med/Health
- Advisory Council for AIS mgt be set up - Cab Secy + Senior AIS officers to suggest sol^{ns} of AIS referred by C/S.

- Relevance of AIS [Recent Phailin mgt's role of AIS came to the fore]
 ↓ acted as links b/w NDMA, MHA, district, State govt.
- Increasing C-S, S-S tensions - need AIS
 - Centrifugal tendencies - needs central oversight to protect sovereignty/integrity
 - Need for continuity (good example: proposed Tg bifurcation → AIS ensure smooth transition in admⁿ)
 - New challenges (CC/GW/Terrorism)

Training

- 1) FC - 15 weeks (develop esprit de corps, dissolve service consciousness)
 Broad understanding P, E, S, Legal f/w
 Physical fitness, culture of adventure
- 2) Institutional/Professional training - 26 weeks
- 3) Dist Field training - 26 weeks } ~52 weeks
- 3a) Second phase of Institutional training - consolidating conceptual + practical aspects.

In-Service Training (Mid-Career): (Yugandhar Comm): 2007, mid career trg introduced for AIS

8 weeks - [7-9 yrs Service] - Proj mgt

8 weeks - [14-16 yrs Service] - PF

4 weeks - [26-28 yrs]

PE, Leadership, ID

Problems of Training ~ (2nd ARC)

- Too pedagogic to be result oriented, too casual to be promotion linked, too generalistic to be professionally relevant.
- ~ 1/5 officers likely to have training at any stage - 20% (R+U Body grants train)
- Paid holiday ✓
- Grp C, D ignored ; ✓
- Not linked to promotion, career dev; often placement ≠ for which officer received training
- No proper evaluation, no follow up ✓
- Less emphasis on behavioral aspects ✓
- Mgt officers (senior) unwilling to let go of best officers → mediocre one shunted out.
- Infra poor
- Training of trainees - neglected ; ill-motivated

2.5% of salary budget
NTP, 2012: distance learning, ethics, empathy, all level of series.
Priority: front line staff
Each Mgt: Model officer Annual Train. Plan. + Infra, Trainer pool

NTP-1996, 3 levels categories

- Top - focus: mental horizon broadening
Vision, Co-ordⁿ, PF, PE
- Med - Prof knowledge, skills
- Low - Public Service ethos, attitudinal orientⁿ

A	TOP
A1	1
B	Med
B1	1
C	Lowest
D	

- Training - Recs.
- Nat Instt of GG-2nd ARC to consolidate & disseminate best practices
 - mandatory training, domainⁿ
 - prepⁿ of long term training plans
 - Nat, state level Training Boards (for co-ordⁿ)
implementⁿ
Evaluation
→ thrust on attitudinal trainⁿ of lower level functionaries

LOOK UP NTP, 2012:
imp points highlighted

- Other features:
- ✓ Attendance → mandatory
 - ✓ Nat Training Council: headed by PM
 - ✓ All orgns - designate training managers
 - ✓ Every dept: 2.5% budget
 - ✓ DoPT: Evaluation of working of the training instt. + Trainee Staffing Scheme

DoPT ↔ CAPAM
Em. Int. Govt Workshop

Civil - Servant Politician R'ship

2 aspects $\left\{ \begin{array}{l} PF \\ PI \end{array} \right.$

PF: Polⁿ - aggregates public opinion, can't satisfy all

- By - injects balance in PF
- provⁿ of background info / relevant facts, figures
 - feasibility analysis - technical, socio-economic etc,
 - prepares bills

PI: B'crats dominate

Appleby: Civil Servants must be politically neutral but not policy neutral

Sc order recently req $\left\{ \begin{array}{l} \text{written order} \\ \text{fixed tenure (CSB)} \end{array} \right.$

Problems

- 1) Interference Complex - [Fred Riggs] \rightarrow Imbalanced polity
- 2) Imbalanced Polity - By powerful (Weber - layman polⁿ no match for expert B'crat)
 \downarrow
 thwarts ideas against self interest
- 3) Recent Nagpal issue - power at the hands. [politicⁿ of personnel mgt]
 vitiated atmosphere

ARC-1 reco:

- All major decisions reduced to writing esp when min-secy differ ✓
- Ministers should develop a climate of fair play
- PM, Cab Secy must take Spl interest in arresting growth of unhealthy personal affiliations
 b/w Secy, Min [As a recent news report suggested, DoPT rule that some personal staff not to be used
 > ltr's floated by PMO permission]
- Min - no interference in day-day PI | C.S: greater sensitivity should be shown-pol difficulties
- Secy \rightarrow min: one of loyalty; min \rightarrow Secy: one of confidence

