

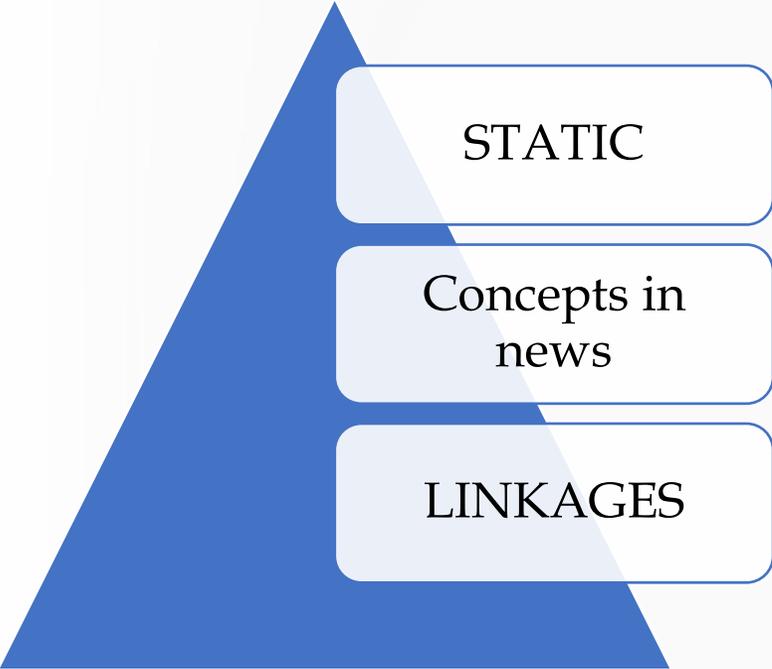


# 50 Important Concepts of Polity

## Part 3

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# What is the central idea for polity?



STATIC

Concepts in news

LINKAGES

Today's session

SYSTEM OF GOVERNMENT,  
PARLIAMENT AND  
JUDICIARY.

RELATED CONCEPTS IN NEWS

# PARLIAMENTARY SYSTEM OF GOVERNMENT

# Parliamentary System Of Government



- Constitution provides for a parliamentary form of government, both at Centre and in states. Articles 74 and 75 deal with the parliamentary system at Centre and Articles 163 and 164 in states.
- The parliamentary government is also known as Cabinet government or Responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada, India among others.
- Under Parliamentary system of government, executive is responsible to the legislature for its policies and acts. (In particular to the Lok Sabha - Article 75).
- The Presidential system of government, on the other hand, is one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature in respect of its term of office.

# Parliamentary System Of Government

## Features

- Nominal and Real Executives
- Majority Party Rule
- Collective Responsibility
- Political Homogeneity
- Double Membership
- Leadership of the Prime Minister
- Dissolution of the Lower House



# Parliamentary System Of Government

MERITS

Harmony between legislature and executive.  
Responsible government.  
Prevents despotism.  
Wide representation

Unstable government.  
No continuity of policies.  
Dictatorship of the Cabinet  
Against separation of powers  
Government by amateurs

DEMERITS

# FEDERAL SYSTEM

# Federal Government

- By definition, a unitary government is one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government.
- A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.

# Parliamentary System Of Government

## FEDERAL Government Features



# EMERGENCY PROVISIONS

# Emergency Provisions

## Why in News -

- In the aftermath of the coronavirus (COVID-19) epidemic, petition asks Supreme Court to declare a national financial emergency under Article 360 of the Constitution.
- Supreme Court has agreed to hear a plea seeking directions to the Centre to impose President's Rule in West Bengal over alleged incidents of post-poll violence in the state.
- Supreme Court has dismissed a PIL that sought imposition of President's rule in Uttar Pradesh for alleged breakdown of constitutional machinery and rising crime in the state.
- President's Rule was imposed in the Union Territory of Puducherry.



# Emergency Provisions

- Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360.
- Emergency **converts the federal structure into a unitary one without a formal amendment of the Constitution.**
- Constitution stipulates three types of emergencies:
  - An emergency due to war, external aggression or armed rebellion (Article 352) - **National Emergency.**
  - An Emergency due to the failure of the constitutional machinery in the states (Article 356). - **President's Rule', 'State Emergency' or 'constitutional Emergency'.**
  - **Financial Emergency** due to a threat to the financial stability or credit of India (Article 360).



