

**Constitutional Bodies****Election Commission**

- The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country.
- **Article 324** of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice president of India shall be vested in the election commission.
- Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments.
- It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states.
- For this, the Constitution of India provides for a separate State Election Commission.

**Composition**

- Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:
  - The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
  - The appointment of the chief election commissioner and other election commissioners shall be made by the president.
  - When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
  - The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.

- The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.
- Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner.
- On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years.
- Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners.
- However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position.
- Again, in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.
- The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court.
- In case of difference of opinion amongst the Chief election commissioner and/or two other election commissioners, the matter is decided by the Commission by majority.
- They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.
- They can resign at any time or can also be removed before the expiry of their term.

### **Independence**

- **Article 324** of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission:

- The chief election commissioner is provided with the security of tenure.
- He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court.
- In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity.
- Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
- The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.
- Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.
- Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,
  - The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
  - The Constitution has not specified the term of the members of the Election Commission.
  - The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

### **Powers and Functions**

- The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and Vice-President can be classified into three categories, viz,
  - Administrative
  - Advisory
  - Quasi-Judicial



• **In detail, these powers and functions are:**

- To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
- To prepare and periodically revise electoral rolls and to register all eligible voters.
- To notify the dates and schedules of elections and to scrutinise nomination papers.
- To grant recognition to political parties and allot election symbols to them.
- To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
- To appoint officers for inquiring into disputes relating to electoral arrangements.
- To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
- To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
- To advise the president on matters relating to the disqualifications of the members of Parliament.
- To advise the governor on matters relating to the disqualifications of the members of state legislature.
- To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
- To request the president or the governor for requisitioning the staff necessary for conducting elections.
- To supervise the machinery of elections throughout the country to ensure free and fair elections.
- To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.

- To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.
- The Election Commission is assisted by deputy election commissioners.
- They are drawn from the civil service and appointed by the commission with tenure system.
- They are assisted, in turn, by the secretaries, joint secretaries, deputy secretaries and undersecretaries posted in the secretariat of the commission.
- At the state level, the Election Commission is assisted by the chief electoral officer who is appointed by the chief election commissioner in consultation with the state government.
- Below this, at the district level, the collector acts as the district returning officer.
- He appoints a returning officer for every constituency in the district and presiding officer for every polling booth in the constituency.

#### UNION PUBLIC SERVICE COMMISSION

- The Union Public Service Commission (UPSC) is the central recruiting agency in India.
- It is an independent constitutional body in the sense that it has been directly created by the Constitution.
- **Articles 315 to 323 in Part XIV** of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.

#### Composition

- The UPSC consists of a chairman and other members appointed by the president of India.
- The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the president, who determines its composition.
- Usually, the Commission consists of nine to eleven members including the chairman.

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- Further, no qualifications are prescribed for the Commission’s membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state.
- The Constitution also authorises the president to determine the conditions of service of the chairman and other members of the Commission.
- The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.
- However, they can relinquish their offices at any time by addressing their resignation to the president.
- They can also be removed before the expiry of their term by the president in the manner as provided in the Constitution.
- The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances:
  - When the office of the chairman falls vacant; or
  - When the chairman is unable to perform his functions due to absence or some other reason.
- The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

**Removal**

- The President can remove the chairman or any other member of UPSC from the office under the following circumstances:
  - If he is adjudged an insolvent (that is, has gone bankrupt);
  - If he engages, during his term of office, in any paid employment outside the duties of his office; or
  - If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.
- In addition to these, the president can also remove the chairman or any other member of UPSC for misbehaviour.
- However, in this case, the president has to refer the matter to the Supreme Court for an enquiry.



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- If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member.
- Under the provisions of the Constitution, the advice tendered by the Supreme Court in this regard is binding on the president.
- During the course of enquiry by the Supreme Court, the president can suspend the chairman or the member of UPSC.
- Defining the term ‘misbehaviour’ in this context, the Constitution states that the chairman or any other member of the UPSC is deemed to be guilty of misbehaviour if he
  - Is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or
  - Participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

### **Independence**

- The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the UPSC:
  - The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.
  - The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.
  - The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
  - The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state.
  - A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state.

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- The chairman or a member of UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

**Functions:**

**UPSC performs the following functions:**

- It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.
- It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- It is consulted on the following matters related to personnel management:
  - All matters relating to methods of recruitment to civil services and for civil posts.
  - The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
  - The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation.
  - The concerned departments make recommendations for promotions and request the UPSC to ratify them.
  - All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials or petitions relating to such matters.