Conduct, Discipline

AIS (Conduct rules), 1954; 1968

Pol:

- R. to vote in silence
- Take part in local body election with permission from govt.
- No pol. party affiliation (dissuading family mem from joining)
- America - Hatch Act (1939) - bans all pol. activities by C.S
- Fr - allowed

SC: "C.S have no legal, moral right to strike"

Property

- Immovable property - must be declared.
- Engaging in stocks - allowed
- No gifts > ₹ 1000

Misc

- Conflict of Interest, cannot allow/give emp't to family mem
- No Polygamy
- Loyalty to state.

Discipline

Informal - warning, cold relations, tedious assignment

Formal
 $\left\{ \begin{array}{l} \text{minor} - \text{Censure, withholding increment/promotion} \\ \text{major} - \text{"red" in rank, dismissal/removal} \end{array} \right.$

Problems in disciplinary action:

- Bentham's dog law, A-310, 311, CrPc - Sec 197, Single directive
- Red tapism.

UPSC / SPC

✓ A. 315

- Mandate :
- Conduict Exam, Interview
 - advisory - promotion, disciplinary
 - claims for compensation - legal proceedings
 - claims for reimbursement: injury while in duty
 - principles reg rectt ^{via} CSE

Issues

- Art. 320(3) - being abused
- UPSC: symbol of integrity lived up to its stature
- Maheshwari: PSC menaced by 3 problems
 - Technological (social infra)
 - Managerial (overburdened)
 - Political (pol meddling)

Eg: Recent controversy over compulsory English Comprehension in Mains
- CVC vs UPSC
- ✓ No Oath for UPSC members, others afftd warrant under hand & Seal
- Delays in exam process, alleged Secrecy wrt 'Scaling' process (Satish Chandra Cmt - 'Scaling' working fine)

Suggestions

- Status be equated to Apex Court
- Cond^{ns} of Service - governed by legisⁿ ✓ *
- ARC 1: Chairperson UPSC - be consulted before appointing UPSC mem & his successor
 - * $\frac{2^{rd}}{3}$ mem - Should be from amongst gov officials (> H.O.D posⁿ / Secy)
 - Univ degree academic qualifⁿ
 - Non officials ~ >10yr & experience in any of recognised professions
- ARC 2: to ↓ delay: UPSC: no need to consult in discip. cases of CS involving corruption

SPSC

APSPSC - Exam irregularities, delays

- Dens of Corruption: Eg. Recent irregularities committed by HPSC / APSPSC members
- Tendency to pack Commisⁿ with ruling party favourites
- Recomm - not accepted in many occasions
- SG. have not respected exalted status of a PSC & treated them as Set depts.

Spoils system
too much of muckiness

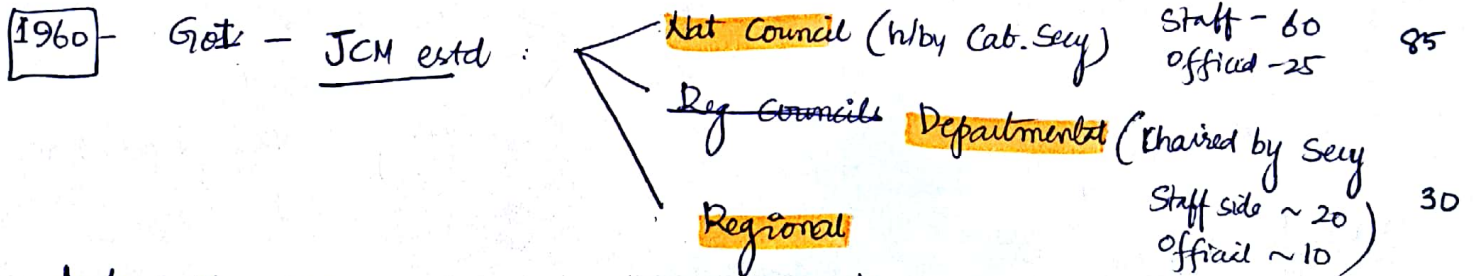
ARC 1

- ✓ ≥ 1 mem \rightarrow outside the state
- ✓ univ degree
- ✓ UPSC chairman consultⁿ while app^t of SPSC mem

Employer - Employee (JCM + CAT)

1st Pay Commis - suggested Whitley machinery.

