

## 4. Union Govt & Adm<sup>n</sup> Executive (Pres, PM + C.O.M) <sup>(PDR)</sup>

### 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 - Qualif<sup>n</sup> Art 71: Matters relating to election of Pres, V. Pres.

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

44<sup>th</sup> 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)) - 1<sup>st</sup> time 2<sup>nd</sup> 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 - 1<sup>st</sup> Dalit Pres - >91% votes; Era of Coalition Govt  
Pres role acquired new dimensions

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

## Vacancy of Prez Office

- 1) Death    2) Resign<sup>n</sup>    3) Impeachment    4) Expiry of term    5) SC quashes election

V. Prez communicates about resign<sup>n</sup> of Prez to Speaker of LS.

Art 61 - Impeachment of Prez by P<sup>'</sup>ment

RS [Pre cond<sup>n</sup>: 1<sup>st</sup> house (either)]  
 LS [14-day notice  
 $\frac{1}{4}$ <sup>th</sup> total strength  $\rightarrow$  sign]

1<sup>st</sup> house: debates res<sup>n</sup> & passes by  $\frac{2}{3}$  spl. majority

2<sup>nd</sup> house: investigating house - Prez given an opportunity to defend himself

If 2<sup>nd</sup> 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 C<sup>n</sup> head ~ English Crown : ✓ Granville Austin  
 ✓ M.C. Setalvad
- 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 C<sup>n</sup>  
 & has to serve people of the Country.  
 i.e. They hold Prez has unspecified reserve of powers as the guardian of the C<sup>n</sup>.





Record from 1950-2011 : estd following principles

- Prez is entitled to quest<sup>n</sup> govt bill, app<sup>t</sup> 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 opp<sup>n</sup> 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  
Co.M at Pleasure of Prez      Co.M req → LS
- Prez entitled to insist PM that he obtains vote of Conf in LS within stipulated period.  
Prez : within the 4 walls of C<sup>n</sup>.

Powers :

→ Leg <sup>ve</sup>	→ Judicial	→ Military.
→ Executive (adm <sup>ve</sup> )	→ 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<sup>l</sup> accords. under his name, Concludes war & peace

But A.78 → 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 (1<sup>st</sup> session of every year, 1<sup>st</sup> 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)

R.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<sup>?</sup>

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.R exists :  
✓ 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 found<sup>n</sup> for a totalitarian state

A 352 :  
1962<sub>-68</sub> : 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<sup>nal</sup> emergency

When state is being run by govt contrary to prov of C<sup>n</sup>, C<sup>m</sup> emergency exists.

State govt dismissed, SLA suspended / dissolved. Law making → P<sup>ment</sup> → 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 adm<sup>n</sup> ✓

\* 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 : Bhatta 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<sup>r</sup> should explore possibilities of forming alternative govt. If fresh elections are inevitable -> care taker govt should be formed
- Gov<sup>r</sup> report asking for A.356 - must be a speaking document not vague & must be given wide publicity.
- Gov<sup>r</sup> - outorder
- No dismissal before ratif<sup>n</sup> by pment (is no simultaneous & immediate dismissal)

Some more imperexamples of Prez dissolution

Kalyan Singh  
Rabbi Devi

\* Prez K.R. Narayanan declined to sign A.356 imp<sup>n</sup> on Kalyan Singh's UP govt after it won a vote of Confidence (220-0) in 1997

\* K.R. Narayanan also returned cabinet res<sup>n</sup> 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<sup>ml</sup> power not absolute power; existence of material evidence pre-cond<sup>n</sup> for impos<sup>n</sup> 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 adm<sup>n</sup>
- ✓ SG resigns, Gov<sup>r</sup> recommends A356 w/o exploring installing alt-gov<sup>t</sup>
- ✓ 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 prov<sup>n</sup> of C<sup>n</sup>.



# Parliament

## 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 1<sup>st</sup> LS: 46.5 15<sup>th</sup> LS ~ 56 (Old age does not mean ↑ wisdom)
- 8) UK has a very robust Youth P'ment & conducts debates annually among motivated, young students. Our Youth P'ment's f'ing has been ineffective.
- 9) % Women rep<sup>n</sup> < 10% , S. Asia including Pak > 12% , World Avg - 14%.
- 10) Quality of debates Q. hour, Quorum - dwindled
- 11) Disruption added to 3 Ds of democracy - debate, dissent, dialogue
- 12) Corruption & Criminalisation in MPs (ADR - 30% of all legislators - accused)  
MPLAD Scam, Cash for vote scam

## Reqd Reforms

- Women ↑ ✓  
Paid news ✓  
check CP, PC ✓  
introduce -ve vote ✓
- 1) Electoral reforms —
  - 2) Code of Conduct — for MPs (Nolan cmt - std in public life recommended a Code of Conduct for both MP & Civ Servants)
  - 3) Penalise unruly behaviour, Ethics cmt should be strengthened + A P'mentary Commis<sup>n</sup> 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 sol<sup>n</sup>s.

J:

Stat:

judge / pop<sup>n</sup>

- ✓ - 10.5 / million India
- ✓ - 107 / million - US
- ✓ - 50 / million - UK

Police:

Sol<sup>n</sup>:

- Operationalis<sup>n</sup> of AJIS
- evening courts, e-technology
- ↑ judge / pop<sup>n</sup> ratio
- ARs: 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



# Council of Ministers

✓ A. 74 :

91<sup>st</sup> C.A.A : C.O.M -  $\leq 15\%$  of strength of LS

→ Gopalaswamy Ayyangar → 3 fold classif<sup>n</sup> : Cab. min  
↓  
did not recommend  
Pment Secy. classif category  
Mos  
Dy min

## ARC-1 on C.O.M

Cab. min - dual resp<sup>ty</sup> < 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 conv<sup>n</sup>.

- 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 accommodate politicians

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

ii) Clustering closely related min on drawing cue from Dept Related Str Combs

M<sup>y</sup> of Transport < Civil Aviation  
Shipping  
Roads, railways

M<sup>y</sup> 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 & above + Nat. Security issues + crisis mgt.

"Cabinet's dominance is a stark reality."

## Checks on Cabinet

- Nat. Commis<sup>n</sup> on SC/ST  
Nat Commis<sup>n</sup> on women  
FC, EC, } Views cannot be ignored
- Judicial checks
- Prez : Art 78, Suspensive veto
- Media — FDI in retail, Bt Brinjal oppos<sup>n</sup>.
- Civil Society

## Challenges facing Cabinet today

- Open airing of differences (Agri 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-ord<sup>n</sup> (Fayol)
- Sustained focus on key aspects of adm<sup>n</sup>.

\* 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<sup>t</sup> comt, C.C. on Security, C.C. on Prices, Pol. Affairs (most imp Super cabinet)  
C.C. on trade & invest, C.C. on Invest, 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<sup>t</sup> done on personal/pol consideration
- 5) MoS rarely appointed, Dy min never app<sup>d</sup>.
- 6) Trivial matters (C.C. on location of offices in Delhi)
- 7) Several Subjects neglected  
Eg: Women emp<sup>t</sup>, Env<sup>t</sup>
- 8) Coalition Compulsions  
& problems

### ARC-1 reco

- 11 std C.C. ~
  - ✓ defence
  - ✓ Ext affairs
  - ✓ Social Services
  - ✓ Eco affairs
  - ✓ App<sup>t</sup> 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<sup>t</sup>, w. emp<sup>t</sup> 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 :

Rem them 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."

Mr Jennings - "He is the Sun around which planets revolve. He is the Key-stone of the arch"

PM - Prez app'd 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" ✓

Dizzy heights of Power.

Sometimes PM's inner council decides major decisions ~ colloquially: Co-ordinator; Teamwork; majority in all cabinet decisions (Kitchen cabinet) called

Dehradun Brigade (Rajiv)  
Kitchen Cabinet (Indira)

elaborate w/ cabinet for \*

PM - P'ment

- leader of the house

- nominated men chosen on his advice

- date of summoning, prorogation

- Mediator role in case of dispute b/w 2 houses

- agenda of P'ment session

- Participates in Biz Advisory Cmt ✓

- Policy announcements

- Pay att<sup>n</sup> to Opp<sup>n</sup>; grievances

Politics: R. Gandhi ~ 2/3 majority in LS, ∴ ignored P'ment → bad precedent

Mammotham - not able to cultivate intimate r/ship with P'ment



- Policy decisions forced by extra-C<sup>n</sup> 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.