**These include:**

- Censure (Severe disapproval)
- Withholding of increments
- Withholding of promotions



- Recovery of pecuniary loss
- Reduction to lower service or rank (Demotion)
- Compulsory retirement
- Removal from service
- Dismissal from service.
- Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
- Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
- Matters of temporary appointments for period exceeding one year and on regularisation of appointments.
- Matters related to grant of extension of service and re-employment of certain retired civil servants.
- Any other matter related to personnel management.
- The Supreme Court has held that if the government fails to consult UPSC in the matters (mentioned above), the aggrieved public servant has no remedy in a court.
- In other words, the court held that any irregularity in consultation with the UPSC or acting without consultation does not invalidate the decision of the government.
- Thus, the provision is directory and not mandatory.
- Similarly, the court held that a selection by the UPSC does not confer any right to the post upon the candidate.
- However, the government is to act fairly and without arbitrariness or malafides.
- The additional functions relating to the services of the Union can be conferred on UPSC by the Parliament.
- It can also place the personnel system of any authority, corporate body or public institution within the jurisdiction of the UPSC.

- Hence the jurisdiction of UPSC can be extended by an act made by the Parliament.
- The UPSC presents, annually, to the president a report on its performance.
- The President places this report before both the Houses of Parliament, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.
- All such cases of non-acceptance must be approved by the Appointments Committee of the Union cabinet.
- An individual ministry or department has no power to reject the advice of the UPSC.

### Limitations

- While making reservations of appointments or posts in favour of any backward class of citizens.
- While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.
- The president can exclude posts, services and matters from the purview of the UPSC.
- The Constitution states that the president, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted.
- But all such regulations made by the president shall be laid before each House of Parliament for at least 14 days.
- The Parliament can amend or repeal them.

### Role

- The emergence of Central Vigilance Commission (CVC) in 1964 affected the role of UPSC in disciplinary matters.
- This is because both are consulted by the government while taking disciplinary action against a civil servant.
- The problem arises when the two bodies tender conflicting advise.
- However, the UPSC, being an independent constitutional body, has an edge over the CVC, which is created by an executive resolution of the Government of India and conferred a statutory status in October 2003.

### STATE PUBLIC SERVICE COMMISSION

- Parallel to the Union Public Service Commission (UPSC) at the Centre, there is a State Public Service Commission (SPSC) in a state.
- The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deal with the composition, appointment and removal of members, power and functions and independence of a SPSC.

### Composition

- A State Public Service Commission consists of a chairman and other members appointed by the governor of the state.
- The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor.
- Further, no qualifications are prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state.
- The Constitution also authorises the governor to determine the conditions of service of the chairman and members of the Commission.
- The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years).
- However, they can relinquish their offices at any time by addressing their resignation to the governor.



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- The governor can appoint one of the members of the SPSC as an acting chairman in the following two circumstances:
  - When the office of the chairman falls vacant; or
  - When the chairman is unable to perform his functions due to absence or some other reason. The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

### **Removal**

- The chairman and members of a SPSC are appointed by the governor, they can be removed only by the president (and not by the governor).
- The president can remove them on the same grounds and in the same manner as he can remove a chairman or a member of the UPSC.
- Thus, he can remove him under the following circumstances:
  - If he is adjudged an insolvent (i.e., has gone bankrupt); or
  - If he engages, during his term of office, in any paid employment outside the duties of his office; or
  - If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.
- In addition to these, the president can also remove the chairman or any other member of SPSC for misbehaviour.
- In this case, the president has to refer the matter to the Supreme Court for an enquiry.
- If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member.
- Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president.
- During the course of enquiry by the Supreme Court, the governor can suspend the concerned chairman or member, pending the final removal order of the president on receipt of the report of the Supreme Court.
- The Constitution has also defined the term ‘misbehaviour’ in this context.

