

July-23 Mains CA Capsule Week 1

By PRAYAAS Institute of Excellence

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Delhi Services Ordinance

Context-

- The Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 was promulgated by the President in May 2023 to provide for a comprehensive scheme of administration of services in Delhi.
- The Ordinance established a **"National Capital Civil Service Authority" consisting of the Chief Minister and two senior IAS officers**, allowing them to decide matters through majority voting.
- Critics argue that this move effectively creates a situation where the elected Chief Minister's views can potentially be overruled.

Syllabus of Mains-GS2 - Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and **issues arising out of these**

About Issue-

- The ordinance came after the **Supreme Court handed over the control of services in Delhi**, excluding police, public order and land, to the elected government.
- The ordinance seeks to set up a National Capital Civil Service Authority (NCCSA) for the transfer of and disciplinary proceedings against Group-A officers from services in the National Capital Territory (NCT) of Delhi.
- The issuance of the Ordinance empowers the Lieutenant Governor of Delhi with control over services, thereby challenging the elected government's authority in matters of officials' transfer and posting.
- This development raises significant constitutional apprehensions regarding the delicate balance of power between the elected government and the Lieutenant Governor.

Issues with the Ordinance

Issue of "Triple Chain of Accountability":

- In May 2023, the Supreme Court explicitly recognised this by formulating the concept of the "triple chain of accountability".

Power Struggle:

- The ordinance has led to a power struggle between the elected government and the Lieutenant Governor.

Issues with Provisions:

- Ordinance gives the Lieutenant Governor the power to make appointments to key bureaucratic positions in Delhi.
- It also gives power to transfer and post officials, which was previously the sole responsibility of the elected government.
- The ordinance also states that in case of any difference of opinion between the Lieutenant Governor and the elected government, the former's opinion will prevail.

Governance Issue:

- Ordinance has created confusion and uncertainty among the civil service officers working in Delhi government departments.
- The ordinance has also affected the delivery of public services and welfare schemes in Delhi.

Violation of the principle of federalism:

- Elected government claims that the ordinance violates the Constitution, which gives them the power to make appointments and transfer officials.

Possible Consequences of the Ordinance

- It may create a constitutional crisis and a power tussle between the Centre and the Delhi government over the control of civil services in the national capital.
- It may undermine the autonomy and democracy of the Delhi government and the will of the people who elected it.
- It may hamper the effective administration and governance of Delhi, as the civil service officers may face uncertainty and confusion over their roles and responsibilities.
- It may invite legal challenges and judicial scrutiny, as the ordinance seems to violate the Supreme Court's judgment and **Article 239AA** of the Constitution.

What is Article 239AA of the Constitution?

- Inserted into the Constitution by the 69th Amendment Act, 1991, Article 239AA conferred special status on Delhi following the recommendations of the S Balakrishnan Committee that was set up in 1987 to look into Delhi's demands for statehood.
- **According to this provision, the NCT of Delhi** will have an administrator and a Legislative Assembly. Subject to the provisions of the Constitution, the Legislative Assembly, "shall have the power to make laws for the whole or any part of the NCT with respect to any of the matters in the State List or

Concurrent List in so far as any such matter is applicable to Union territories,”
except on the subjects of police, public order, and land.

Argument in Favour of the Delhi Services Ordinance:

- Ordinance is **necessary to balance the local and national interests of the people of Delhi with the democratic will of the entire nation** reflected through the President of India.
- The **ordinance ensures that the Centre has a say in the administration of services in the national capital, which is vital for maintaining public order, security and development.**
- Ordinance is **in line with Article 239AA of the Constitution**, which gives special status to Delhi as a Union Territory with a legislative assembly and **allows Parliament to make laws on matters that are normally within the exclusive domain of the States, such as services.**
- The **ordinance does not violate the Supreme Court’s judgment**, which only held that the Delhi government has legislative and executive powers over services but **did not bar Parliament from making laws on the same subject.**
- Ordinance **seeks to clarify and streamline the scheme of administration of services in Delhi, which has been a source of conflict and confusion for a long time.**

Argument Against the Delhi Services Ordinance:

- Ordinance **undermines the principles of representative democracy and responsible governance, which are the pillars of India’s constitutional order.**
- Ordinance also **reduces the role of the Chief Minister and the council of ministers to a rubber stamp, as they can be overruled by two bureaucrats in the NCCSA, who are ultimately accountable to the Lieutenant Governor and the Centre.**
- Ordinance **violates and nullifies the Supreme Court’s judgment**, which held that the Delhi government has legislative and executive powers over services in the national capital, except matters relating to public order, police and land.
- ordinance also **violates the principle of federalism**, which is a basic feature of the Constitution, and encroaches upon the domain of the States.

Issue with the Current Governance Model of Delhi

Erosion of Democratic Mandate:

- The Lieutenant Governor (LG), who has the **final say in governance, does not have to respect the laws or directions of the assembly**, which represents the will of the people of Delhi.

Violation of Executive Responsibility:

- The LG, who is the chief executive, does not have to answer to the assembly, which goes against the principle of executive responsibility.

Infringement of Legislative Privilege:

- The assembly has the right to make its own rules for its functioning, which is a part of its legislative privilege.

Obstruction of Decision-Making:

- The need for LG's consent for many decisions has caused delays in decision-making, which has affected the development and governance of the city.

Ambiguity of Accountability:

- The split of duties between the elected government and the Lieutenant Governor has created problems in assigning responsibility for actions and decisions.

Contradiction of Cooperative Federalism:

- The Act not only opposes cooperative federalism but also reverses the fundamental principles laid down by the Supreme Court in Government of NCT Delhi vs Union of India case (2018).

Way Forward:

Expert Committee Formation:

- An expert committee comprising legal, constitutional, and administrative experts can be formed to provide recommendations on resolving the issue.

Dialogue and Negotiation:

- Engaging in meaningful dialogue and negotiation between the central government and the Delhi government is crucial for resolving the issue.
- Both parties should come together to discuss their respective concerns and interests, seeking a mutually agreeable solution that respects the democratic principles and the unique status of Delhi as the national capital.

Respect for Constitutional Principles:

- Throughout the resolution process, it is vital for all stakeholders to demonstrate a commitment for upholding constitutional principles, including democratic governance, separation of powers, and the rights of elected representatives.

Promulgation and Re-promulgation of Ordinances

Context-

- Many raises' questions about the practice of issuing ordinances to make law and that of re-issuing ordinances without getting them ratified by Parliament.

What are Ordinances in Indian Polity?

- **Article 123 of the Constitution** of India grants the President certain law-making powers to promulgate ordinances when either of the two Houses of Parliament is not in session, in urgent situations.
- Hence, it is not possible for the ordinances to be issued by Parliament.
- When an ordinance is promulgated but the legislative session is yet to commence, the ordinance remains in effect as law. It has the same force and effect as an Act of the legislature.
- But it requires subsequent ratification by Parliament within six weeks of its reassembly.
- An ordinance promulgated by the President has a **maximum validity of six months and six weeks** from the date of its promulgation.
- The Governor of a state can also issue ordinances under Article 213 of the Constitution of India, when the state legislative assembly is not in session.
- If the two Houses start their sessions on different dates, the later date is considered (Articles 123 and 213).
- **Note:** An ordinance like any other legislation **can be retrospective** i.e., it may come into force from a back date. **It may also modify or repeal any act of Parliament or another ordinance.**

Withdrawal:

- The President can withdraw an Ordinance, and both Houses of Parliament can pass resolutions to disapprove it, potentially leading to its lapse. Rejection of an ordinance would, however, imply the government has lost majority.
- However, If an Ordinance enacts a law that **falls outside the purview of Parliament's competence, it is considered void.**

Data on Ordinances-

- Historically, in the 1950s, central ordinances were issued at an average of 7.1 per year. However, the number peaked in the 1990s at 19.6 per year. The last couple of years has also seen a high spike in ordinance promulgation (16 in 2019, 15 in 2020 and 10 in 2021).
- There has been a **steady decrease in the number of ordinances** promulgated by the Centre since 2021.
- States have also been using the ordinance route to enact laws.