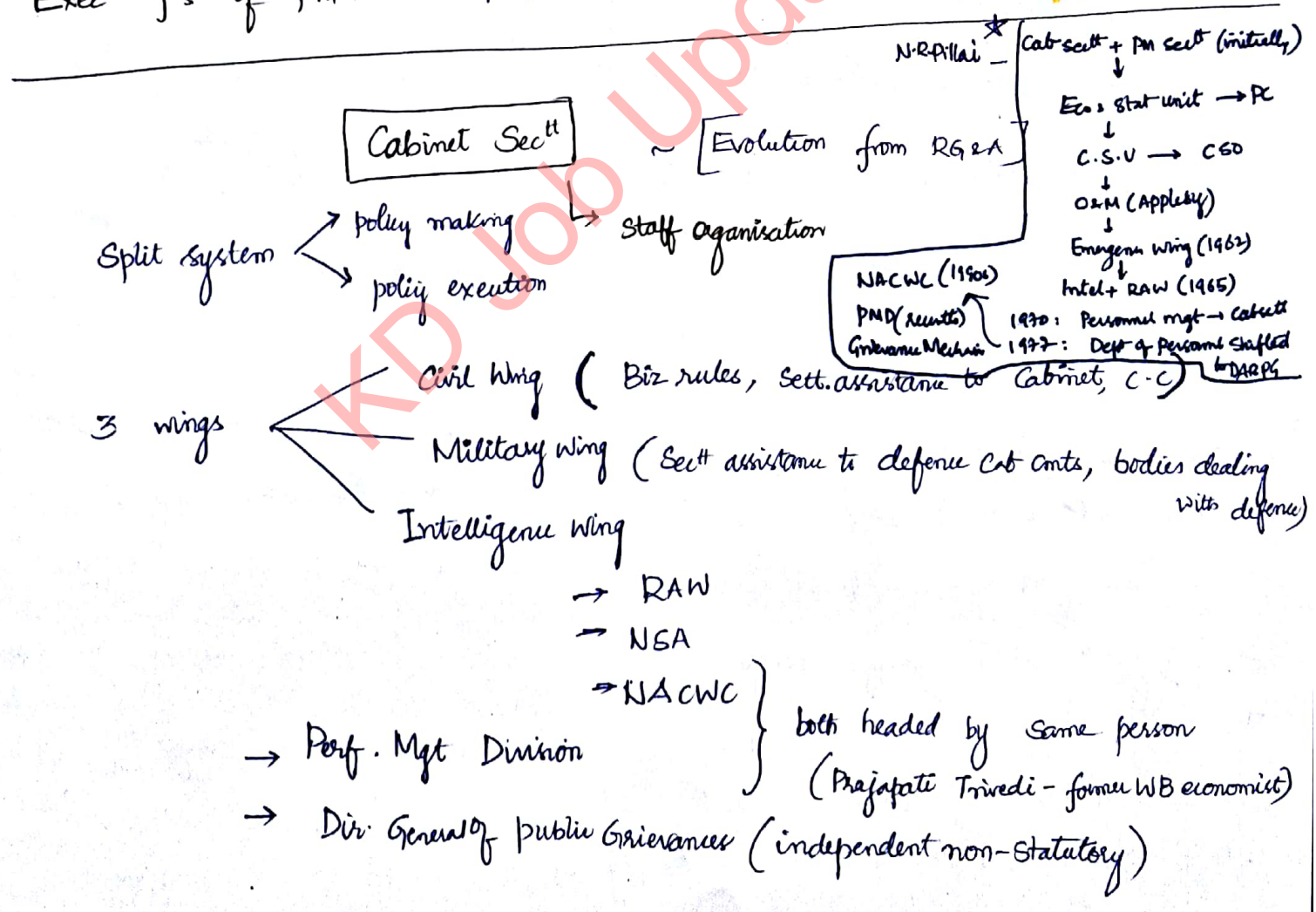
- Chief rep<sup>ve</sup> of the country in Int' arena

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

Gujrat doctrine, Bus diplomacy, Modi - Neighborhood first policy

Exec. f<sup>n</sup>s of PM: P O S D C O R B

★ Evolution



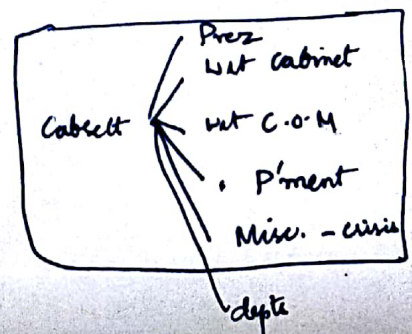
## Role & Fns

- 1) Provide Sec<sup>t</sup> 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 implement<sup>n</sup>
  - 4) deals with decision modif<sup>n</sup>, 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)  
(Transar 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.

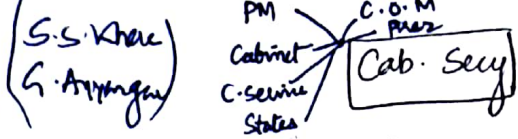
### \* Misc - Deals with

- Ordinances
- Prez address to P<sup>r</sup>ment
- Summoning, prorogue, diss<sup>n</sup>
- Negotiation with foreign countries
- Appts
- Cmte of Inquiry / Commissions \*
- Proposal to withdraw prosec<sup>n</sup> initiated by Gov.
- PMD, NACWC, [O&M mutually, non DARPS]  
RFD Grievance Redressal (CGERMS)

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







- 11<sup>th</sup> in table of precedence

Despite the enormity of the floods, leadership skills shown by Ajit Kumar Sethi in co-ordination & relief work is exemplary in UK floods / Sikkim earthquake in 2011

1) Head of Civil Service of India :

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

\* Chief of Civil Services Board → app<sup>t</sup> : 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<sup>tt</sup>  
Exec.

- Eyes & ears of PM : responsible to PM.  
- Keeps him posted on imp dev<sup>t</sup> in <sup>all</sup> ministry (ies)

Gopalakrishna Ayyangar  
- "He should be an adobe offering the highest rank ...."

- 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.

Cab. Secy - staff f<sup>n</sup> not a line f<sup>n</sup>. His purpose to help not to oversee

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

: (S.S. Khare, former Cab Secy)

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  $\equiv$  PM + MoS  
 P.K. Mishra + Nripendra Mishra  
 Principal Secy (Palok Chatterjee) "Backroom Boys"  
 NSA - Ajit Dorad  
 Media Adviser  
 Add. Secy, Joint Secy, Private Secy, 12 directors  
 PMEAC

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 <sup>(P.C., C.C.I)</sup> fulcrum of eco activity
- Residual Legatee w.r.t P'ment duties  
 PMO monitoring projects → overpassing ministers  
 Govt 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, pos<sup>n</sup>, authority of PMO depends to a large extent on incumbent PM.

Palok; Palok Chatterjee Evolution of PMO: RGA, NAC  
 Recent: NAPECC, Skill Dev Unit, Delivery Monitoring Unit etc;

PMO is salvation of PM ∴ ↑ Complexity, Globalis<sup>n</sup>, shorter tenures of Cab Secy

P.N. Dhar: "↑ Complexity of GoI makes PM deal with Int affairs, Socio-econ devt & 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

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

+ election manifestos



Split system. - India

Westminster : Sect<sup>r</sup> - responsible for both PF, PI.

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

- Adv of Split sys :
- Specialis<sup>n</sup> 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 & F<sup>n</sup>s

- 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<sup>r</sup> - P<sup>r</sup>ment

- Prepares answers to P<sup>r</sup>ment Qs.
- Draft bills prepared / takes birth in ~~at~~ Sect<sup>r</sup>
- **Delegated Leg<sup>n</sup>**
- Prep<sup>n</sup>, Exec<sup>n</sup>, 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<sup>r</sup>
  - **Channel of Comm<sup>n</sup> with States**
  - **Measures to  $\uparrow$  admin<sup>n</sup> skill, Capacity building**

Structure of Sect<sup>n</sup> — Dept — Wing — Div — Br — Office/Sections

## Tenure System

Initiated by Curzon - 1905

Simon, Wheeler, Llewellyn Smith comt, ARC-1

endorsed Tenure Sys.

Adv:

- Prevents monotony
- ground realities reflected in PF
- helps get rid of incompetent officers
- (AIS - tenure) are repugnant, but tenure sys facilitates coord<sup>n</sup> b/w C-S
- As motiv<sup>n</sup> for officers - close to corridors of power
- Officer Career dev<sup>t</sup>, 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 incapacity by staying in Sect.
- C-S tussle (States unwilling to part with their best officers)
- Scope of tenure sys ↓ (no. of posts are declining)
- results in evaluation of Civ. Servant (∵ wide varied work)

\* Problems of Central Sect<sup>n</sup> (Transaction of Biz Rules/A BR)

Proliferation

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

Fragmented adm<sup>n</sup>.



## Over Centralis<sup>n</sup>

- $\frac{1}{3}$  Staff - house-keeping work: Sixth Pay Commis<sup>n</sup> - 'Grp D - <sup>to</sup> eliminated.'
- Sect<sup>n</sup> arrogated to itself PF & PE roles by unduly exercising Supervision.
- It is partly Confessed: 20% of total Sect<sup>n</sup> work can be readily passed to field officers
- Dominance/overbearing role
- Efficiency
- Dilatory, time consuming, Red tape
- Poor co-ord<sup>n</sup>, no integr<sup>n</sup> Eg: M'y of U. devt & M'y of U. Housing & Poverty Alleviation  
M'y of P. Raj & M. of Rural Devt - fragmented.  
IGMSY (MWCD) & JSY (MoH) - fragmented  
(What is the need of having 2 min?)
- Tendency of reverse delegation (pushing files upward), Obfuscation  
↳ Risk averse
- Absence of team work. (12<sup>th</sup> 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, Staffation, Emulation & Const

- 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)

Domainis<sup>n</sup> (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 & modif<sup>n</sup> thereto.

Ⓒ Promoting & Incenturising Perf:

1) PAR → PMS (ARC-2)

2) PRIS (6<sup>th</sup> Pay Commis<sup>n</sup>, 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<sup>l</sup> ministries dealing with State Subjects.

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

Ⓔ Rationalising f<sup>n</sup>s & 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<sup>l</sup>ment (Transport, Energy, etc)

- ✓ Flatten Orgz<sup>n</sup>



# Rationalising Govt Staff

- 6<sup>th</sup> Pay Commis<sup>n</sup> - Abolish Grp. D
- Currently Top heavy - needs rationalis<sup>n</sup> ✓
- 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<sup>y</sup> : 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.

Sol<sup>n</sup>s :

3 methods :

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

ARC-2 : 1<sup>st</sup> method ✓ : Said :

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

## 5. State Govt & Adm<sup>n</sup>

### Governor

Art 153, 155 ....

Discretionary Power of Gov<sup>r</sup>   
Explicitly Provided (A. 163, A. 239, A. 371, A. Sch VI Para 9(2))  
Derived/Implied/Hidden

### Explicit

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

Sch. VI - Para 9(2): The gov<sup>r</sup> 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<sup>r</sup> of UT - no need of COM advice  
239AA

Spl. Responsibilities: Art 371 - Prez may direct Gov<sup>r</sup> of MH, GJ to have special resp for dev<sup>t</sup> 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 f<sup>n</sup> 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<sup>t</sup>

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<sup>r</sup> (~ Prez)

- Exec
- Leg<sup>'ve</sup> Similar to prez mutatis mutandis
- Judicial
- Emergency

## Issue Areas wrt Office of Gov<sup>r</sup>

(A) **Appt**: Nominated vs directly elected (Give arguments on both sides)  
 Finally we accepted nomination - On the <sup>pattern</sup> basis of Canada.