- The Constitution states that the chairman or any other member of a SPSC is deemed to be guilty of misbehaviour.
  - Is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or
  - Participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

### Independence

- The chairman or a member of a SPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy the security of tenure.
- The conditions of service of the chairman or a member, though determined by the governor, cannot be varied to his disadvantage after his appointment.
- The entire expense including the salaries, allowances and pensions of the chairman and members of a SPSC are charged on the consolidated fund of the state. Thus, they are not subject to vote of the state legislature.
- The chairman of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of any other SPSC, but not for any other employment under the Government of India or a state.
- A member of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC, or as the chairman of that SPSC or any other SPSC, but not for any other employment under the Government of India or a state.
- The chairman or a member of a SPSC is (after having completed his first term) not eligible for reappointment to that office (that is, not eligible for second term).

### Functions

- A SPSC performs all those functions in respect of the state services as the UPSC does in relation to the Central services:
  - It conducts examinations for appointments to the services of the state.

- It is consulted on the following matters related to personnel management:
  - All matters relating to methods of recruitment to civil services and for civil posts.
  - The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
  - The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation.
  - The concerned departments make recommendations for promotions and request the SPSC to ratify them.
  - All disciplinary matters affecting a person serving under the government of the state in a civil capacity including memorials or petitions relating to such matters.

**These include:**

- Censure (severe disapproval)
- Withholding of increments
- Withholding of promotions
- Recovery of pecuniary loss
- Reduction to lower service or rank (demotion)
- Compulsory retirement
- Removal from service
- Dismissal from service
- Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
- Any claim for the award of a pension in respect of injuries sustained by a person while serving under the government of the state and any question as to the amount of any such award.
- Any other matter related to the personnel management.



- The Supreme Court has held that if the government fails to consult the SPSC in these matters, the aggrieved public servant has no remedy in a court.
- In other words, the court held that any irregularity in consultation with the SPSC or acting without consultation does not invalidate the decision of the government.
- Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the SPSC does not confer any right to the post upon the candidate.
- However, the government is to act fairly and without arbitrariness or malafides.
- The additional functions relating to the services of the state can be conferred on SPSC by the state legislature.
- It can also place the personnel system of any local authority, corporate body or public institution within the jurisdiction of the SPSC.
- Hence the jurisdiction of SPSC can be extended by an Act made by the state legislature.
- The SPSC presents, annually, to the governor a report on its performance.
- The governor places this report before both the Houses of the state legislature, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.

### FINANCE COMMISSION

- **Article 280** of the Constitution of India provides for a Finance Commission as a quasi judicial body.
- It is constituted by the president of India every fifth year or at such earlier time as he considers necessary.
- **15<sup>th</sup> Finance Commission Chairman: N. K. Singh**

### Composition

- The Finance Commission consists of a chairman and four other members to be appointed by the president.

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- They hold office for such period as specified by the president in his order.
- They are eligible for reappointment.
- The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected.
- Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission.
- The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:
  - A judge of high court or one qualified to be appointed as one.
  - A person who has specialised knowledge of finance and accounts of the government.
  - A person who has wide experience in financial matters and in administration.
  - A person who has special knowledge of economics.

**Functions**

- The Finance Commission is required to make recommendations to the president of India on the following matters:
  - The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
  - The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).
  - The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
  - Any other matter referred to it by the president in the interests of sound finance.

- Till 1960, the commission also suggested the grants given to the States of Assam, Bihar, Odisha and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products.
- These grants were to be given for a temporary period of ten years from the commencement of the Constitution.
- The commission submits its report to the president.
- He lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

### Advisory Role

- It must be clarified here that the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government.

### National Commission for SCs

- The National Commission for Scheduled Castes (SCs) is a constitutional body in the sense that it is directly established by Article 338 of the Constitution.
- On the other hand, the other national commissions like the National Commission for Women (1992), the National Commission for Minorities (1993), the National Commission for Backward Classes (1993), the National Human Rights Commission (1993) and the National Commission for Protection of Child Rights (2007) are statutory bodies in the sense that they are established by acts of the Parliament.

### Origin of the Commission

- **Article 338** of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working.
- He was designated as the Commissioner for SCs and STs and assigned the said duty.



- In 1978, the Government (through a Resolution) set up a non statutory multimember Commission for SCs and STs; the Office of Commissioner for SCs and STs also continued to exist.
- In 1987, the Government (through another Resolution) modified the functions of the Commission and renamed it as the National Commission for SCs and STs.
- Later, the 65th Constitutional Amendment Act of 19905 provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs.
- This constitutional body replaced the Commissioner for SCs and STs as well as the Commission set up under the Resolution of 1987.
- The 89th Constitutional Amendment Act of 2003 bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).
- The separate National Commission for SCs came into existence in 2004.
- It consists of a chairperson, a vice-chairperson and three other members.
- They are appointed by the President by warrant under his hand and seal.
- Their conditions of service and tenure of office are also determined by the President.