# National Emergency

- When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency' and when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.
- It may be applicable to the entire country or only a part of it. (42<sup>nd</sup> AA, 1976).
- 44<sup>th</sup> AA of 1978 substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance'.
- The President can proclaim a national emergency only after receiving a written recommendation from the cabinet. (44<sup>th</sup> AA, 1978).
- **44<sup>th</sup> AA, 1978 provided for JR.**



# National Emergency

- Proclamation of Emergency **must be approved by both the Houses of Parliament within one month from the date of its issue** (reduced from 2 months by 44<sup>th</sup> AA, 1978) or until 30 days from the first sitting of the Lok Sabha after its reconstitution.
- Emergency continues for six months and **can be extended to an indefinite period** with an approval of the Parliament for every six months.
- Every resolution approving the proclamation of emergency, or its continuance **must be passed by either House of Parliament by a special majority (44<sup>th</sup> AA, 1978).**
- A proclamation of emergency **may be revoked by the President at any time by a subsequent proclamation.** Such a proclamation does not require the parliamentary approval.
- President **must revoke a proclamation if the Lok Sabha passes a resolution by simple majority disapproving its continuation.**



# National Emergency

## Effect of emergency

- Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.
- Parliament becomes empowered to make laws on any subject mentioned in the State List. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament.
- Life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.



# National Emergency

## On FRs

- According to Article 358, when a proclamation of national emergency is made, the six Fundamental Rights under Article 19 are automatically suspended. However, FRs under Article 19 can be suspended **only when National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion.**
- Article 359 authorizes the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. This means that under Article 359, FRs as such are not suspended, but only their enforcement is.
- However, President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 to 21.



# State Emergency



- Article 356 empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution.
- Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.
- A proclamation imposing President's Rule must be approved by both the Houses of Parliament **within two months** from the date of its issue.

# State Emergency

- If approved by both the Houses of Parliament, the **President's Rule continues for six months**. It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- 44th Amendment Act of 1978 provided that, **beyond one year, the President's Rule can be extended by six months at a time only** when the following **two conditions** are fulfilled:
  - proclamation of **National Emergency** should be in **operation** in the whole of India, or in the whole or any part of the state; and
  - **Election Commission** must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.



# State Emergency

## Effect of emergency

- **President dismisses the state council of ministers headed by the chief minister.** The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President.
- **President either suspends or dissolves the state legislative assembly.**
- Parliament passes the state legislative bills and the state budget.
- A law made by the Parliament or the President or any other specified authority continues to be operative even after the President's Rule.
- President cannot assume powers vested in the concerned state high court.



# State Emergency



- 44<sup>th</sup> AA act provided for JR in case of state emergency.
- Supreme Court in Bommai case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper.
  - Accordingly, it is improper to exercise power of state emergency in case of –
    - Internal disturbances not amounting to internal subversion or physical breakdown and
    - Maladministration in the state or allegations of corruption against the ministry.

# Financial emergency

## Financial emergency (Article 360)

- Empowers president to proclaim a Financial Emergency if situation arises due to which the financial stability or credit of India or any part of its territory is threatened.
- proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
- Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.
- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority.



# PARLIAMENT

# Parliamentary sessions



- President from time to time summons each House of Parliament to meet. But, maximum gap between two sessions of Parliament cannot be more than six months (Article 85). In other words, Parliament should meet at least twice a year. There are usually three sessions in a year, viz,
- *The Budget Session* (February to May); *the Monsoon Session* (July to September) and *the Winter Session* (November to December).

# Parliamentary sessions

**Adjournment** - suspends the work in a sitting for a specified time, which may be hours, days or weeks.

**Adjournment sine die** - terminates a sitting of Parliament for an indefinite period. This is done by the Presiding Officer.

Terms related to parliamentary sessions.

**Prorogation** - It not only terminates a sitting but also a session of the House. It is done by the President of India. It does not affect the bills or any other business pending before the House.

**Dissolution** - Specific to Lok Sabha, dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. On dissolution, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse.

# Parliamentary Committees



## 100th Anniversary Of Public Accounts Committee

- This committee was set up first in 1921 under the provisions of the Government of India Act of 1919.
- At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha).
- Members are **elected by the Parliament every year from amongst its members** according to the principle of **proportional representation by means of the single transferable vote.**
- The term of office of the members is **one year.**
- A **minister cannot be elected** as a member of the committee.



# Parliamentary Committees



- The chairman of the committee is appointed from amongst its members by the Speaker. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the Opposition.
- The function of the committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the President.

# Parliamentary Committees



## Estimates Committee

- The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister.
- It has 30 members and all are from Lok Sabha only.
- The function of the committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure. Hence, it has been described as a 'continuous economy committee'.