1967: Year of great divide in politics of India.

**Sarkaria**: Consult<sup>n</sup> with CM was not done, in some cases gov<sup>r</sup> was appointed even when CM outrightly rejected the nominee.

- Said that A-155 must be amended to mandate consult<sup>n</sup> process - A-155 amend<sup>t</sup>

Rev. by various bodies on Gov<sup>r</sup> Appt:

**SC**: observed:

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

Shriraj Patel

**ARC-1**

- Burnt out politicians should not be appointed
- Men of low integrity, men who lost elections - should not be appt<sup>d</sup>
- Opp<sup>n</sup> Leader in LS be consulted
- Prez should exercise this power in his own discretion.

## Sarkaria - echoed Nehru's views

2

- 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 reo. 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't 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



④ Editing speech - Gov<sup>r</sup> not entitled to edit speech unless it is critical of his own conduct.

⑤ A356 report - Sarkaria: must be a speaking document, corroborated by evidence  
Punchi: To avoid doctoring of Gov report, Bommai <sup>govt dir</sup> guidelines → in c?

⑥ Discretionary power: Art 163(2) 's impression of discretionary power - must be dispelled  
Punchi said: Gov<sup>r</sup>'s discretion is limited must be narrowly construed  
"Exercise must be dictated by reason, activated by good faith, tempered by caution."

⑦ Removal of Gov<sup>r</sup>: Gov<sup>r</sup> continuance in office depends on sweet will of the Centre, whims & fancies.

Rem \* Hargovind Pant vs Raghukul Tilak: SC → Gov<sup>r</sup> not an employee of Union

Rem. BP Singhal Case - SC:

→ Gov<sup>r</sup> cannot be removed on grounds

i) C-Gov<sup>r</sup> lost Confidence

ii) ideology mismatch

\* iii) A. 156 does not warrant reason but warrants fairness & reasonableness  
(Term of Gov<sup>r</sup>)

iv) If removal is actuated by mala fide intentions Courts

can step in. (J.P.)

add examples of pol.

dog fight b/w Janata

Gov<sup>r</sup> & Indira Gov<sup>r</sup>

- Gov<sup>r</sup> dismissal en masse

- Bad precedent.

### Sarkaria on removal of Gov<sup>r</sup>

- Gov<sup>r</sup> tenure 5 yr should not be normally disturbed except in compelling situations

- Gov<sup>r</sup> must be apprised of grounds of proposed action ~ <sup>be</sup> 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,  
↓  
(CM lobbies for central assistance)

The adage  
"To see Naples and die" twisted to  
"To see Delhi and survive"  
(CMs as mere adjuncts)

+ CM Admin role

- head of SPD, Gen. Adm Dept (GAD)

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

Pos<sup>n</sup> of CM - A Reality check

- CM vested with many powers, but his real pos<sup>n</sup> depends upon → personality  
pol exp  
admin capability  
Central L'ship backing.

- CM with a comfortable majority → strong & available pos<sup>n</sup>

Eg: Nitish - Bihar  
~~N. Patnaik~~  
N. Patnaik - Odisha

- CM though enjoy majority but are nominated by Central L'ship, 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-ord<sup>n</sup>, 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:  
- R<sup>3</sup>, P<sup>3</sup> in dis-mgt  
- Secy of SDMA  
- Chief adviser to Govt after ABSB 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

4  
G) CS & Centre : - Represents Centre ∴ AIS

- as channel of Comm<sup>n</sup> 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 <sup>state</sup> 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  $\left\{ \begin{array}{l} \text{judges of HC} \\ \text{fin \& acct} \\ \text{fin adm} \\ \text{Spl knowledge eco} \\ \text{nomes} \end{array} \right.$

FC shall make reco to Prez as to

- i) distb<sup>n</sup> 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 <sup>augment</sup> Consolidated F. of state,  $\uparrow$  resource of States  
(On basis of SFC reco)
- iv) any other matter referred by Prez.

## 14<sup>th</sup> 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<sup>t</sup>, consistent with FRBM. Commis<sup>n</sup> is to consider incentives, disincentives for states for observe FRBM regulation (~ overbearing)
- In making reco Commis<sup>n</sup> is reqd to consider:
  - level of subsidies for inclusive growth
  - need for making PSU- competitive, mkt oriented
  - listing disinvest<sup>+</sup>
  - need to balance ecology, env<sup>t</sup> c.c.
  - Sust eco-devt.
  - impact of proposed GST.
- Commis<sup>n</sup> to look to budgeting & accounting standards, linking outlays  $\rightarrow$  outcomes, best practices within the country & make appropriate reco.

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 fiscal part of CS
- FC: permanent body
- more FC-PC coord<sup>n</sup> (time sync)
- Sect<sup>t</sup> should be provided

→ C<sup>n</sup> does not differentiate b/w plan/non-plan Capital & Revenue grants. 1<sup>st</sup> FC even said that FC can take up plan/capital grants. But importance of planned eco dev<sup>t</sup> is very high ⇒ implement<sup>n</sup> expert body is req<sup>d</sup> → 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-ord<sup>n</sup> @ Fora like NDC ✓  
State gov<sup>t</sup> <sup>rep<sup>r</sup></sup> must be represented in FC ✓

FC cell in PC should monitor State finances continuously & monitor behaviour of State finances. This provides co-ord<sup>n</sup> for plan formulation.

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

Compos<sup>n</sup> of FC SG must have rep<sup>n</sup>. Record of FC has been exemplary, but rep<sup>n</sup> helps.

Mechanism followed - Inflation argument (rem well) + Pay Commis<sup>n</sup> argument



→ Gap-filling approach is leaving rich states with more funds while poor states are 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've, Leg've, Financial Relations  
(Rg 2 X)

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 consider<sup>n</sup> of all changes in the country."

Leg've Relations

[A. 245 - 255]

Wheare answer on leg've 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've powers to P'ment (A. 252)

Restrictions on P'ment, State L.A

— Art. 286, 301, 303 (taxation, trade & Commerce)  
Lists in Sch 7

Part III - FR

State's jurisdiction restricted in boundary of State.

✓ A. 249 - RS res<sup>n</sup>

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 interpret<sup>n</sup>** — (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 - 2<sup>nd</sup> - P'ment can enact law on any entry in State list

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

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

A. 252, 253 ✓

A. 254 — Concurrent list conflict ⇒ 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<sup>ns</sup>.

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.

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

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

: Union can confer duties on state

✓ A. 258 : Govt with consent of GoI, can entrust f<sup>ns</sup> to Union.

✓ A. 261 — full faith credit clause

✓ A. 262 — Pment deals with water disputes

✓ A. 263 — ISC (Prez created Central Council of LSG, Health under this article)

✓ A. 350 — Prez instructions, mother-tongue + 352, 356, 360 ✓

✓ A. 312 — AIS @ Pment 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 c<sup>n</sup> 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, Sibal had 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 consult<sup>n</sup> 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 GW/CC/Terrorism/Naxalism → calls for rejuvenated C-S r'ship.  
NCTC ✓
- Reg A. 355/356: Punchhi, Sarkaria → said to lay down Bommai guidelines in c<sup>n</sup>.  
(~ Gov' action dictated by reason, tempered by caution) Coalition era ⇒ ↓ A356.
- ZC, ISC, NDC should become effective channels of collaboration.
- Concurrent list - Union leg<sup>n</sup> - an irritant: Criticism against Centre: need for



formal institutional structure facilitate mandatory consult<sup>n</sup> b/w U & S before legislating  
on matters falling within ambit of conc list.

KD Job Updates

# Centre - State Relations (Puri)

L, E, F

Part VIII - 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 1<sup>st</sup> 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,

A. 304(b) - Permission of Pres

as it affects interstate trade.

Interpretation of Lists → Non obstante clause ✓

D. of Pith & Substance ✓

D. of Severability ✓

D. of Colourable Legn ✓

D. of Harmonious interpret<sup>n</sup> ✓

Full faith credit clause. ✓ - A. 261

Views of States <sup>givants</sup> ~~As~~ per Sarkaria <sup>union</sup>: cons-list  
Residuary  
A. 201

A. 200: assent to bills

A. 201: Gov<sup>r</sup> reserving bills  
for Pres

- Over Centralis<sup>n</sup>: Union monopolised C. list ✓

✓ Powers under A. 201 abused (i.e. Gov<sup>r</sup> reserving, Pres  
not returning them)



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

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

- Union : should restrict to 4 f<sup>n</sup>s : Defence, Ext Affairs, Currency, Comm<sup>n</sup>

### 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 f<sup>n</sup>s → neither desirable nor feasible.

### Punchi

- Broad agreement b4 introducing bill on C.L Subject . ISC must be used in this regard
- Transferred Subjects (42<sup>nd</sup> AA) : a) Forest, Edu, Wildlife Protec<sup>n</sup>, Adm<sup>n</sup> 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 ✓





## Issues & Irritants ~ Adm'ive

- Misuse of A. 35B
- Gov<sup>n</sup>
- Problem w.r.t AIS :
- CAD - A. 256, 257(1)(2)(3), 339, 350A (States: resent them) Punchi → tools of last resort
- Commis<sup>n</sup> of Enquiry Act, 1952 (any Comm<sup>n</sup> with powers of Civil Court can be setup)  
Punchi → this power must normally be exercised by states

## → Punchi reco on CAD

- C<sup>n</sup> provided limited insti arrangement for coord<sup>n</sup> 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, Enrg, J.