1954: Staff Councils Setup - but failed



deals with grievances of Gp C & D.

+ Arbitration comt to settle disputes of JCM fails. Decision binding & nullified only by P^rment

Objectives

- To foster harmonious relation b/w Govt, employees
- Secure co-opⁿ b/w Govt & employee
- ↑ η of public Service.

Civil Service Activism add. material

Sardar Patel wrote to Sey - "that latter should be totally, fair, frank in expressing his views even to the expression of dissent if Cⁿ, moral conscience tells him to.

Fessler's Kettle - resp^{'ty} of civil servant = acc^{'ty} + morality (sometimes call for dissent)

→ "A small stream can cleanse a stagnant pond" (to show even little good works can have major impact)

(Police reforms)
Kiran Bedi, T. N. Seshan, Vinod Rai, Ashok Khemka - recent examples

Arun Bhatia (known for acting against corruption)

↳ transferred 26 times in 26 yrs of service

"defⁿ: "CSA refers to scenario where C. servants step out of and tread uncharted, ~~in~~ territories for a cause or in dissent to something which he/she feels unconstitutional and against the law"

CSA = ("philosophy that motivates C. servants to depart from strict adherence to norms) in pursuance of a cause or in dissent ^{to a course of action}, which may not always be consistent with restraint expected of bureaucrats" (CSA adheres by values of NPA)

CSA involves dissent, holding public meetings, making people aware of their rights

→ C. Servant is responsible for adherence to Cⁿ laws and not to a party / politician.

If his authorities ask of him to purport an unconstitutional act, he is always expected ~~to~~ not to adhere to them & follow what is morally, legally right

C-Service
Values :

- Integrity ✓
- Devotion to duty ✓
- Honesty ✓
- Impartiality ✓
- Transparency ✓

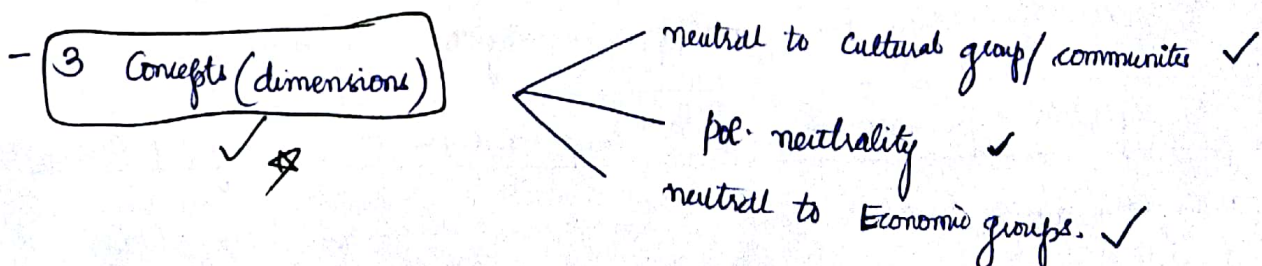
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Code of Conduct

- Restriction on pol. activities
- Pol. neutrality
- Economic — immovable property, gifts (₹ ≥ 1000), employment for family members
- Spouse
- No adverse criticism of govt
- Official Secrecy

Civil Service Neutrality (Fadia, Puri)

- One of the foundational pillars of an effective, efficient, competent, corruption free C.S is for it to be neutral & fearless & faithful to Cⁿ, laws and public at large, not soliciting patronage from any party for vested interests.
- Essence behind Part XIV of Cⁿ is neutrality of C-Service



[Fadia] C.S. Neutrality

Anonymity \Rightarrow minister alone is answerable to P^{ment},

Neutrality vs Commitment

- Legacy of British civil service

- neutrality in 2 main respects

- PF (prerogative of minister, F³ advice)
- PI (highest devotion to duty irrespective of which party is in power)

* **F.M. Marx** - "Adverse neutrality means acceptance of discipline of working w/o reservation - i.e. devotion for success of every govt lawfully in power."

Fulton, Nolan Cmt - "Civil Servants must be flexible to serve govt of any complexion."

✓ Characteristics of C.S. neutrality:

- ✓ public conf in non-pol. character of C.S.
- ✓ Conf of min to get loyalty of permanent CS
- ✓ High morale of C.S that they'd not be victimised

Code of Conduct maintains C.S.N in India

- Party
- family members
- vote in silence
- no adverse criticism
- official secrecy.