- For example, in 2020, Kerala issued 81 ordinances, while Karnataka issued 24 and Maharashtra 21.

Repromulgation of Ordinance:

- When an Ordinance lapses, the government can choose to re-promulgate it if necessary.
- In a 2017 case, the Supreme Court ruled that repeated re-promulgations without legislative consideration would be unconstitutional and a violation of the legislature's role.
- The court emphasised that the power to issue an Ordinance should be treated as an emergency measure and not as a means to bypass the legislature.

Advantage and Disadvantages of Ordinances

Advantages	Disadvantages
They allow quick and effective action on urgent matters.	They bypass the democratic process of law-making and reduce parliamentary oversight.
They enable policy implementation without legislative hurdles.	They undermine the principle of separation of powers and encroach on the domain of the legislature.
They provide legal certainty and clarity in case of a judicial gap or ambiguity.	They create legal instability as they are temporary and subject to change or repeal.
They reflect the responsiveness and accountability of the executive branch.	They may be misused for political or personal gains or to avoid public scrutiny or debate.

Issues with the Ordinance Route

Usurpation of Legislative Power:

- As lawmaking is a legislative function, this power is provided for urgent requirements, and the law thus made has an automatic expiry date.
- To repromulgate is to effectively extend the life of an ordinance and lead to the usurpation of legislative power by the executive.

Undermining the Doctrine of Separation of Powers:

- Separation of powers as a “**basic feature**” of the Constitution However, article 123 places no numeric limits on ordinances.
- In this way, the repromulgation undermines the separation of powers, as it effectively allows the executive to make permanent legislation without legislative input or approval.

Ignoring Supreme Court’s Judgements:

- Even after tough judgments on the use of ordinances, both the Centre and state governments have ignored the Supreme Court’s observations.
- **For example**, an ordinance to amend the Land Acquisition Act was issued in December 2014, and repromulgated twice – in April and May 2015.

Abuse of the constitutional process:

- Repromulgation of ordinances is constitutionally impermissible since it represents an effort to overreach the legislative body which is a primary source of law-making authority in a parliamentary democracy.

Lack of Clarity on word emergency:

Making Functional representative democracy ill by executive

Destabilize checks and balances system

Way Ahead:

- Every ordinance issued must be laid before both the Houses of Parliament or state legislature within six weeks from the reassembly of Parliament or state legislature and it ceases to exist if it is not approved within six weeks of reassembly.
- **44th Constitutional Amendment** has reiterated that the **satisfaction of the President to promulgate ordinance could be challenged** in case an ‘immediate action’ was not required.
- Our Constitution has provided for the separation of powers among the legislature, executive and judiciary where enacting laws is the function of the legislature.
- The executive **must show self-restraint**.
- It should use ordinance making power only in unforeseen or urgent matters and not to evade legislative scrutiny and debates.

Past Judicial Pronouncements on Ordinances

R.C. Cooper v. Union of India (1970):

- This case challenged the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, which nationalised 14 major banks in India.
- The Supreme Court held that the President's satisfaction regarding the necessity of an ordinance is not immune from judicial review and can be challenged.
- The Court also held that an ordinance is subject to the same constitutional limitations as an Act of Parliament and cannot violate any fundamental rights or other provisions of the Constitution.

A.K. Roy v. Union of India (1982):

- This case challenged the National Security Ordinance, 1980, which provided for preventive detention of persons for up to one year without trial.
- The Supreme Court upheld the validity of the ordinance but laid down some safeguards for its operation, such as periodic review by an advisory board, communication of grounds of detention to the detenu, and opportunity for representation against detention.
- The Court also observed that an ordinance should not be used as a substitute for parliamentary legislation and should be resorted to only in cases of extreme urgency or unforeseen emergency.

D.C. Wadhwa v. State of Bihar (1987):

- This case challenged a series of ordinances issued by the Governor of Bihar between 1967 and 1981 on various subjects, some of which were promulgated several times without being placed before the state legislature.
- The Supreme Court **struck down all the ordinances as unconstitutional and held that re-promulgation of ordinances is a fraud on the Constitution and a subversion of the democratic legislative process.**
- The Court also held that an ordinance lapses automatically if it is not approved by the legislature within six weeks of its reassembly and cannot be continued by repromulgation.