## Financial R<sup>n</sup>

- fin rel<sup>n</sup> doesnot envisage a water tight div<sup>n</sup> of resources but a fair, equitable distb<sup>n</sup>

Distrib<sup>n</sup>: Union P: tax. laws on union list Subject  
State LA: " " State " "

Residuary - P<sup>l</sup>ment

# I) Limitations on state powers to levy taxes :

- a) A-276 - Prof. tax: max ₹ 2500/annum (c<sup>n</sup> 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 tax<sup>n</sup> 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 electricy where Consumer is GOI.
- e) Immunity of instrumentalities - A-285, 289
  - (Union incomes property exempted from state taxation vice versa)
  - Art 304(1): Pres permission ↓ reqd interstate trade

# II) Fiscal Scheme under c<sup>n</sup>.

A-269 - Central Sales Tax. *what is it?*

10<sup>th</sup> FC → Alternate Scheme of Dev<sup>n</sup> ie, all taxes except Inc tax - divided b/w C & S.

Divisible pool will not extend to A-268, 269, 268A → *grudge of states* and doesnot include Cess, Surcharge

## Principles of Fis-fed'sm

- Independence & Responsibility (ie. ~~an~~ independence/autonomy be co-terminus with resp<sup>n</sup> 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 <sup>max</sup> as far as possible power to Levy, collect, appropriate - be combined)
- Integr<sup>n</sup> & Coord<sup>n</sup> (Tax<sup>n</sup>, Grants, Borrowings, Expenditur) - must be integrated.
- Equalis<sup>n</sup>/Equity w/ transfers
- Acc'ty



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

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

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

### Issues & Irritants

#### Related to FC

- Composition:
- ✓ no qualif<sup>n</sup> mentioned for CP of FC ( $\Rightarrow$  ruling party members, CMs, Cab ministers)
  - ✓ membership bias towards adm<sup>rs</sup>.
  - ✓ No rep<sup>n</sup> of States.
  - ✓ 1<sup>st</sup> 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

14<sup>th</sup> FC: Ecology, Sust dev<sup>t</sup>, 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 - (Eyenath)

Phase III - prepare & submit.

Poor estim<sup>n</sup>, Opacity, Earlier FC - destroyed their papers  $\rightarrow$  Obsession

#### 4) FC v. PC

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

Period of FC-PC Sync ✓

Do away with distinc<sup>n</sup> of plan / non-plan exp. ✓

Rajamannar : Scope must be clearly defined by amend<sup>t</sup> to C<sup>n</sup> } not accepted  
C<sup>n</sup> }  
Scope of PC be limited, no powers of disbursement

#### 5) Non-implem<sup>n</sup> of reco

Reco of 3<sup>rd</sup>, 7<sup>th</sup>, 8<sup>th</sup> FC — not accepted

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

FC formula :

Income : 50%

Pop<sup>n</sup> : 25%

Area : 10%

4) Fixed dis. : 7.5%

5) Tax eff : 7.5%

PC (Gadgil  
M. K. Jayee) :

Pop<sup>n</sup> : 60%

P. Income : 25%

Tax eff : 7.5%

Spl. prob. : 7.5%

Conditional  
not imposed by  
C<sup>n</sup> grudge  
States

Centre using FC to am-tuist

into fiscal reforms — 4, 5 conditionalities — unconst — say States.

Eg. ✓ 12<sup>th</sup> FC : Debt Consolidating Scheme — only for states enacting FRBM

✓ 14<sup>th</sup> 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'  
 $\Rightarrow$  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  $\rightarrow$  2 yrs  
Punchhi  $\rightarrow$  3 yrs  
- Royalty must be calculated in terms of % of value govt is earning from minerals not per quantum.

5) Central Pay rev<sup>n</sup> : States Suffered  $\therefore$  6<sup>th</sup> Pay c<sup>n</sup>, [Even 7<sup>th</sup> Pay Commis<sup>n</sup> announced]   
No consulting states

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

7) Industrial Devt - Centre monopolised

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

Gradgil - Pranab formula

$\downarrow$   
Punchhi recom<sup>d</sup> to revise this formula also

# Punchhi Reo on fin relations ✓

- Reduce CSS. restrict to flagship ✓
- All future Central leg<sup>n</sup> involving State (must provide Cost Sharing as given in RTE existing leg<sup>n</sup> 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<sup>t</sup> tax (₹ 2500/yr)
- State specific FRDM not whole sale \* Punchhi recommended Permanent Sec<sup>t</sup> for FC
- Fin Com<sup>n</sup> div in Fin Min → dept as permanent Sec<sup>t</sup> of 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 Commis<sup>n</sup> ✓\* → INTER STATE COMMERCE COMMISSION
- PC, no detailed approval of state annual plan.

Punchhi - "PC → role of honest broker, coord<sup>n</sup> not micis - manager"

## 13<sup>th</sup> FC relo \* (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 <sup>with</sup> NDRF  
State Calamity Relief fund → merge <sub>with</sub> SDRF

KD Job Updates

## 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 <sup>items</sup> ~~list~~" in Conc list [~Leg've] & Conc.
2. Reserved bill under A. 201  $\rightarrow$  6 months - Consent / return with reco. for modif<sup>n</sup>
3. Amend C<sup>n</sup> - Qualif<sup>n</sup> for post of Gov<sup>r</sup> - Art. 157 (currently - 35 yrs + citizen of India) { app<sup>t</sup> }  
Bommai guidelines ✓  
Nehru " ✓
4. Impeachment of Gov<sup>r</sup>  $\equiv$  Impeachment of Prez ; [A. 61] { Removal }
5. Gov<sup>r</sup> - 5 yr fixed tenure & removal not at whim of CG { Tenure }. - B.P. Singhal <sup>Raghul Tilak, not employ</sup>  
Amend [art. 156 (i)]. Decision in this respect  $\rightarrow$  fair & dignified manner befitting C<sup>n</sup> spirit
6. Scope of discretionary power A. 163(2) - narrowly construed. dictated by reason ✓  
Gov<sup>r</sup> should not be burdened with pos<sup>n</sup>, pow<sup>r</sup> not envisaged by the C<sup>n</sup> activated by good faith ✓  
tempered by caution ✓
7. A. 356 - Amend<sup>t</sup> 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 <sup>Center</sup> policy concerns 2 or more States - Comd of RS discuss, alternatives be suggested



- ✓ RS offers immense potential to suggest sol<sup>ns</sup> to friction points
  - ✓ Equal seats to all states irrespective of pop<sup>n</sup>. ✓ (~US style)
12. Scope of dev<sup>n</sup> of powers to LB — Constitutionally def<sup>d</sup>.
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 ppt<sup>n</sup> in formulation of T.O.R.
14. Planning's role in period of LPG — Coordinator & micro manager  
States must be given enough freedom in formulation of plans acc<sup>o</sup> 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<sup>d</sup> 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 - 1<sup>st</sup> 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 Res<sup>n</sup> - (emphasised ↑ assoc<sup>n</sup> of Indians in local adm<sup>n</sup>)
  - ✓ 1882 - Ripon resolution (Magna Carta of LSG)
    - ↳ → Greater induction of elected members in local bodies (≥67%)
    - App<sup>t</sup> 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 Commis<sup>n</sup> on Decentralis<sup>n</sup>: Concluded LSG, unsatisfactory because
    - Excessive official control
    - Paucity of resources
    - Non 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.  $\Rightarrow$  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 Ppt<sup>n</sup> in development progs - failed (purpose) (outcome)

$\therefore$  B'y resistant,  $\uparrow$  official control, no institutional f/w.

- Blocks as units came into existence  $\checkmark$

[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  
 $\therefore$

BRM viewed LB as dev't instl not a pol instl<sup>n</sup>

1959: NDC accepted the report

RJ, AP: Set up PRI bodies.

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

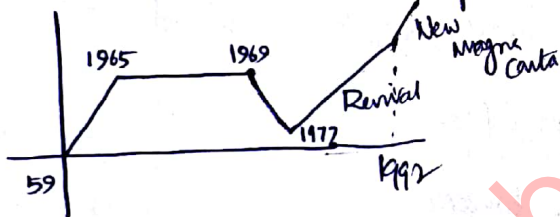
1965-69: Stagnation: ✓ Period of great instability at nat, state level  
✓ Bureaucratic resistance.  
✓ LB - faction ridden, petty rivalries.

1969-77: Decline: Era of Centralis<sup>n</sup>: ITDP, DPAP etc,

Irregularities in holding election

Nationalis<sup>n</sup>, Emergency

Corruption, B<sup>y</sup> resistance



- Ashok Mehta Cmt set up:

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

### RJ Model

- Block - neither too small, nor too large
- Block already emerged as unit of dev (CDP)
- 60-80K ⇒ ideal pop<sup>n</sup>

### MH model

- Adm<sup>n</sup>, tech staff much higher calibre @ ZP
- Dist level - balanced view
- Co-ord<sup>n</sup>: good for planning & implement<sup>n</sup>
- 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 : C<sup>n</sup> status

No party elections

Nyaya Panchayats.