Morale of C-Service

- P.S. Appu
- Kuldip Nayyar - "Degenerated B^y" - book Bihar
- Abhash Kumar Chatterja - 26 page resign letter.

P. R.B.
Dwivedi & Jain - "It is impossible for any enlightened ^{but} capable of judging problems pragmatically to maintain intellectual ~~not~~ neutrality"

D & J say 'neutrality' in traditional mould broke down because:

- Role of B'g in PF ✓
- B'g dev's role in dev's countries → NPA philosophy → Commit to goals, state's objectives ✓
- B'cat cannot be psychologically neutral on issues that confront him. inescapable.

Concept of Commitment

- India Gandhi floated this idea → Committed B'g to pol-party in power.

- This is an anachronism in a modern democracy.

Commitment in Civil Services → committed to philosophy of Cⁿ, laws, DPSP, Preamble.

Dwivedi & Jain - 4 categories of B'g on the extent of politics:

- Depoliticised ✓
- Semi-politicised ✓
- Committed ✓
- Fully politicised ✓

Citizen - Admⁿ Interface : ARC-2 & Rejoinder

Corruption - Rejoinder + RG & A

Disaster Mgt - ARC 2

Values in P.A.:

honesty - telling the truth
Integrity - proof one's long term honesty, reliability, steadfastness to moral principles
Opp of integrity is hypocrisy.

Nat. Assocⁿ of Schools of Public Affairs & Admⁿ (NASPAA) - gives 5 core values

of P.A.: Honesty, Integrity, Accountability, Transparency, Dedication to Service.

Honesty \neq Integrity:

One can be honest ~~to~~ yet lack integrity

One cannot have integrity w/o being honest.



Integrity = ~~true~~ ~~honestness~~ in essence \Rightarrow adherence to moral principles.

a 3-step process: choosing the ^{morally} right course of conduct

acting consistently with the choice - even if its inconvenient

openly declaring where one stands.

Integrity is equated to moral reflection + Steadfastness to commitment + trustworthiness

Diff with honesty is that one may be entirely honest w/o engaging in thought & reflection that integrity demands. Honesty is simply telling the truth.

2nd ARC — in Ethos Report gave.

Values :

Integrity

Impartiality

Acc'ty

Exemplary Behaviour

Devotion to Duty

Commitment to Public Service

Coalition problems

Morris Jones — "Co-op fed'sm"

K. C. Wheare — "Quasi-fed'sm"

Suggestion

Sch X — Coalition

Pref to pre poll alliance

Constr vote of no conf (Germany)

Internalisation of 'Coalition Dharma' — no partner should make impossible demands

~~Develop a dedicated pool of troubleshooters — Good Cmtr~~

Presence of strong leader helps

NHRC

"Human Rights are understood as inalienable fundamental rights to which a person is inherently entitled simply because he/she is a human being." They are universal and egalitarian

UDHR — adopted by UNGA in 1948

UDHR — 2 sets of Rights

Civil & Political

Eco, Social & Cultural

2 Covenants to give teeth —

Int'l. Covenant on civil & pol. rights

" " on eco, social & cultural

India signed these 2 covenants in 1979

— 1st cov: Articles dealing with arrests shall be consistent with Art 22 of Cⁿ

2nd cov: India doesn't recognise enforceable R. to Compensⁿ

Also equal oppor, r to ~~self~~ peaceful assembly shall be consistent with A-19. Art 14-18.

NHRC Act 1993

NHRC = 4 + 1 =

- 1 ret'd CJ (chairperson)
- 1 SC judge (senior / ret'd)
- 1 CJ of HC (senior / ret'd)
- 2 mem — knowledge on HR.

CP of NC on SC, ST, Women, Minorities → shall be deemed members of NHRC (ex-officio)

Cmt: [PM + HM] + [LS_{sp} + RS_{Dy sp}] + [LOP_{LS} + LOP_{RS}]

CJI must be consulted if Cmt has a judge as mem

Fns:

- Enquire suo moto / petition / on direction of a court — into acts of Commis/omnisⁿ by C servant
- * Intervene — in proceedings involving HR violation (pending before court)

- Visit Jail & study & recommend
- Review safeguards under Cⁿ & recommend for 4th implementⁿ
- Review factors including terrorism - that inhibit HR
- Study Int'l treaties & recommend
- Promote Research in HR
- Spread HR literacy.