### Functions of the Commission

- The functions of the Commission are:
  - To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
  - To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;
  - To participate and advise on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the Union or a state;
  - To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;

- To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs; and
- To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify.

### **Powers of the Commission**

- The Commission is vested with the power to regulate its own procedure.
- The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
  - Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - Requiring the discovery and production of any document;
  - Receiving evidence on affidavits;
  - Requisitioning any public record from any court or office;
  - Issuing summons for the examination of witnesses and documents; and
  - Any other matter which the President may determine.
- The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs.
- The Commission is also required to discharge similar functions with regard to the other backward classes (OBCs) and the Anglo-Indian Community as it does with respect to the SCs.
- In other words, the Commission has to investigate all matters relating to the constitutional and other legal safeguards for the OBCs and the Anglo-Indian Community and report to the President upon their working.

### **Report of the Commission**

- The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary.

**National Commission for STs**

- Like the National Commission for Schedules Castes (SCs), the National Commission for Scheduled Tribes (STs) is also a constitutional body in the sense that it is directly established by Article 338-A of the Constitution.

**Separate Commission for STs**

- The National Commission for SCs and STs came into being consequent upon passing of the 65th Constitutional Amendment Act of 1990.
- The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws.
- Geographically and culturally, the STs are different from the SCs and their problems are also different from those of SCs.
- In 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs.
- It was felt necessary that the Ministry of Tribal Affairs should coordinate all activities relating to the STs as it would not be administratively feasible for the Ministry of Social Justice and Empowerment to perform this role.
- Hence, in order to safeguard the interests of the STs more effectively, it was proposed to set up a separate National Commission for STs by bifurcating the existing combined National Commission for SCs and STs.
- This was done by passing the 89<sup>th</sup> Constitutional Amendment Act of 2003.
- This Act further amended Article 338 and inserted a new Article 338-A in the Constitution.
- The separate National Commission for STs came into existence in 2004.
- It consists of a chairperson, a vice-chairperson and three other members.
- They are appointed by the President by warrant under his hand and seal.
- Their conditions of service and tenure of office are also determined by the President.



### Functions of the Commission

The functions of the Commission are:

- To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working;
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state;
- To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs; and
- To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the President may specify.

### Powers of the Commission

- The Commission is vested with the power to regulate its own procedure.
- The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
  - Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - Requiring the discovery and production of any document;
  - Receiving evidence on affidavits;
  - Requisitioning any public record from any court or office;
  - Issuing summons for the examination of witnesses and documents; and
  - Any other matter which the President may determine.

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- The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs.

**Report of the Commission**

- The Commission presents an annual report to the President.
- It can also submit a report as and when it thinks necessary.

**COMPTROLLER AND AUDITOR GENERAL OF INDIA**

- The Constitution of India (**Article 148**) provides for an independent office of the **Comptroller and Auditor General of India (CAG)**.
- He is the head of the Indian Audit and Accounts Department.
- He is the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state.
- His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration.
- This is the reason why Dr B R Ambedkar said that the CAG shall be the most important Officer under the Constitution of India.
- He is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.

**Appointment and Term**

- The CAG is appointed by the president of India by a warrant under his hand and seal.
- The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation:
  - To bear true faith and allegiance to the Constitution of India;
  - To uphold the sovereignty and integrity of India;
  - To duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will; and
  - To uphold the Constitution and the laws.

- He holds office for a period of six years or upto the age of 65 years, whichever is earlier.
- He can resign any time from his office by addressing the resignation letter to the president.
- He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court.
- In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity.

### Independence

- The Constitution has made the following provisions to safeguard and ensure the independence of CAG:
  - He is provided with the security of tenure.
  - He can be removed by the president only in accordance with the procedure mentioned in the Constitution.
  - He does not hold his office till the pleasure of the president, though he is appointed by him.
  - He is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
  - His salary and other service conditions are determined by the Parliament.
  - His salary is equal to that of a judge of the Supreme Court.
  - Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
  - The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
  - The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India.