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

1992 - 73<sup>rd</sup> Amend<sup>t</sup> 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<sup>vt</sup>
  - considers report on adm<sup>n</sup> of preceding year
  - proposals for fresh taxation
  - Selection of Schemes & beneficiaries

243A - GS
243G - Powers, authority, fns
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 of dev schemes ✓
- Appointing vigilance coms. ✓
- Procuring voluntary labour. ✓

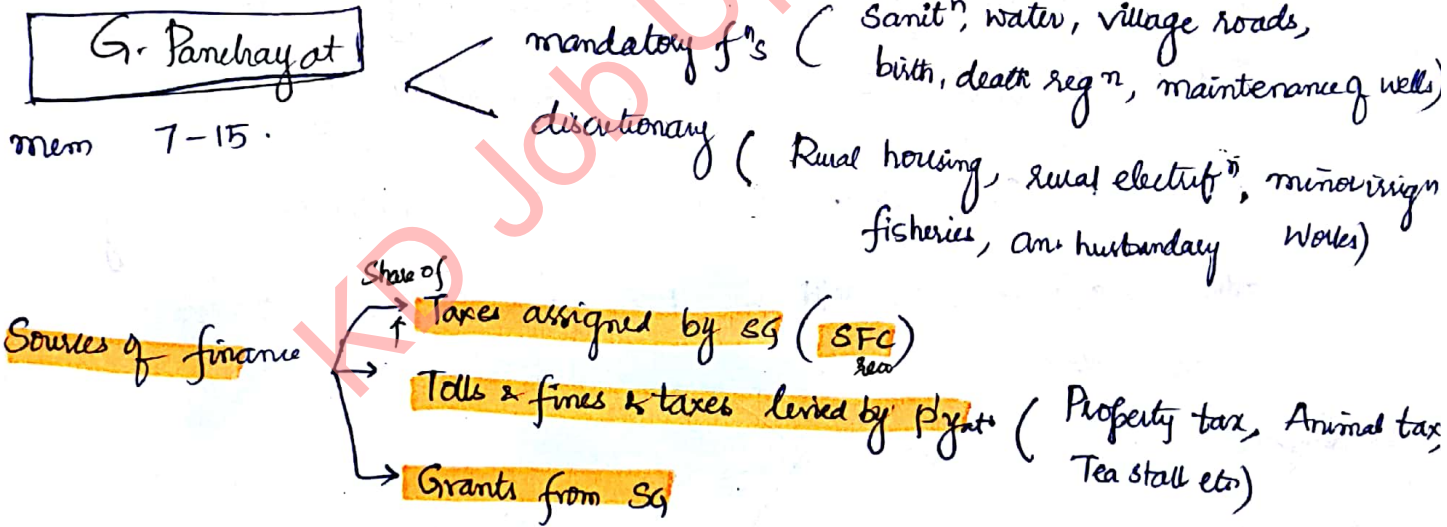
Suggestions - (GS)

- Mandatory meetings ✓
- Power of Recall ✓
- Awareness of RTI among rural populace ✓
- R'ship b/w GS - G.P<sup>vt</sup> : 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 ppt<sup>n</sup> of Women in GS meetings



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

**Block P'yat** -

- Supervising f<sup>n</sup> of GP
- Approve budget of GP.
- Co-ordinate dev<sup>n</sup> plans prepared by GP & Submit to IP
- Some other f<sup>n</sup>s are assigned by SG (inter-state variation)



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

BDO is ex-officio CEO of BP.

- f<sup>ns</sup> of BDO:
- implementing res<sup>n</sup> 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  $\Psi$  performance
- Coordinates interblock activities, dev<sup>t</sup> plans prepared by BP
- \* - Distributes funds allocated by SG ~~PR1~~ to ~~SG~~ PR1
- Informs DC & div comm<sup>n</sup> about irregularities in f<sup>n</sup> 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.

Separate Local body Service  $\left\{ \begin{array}{l} \text{for} \\ \text{against} \end{array} \right.$

Sol<sup>n</sup> (middle, lower - Local body

rest. - SG) - SG should lay down guidelines of rect.

Mun. scenin

WP, P<sub>1</sub>, RJ - ZP & PS Admin Services

~~State Parishad Service~~

} Unified Govt Service Sys upto Supervisory levels, lowest level - rect<sup>d</sup> by mun. authorities.

GJ, MH, WB - separate personnel sys - Mun. auth. rect their own

S<sup>n</sup> states - Integrated is horizontal transfer / vertical transfer

## State Control over PRI

4

**Need:** PRI - legal creations of the state  $\Rightarrow$  State resp for smooth functioning  
Ensure balanced dev't

SG can provide tech, admin, fin support to PRI

### Means:

- SG officials - power to inspect & supervise working of PRI. Can examine books, records & issue instructions
- Key personnel in all 3 tiers - by SG
- Power to supersede PRIs. Under following circumstances:
  - $\rightarrow$  Negligence of duties
  - $\rightarrow$  Irregularities
  - $\rightarrow$  Mal adm<sup>n</sup>
  - $\rightarrow$  Failure to comply with SG dir<sup>n</sup>.

Supersede, Dissolve, Suspend Res<sup>n</sup>
- Power to dissolve: Safeguards:
  - $\checkmark$  Elections within 6 months
  - $\checkmark$  Show cause to PRI before dissolution
  - $\checkmark$  Dissol<sup>n</sup> only on grounds & manner as given in State P<sup>l</sup>at Act.
- Power to remove personnel (on DC's req<sup>d</sup>)
- Power to suspend res<sup>n</sup>. DC is given the power in most states
- Annual Budget of all 3 tiers accepted by SG
- Annual adm<sup>n</sup> reports of bodies - submitted to SG
- manner of maintenance of accounts, audit done by SG
- SG can order enquiries, inv<sup>st</sup><sup>n</sup>
- SG can issue binding instructions
- SG decides min, max admin fin powers - Controls via tied grants.
- SG

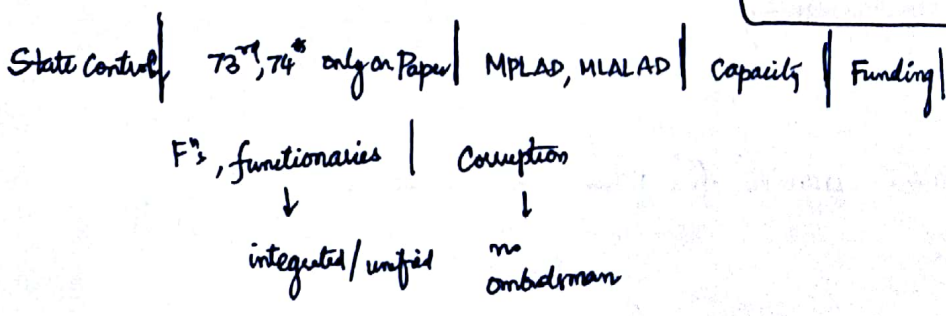
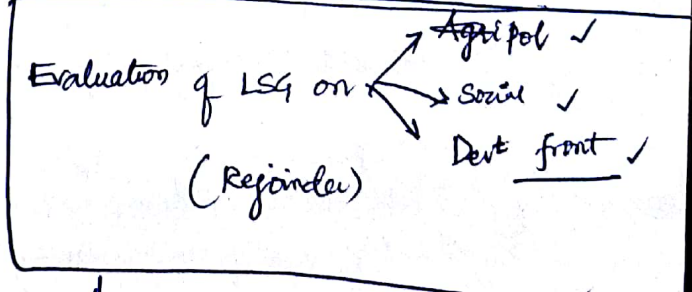


Problems in PRI

recently reported: Mallapur Mandal of Karimnagar dist, AP.  
election not held for 2 years! (LOL!)

- 1) Lack of pol. will to implement 73<sup>rd</sup> 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) 11<sup>th</sup> prog's bodies: DRDA, DH & Sanit<sup>n</sup> Societies. [ARC-2: abolish DRDA].  
Under reco. of WB, 'Water User Groups' set up - outside PRI [World Bank]
- 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



NCPRI - Pyat PIO in rural areas - 50% unaware.  
Social audit by GP in Mallapur Mandal of K. Nagar - 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:

- Shashaktigan 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 appt'd 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 centrity, decentr
- Cap building of PRI personnel + [Ind. Council for Soc Sci Research] - encouraged by fns to conduct research  
Pijat Shashaktikaran Yojana for Capacity Building
- [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: 1<sup>st</sup> Stage reqt: SEC  
SFC  
DPC  
reg. elections.

2<sup>nd</sup> Stage: 3Fs - Funds, f.

2009-10:

Top 3 - Kerala  
KTK  
TN

Bottom - Assam, Ar. P.

Bihar, Pb - poorly performy

Rajiv Gandhi Panchayat Sashaktikaran  
Yojana - as part of 12<sup>th</sup> FYP

Stats :

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

2035: UN Pop<sup>n</sup> Fund estimates that 50% - urban

65% GDP : urban areas

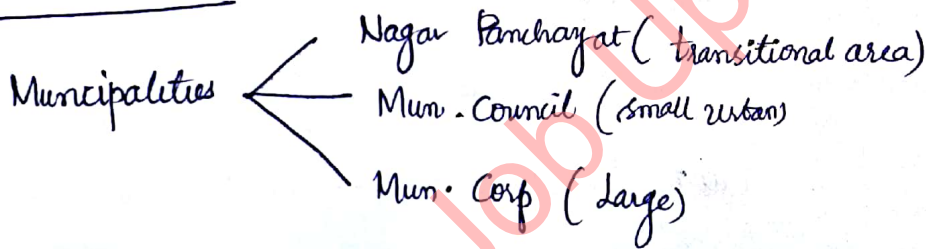
- If cities are to remain principal drivers of eco growth, quality of urban adm<sup>n</sup> and mun affairs has to become a priority.