Enquiry by NHRC [L'Kant] ✓

NHRC - track Record

Child Labour (Prevⁿ & R) Act, 1986 ✓

Maternity Benefit Act ✓

Visakha Case vs S. of. Rj, 1997 - Sexual harassment

R-to-Food ✓

Limitations of NHRC

- Overwhelming dependence on state, centre & inst machinery
 - No SO SHRC in all states, even if they are - fⁿ lackadaisical
 - 1 NHRC : 1.2b popⁿ
 - Dec^s - not binding on govt, but delays in implementⁿ
 - Meagre finances
 - Inadequacy of HR Courts
 - Jurisdiction - not clearly defined : blessing in disguise
 - One yr rule
 - Poor Awareness
- NHRC makes rules for transⁿ of biz
 - (Some rules out of sync :
 - They'll not entertain complaints - some matters)

Others Limitations

- Sec 11 of NHRC Act — makes Commⁿ dependent on govt for invstg purposes
- Problems with Composition: ^{Selection} Cmt ~~has~~ membership — politicians only: disingenuous *
- No invstgⁿ into HR violation by armed forces *
- No power to enforce decisions *

Corruption & Admⁿ

Puri [rejoinder]



- Sources of Corruption:
- Economic : Consumerism, lust for money, LQPR
 - Social : Sanskritisⁿ, Wⁿ, Erosion of values, urbanisⁿ
 - Legal : 197 CrPc, A.311, Sec.19 PoCA, 1988; Sec 6A, DSPE
 - OSA, mystifⁿ, complex rules, ← Admⁿive : → Secrecy, asymmetry, Polⁿ of personnel, Speed money
 - Political : Electoral Corruption
Black money, paid news, Liquor

Institutions to tackle corruption

- CBI
- CVC
- FIU
- ED
- CAG
- Judiciary
- Div. of Rev. Intelligence
- Banking Ombudsman

Laws to tackle Corruption

- DSPE, 1946
- RPA, 1951
- PoCA, 1988
- Benami Transacⁿ Act, 1988
- Prev. of Money Laundering Act, 2002
- RTI - 2005
- Lok Ayukta, — many states | no Lokpal.

Integrity in Public Service (RG&A)

Defn

Corruption = "use of public power for private gains in a way that constitutes breach of law." - [Transp. Int'l]

- Corruption is a multi-headed Hydra with no Hercules insight to slay it.

Santhanam Cmt - expands defn: "Any action or failure to take action in the perf of duty by a govt servant for some advantage is corruption."

Corruption involves:
(6)

- misuse of official posⁿ
- Deviation from rules, laws
- Non-action when action is req^d
- Selfish motive
- monetary or non-monetary
- harm to public good.

136(ii)
POA

Effects

Acc to T. I

Costs/Effects of Corruption:

- Pol: (Erodes democracy, breach of rule of law)
- Eco: (depletes nat wealth, cripples dev^t)
- Socil: (undermines social fabric, distrust, crime)
- Env^t: (Env^t degradation)

- Whenever there is excess conc. of power, little acc^ty, turpitude & corruption thrives.

Indian Legacy

Kautilya - "Honey quote"

"Just as one cannot observe fish drinking water, it is impossible to find employees holding revenue pos^{ns} indulging in corruption."

- 40 types of embezzlement & suggests: proven to be corrupt → expelled from service
Properties Confiscated

Corruption - rife during Mughal / Sultanate era

Lord Clive - described EIC servants as corrupt

W. Hastings - was impeached in Britain for his misdeeds in India.

Congress - Gandhiji remarked in Harijan that Congress was fast becoming a corrupt orgⁿ.

Post - Independence

- IPR, 1948 and LQPR - entrenched corruption

- Babu-neta nexus, electoral corruption, black-money - have become so pervasive that any fresh case involving colossal corruption does not even startle or rouse the conscience of most Indians.