Conclusion

- Indian Constitution has provided for the separation of powers among the legislature, executive, and judiciary where enacting laws is the function of the legislature.
- The executive must show self-restraint and should use ordinance making power only in unforeseen or urgent matters and not to evade legislative scrutiny and debates.

- As the Supreme Court said, **repromulgation would most certainly be a colourable exercise of power for the Government** and it needs to be avoided.
- The power to make ordinances holds the potential for positive impact by promoting order and addressing immediate concerns. However, it must be ***exercised with careful consideration of individual rights and community needs.***
- Balancing regulation with fairness and accountability is crucial to ensure that ordinances serve their intended purpose while respecting the principles of democracy and justice

Previous Year's Question (PYQs)

Q. Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyse whether the decision of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate the ordinances be repealed? (2015)

Internationalization of Rupee

Context:-

- India's push for rupee invoicing in international trade has gained momentum with the recent Foreign Trade Policy (FTP) 2023, which proposes invoicing, payment, and settlement of trade in Indian rupees.
- Reserve Bank of India (RBI) has **put in place the mechanism for rupee trade settlement with as many as 18 countries.**

Syllabus of Mains-GS3 - Effects of liberalization on the economy

What is Internationalisation of Indian Rupee?

- It refers to the process of making the Indian rupee a globally accepted currency, similar to other major currencies like the US dollar, Euro, and Japanese yen etc.,
- This process aims to promote India's economic growth and development by increasing the use of the rupee in cross-border transactions, foreign investment, and global trade.
- It **requires the liberalization of India's capital account**, which means allowing free flow of capital in and out of the country without any restrictions.

- India currently has full convertibility of the rupee in current accounts such as for exports and imports. **However, India's capital account convertibility is not full.** There are ceilings on government and corporate debt, external commercial borrowings and equity.

Data-

- Currently, while the **dollar accounts for 88% of international trade, Rupee accounts for less than 1.7% of global trade.**

Benefits of internationalizing rupee

- **Increased global acceptance:** Internationalization of the rupee can increase its global acceptance, which can lead to more international transactions being conducted in the rupee, thereby reducing the demand for foreign currencies and reducing exchange rate risks.
- **Mitigate exchange rate risk** - Internationalization of the INR can lower transaction costs of cross-border trade and investment operations by mitigating exchange rate risk.
- **Reduce risk** – Eliminates the risk of exposure to currency volatility faced by Indian businesses. Ex- US Dollar volatility in recent times
- **Exports becoming competitive** - Reducing currency risk can reduce the cost of doing business and can hence help in making exports more competitive in the global market.
- **Increased financial integration** - Help to integrate the Indian financial system with the global financial system.
- This could lead to **increased investment and economic growth.**
- **Reduced need for foreign exchange reserves** - The need to maintain foreign exchange reserves can reduce if a sizeable share of India's trade can be settled in terms of the domestic currency.
- **Lowering of Transaction Costs:** The internationalization of the Rupee can reduce the need for currency conversion, thereby lowering transaction costs for businesses and individuals conducting international trade.

Challenges to internationalize rupee:

- **Exchange Rate Volatility:** Internationalising the rupee exposes it to greater exchange rate volatility. Fluctuations in the value of the rupee can impact trade competitiveness, foreign investment flows, and financial market stability.
- **Process being complex** - Rupee-trade arrangements have not been easy to implement.
 - **Example-** Tarde arrangement with Russia is not yet fully operational even after a year-long engagement between the two partner countries.