- Urban gov<sup>t</sup> - largely neglected: M'y of Urban dev<sup>t</sup> (1985)

↳ Nat. Comm<sup>n</sup> on Urb<sup>n</sup> (1985) - headed by Charles Correa

most have incorporated in 74<sup>th</sup> CAA, 1992

74<sup>th</sup> CAA, 1992



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

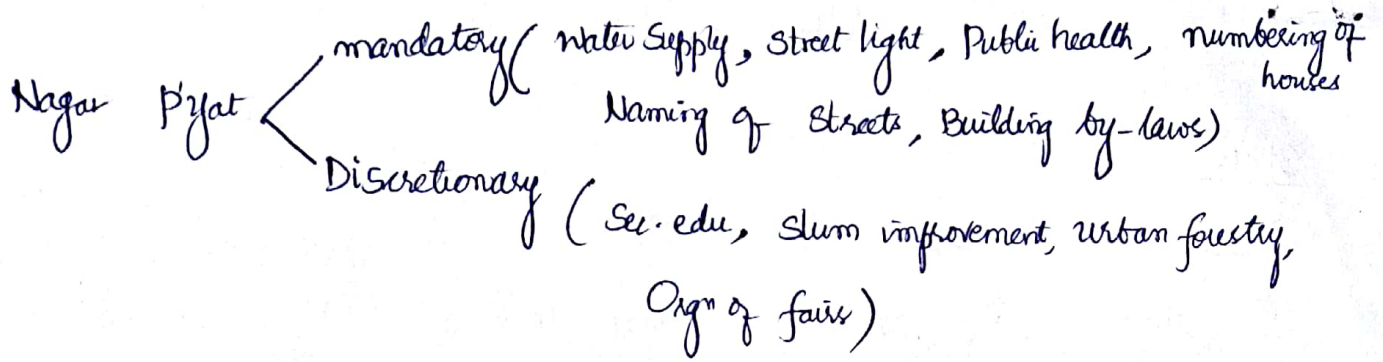
Nagar P'ayat - trans. area. Very difficult to identify trans. area

NP - should be set up with utmost care :-

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

ktk: Pop<sup>n</sup> criteria: >10,000 | MH: Pop<sup>n</sup> >20,000 | TN - revenue >30L





### Mun Council

Various criteria on pop<sup>n</sup>

Adm<sup>ve</sup> head - Secy / Commis<sup>r</sup> : belongs to State Civil Service / Mun. Adm<sup>ve</sup> Service (GJ/RJ)

Commis<sup>r</sup> - works for a tenure of 3 yrs

↳ Can be recalled if MC passes res<sup>n</sup> 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 - 1959  
- (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

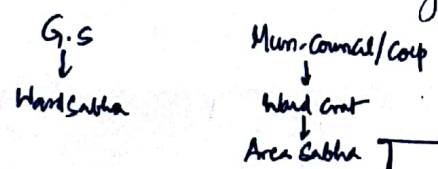
Mun. Comm<sup>r</sup>, Subordinate Staff - work under Mayor-in-Council

# Problems of Urban Adm<sup>n</sup>

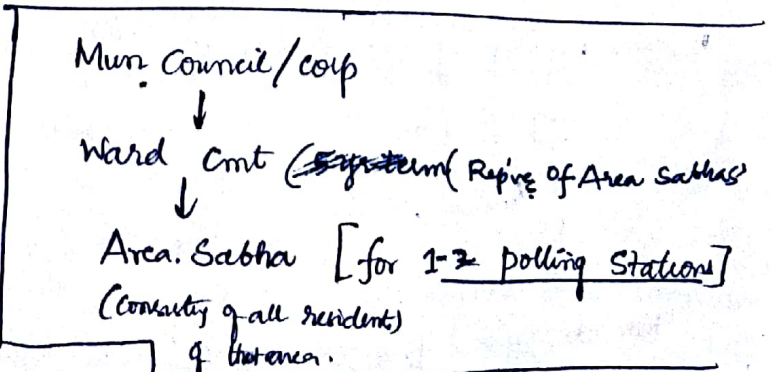
- Rising levels of urb<sup>n</sup> : (Urban sprawl, crippling infra, slums, crimes against women, pollution, crime related, poverty, unemployment, Power outage (2012: 600mill - no power))
- Corruption (in electricity discoms: theft T&D)
- Poor dev<sup>n</sup> of SFs
- Excessive SG Control,
- Emergence of Special purpose agencies (DDA, Delhi Jal Board, eg: SPCB, CPCB - Both have simultaneous jurisdiction in mun corp  
"Institutional Jungle"  
Roads: (PPP) ⇒ GoI, 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 commis<sup>n</sup> on Urb<sup>n</sup> to suggest measures to deal with rapid urb<sup>n</sup> effruit urb<sup>n</sup>



- Urban LSG Structure : 3 tier



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



- Ward coms be given legitimate f<sup>ns</sup> <sup>that can</sup> 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<sup>n</sup> - be given to Corp. SA must lay down procedures & Cond<sup>n</sup>.

## Finances - ARCC

- Abolish Octroi
- Complete Property tax reforms <sup>tax on</sup> i.e. Annual Rental value  $\rightarrow$  Annual Capital value
- Cost of tax collection need to be  $\downarrow$ , use of GIS
- Mayor to monitor tax collection
- Art 276  $\rightarrow$  In most states, tax under this to  $\rightarrow$  ULB
- Ceiling on Prof. tax ( $\approx 2500/yr$ ) - need be reviewed
- Fines for civil offences  $\uparrow$  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)
  - $\cdot$  costly to administer
  - prohibits free flow of G&S
- 2) Prof tax
- 3) Animal, vehicle tax
- 4) Terminal tax on Goods & passengers (Eg: Bus <sup>Inter-state</sup> Terminal)
- 5) Entm<sup>t</sup> tax
- 2) Non-tax: fees, fines, Earnings from mun. bodies
- 3) Loans - Borrowings
- 4) Grants from C/S (Eg: JNNURM)

### Exp

- 1) Gen admo<sup>n</sup> Expenditure
- 2) Public Instruct<sup>n</sup> - Edu
- 3) Public Health  $\rightarrow$  Vaccin<sup>n</sup>, Clinical Service
- 4) Water Supply + Sewage + Sanit<sup>n</sup>
- 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) SG can exempt any person/property

2) ↑ or abolition require SG approval

3) SG can suspend/prohibit a tax <sup>which is</sup> unfair & injurious

4) SG can direct to impose a tax on any item or to ↑ rates

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

Budget: in form & manner prescribed by SG

SG can modify budget

Loans: fixes mode of borrowing, period of repayment

Grants: SG gives 2 types of grants

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

Acct & Audit: in manner prescribed ✓  
Audited by SG 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, opp<sup>n</sup> 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 cmts 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 ← UID<sup>S</sup>MT  
BSUP ✓

### Illustrations of New Localism in India

CC/Social Audit (RTI)  
Time bound delivery

[Purkh folder]

73<sup>rd</sup>, 74<sup>th</sup> 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

Budget as political instrument - "Dimock & Dimock def" ✓  
Lloyd George ✓

Fayol, Kautilya

Wildawsky: "Budget is a series of goals with priorities 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. Bill & Appr<sup>n</sup> 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: Appr<sup>n</sup> 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 ppl<sup>n</sup> 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, η 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 the budget is

passed by P'ment. However, due to practical difficulties, committee completes its exam<sup>n</sup> of estimates after Budget is passed i.e. becomes "fait-accompli"

Yet, the fear that somebody will be checking the estimates — <sup>Keeps</sup> ~~makes~~ dept's ~~stand~~ on their toes.  
→ Sometimes may create friction ∵ EC may adversely comment on Govt policy. Eg: Once EC considered app<sup>t</sup> of Cab Secy as Secy of PC undesirable — effective check even on adm<sup>n</sup>ve matters

**PAC**

22  $\left\{ \begin{array}{l} 15 \text{ LS} \\ 7 \text{ RS} \end{array} \right.$

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

→ Proprietary audit

→ audit of accounts

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

- Assisted by CAG

- Scrutinises & ~~prep~~ tables PAC report in P'ment.

+ves: 61% of Recs of PAC — accepted in 1<sup>st</sup> instance ✓  
+ves: Cross party culture ✓

**CoPU**

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

22  $\left\{ \begin{array}{l} 15 \text{ mem LS} \\ 7 \text{ mem RS} \end{array} \right.$

Functioning of these comts: — Each of these comts has Sect<sup>t</sup> 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  $\left\{ \begin{array}{l} \text{Recs accepted} \\ \text{not} \\ \text{under consideration} \end{array} \right.$

## Critique of their functioning

(Add genuine +ves)

3

-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<sup>n</sup> (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'<sup>ex-post</sup> in nature. Cannot control mal-adm<sup>n</sup> at the time when they are about to take place.

## Suggestions

Strength ↑ ; Computeris<sup>n</sup> ↑ ; Govt ATR with reasons within stipulated time limit;


- ✓ → Strength of Cmts to be ↑ to cope up with ↑ load. ↑ strength ⇒ ↑ frequency of exam<sup>n</sup>
- Computeris<sup>n</sup> 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 consider<sup>n</sup>' are accepted or 'rejected' ✓





Budget Div (DEA)

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

- Budget div<sup>n</sup> — prepares Statements of Revenue (@ current rates) & estimates of expenditure (consolidated by preparing) 
  
 Reg, Part II B (new heads) <sup>new demands</sup> detailed scrutiny is done by this div examining need, justif<sup>n</sup>, its req<sup>t</sup> as part of Govt policy etc,

Plan II - Central  
Funds

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

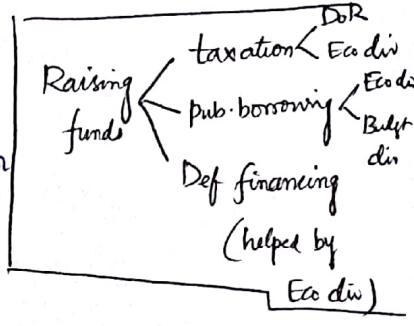
✓ Deals with Part I of Budget estimates

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

- DoR may advise about ↑ taxation (Eco div)
- DEA: 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 justif<sup>n</sup>, 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 release money for next quarter unless acct for prev quarter is furnished. (5)

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

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

Role of CGA      Accounting def<sup>n</sup>  
1970's audit & acct separation

IFA  
↓  
Principal Acct off  
↓  
Pay & Acct office

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

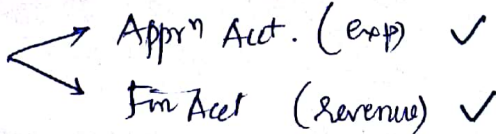
- CGA is the principal Accounts Adviser to GoI and is responsible for establishing and maintaining technically sound mgt of accounting system.

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

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

- CGA has powers 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 

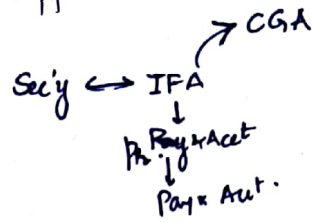
- CGA exercises budgetary control over exp. via [Pay & Acct office] who has the authority to release payments of all claims arising out of govt operations.