Stat: on Blackmoney:

T.I. India:

- A recent study by Nat. Institute of Public Finance & Policy showcased wide-spread corruption even in PRIs → "decentralised corruption"

- Kaushik Basu - "Sanskritisation of corruption"

Sources :

- Political	Social & Ecological	Economical	Adm've	Legal C ⁿ al
Electoral corrup ⁿ Babu-Neta Nexus Liquor, paid news.	Sanskritis ⁿ W ^m , us ⁿ Lust for money Erosion of moral values & ethics	Consumerism :	Single directive - Secrecy, mystif ⁿ - Complex rules - Speed money - LQPR	<u>OSA</u> Sec. 197 CrPC Art- 311 <u>Sec. 19 - PoCA</u> Sec 6A, DSPE

Weak Institutions : CBI, CVC + (there are 12 stages in deptal proceedings undertaken to inquire into misconduct of C-Servant) & takes 6 months atleast even if conducted in a n manner

C. P Bhambhui → pol & bureaucrats are partners in bending rules. Both provide support for each other for their common benefits.

Measures to contain corruption (Santhanam reco)

- A. 311 - repealed
- Simplifⁿ of laws
- CVC
- ↑ no. of personnel in CBI
- * - No govt servant should work in a private commercial and industrial firm for first two years following retirement.

CVC - Started VIGEYE programme - consists of Vig. Complaint Mgt Sys which enables use of mobile phones. Citizens can gather evidence in the form of a picture and send it to Commisⁿ.

AIS (Conduct) Rules - 1968

AIS (Discipline & Appeal) Rules - 1969

Central C.S (Conduct) Rules - 1964.

- No civil servant shall use his office to secure emp't for any mem of his family in any pub undertaking
- He shall not accept or permit any mem of his family any gift (> ₹1000)
- Engage in any trade / biz or undertake any other emp't
- Speculate in any invst, or make an invst that is likely to embarrass the discharge of his duties.

Ombudsman System

Ombud ⇒ acts as rep^{ve} of another person.

Sweden - 1st country to establish this 1809

Finland, Denmark.

Reasons for popularity:

Expansion of govt activities, discretionary powers to public officials
delegated legⁿ, ↑ chance of abuse

- * ineffectiveness of leg^{ve} control over exec
- * dilatoriness of judicial courts
- * scarcity of admin courts

Criteria for ^{a good} Ombudsman:

- independence from those investigated
- effectiveness, fairness, accessibility, public acc'ty
- a reasonable expectation that his decision would be complied with.

* Ombudsman system is not a substitute for conv. methods of grievance redressal, AR but a device complementary to these mechanisms.

- ARC 1, legal luminaries like MC Setalvad championed for its cause.

Lok Ayukta - @ state level

Est'd in 1970s - MH, RJ, Bi, UP, GJ, AP.

Variation in between various states

- In Odisha, & pb: LA called LP.
- LA + Up-LA in MH, RJ; no Up-LA in many other states
- 18 states have appt'd LA. NE (Assam) + WB + TN + J&K + Goa (No LA)
- MH, RJ - no specific Qualifⁿ for LA post; AP, K&K, GJ: LA → need jud qualifⁿ
- MH, RJ, MP: Gov^r in Consultⁿ with CM + CJHC + LOPⁿ
AP: Gov^r in Consultⁿ with CM + CJHC.
- * → ~~Odisha~~ Odisha, MH, RJ, UP: CM excluded
MP, GJ, AP: CM included.
- MH, Bi, K&K
- maladmⁿ + corruption
- MH: Even former civil servants are covered.

Performance (review)

N.T. Rama Rao dismissed LA instnⁿ for a while

Orissa - app^t of LA was held up for many years.

AP - LA completed instgns against former & serving min, but HC got in the way

- LA of MP, Ktk (Hegde) - Creditable
- LA in some states assertive, others - lackadaisical
- LA complain that they do not get sufficient info from govt depts
Eg. In Bihar, LA closed a case ∵ it could not get report from SA for as long as 8 years.
- Thus LA perf - ambivalent, heterogenous.

Suggestions

- CM within ambit of LA
- former CS & min - Should be covered
- Suo moto power
- Own independent investigation machinery
- Leg've comt on LA to monitor & follow up the implementⁿ of reco.
- HC should dispose of cases expeditiously filed before it.

Recent: GJ: Kamla Benival app^t LA w/o consulting CM.

- as far as possible the acrimony should be avoided.