- **Large trade deficit** - With Russia would saddle Russia since with large rupee balances, it would have to find a way to use or invest.
- **Small market** - The Indian economy is not as large as some other economies, so there is less demand for the rupee in the global financial markets.
- **Too much regulation** - The Indian government has a number of controls on the rupee and these controls make it difficult for the rupee to be used as a global currency.
- **Lack of liquidity** - The Indian rupee is not as liquid as some other currencies, so it can be difficult to buy and sell large amounts of rupees.
- **Geopolitical Factors:** Geopolitical factors such as political instability, wars, and sanctions can have a significant impact on the Internationalization of a currency. India needs to have stable relations with other countries and avoid getting caught in geopolitical conflicts that could impact the use of the INR as an international currency.

Current Status for the Rupee's Internationalization

Limited Progress in Internationalisation:

- The rupee is far from being internationalized, the daily average share for the rupee in the global foreign exchange market hovers around 1.6%, while India's share of global goods trade is mere 2%.

Steps Taken to Promote Internationalisation:

- India has taken some steps to promote the internationalisation of the rupee (e.g., enable external commercial borrowings in rupees), with a push to Indian banks to open Rupee Vostro accounts for banks from Russia, the UAE, Sri Lanka and Mauritius and measures to trade with about 18 countries in rupees instituted.
- However, such transactions have been limited, with India still buying oil from Russia in dollars.

Constraints on Currency Exchange:

- **India does not permit full capital account convertibility** (i.e., allowing free movement of local financial investment assets into foreign assets and vice-versa), with significant constraints on the exchange of its currency with others, driven by past fears of capital flight (i.e., outflow of capital from India due to monetary policies/lack of growth) and exchange rate volatility, given significant current and capital account deficits.

Concerns of Neighbouring Countries:

- The rupee's internationalization cannot make a start without accounting for the concerns expressed by India's neighbours.
- The **demonetisation of 2016 also shook confidence** in the Indian rupee, especially in Bhutan and Nepal.
- Both countries continue to fear additional policy changes by the RBI (including further demonetisation).
- The move, in 2023, to withdraw the ₹2,000 note has also impacted confidence in the rupee.

Steps taken to promote the internationalisation of the Indian rupee

- **Liberalisation of capital account:** The RBI has progressively relaxed restrictions on capital flows to and from India, thereby facilitating greater cross-border investment and trade.
- **Currency swap agreements:** The RBI has signed currency swap agreements with several countries, which allow for the exchange of rupee and foreign currency between the central banks of the two countries.
- **Promotion of rupee-denominated bonds:** The government has allowed Indian companies to issue rupee-denominated bonds in international markets, which has helped to increase the demand for the rupee.
- **Bilateral trade agreements:** The government has signed several bilateral trade agreements with other countries, which has facilitated greater cross-border trade and investment and increased the use of the rupee in international transactions.
- **Encourage Exporters/Importers for Transactions in Rupee:** Optimising the trade settlement formalities for rupee import/export transactions would go a long way.
- **Offer Tax Incentives:** Offer Tax Incentives to Foreign Businesses to Utilise the Rupee in Operations in India.
- **Ensure Currency Management Stability and Improve the Exchange Rate Regime:** Avoid sudden or drastic changes such as devaluation or demonetisation that can impact confidence. Ensure consistent and predictable issuance/retrieval of notes and coins.
- **Encourage Cross-Border Trade in Indian Rupee:** Government should encourage cross-border trade with other countries, especially neighboring countries like Nepal, Bhutan, and Bangladesh, in Indian Rupee instead of other currencies.

Committee-

Pursue the Recommendations of the Tarapore Committees :

- Such as reducing fiscal deficits lower than 3.5%, reducing gross inflation rate to 3%-5%, and reducing gross banking non-performing assets to less than 5%.

Conclusion:

- There is need for careful planning and coordination between policymakers, market participants, and regulators to ensure a smooth and successful transition towards the internationalisation of the Indian rupee.
- Overall, increase in the international use of the Indian rupee will go a long way in positioning India as a more attractive destination for foreign investment and trade.
- India should learn from China's Experience of China's success in internationalizing the renminbi (RMB) and it also had trade surplus across the world.

Buddha's Relevance to the Modern Youth

Context-

- The **President of India urged the youth to draw inspiration from the teachings of Lord Buddha,** on Dharma Chakra Pravartana Divas (3rd July 2023)- **PIB**
- The President reflected on how Lord Buddha's first sermon on Asadha Purnima planted the seeds of the middle path of the Dhamma.