- Thus, they are not subject to the vote of Parliament.
- No minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

### **Duties and Powers**

- The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the states and of any other authority or body.
- Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) act, 1971.
- This Act was amended in 1976 to separate accounts from audit in the Central government.
- The duties and functions of the CAG as laid down by the Parliament and the Constitution are:
  - He audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
  - He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
  - He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.
  - He audits the receipts and expenditure of the Centre and each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
  - He audits the receipts and expenditure of the following:
    - All bodies and authorities substantially financed from the Central or state revenues;
    - Government companies; and

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- Other corporations and bodies, when so required by related laws.
- He audits all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.
- He audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
- He advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).
- He submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).
- He submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).
- He ascertains and certifies the net proceeds of any tax or duty (Article 279).
- His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
- He acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.
- He compiles and maintains the accounts of state governments.
- In 1976, he was relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalisation of accounts.
- The CAG submits three audit reports to the President—audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings.
- The President lays these reports before both the Houses of Parliament.

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- After this, the Public Accounts Committee examines them and reports its findings to the Parliament.
- The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

**SPECIAL OFFICER FOR LINGUISTIC MINORITIES**

**Constitutional Provisions**

- Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities.
- Later, the States Reorganisation Commission (1953–55) made a recommendation in this regard.
- Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350-B in Part XVII of the Constitution. This article contains the following provisions:
  - There should be a Special Officer for Linguistic Minorities.
  - He is to be appointed by the President of India.
  - It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution
  - He would report to the President upon those matters at such intervals as the President may direct.
  - The President should place all such reports before each House of Parliament and send to the governments of the states concerned.
- It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities.

**Commissioner for Linguistic Minorities**

- In pursuance of the provision of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957.



- He is designated as the Commissioner for Linguistic Minorities.
- The Commissioner has his headquarters at Allahabad (Uttar Pradesh).
- He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal).
- Each is headed by an Assistant Commissioner.
- The Commissioner is assisted at headquarters by Deputy Commissioner and an Assistant Commissioner.
- He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.
- At the Central level, the Commissioner falls under the Ministry of Minority Affairs.
- He submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

#### **Role of the Commissioner**

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

### **Vision**

- Streamlining and strengthening implementation machinery and mechanism for effective implementation of the Constitutional safeguards for the Linguistic Minorities, thereby ensuring protection of the rights of speakers of the minority languages so as to provide them equal opportunities for inclusive and integrated development.

### **Mission**

- To ensure that all the states / U.T.s effectively implement the Constitutional safeguards and the nationally agreed scheme of safeguards for the linguistic minorities for providing them equal opportunities for inclusive development.

### **Functions**

- To investigate all matters related to safeguards provided to the linguistic minorities
- To submit to the President of India, the reports on the status of implementation of the Constitutional and the nationally agreed safeguards for the linguistic minorities
- To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, review mechanism, etc

### **Objectives**

- To provide equal opportunities to the linguistic minorities for inclusive development and national integration
- To spread awareness amongst the linguistic minorities about the safeguards available to them
- To ensure effective implementation of the safeguards provided for the linguistic minorities in the Constitution and other safeguards, which are agreed to by the states / U.T.s
- To handle the representations for redress of grievances related to the safeguards for linguistic minorities

**ATTORNEY GENERAL OF INDIA**

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

**Appointment and Term**

- The Attorney General (AG) is appointed by the president.
- He must be a person who is qualified to be appointed a judge of the Supreme Court.
- In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.
- The term of office of the AG is not fixed by the Constitution.
- Further, the Constitution does not contain the procedure and grounds for his removal.
- He holds office during the pleasure of the president.
- He may be removed by the president at any time.
- He may also quit his office by submitting his resignation to the president.
- Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- The remuneration of the AG is not fixed by the Constitution.
- He receives such remuneration as the president may determine.

**Duties and Functions**

- The chief law officer of the Government of India, the duties of the AG include the following:
  - To give advice to the Government of India upon such legal matters, which are referred to him by the president.
  - To perform such other duties of a legal character that are assigned to him by the president.
  - To discharge the functions conferred on him by the Constitution or any other law.
- The president has assigned the following duties to the AG:



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- To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
- To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

**Rights and Limitations**

- In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India.
- He has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote.
- He enjoys all the privileges and immunities that are available to a member of Parliament.
- Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:
  - He should not advise or hold a brief against the Government of India.
  - He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
  - He should not defend accused persons in criminal prosecutions without the permission of the Government of India.
  - He should not accept appointment as a director in any company or corporation without the permission of the Government of India.
  - He should not advise any ministry or department of Government of India or any statutory organization or any public sector undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.
- The Attorney General is not a fulltime counsel for the Government.
- He does not fall in the category of government servants.
- He is not debarred from private legal practice.