Political | Judicial | Adm'ive

Pol :

- 1) partial state funding of elections
- 2) Disqualifⁿ on defection - decided by Prez/Govⁿ ✓
- 3) Sec(6) of RPA - amend to disqualify criminals from ^{seats} entering Legislature.
- 4) COC, COE for ministers - enforced by dedicated units of PMO, CMO
- 5) Abolish MPLADS, MLALADS ✓
- 6) RTI Act - MPs, MLAs as public authorities ✓

Jud :

- NJC for appt & oversight & removal recommⁿ to Prez
- COC, enforces judge

Adm'ive :

POCA → amend to include following :

- Obstruction of justice ✓
- Gross perversion of Cⁿ & democratic insti ✓
- Squandering public money ✓
- Collusive bribery ✓

Sanction:

- ✓ Single directive - decided by ^{headed by} cmt, of CVC, Cab secy, Dept secy
- ✓ 2nd month limit refusal → reasons be placed before legislature
- ✓ Liability of CS to pay damages, Confiscation of property
- ✓ Collusive bribery - punishment should be double than other cases of bribery.
- ✓ Speedy trials - CrPC amended to provide a time limit
- ✓ Serious Eco offences ✓ Repeal 1311, 310 ✓

- False Claims Act
- Social Audit to all
- Integrity Pacts
- Separate column in APR of C-sevants
- ICT, etc, *

- innovative
- Fraud Net - whistle blower mechanism: US
- Qui tam enforcement
- Raising matter personally with Civil Service
- measures he undertook
- Commission - UK

Add:

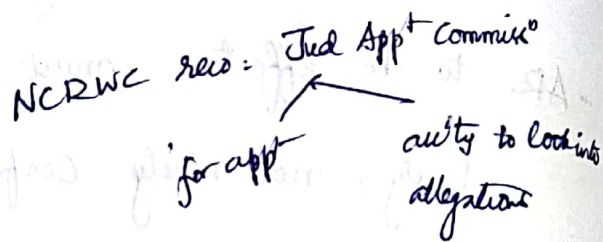
Corruption in pvt sector:

Gandhian concept of 'trusteeship' may not be taken too far, but its core maxim must be honoured: no pvt orgⁿ should become a source of harm to society

Refer other recs. of SARC recs. ✓

Union Judiciary (R.K. Arora)

[Art 124-147]



Judges Inquiry Act (1968) - to look into allegations against a judge

Impeachment initiated after a motion is passed - ≥ 100 - LS
(signed by) $\rightarrow \geq 50$ - RS.

Independence of J maintained by

- 1) App^t of judges & Officers by CJI \rightarrow \checkmark
- 2) Tenure (fixed) \rightarrow \checkmark
- 3) No practice post retirement
- 4) Removal
- 5) Salary - CFI
- 6) Immunities - no discussion in P^{ar}ment except on impeachment motion
- 7) Art 138.

Art 131 - Original J (dispute b/w states)

U - * states
+ state

Art 132 - Appellate Juris against any order/direct of HC & other courts

↳ Art 133 - civil appellate involving Substantive Question of Law

Art 134 - Cr. Case where H. Court awards death sentence or HC certifies case is fit for appeal

Art 136 - Special Leave Petition from any judgement

Art 137 - SC can review its own decisions

Art 142 - SC can pass orders for doing complete justice.

~~Art 1~~

J. Review

Originated from ^{the famous} **Marbury vs Madison Case (1803)** when ^{John} Justice Marshall observed that SC had power to look into C^oality of an act.

Black's Law Dictionary:

~~Art 143~~ "J.R is the power of the courts to pass judgements upon the

C^oality of laws"

✓ Art 13(2) - (No law which can abrogate rights under A.F.R)

✓ Art 32

~~Art 226~~

✓ Art 131-136 - vests SC with sole power to pass J.R.

PIL

"PIL means a **legal action initiated** by a court of law by a person other than the affected party for the enforcement of public interest"

PIL goes against **doctrine of locus standi**

Justice P.N Bhagwati & ✓
V.R. Krishnaiah ✓

Epistolary Jurisdiction - (via letters)

Evolution

Hussainara Khatun v. State of Bihar - (plight of undertrials)

writ petition filed, SC accepted the locus standi

Sheela Barse vs State of MH -

Cause of **women prisoners** in Mumbai jails.

Olga Tellis - " pavement dwellers case" -
vs Bombay Mun Corp

Rt to Livelihood upheld by SC

Unique model of PIL is that it transcends many issues such as

Consumer protection, envt, wages etc,

J. Activism

J.A is one step ahead of J.R. ✓

Black's Law dictionary:

"The Judicial philosophy which motivates judges to depart from strict adherence to judicial proceeding in favour of progressive and new social policies which are not always consistent with restraint expected of judges."

It is when J steps into the shoes of L & E because of the constantly deteriorating social & pol. conditions of the country.