How can Youth Draw Inspiration from Buddha to Navigate Life's Challenges

Mindfulness as a Foundation:

- One of the central tenets of Buddha's teachings is the practice of mindfulness.
- Mindfulness encourages individuals to cultivate a deep awareness of the present moment, fostering an enhanced understanding of their thoughts, emotions, and actions.
- In a world saturated with distractions, young people can draw inspiration from Buddha's emphasis on being fully present and engaged.
- By practicing mindfulness, youth can learn to manage stress, improve focus and concentration, and nurture a greater sense of self-awareness, leading to improved mental well-being and personal growth.

Impermanence and Non-Attachment:

- Buddha's teachings emphasize the impermanence (the state or fact of lasting for only a limited period of time) of all phenomena and the futility of attachment.
- In a materialistic society driven by instant gratification, youth can find solace and inspiration in the understanding that everything is transient.
- By recognizing the impermanence of both joy and suffering, young individuals can cultivate a mindset that is adaptable, resilient, and open to change.
- Learning to let go of attachment to outcomes, possessions, and **even relationships can free the youth from unnecessary suffering** and allow them to embrace life with greater equanimity.

Compassion and Empathy:

- In a world where divisions and conflicts persist, young people can find inspiration in Buddha's teachings on loving-kindness and compassion.
- By cultivating empathy, youth can develop a deeper understanding of others' struggles, fostering a sense of unity and connection.

Self-Discovery and Inner Transformation:

- Young people, often grappling with questions of identity and purpose, can draw inspiration from Buddha's teachings on self-exploration.
- By engaging in introspection and self-reflection, youth can gain insights into their true nature, passions, and aspirations.

Engaging in Social and Environmental Responsibility:

- Buddha's teachings emphasize the interconnectedness of all beings and advocate for responsible action.
- The youth can actively engage in social and environmental responsibility by working towards equality, justice, and sustainable practices.
- They can participate in community initiatives, advocate for marginalized groups, and champion environmental conservation.
- By embodying these teachings, they contribute to building a more equitable, harmonious, and environmentally conscious society.

Conclusion

- The relevance to Buddhism can be traced from the words of Dalai Lama who stated that the 20th century was a century of war and violence, it was the work of humanity to ensure the 21st century goes on the way of peace and dialogue.

Major Teachings of Lord Buddha:

The Three Marks of Existence:

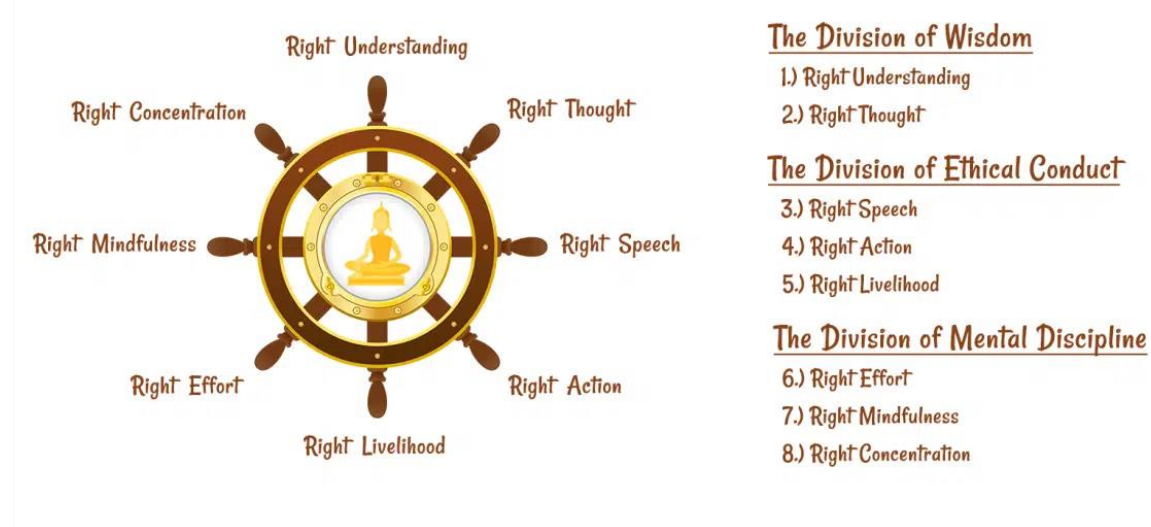
- These are the characteristics of all phenomena that one should understand and accept. They are impermanence (anicca), unsatisfactoriness (dukkha), and non-self (anatta).