Appr<sup>n</sup> acct shows exp incurred against appr<sup>n</sup> made by P<sup>r</sup>ments, in prev. FY.

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

Broadly f<sup>n</sup>s of CGA:



- 1) To formulate policy related to general principles, form, procedure of accounting for the entire CG & SG
- 2) Oversee payment, receipts & acct<sup>g</sup> matters of Central <sup>civil</sup> ministries/dep via Civil Acct<sup>t</sup> Org<sup>n</sup>.
- 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 - recr<sup>t</sup>, deployment, Career mgt within Indian Civil Acct<sup>t</sup> Org<sup>n</sup>.
- 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. ✓
- 12<sup>th</sup> FC rec<sup>d</sup>: gradual move towards accrual base undertaken ✓
- Developed an advance Internal Control & Audit sys for Govt depts. ✓
- Dev<sup>d</sup> a modern, unified, multidim sys of accounting ✓

2<sup>nd</sup> ARC rec<sup>d</sup>:  
App<sup>t</sup> of a task force for conducting a Cost-benefit analysis to suggest modif<sup>c</sup> in App<sup>n</sup> & 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 Const<sup>n</sup> 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 adm<sup>n</sup>."

Cm: ✓ Art 148 — There shall be a CAG whose pos<sup>n</sup> 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 —

CAG REPORT

→ PMENT!

prescribes that his reports are submitted to President/Gov<sup>t</sup> and placed before respective legislatures.

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<sup>t</sup> 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, he ascertains and certifies net proceeds of taxes levied and collected by the Union but assigned to States; distributed b/w Union & States.

A-279

FIDUCIARY

ROLE

C-S R'ship

\* 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 :

(~ Ashoka 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  
Ashoka Chandra

Wider authority: of CAG

- 1) His Oath → (under Sch-3) to uphold C<sup>n</sup> & 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 (Ashoka Chandra) - Agent of P'ment ✓
- 4) His role is to maintain the <sup>Char ↓</sup> 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 does not 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 (R.G. & Arora)

2 schools ← R.K. Arora  
Paul Appleby

Assessment of CAG makes 2 very diverse opinions visible ← CAG most useful public servant  
Paul Appleby's 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 adm<sup>n</sup> & auditing is a pedestrian fr<sup>n</sup> with a narrow perspective  
→ A deputy secy knows more about dept problems than CAG.

Rebuttal to Appleby's view : a) → Entire adm<sup>n</sup> 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 & adm<sup>n</sup> being complementary. not able to appreciate that audit & adm<sup>n</sup> 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 & Adm<sup>n</sup>

## 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 C<sup>n</sup> to go beyond regulatory auditing. ★ Key
- 2<sup>nd</sup> ARC: - CAG reports are sometimes unduly -ve & fault-finding in nature. ← fault-finding
- Auditing does not recognise practical constraints (Appleby). It does not 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 adm<sup>n</sup>

- ✓ "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



1950: Good system envisaged yet distanced.

1958 - system was derided:

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<sup>t</sup> 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 2<sup>nd</sup> 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 ~~read~~ readable to common man.

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

✓ CAG started giv<sup>g</sup> rec<sup>s</sup> on improvements in govt system. i.e. moving away

audit paras & indiv irregularities → thematic audit & 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.



# 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 compet<sup>n</sup> (1854)
- By 1909 - 9 AIS created common to federal, provincial level  
Montford - 33% 50%
- Islington - recommended indianis<sup>n</sup> of CS ←
- Lee Com<sup>n</sup> : FPSC set up (1926)

## Rationale behind AIS

- Common Service b/w C.S
- better day-to-day adm<sup>n</sup>
- understanding, co-ord<sup>n</sup>
- ↓ C-S tensions
- ↑ federalism, nat unity
- Req<sup>d</sup> in context of A-35<sup>b</sup>
- historical reasons (Centrifugal forces) } contributed to  
planned dev<sup>t</sup> } 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 com<sup>n</sup> - 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<sup>ns</sup> of AIS referred by C/S.

Relevance of AIS [Recent Phailin mgt 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 adm<sup>n</sup>)
- 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

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, domain<sup>n</sup>
  - prep<sup>n</sup> of long term training plans
  - Nat, state level Training Boards (for co-ord<sup>n</sup>) implement<sup>n</sup> Evaluation
  - thrust on attitudinal train<sup>n</sup> of lower level functionaries

Top - focus : mental horizon broadening  
Vision, Co-ord<sup>n</sup>, PF, PE

Med - Prof knowledge, skills

Low - Public Service ethos, attitudinal orient<sup>n</sup>

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

PF: Pol<sup>n</sup> - aggregates public opinion, can't satisfy all

- By - injects balance in PF
- prov<sup>n</sup> 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 pol<sup>n</sup> no match for expert B'crat)  
 $\downarrow$   
thwarts ideas against self interest
- 3) Recent Nagpal issue - power at the hands. [politic<sup>n</sup> of personnel mgt]  
vitalized 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 > loyrs flouted by PMD 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   
     minor - Censure, withholding increment/promotion   
     major - "red" in rank, dismissal/removal

## Problems in disciplinary action:

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



# UPSC / SPC

✓ A. 315

Mandate : → Conduat Exam, Interview

→ advisory - promotion, disciplinary

- claims for compensation - legal proceedings

- claims for reimbursement : injury while in duty

- principles reg rectt <sup>via</sup> CSE

## Issues

- Art. 320(3) - being abused

- UPSC: symbol of integrity lived up to its stature

- Maheshwari : PSC menaced by 3 problems

→ Technological (overload info)

→ 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 Comt - 'Scaling' working fine)

## Suggestions

→ Status be equated to Apex Court

→ Cond<sup>ns</sup> of Service - governed by legis<sup>n</sup> ✓ \*

→ ARC 1: Chairperson UPSC - be consulted before appointing UPSC mem & his successor

\*  $\frac{2+1}{3}$  mem - Should be from amongst gov officials (> H.O.D pos<sup>n</sup> / Secy)

Univ degree academic qualif<sup>n</sup>

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 Commis<sup>n</sup> 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

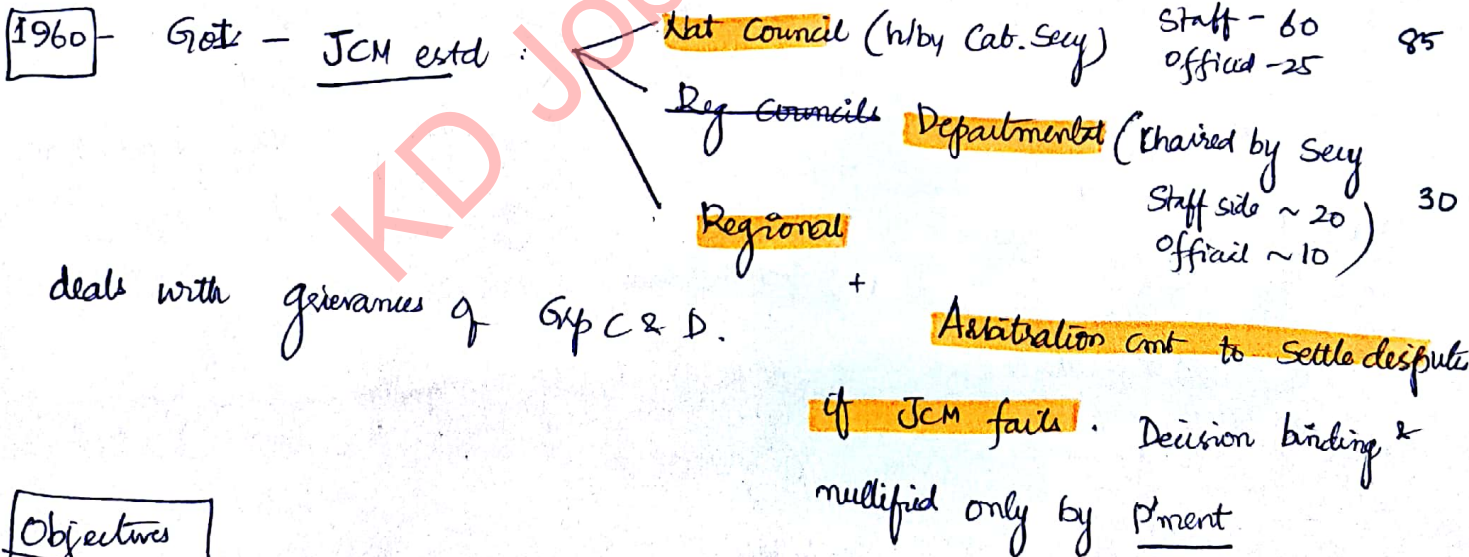
## ARC 1

- ✓ 1 mem → outside the state
- ✓ univ degree
- ✓ UPSC chairman consult<sup>n</sup> while app<sup>t</sup> of SPSC mem

## Employer - Employee (JCM + CAT)

1<sup>st</sup> Pay Commis - suggested Whitley machinery.

1954: Staff Councils Setup - but failed



## Objectives

- To foster harmonious relation b/w Govt, employees
- Secure co-op<sup>n</sup> b/w Govt & employee
- ↑ η of public Service.





## Civil Service Activism add. material

Sardar Patel wrote to Seay - "that latter should be totally, fair, frank in expressing his views even to the expression of dissent if C<sup>n</sup>, moral conscience tells him to.