Examples: SIT probe, CBI monitoring, Tiger Reserve tourism

Guidelines in Prakash Singh case (Police admn), border labour issues, pavement dwellers, Env't issues etc,

Critics: Detractors charge that J.A is undemocratic: Judges are not accountable to the people.

J becomes a virtual law maker, a 11th branch of L.
3rd chamber of legislature

Critics also say J.A leads to burdening of cases, piling up of cases ⇒

justice delayed.
⇒ justice denied.

Conclusion

Yet even at the height of its present acclivism, SC has not exceeded its powers. J has certainly played a laudable role in plugging the vacuum created by an ~~an~~ apathetic E and an insensitive L.

Limitations : a) Recent refusal of Pb & Hy HC to initiate proceedings against its former Judge Nimal Yadav in graft case, Sourmita Sen, Dinakaran etc.,

✓ b) J must be sensitive to admin reality & complexity in which Exec

Solⁿ : More interaction b/w retd judges → political actors ; Nat. Jud Comⁿ annually = functions = hd by CJI to take stock of J-admin in the country (like ancomp)
9th Sch, post 1973 acts - no immunity.

Recently

IR Coelho vs State of TN :

2nd ARC

Currently we have Judges Inquiry Act, (1968), Restatement of Values of Jud life (COC of judges)

2nd ARC rec^d - a separate Jud Value Commission (a senior judge of SC)

Add Recent : Nat Jud App^t Commisⁿ ✓

Suggestions :

- Malimath's rec^d ✓

- Controlling no. of adjournments ✓

- Strengthening of Nyaya Prats ✓
- ADR, ICT, evening courts ✓
- Connexion rates ✓
- FTC, clubbing similar cases & disposing them.
- AJTS

Hindu article

PIL started when judges started donning the hat of Social Engineers as evidenced in Pavement Dwellers case / Sheila Barse case. But what we are witnessing these days → not for enforcing rights of disadvantaged but for correcting actions / omissions of exec.

Eg: Tiger reserve, auction in 2G, recent ~~judgements~~ judgements on electoral reforms
Jain Hawala case, fodder scam

Some adverse examples: 1) SC ordering Jharkhand SLA to conduct a Motion of Conf

despite A 212 barring it etc,

2) Distribution of food grains order is clearly interfering in food policy

3) Auction - AA 143 - 2G

Conclusion: Kapadia - "Judges would normally not accept PILs dealing with govt policy"

Thus despite our temptation to laud judiciary for activist role,

S.O.P is part of basic structure of C and must be held sacrosanct.

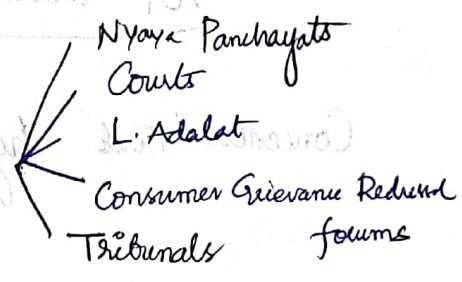
As Justice Jackson of US has said, "the doctrine of J.A which justifies easy and constant readiness to set aside decisions of L.E is incompatible with a faith in democracy." ✓

Sobit: Judges must outline broad parameters of PIL else it might become a blunt tool.

J. Activism w/o limitations might become Judicial activism

"I must be a alarm clock not a time-keeper" ✓

Dispute Redressal Mechanisms & Institutions (4)



Arbitration & Conciliation Act, 1996 — enacted to harmonise with UNCITRAL Model.

~~CPC~~ Code of Civil Procedure amended ~~in 1999~~

to include Sec 89 — which includes dispute resⁿ outside courts

Arbitration, Conciliation, Mediation, Jud. Settlement.

LOK Adalat

(Legal Services Authority)

Based on

Gandhian principles

non-adversarial

LA deals with Civil disputes

Mock courts held by —

State Authority ✓

Dist Authority ✓

SC Legal Services Cmt.

HC Legal Services Cmt.

Family Court cases

Land disputes

Family disputes

Mutation, Damages cases etc,

Presided by

retired judges

social activists

members of legal profession

- No Court fee, no rigid procedural req^t (as in IEvid Act / C.P.C)

- Case pending in Courts can be transferred to LA only on consent by both.

- NO Appeal after LA decree. If no compromise is reached goes back to Court. If compromise reached → binding → award is made → no appeal