### **Solicitor General of India**

- In addition to the AG, there are other law officers of the Government of India.
- They are the solicitor general of India and additional solicitor general of India.
- They assist the AG in the fulfilment of his official responsibilities.
- It should be noted here that only the office of the AG is created by the Constitution.
- In other words, Article 76 does not mention about the solicitor general and additional solicitor general.
- The AG is not a member of the Central cabinet.
- There is a separate law minister in the Central cabinet to look after legal matters at the government level.

### **ADVOCATE GENERAL OF THE STATE**

- The Constitution (**Article 165**) has provided for the office of the advocate general for the states.
- He is the highest law officer in the state.
- He corresponds to the Attorney General of India.

### **Appointment**

- The advocate general is appointed by the governor.
- He must be a person who is qualified to be appointed a judge of a high court.
- In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

### **Term**

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

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- He may also quit his office by submitting his resignation to the governor.
- Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- The remuneration of the advocate general is not fixed by the Constitution.
- He receives such remuneration as the governor may determine.

**Duties and Functions**

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

**GOODS AND SERVICES TAX COUNCIL**

**Establishment of the Council**

- The **101st Amendment Act of 2016** paved the way for the introduction of a new tax regime (i.e. goods and services tax - GST) in the country.
- The smooth and efficient administration of this tax requires co-operation and coordination between the centre and the states.
- In order to facilitate this consultation process, the amendment provided for the establishment of a Goods and Services Tax Council or the GST Council.



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- The amendment inserted a new **Article 279-A** in the Constitution.
- This Article empowered the President to constitute a GST Council by an order.
- Accordingly, the President issued the order in 2016 and constituted the Council.
- The Secretariat of the Council is located at New Delhi.
- The Union Revenue Secretary acts as the ex-officio Secretary to the Council.

#### **Vision**

- To establish the highest standards of co-operative federation in the functioning of the Council, which is the first constitutional federal body vested with powers to take all major decisions relating to GST.

#### **Mission**

- Evolving by a process of wider consultation, a GST structure, which is information technology driven and user friendly.

#### **Composition of the Council**

- The Council is a joint forum of the centre and the states and consists of the following members:
  - The Union Finance Minister as the Chairperson
  - The Union Minister of State in-charge of Revenue or Finance
  - The Minister in-charge of Finance or Taxation or any other
- Minister nominated by each state government The members of the Council from the states have to choose one amongst themselves to be the Vice-Chairperson of the Council. They can also decide his term.
- The Union Cabinet also decided to include the Chairperson of the Central Board of Excise and Customs (CBEC) as a permanent invitee (non-voting) to all proceedings of the Council.

#### **Working of the Council**

- The decisions of the Council are taken at its meetings.
- One-half of the total number of members of the Council is the quorum for conducting a meeting.

- Every decision of the Council is to be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting at the meeting.
- The decision is taken in accordance with the following principles:
  - The vote of the central government shall have a weightage one-third of the total votes cast in that meeting.
  - The votes of all the state governments combined shall have weightage of two-thirds of the total votes cast in that meeting.
- Any act or proceedings of the Council will not become invalid on the following grounds:
  - Any vacancy or defect in the constitution of the Council; or
  - Any defect in the appointment of a person as a member of the Council; or
  - Any procedural irregularity of the Council not affecting the merits of the case.

### Functions of the Council

- The Council is required to make recommendations to the centre and the states on the following matters:
  - The taxes, cesses and surcharges levied by the centre, the states and the local bodies that would get merged in GST.
  - The goods and services that may be subjected to GST or exempted from GST.
  - Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce and the principles that govern the place of supply.
  - The threshold limit of turnover below which goods and services may be exempted from GST.
  - The rates including floor rates with bands of GST.
  - Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.

- Special provision with respect to the states of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.
- Any other matter relating to GST, as the Council may decide.