# Parliamentary Committees



- These members are **elected by the Lok Sabha** every year from amongst its own members, according to the principles of **proportional representation by means of a single transferable vote**.
- The term of office is **one year**. A **minister cannot be elected** as a member of the committee.
- The **chairman of the committee is appointed by the Speaker** from amongst its members and he is invariably from the ruling party.

# Parliamentary Committees



## Committee on Public Undertakings

- This committee was created in 1964 on the recommendation of the Krishna Menon Committee.
- Consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha).
- The chairman of the committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only.
- Functions: To examine the reports and accounts of public undertakings and the CAG reports on them.

# Parliamentary Committees



## Departmental Standing Committees

- Set up on the recommendation of the rules committee. At present, there are 24 DRSCs.
- The main objective of the standing committees is to secure more accountability of the Executive (i.e., the Council of Ministers) to the Parliament, particularly financial accountability.
- Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha).
- A minister is not eligible to be nominated as a member.
- Term is one year.

# Legislative Council

- Cabinet approved the proposal for creation of a Legislative Council in West Bengal.
- The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, **the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect.**
- Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting.



# Legislative Council



- However, this Act of Parliament is not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (i.e., by simple majority).
- The members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40.
- Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament.



# Legislative Council

- Manner of Election - Of the total number of members of a legislative council:
  - 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
  - 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
  - 1/12 are elected by graduates of three years standing and residing within the state,
  - 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,

# Legislative Council



- the remainder(1/6) are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.
- The legislative council is a continuing chamber, **one-third of its members retire on the expiration of every second year**. So, a member continues as such for **six years**.
- Chairman of Council is **elected by the council itself from amongst its members**.

# Devices of Parliamentary proceedings



## Question Hour

- The **first hour of every parliamentary sitting** is slotted for this. The questions are of three kinds, namely, starred, unstarred and short notice.
- A **starred question** (distinguished by an asterisk) **requires an oral answer and hence supplementary questions can follow.**
- An **unstarred question**, on the other hand, **requires a written answer and hence, supplementary questions cannot follow.**
- A **short notice question** is one that is asked by **giving a notice of less than ten days. It is answered orally.**

# Devices of Parliamentary proceedings



## Zero Hour

- Unlike the question hour, **the zero hour is not mentioned in the Rules of Procedure**. Thus, it is an **informal device** available to the members of the Parliament to raise matters without any prior notice.
- The zero hour **starts immediately after the question hour and lasts until the agenda for the day** (ie, regular business of the House) is taken up.

# Devices of Parliamentary proceedings



## Adjournment Motion

- It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance and needs the support of 50 members to be admitted.
- It involves an element of censure against the government and hence **Rajya Sabha is not permitted to make use of this device.** The discussion on an adjournment motion should last for not less than two hours and thirty minutes.



# Devices of Parliamentary proceedings

**Table 22.2** *Censure Motion vs No Confidence Motion*

Censure Motion	No-Confidence Motion
1. It should state the reasons for its adoption in the Lok Sabha.	1. It need not state the reasons for its adoption in the Lok Sabha.
2. It can be moved against an individual minister or a group of ministers or the entire council of ministers.	2. It can be moved against the entire council of ministers only.
3. It is moved for censuring the council of ministers for specific policies and actions.	3. It is moved for ascertaining the confidence of Lok Sabha in the council of ministers.
4. If it is passed in the Lok Sabha, the council of ministers need not resign from the office.	4. If it is passed in the Lok Sabha, the council of ministers must resign from office.



# JUDICIARY

# Tribunals Reforms (Rationalization and Conditions of Service) Act, 2021



## KEY PROVISIONS

- Dissolution of Existing Bodies: The Bill seeks to dissolve certain appellate bodies and transfer their functions to other existing judicial bodies. For example, the disputes heard by the Film Certification Appellate Tribunal will be addressed by the High Court.
- Eligibility and Term of Office: The Bill provides for a four-year term of office (subject to the upper age limit of 70 years for the Chairperson, and 67 years for members).
- Search-cum-selection Committees: The Chairperson and Members of the Tribunals will be appointed by the central government on the recommendation of a Search-cum-Selection Committee.

# Tribunals Reforms (Rationalization and Conditions of Service) Act, 2021

Members of the Search cum selection committee include –

- the Chief Justice of India, or a Supreme Court Judge nominated by him, as the Chairperson (with a second casting vote in case of a tie).
- two Secretaries nominated by the central government,
- the sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court, and
- the Secretary of the Ministry under which the Tribunal is constituted (with no voting right).