**Fessler's Kettle** - resp'ty of civil servant = acct'y + 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

"def<sup>n</sup>: "CSA refers to scenario where C. servants step out of and tread unchartered, ~~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 <sup>to a course of action</sup>, 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 C<sup>n</sup> 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 ✓

9

## Code of Conduct

- Restriction on pol. activities
- Pol. neutrality
- Economic — immovable property, gifts (₹ ≥ 100), 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 C<sup>n</sup>, laws and public at large, not soliciting patronage from any party for vested interests.
- Essence behind Part XIV of C<sup>n</sup> is neutrality of C-Service

- 3 Concepts (dimensions)

- neutral to cultural group/communities ✓
- pol. neutrality ✓
- neutral to Economic groups. ✓

Anonymity  $\Rightarrow$  minister alone is answerable to P<sup>ment</sup>,

Neutrality vs Commitment

- Legacy of British civil service

- neutrality in 2 main respects

- PF (prerogative of minister, F<sup>3</sup> advice)
- PI (highest devotion to duty irrespective of which party is in power)

\* **F.M. Marx** - "Adm<sup>ve</sup> 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:

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

Code of Conduct maintains C.S.N in India

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

Morale of C-Service

- $\rightarrow$  P.S. Appu
- $\rightarrow$  Kuldip Nayyar - "Degenerated By" - book Bihar
- $\rightarrow$  Abhash Kumar Chatterja - 26 page resign letter.



P. R.B.  
**Dwivedi & Jain** - "It is impossible for any enlightened <sup>but</sup> 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'g 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 C<sup>n</sup>, laws, DPSP, Preamble.

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

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

## 14. Issues in Indian Adm<sup>n</sup>

Citizen - Adm<sup>n</sup> 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  
99% integrity is hypocrisy.

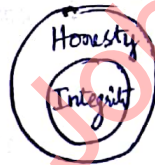
Nat. Assoc<sup>n</sup> of Schools of Public Affairs & Adm<sup>n</sup> (NASPAA) - gives 5 Core values

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 = ~~honesty~~ in essence  $\Rightarrow$  adherence to moral principles.

a 3-step process: choosing the <sup>morally</sup> 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.



2<sup>nd</sup> 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

2

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 C<sup>n</sup>

2nd cov: India doesn't recognise enforceable R. to Compens<sup>n</sup>

Also equal oppor, r to self-d 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 (serving/ret'd)  
1 CJ of HC (serving/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<sub>sp</sub> + RS<sub>Dy,sp</sub>] + [LOP<sub>LS</sub> + LOP<sub>RS</sub>]

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/omnis<sup>n</sup> by C servant
- \* Intervene - in proceedings involving HR violation (pending before court)



- Visit Jail & study & recommend
- Review safeguards under C<sup>n</sup> & recommend for 45 implemen<sup>n</sup>
- 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 (Prev<sup>n</sup> & 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 SHRC in all states, even if they are - f<sup>n</sup> lackadaisical
- 1 NHRC : 1.2b pop<sup>n</sup>
- Dec<sup>s</sup> - not binding on govt, but delays in implemen<sup>n</sup>
- Meagre finances
- Inadequacy of HR Courts
- Jurisdiction - not clearly defined : blessing in disguise
- One yr rule
- Poor Awareness

- NHRC makes rules for trans<sup>n</sup> of biz
- (Some rules out of sync :
  - They'll not entertain complaints - some matters

- Sec 11 of NHRC Act - makes Comm<sup>n</sup> dependent on govt for invstg purposes

- Problems with Composition: <sup>Selection</sup> Cmt ~~has~~ membership - politicians only: disingenuous \*

- No invstg<sup>n</sup> into HR violation by armed forces \*

- No power to enforce decisions \*

## Corruption & Adm<sup>n</sup>

### Puri [rejoinder]



Sources of Corruption:

- Economic: Consumerism, lust for money, LQPR
- Social: Sanskritis<sup>n</sup>, W<sup>n</sup>, Erosion of values, urbanis<sup>n</sup>
- Legal: 197 CrPc, A. 311, Sec. 19 PoCA, 1988; Sec 6A, DSPE
- OSA, mystif<sup>n</sup>, complex rules, ← Adm<sup>n</sup>: → Secrecy, asymmetry, Pol<sup>n</sup> 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 Transac<sup>n</sup> 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.

Santharam 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 pos<sup>n</sup>
- Deviation from rules, laws
- Non-action when action is req<sup>d</sup>
- Selfish motive
- monetary or non-monetary
- harm to public good.

136(ii)  
PCA

Effects

Acc to T. I

Costs/Effects of Corruption:

- Pol: (Erodes democracy, breach of rule of law)
- Eco: (depletes nat wealth, cripples dev<sup>t</sup>)
- Social: (undermines social fabric, distrust, crime)
- Env<sup>t</sup>: (Env<sup>t</sup> degradation)

- Whenever there is excess conc. of power, little acc<sup>t</sup>y, 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<sup>ns</sup> 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 org<sup>n</sup>.

## 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 <sup>n</sup> al
Electoral corrup <sup>n</sup> Babu-Neta Nexus Liquor, paid news.	Sanskritis <sup>n</sup> W <sup>m</sup> , us <sup>n</sup> Lust for money Erosion of moral values & ethics	Consumerism :	Single directive - Secrecy, mystif <sup>n</sup> - 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 & Bcrats are partners in bending rules. Both provide support for each other for their common benefits.

### Measures to Contain Corruption (Santhanam reco)

- A. 311 - repealed

- Simplif<sup>n</sup> 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 Commis<sup>n</sup>.

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<sup>'ve</sup> of another person.

Sweden - 1<sup>st</sup> country to establish this 1809

Finland, Denmark.

### Reasons for popularity :

Expansion of govt activities, discretionary powers to public officials  
delegated leg<sup>n</sup>, ↑ chance of abuse

- \* ineffectiveness of leg<sup>'ve</sup> control over exec
- \* dilatoriness of judicial courts
- \* Scarcity of admin<sup>'ve</sup> courts



## Criteria for <sup>a good</sup> 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 app'td LA. NE (Assam) + WB + TN + J&K + Goa (No LA)
- MH, RJ - no specific Qualif<sup>n</sup> for LA post; AP, K&K, GJ: LA → need jud qualif<sup>n</sup>
- MH, RJ, MP: Gov<sup>r</sup> in Consult<sup>n</sup> with CM + CJHC + LOP  
AP: Gov<sup>r</sup> in Consult<sup>n</sup> with CM + CJHC.
- \* → ~~Odisha~~ Odisha, MH, RJ, UP: CM excluded  
MP, GJ, AP: CM included.
- MH: Even former civil servants are covered.

→ MH, Bi, K&K  
- maladm<sup>n</sup> + corruption

## Performance (review)

N.T. Rama Rao dismissed LA instn<sup>n</sup> for a while

Orissa - app<sup>t</sup> 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 cont on LA to monitor & follow up the implement<sup>n</sup> of reco.
- HC should dispose of cases expeditiously filed before it.

Recent: GJ: Kamla Benival app<sup>t</sup> LA w/o consulting CM.

- as far as possible the acrimony should be avoided.



## 2<sup>nd</sup> ARC reco

Political | Judicial | Adm'ive

- Pol :
- 1) partial state funding of elections
  - 2) Disqualif<sup>n</sup> on defection - decided by Prez/Gov<sup>n</sup> ✓
  - 3) Sec(6) of RPA - amend to disqualify criminals from <sup>seats</sup> 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 recomm<sup>n</sup> to Prez
  - COC, enforces judge

Adm'ive :

POCA → amend to include following :

- Obstruction of justice ✓
- Gross perversion of C<sup>n</sup> & democratic insti ✓
- Squandering public money ✓
- Collusive bribery ✓

Sanction :

- ✓ Single directive - decided by <sup>headed by</sup> cmt, of CVC, Cab secy, Dept secy
- ✓ 2<sup>nd</sup> 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 ✓

innovative

Fraud Net - whistle blower mechanism: US

Qui tam enforcement

Raising matter personally with Civil Service

Corruption - UK

measures he undertook

- False Claims Act

- Social Audit to all

- Integrity Pacts

- Separate column in APR of C-sevants

- ICT, etc, \*

Add:

Corruption in pvt sector:

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

Refer other recs. of SARC Recs. ✓

KD Job Updates



# Union Judiciary (R.K. Arora)

[Art 124-147]

NCRWC recs:  $\swarrow$  Jud App<sup>t</sup> Commis<sup>n</sup>  
 $\searrow$  for app<sup>t</sup>  $\swarrow$  duty to look into allegations

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

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

Independence of J maintained by

- 1) App<sup>t</sup> of judges & officers by CJI  $\rightarrow$  ✓
- 2) Tenure (fixed)  $\rightarrow$  ✓
- 3) No practice post retirement
- 4) Removal
- 5) Salary - CFI
- 6) Immunities - no discussion in P<sup>ar</sup>ment except on impeachment motion
- 7) Art 138.

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

Union & State  
+ State

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

↳ Art 133 - civil appellate involving Substantiated 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 143 - Advisory J

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

~~Art 1~~

### J. Review

Originated from <sup>the famous</sup> Marbury vs Madison Case (1803) when Justice Marshall observed that SC had power to look into C<sup>o</sup> of an act.

Black's Law Dictionary:

J.R is the power of the courts to pass judgements upon the

C<sup>o</sup> 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" - Rt to Livelihood upheld by SC  
vs Bombay Mun Corp



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.  
Envt issues etc,

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

J becomes a virtual law maker, a 11<sup>th</sup> branch of L.  
3<sup>rd</sup> 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 admit reality & complexity in which Exec

Sol<sup>n</sup> : More interaction b/w retd judges → political actors ; Nat. Jud Com<sup>n</sup> annually = hd by CJI to take stock of J. adm<sup>n</sup> in the country (like ancomp)  
9<sup>th</sup> Sch, post 1973 acts - no immunity.

### Recently

IR Coelho vs State of TN :

### 2<sup>nd</sup> ARC

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

2<sup>nd</sup> ARC reco - a separate Jud Value Commission (a senior judge of SC)

Add Recent : Nat Jud App<sup>t</sup> Commis<sup>n</sup>. ✓

### Suggestions :

- Malimath's reco ✓

- 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, "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 adventurism.

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

Dispute Redressal Mechanisms & Institutions (4)

- Nyaya Panchayats
- Courts
- L. Adalat
- Consumer Grievance Redressal Tribunals
- forums

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 res<sup>n</sup> 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<sup>t</sup> (as in IEvid<sup>nc</sup> 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