### Other Functions of the Council

- The Council has the following other functions:
  - The Council shall recommend the date on which the GST may be levied on petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel.
  - When there is a dispute with respect to its recommendations or their implementation, the Council shall establish a mechanism to adjudicate upon the dispute:
    - Between the centre and one or more states; or
    - Between the centre and any state or states on one side and one or more other states on the other side; or
    - Between two or more states.
  - The Council has to recommend the compensation to the states for loss of revenue arising on account of introduction of GST for a period of five years.
  - Based on this recommendation, the Parliament determines the compensation.
  - Accordingly, the Parliament enacted the law in 2017.

### NATIONAL COMMISSION FOR BCs

#### Establishment of the Commission

- In the **Mandal case judgement (1992)**, the Supreme Court directed the central government to constitute a permanent statutory body to examine the complaints of under inclusion, overinclusion or non-inclusion of any class of citizens in the list of backward classes.
- Accordingly, the **National Commission for Backward Classes (NCBC)** was set up in 1993.



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- Later, the **102nd Amendment Act of 2018** conferred a constitutional status on the Commission.
- The amendment inserted a new **Article 338-B** in the constitution.
- The Commission ceased to be a statutory body and became a constitutional body.
- The scope of functions assigned to the Commission is also enlarged under the new dispensation.
- This was done in order to safeguard the interests of the socially and educationally backward classes more effectively.
- In other words, the constitutional status of the new Commission is at par with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST).
- The Commission consists of a chairperson, a vice-chairperson and three other members.
- They are appointed by the President by warrant under his hand and seal.
- Their conditions of service and tenure of office are also determined by the President.

**Functions of the Commission:**

- The functions of the Commission are the following:
  - To investigate and monitor all matters relating to the constitutional and other legal safeguards for the socially and educationally backward classes and to evaluate their working.
  - To inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes.
  - To participate and advise on the socioeconomic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union or a state.
  - To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards.
  - To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards

and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes.

- To discharge such other functions in relation to the protection, welfare, development and advancement of the socially and educationally backward classes as the President may specify.

### **Report of the Commission**

- The Commission presents an annual report to the President.
- It can also submit a report as and when it thinks necessary.

### **Powers of the Commission**

- The Commission is vested with the power to regulate its own procedure.
- The Commission, while investigating any matter or enquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
  - Summoning and enforcing the attendance of any person from any part of India and examining him on oath
  - Requiring the discovery and production of any document
  - Receiving evidence on affidavits
  - Requisitioning any public record from any court or office
  - Issuing summons for the examination of witnesses and documents
  - Any other matter which the President may determine
- The central government and the state governments are required to consult the Commission on all major policy matters affecting the socially and educationally backward classes.

### **CO-OPERATIVE SOCIETIES**

- The 97<sup>th</sup> **Constitutional Amendment Act of 2011** gave a constitutional status and protection to co-operative societies.
- In this context, it made the following three changes in the constitution:
  - It made the right to form co-operative societies a fundamental right (**Article 191**).

- It included a new Directive Principle of State Policy on promotion of co-operative societies (**Article 43-B2**).
- It added a new **Part IX-B** in the Constitution which is entitled “The Co-operative Societies” (**Articles 243-ZH to 243-ZT**).

### Constitutional Provisions

- Part IX-B of the constitution contains the following provisions with respect to the cooperative societies:
- **Incorporation of Co-operative Societies:** The state legislature may make provisions for the incorporation, regulation and winding-up of co-operative societies based on the principles of voluntary formation, democratic member control, member economic participation and autonomous functioning.
- **Number and Term of Members of Board and its Office Bearers:**
  - The board shall consist of such number of directors as may be provided by the state legislature. But, the maximum number of directors of a co-operative society shall not exceed twenty-one.
  - The state legislature shall provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every co-operative society having members from such a category of persons.
  - The term of office of elected members of the board and its office bearers shall be five years from the date of election.
  - The state legislature shall make provisions for co-option of persons having experience in the field of banking, management, finance or specialisation in any other related field, as members of the board. But, the number of such co-opted members shall not exceed two (in addition to twenty-one directors).
  - Further, the co-opted members shall not have the right to vote in any election of the co-operative society or be eligible to be elected as office bearers of the board.