# Tribunals Reforms (Rationalization and Conditions of Service) Act, 2021



- **Constitutional Provisions regarding Tribunals**

- Tribunals were not part of the original constitution, it was incorporated in the Indian Constitution by 42nd Amendment Act, 1976.
- Article 323-A: It deals with Administrative Tribunals.
- Article 323-B: It deals with tribunals for other matters.
- Article 262 – Tribunals related to conflicts surrounding inter-state rivers.



# Mediation Bill, 2021



- Bill seeks to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial and otherwise and to enforce mediated settlement agreements.
- It promises **an effective dispute resolution process which can improve 'ease of doing business'** in the country.

# Mediation Bill, 2021



## Key features of the Bill

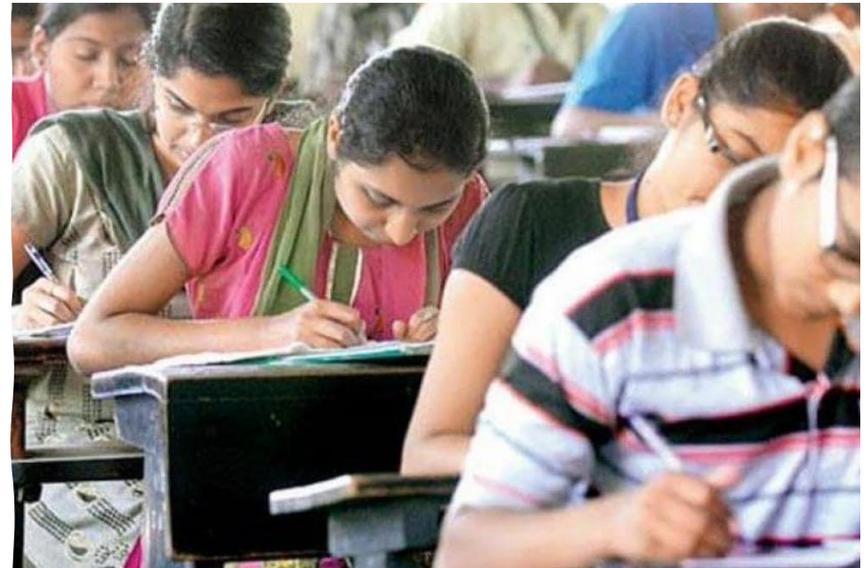
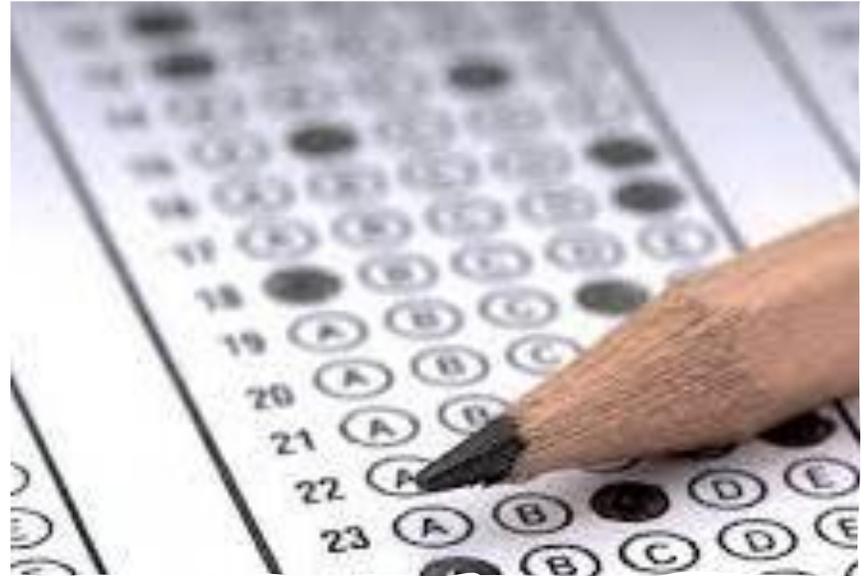
- Establishment of Mediation Council of India to develop India as a robust centre for domestic and international mediation.
- Mandatory pre-litigation mediation and settlement before filing any suit or proceeding in any Court or Tribunal.
- Due recognition to online mediation conducted at any stage of the mediation process.
- Provides for community mediation to any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality.

# Mediation Bill, 2021



- A period of 180 days for completing the mediation process (further extendable to a maximum period of 180 days).
- Mediation Fund for promotion, facilitation and encouragement of mediation.
- Presently, there is no comprehensive law governing various aspects of ADR mechanism of mediation although they find mention in various existing laws.

Let's  
resolve  
your  
Queries!



Thank you! And,  
Best Of Luck!  
I wish and pray  
each one of you  
qualifies the  
examination.