The Four Noble Truths:

- These are the truths about the nature of suffering, its cause, its cessation, and the path to its cessation. The cause of suffering is ignorance, attachment, and aversion.

The cessation of suffering is possible by following the Noble Eightfold Path:

THE NOBLE EIGHTFOLD PATH



The Four Sublime States:

- These are the positive mental qualities that one should cultivate and radiate to all beings. They are loving-kindness (metta), compassion (karuna), sympathetic joy (mudita), and equanimity (upekkha).
- By developing these states, one can foster harmony, empathy, altruism, and peace.

The Five Precepts:

- These are the basic ethical principles that Buddha laid down for his lay followers.

- **They are:** to abstain from killing, stealing, sexual misconduct, lying and intoxication.
- They help us to avoid harming ourselves and others, to respect life and property, to maintain purity and honesty and to preserve clarity and awareness.

PYQ for Practice-

Q. What teachings of Buddha are most relevant today and why? Discuss. (UPSC GS-4 Mains 2020)

Governor- State Relations

Context-

- **Kerala Governor locked in a standoff with elected government on a range of issues** including appointments to the state-run Kerala University and also threatened to sack ministers who “lowered the dignity” of his office.
- The **recent decision of dismissal and suspension of a Minister in Tamil Nadu by the Governor has sparked a Constitutional Controversy.** The **Governor reversed his decision later and suspended the dismissal order.**

Governor’s Powers to Dismiss Ministers

Article 164:

- **Under Article 164 of the Constitution,** the **Chief Minister is appointed by the Governor without any advice from anyone.** But he **appoints the individual Ministers only on the advice of the Chief Minister.**
- The Article implies that the **Governor cannot appoint an individual Minister according to his discretion.** Therefore, the **Governor can dismiss a Minister only on the advice of the Chief Minister.**

Constitutional Limitations on Governor's Discretion:

- The power to choose or dismiss a Minister lies with the Chief Minister, who represents the will of the people.
- **B.R. Ambedkar,** during the Constituent Assembly debates, unequivocally stated that the **Governor has no independent executive functions under the Constitution.**
- The **inclusion of the "pleasure of the Governor" in Article 164** of the Constitution refers **only to the formal act of issuing dismissal orders** upon the advice of the Chief Minister.

Concerns Related to the Issue of Dismissal of Minister

Constitutional Misadventure:

- **Removing a Minister is a matter of moral judgment, not a legal requirement.**
The Governor's decision to dismiss a Minister without the Chief Minister's recommendation is a constitutional misadventure.

Sets Wrong Precedent:

- This unprecedented and deliberately provocative act of dismissing a Minister of a government without the recommendation of the Chief Minister of the State, may set a precedent and has the potential to destabilise State governments putting the federal system in Jeopardy.

Collapse of Constitutional System:

- If Governors are allowed to exercise the power of dismissal of individual Ministers without the knowledge and recommendation of the Chief Minister, the **whole constitutional system will collapse.**

Constitutional Provisions Related to the Governor

- **Article 153 says** that there shall be a Governor for each State. One person can be appointed as Governor for two or more States.
- A Governor is appointed by the President and is a nominee of the Central Government.
- It is stated that the Governor has a dual role.
- He is the constitutional head of the state, bound by the advice of his Council of Ministers (CoM).
- He functions as a vital link between the Union Government and the State Government.

Articles 157 and 158 specify eligibility requirements for the post of governor. A governor must:

- Be a citizen of India.
- Be at least 35 years of age.
- Not be a member of the either house of the parliament or house of the state legislature.
- Not hold any office of profit.