- The functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors (that is, twenty-one).
- **Election of Members of Board:**
  - The election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members assume office immediately on the expiry of the term of the office of members of the outgoing board.
  - The superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to a co-operative society shall vest in such body, as may be provided by the state legislature.
- **Supersession and Suspension of Board and Interim Management:**
  - No board shall be superseded or kept under suspension for a period exceeding six months.
  - The board may be superseded or kept under suspension in case
    - Of its persistent default
    - Of negligence in the performance of its duties
    - Of committing any act prejudicial to the interests of the cooperative society or its members
    - Of there being a statement in the constitution or functions of the board
    - Of the election body having failed to conduct elections in accordance with the provisions of the State Act.
  - However, the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government.
  - In case of supersession of a board, the administrator appointed to manage the affairs of such a co-operative society shall arrange for conduct of elections within the period of six months and handover the management to the elected board.

• **Audit of Accounts of Co-operative Societies:**

- The state legislature may make provisions for the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year.
- It shall lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing the accounts of the co-operative societies.
- Every co-operative society shall be audited by an auditor or auditing firm, appointed by the general body of the co-operative society.
- But, such an auditor or auditing firm shall be appointed from a panel approved by the State Government or a body authorised by the State Government on this behalf.
- The accounts of every co-operative society shall be audited within six months of the close of the financial year.
- The audit report of the accounts of an apex co-operative society shall be laid before the state legislature.

• **Convening of General Body Meetings:**

- The state legislature may provide that the annual general body meeting of every cooperative society shall be convened within a period of six months of the close of the financial year.
- Right of a Member to Get

• **Information:**

- The state legislature may provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society.
- It may also make provisions to ensure the participation of members in the management of the co-operative society.
- Further, it may provide for co-operative education and training for its members.

• **Returns:**

- Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the State Government.
- These returns shall include the following matters:
  - Annual report of its activities
  - Its audited statement of accounts
  - Plan for surplus disposal as approved by the general body of the co-operative society
  - List of amendments to the by-laws of the co-operative society
  - Declaration regarding date of holding of its general body meeting and conduct of elections when due
  - Any other information required by the Registrar in pursuance of any of the provisions of the State Act.

• **Offences and Penalties:**

- The state legislature may make provisions for the offences relating to the co-operative societies and penalties for such offences.
- Such a law shall include the commission or omission of the following acts as offences:
  - A co-operative society wilfully makes a false return or furnishes false information
  - Any person wilfully disobeys any summon, requisition or order issued under the State Act
  - Any employer who, without sufficient cause, fails to pay to a co-operative society the amount deducted from its employee within a period of fourteen days
  - Any officer who wilfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society to an authorised person
  - Any person who adopts corrupt practices before, during or after the election of members of the board or office bearers.



- **Application to Multi-state Co-operative Societies:** The provisions of this part shall apply to the multi-state co-operative societies subject to the modification that any reference to the “State Legislature”, “State Act” or “State Government” shall be construed as a reference to “Parliament”, “Central Act” or “Central Government” respectively.
- **Application to Union Territories:**
  - The provisions of this part shall apply to the Union territories.
  - But, the President may direct that the provisions of this part shall not apply to any Union territory or part thereof as he may specify in the notification.
- **Continuance of Existing Laws:** Any provision of any law relating to co-operative societies in force in a state immediately before the commencement of the Constitution (Ninety seventh Amendment) Act, 2011, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed or until the expiration of one year from such commencement, whichever is less.

#### Reasons for the 97<sup>th</sup> Amendment

- The reasons for adding the above provisions in the Constitution by the **97<sup>th</sup> Constitutional Amendment Act of 2011** are as follows:
  - The co-operative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth.
  - However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised.
  - There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators have remained in-charge of these institutions for a long time.
  - This reduces the accountability in the management of co-operative societies to their members.

- Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity.
- Co-operatives need to run on well established democratic principles and elections held on time and in a free and fair manner.
- Therefore, there was a need to initiate fundamental reforms to revitalise these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.
- The “co-operative societies” is a subject enumerated in Entry 32 of the state list of the Seventh Schedule of the Constitution and the state legislatures have accordingly enacted legislations on co-operative societies.
- Within the framework of State Acts, growth of co-operatives on large scale was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development.
- It has, however, been experienced that in spite of considerable expansion of co-operatives, their performance in qualitative terms has not been up to the desired level.
- Considering the need for reforms in the Cooperative Societies Acts of the States, consultations with the State Governments have been held at several occasions and in the conferences of state co-operative ministers.
- A strong need has been felt for amending the Constitution so as to keep the co-operatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.
- The Central Government was committed to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner.
- With a view to bring the necessary reforms, it was proposed to incorporate a new part in the Constitution so as to provide for certain