Powers:

- Governor has the power to grant pardons, reprieves, etc. (Article 161).
- There is a CoM with the CM at the head to aid and advise the Governor in the exercise of his functions, except some conditions for discretion. (Article 163).

- The Governor appoints the Chief Minister and other Ministers (Article 164).
- Governor assents, withholds assent, or reserves the bill for the consideration of the President passed by the Legislative Assembly (Article 200).
- Governors may promulgate the Ordinances under certain circumstances (Article 213)

Causes of Governor- State friction

- **Lacunae in appointment/removal process:** Governor have become political appointees and there is no provision for impeaching the Governor, who is appointed by President on Centre's advice.
- **No security of tenure:** Governor has 5-year tenure, though he can be removed by President at any time.
- **No time limit for granting assent to a State Bill:** It has been held in Purshothaman v. State of Kerala case (1962), under Article 200, there is no time limit for granting the assent and lack of guidance regarding matters he should accord or withhold assent.
- **Legitimacy:** Since Governor is not elected, his power to undo the will of the Legislature by just declaring that he is withholding his assent, raises concerns of legitimacy.
 - Additionally, no court is entitled to go into justification of such withholding.
- **Lack of guidelines to exercise Governor's powers,** including for appointing a CM or dissolving Assembly and thus Governors have been accused of acting on behest partisan politics.
- **Lack of mechanisms to resolve differences** regarding how Governor and state must engage publicly when there is a difference of opinion.

Attempts have been Made to Address Concerns over the Alleged Partisan Role Played by Governors:

Changes regarding the Selection of Governors:

- The **National Commission To Review the Working of the Constitution appointed by the Atal Bihari Vajpayee government** in 2000 suggested that the Governor of a State should be appointed by the President, after consultation with the Chief Minister of that State.

Proposal by Sarkaria Commission:

- The Sarkaria Commission, set up in 1983 to look into Centre-state relations, proposed that the Vice President of India and Speaker of Lok Sabha should be consulted by the Prime Minister in the selection of Governors.

Punchhi Committee Proposal:

- The Justice Madan Mohan Punchhi Committee, constituted in 2007 on Centre-state relations, proposed in its report that a committee comprising the Prime Minister, Home Minister, Vice President, Speaker, and the concerned Chief Minister should choose the Governor.
- The Punchhi Committee recommended deleting the “Doctrine of Pleasure” from the Constitution, but backed the right of the Governor to sanction the prosecution of ministers against the advice of the state government.
- It also argued for a **provision for impeachment of the Governor by the state legislature.**

Supreme Court’s View:

Shamsher Singh & Anr vs State Of Punjab (1974):

- In this case, a seven-judge Constitution Bench of the Supreme Court said that the President and Governor, custodians of all executive and other powers under various Articles, shall exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations.

Nabam Rebia And Etc. vs Deputy Speaker And Ors (2016):

- In this case, the **Supreme Court cited the observations of B R Ambedkar:** *“The Governor under the Constitution has no function which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and the House will do well to bear in mind this distinction.”*
- **SC ruled that Article 163** of the Constitution does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers

Mahabir Prasad v. Prafulla Chandra 1969:

- The case revolved around the question of the nature of the governor’s pleasure under article 164(1).
- The governor's pleasure under article 164(1) is subject to Article 164(2). Thus, the withdrawal of the governor's pleasure must coincide with the withdrawal of support to the ministry by the assembly.

Conclusion

- A legislature should establish **clear guidelines for the exercise of powers by the Governor.**
- In India, as a parliamentary democracy, the authority of Parliament should be respected, just as the democratically elected State Legislature should have a similar role and importance.
- Governors seem to have an exaggerated notion of their own roles under the Constitution. They are expected to defend the Constitution and may use their powers to caution elected regimes against violating the Constitution, but this does not mean that they can use the absence of a time-frame for decision-making and the discretionary space given to them to function as a parallel power centre.

Mains PYQs

- Q. Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt.Governor and elected government of Delhi? Examine. (2018)
- Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature. (2022)