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Sample Chapters of This Booklet

Parliament of India

Indian democracy is based on the Westminster model (British model of democracy is referred to as the Westminster model) where the importance of Parliament in the political system is central. Preamble to the Indian Constitution begins with the people.” which confers sovereignty on the Parliament as ‘people’ in an indirect democracy means the representative body.

Art. 79 says that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known as the Rajya Sabha or the federal chamber or Council of States or Upper House and the Lok Sabha or the popular chamber or Lower House or House of the 'People'.

Even though the President of India is not a member of the parliament, he is a part of the Parliament for the following reasons

- in a parliamentary system, the Executive is a part of the Legislature unlike the Presidential form of democracy where there is a strict separation between the two institutions.
- Bills passed by the Parliament need Presidential assent before they become laws
- President performs certain other legislative duties like summoning and proroguing the Parliament; recommending the introduction of certain Bills in the Parliament etc.

The term in Constitutional law, President-in-Parliament, is used to refer to the President in his legislative role, acting with the advice and consent of the two Houses of Parliament. It is similar to Crown-in-Parliament which means the Crown acting with the advice and consent of the British Parliament.

Role of the President of India with regard to Parliament

The President is the constitutional head of Republic of India. He is elected by an electoral college that includes elected members of both-Houses of Parliament and the elected members of the Legislative Assemblies of the States. The President performs the following constitutional functions vis-a-vis Parliament

- He invites the leader of the majority party to form the Government after a new Lok Sabha is duly elected.
- He summons the two Houses of Parliament to meet from time to time.
- He has the power to prorogue a session in the two Houses and dissolve the Lok Sabha.
- The President has to assent to a Bill before it can become a law.
- If the Houses are not in session, the President can promulgate Ordinances having the same validity as a law passed in Parliament.
- The President has the right to address either or both houses of Parliament.
- The President has the power to call both houses for a joint Sitting in case a dispute arises over passing a Bill.
- He nominates 12 members of the Rajya Sabha and has the right to nominate two members from the Anglo Indian community to the Lok Sabha if they are under represented.

Thus, President is a constituent part of the Parliament.

Ques. 1 : 'Rajya Sabha has an insignificant role in the functioning of parliamentary democracy in India'. Critically examine?

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Ans. It is the federal house representing the States.

Maximum strength (sanctioned strength) of Rajya Sabha is two hundred and fifty (250), of which 238 are to be elected and 12 are nominated by the President of India. The actual strength of Rajya Sabha is two hundred and forty five (245), of which 233 are elected and 12 are nominated by the President. The actual strength is also known as total membership. Each State and the two Union Territories of Delhi and Puduchery are represented in the Rajya Sabha. The allocation of seats in Rajya Sabha is contained in the Fourth Schedule to the Constitution.

Article 80 provides that the Rajya Sabha shall consist of:

- twelve members nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as Literature, science, art and social service; and
- not more than two hundred and thirty-eight representatives of the States and of the Union Territories.

The elected members of the (233 Members) Rajya Sabha are elected by the elected members of the Assemblies of States and the two Union Territories of Delhi and Puduchery in accordance with the system of proportional representation by means of the single transferable vote.

Of the UTs, only NCT of Delhi and Puduchery are represented in the Rajya Sabha. No other UT has an assembly and so has any representation in the Rajya Sabha.

While the nominated members of Rajya Sabha have a right to vote in the election of the Vice-President of India, they are not entitled to vote in the election of the President of India.

The Council of States was set up under the Constitution in 1952. Dr. Radhakrishnan was the first Chairman of Rajya Sabha. He was the longest serving Chairman (1952-62).

The allocation of seats to be filled by the representatives of the States/Union Territories as laid down in the Fourth Schedule to the Constitution is as follows:

1.	Andhra Pradesh	18
2.	Arunachal Pradesh	1
3.	Assam	7
4.	Bihar	16
5.	Chhattisgarh	5
6.	Goa	1
7.	Gujarat	11
8.	Haryana	5
9.	Himachal Pradesh	3
10.	Jammu and Kashmir	4
11.	Jharkhand	6
12.	Karnataka	12
13.	Kerala	9
14.	Madhya Pradesh	11
15.	Maharashtra	19
16.	Manipur	1
17.	Meghalaya	1

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18.	Mizoram	1
19.	Nagaland	1
20.	Orissa	10
21.	Punjab	7
22.	Rajasthan	10
23.	Sikkim	1
24.	Tamil Nadu	18
25.	Tripura	1
26.	Uttaranchal	3
27.	Uttar Pradesh	31
28.	West Bengal	16
29.	The National Capital Territory of Delhi	3
30.	Puduchery	1
Total:		233

Eligibility

A candidate for election to Rajya Sabha

- should be a citizen of India
- above 30 years of age and
- possessing such other qualifications as may be prescribed by law of Parliament

Rajya Sabha is not subject to dissolution; one-third of its members retire every two years. Thus, it is a permanent body. Normally a member is elected for six years but a member elected against a mid-term vacancy (casual vacancy), serves only for the remaining period.

Rajya Sabha, when it was constituted in 1952, had 216 members-12 nominated by the President and the remaining 204 elected to represent States. President, after consultation with the Election Commission made an order in 1952 for curtailing the term of office of some of the members so that as nearly as one-third of the members retire after every two years. Election Commission by drawing of lots decided who should retire and when. That is how the initial order was established.

Ques. 2 : 'The amendments in the Representation of Peoples Act, 1957 related to Rajya Sabha is violates the 'basic structure' of the constitution as federalism is a basic feature'. Examine"

Ans. In 2003, Parliament made an amendment to the Representation of People's Act, 1951 to make two crucial changes

- to do away with the domicile / residency condition
- to replace secret ballot with open ballot.

Section 3 of the Representation of the People Act said that a candidate seeking election to Rajya Sabha should be "ordinarily resident" in the State that he wants to represent. By amending this Section of the RPA, the Government opens the contest for a resident "anywhere in the country".

Government explained that the purpose of the first change was to remove the anomaly in the eligibility criteria for both the Houses of Parliament a candidate for Lok Sabha can contest from anywhere in the country but it is not so for Rajya Sabha.

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The residency rule for the Rajya Sabha became controversial when the Election Commission questioned the genuineness of the domiciliary credentials of some members of Rajya Sabha. In a large number of cases, representatives from various States in Rajya Sabha were those who traditionally were not resident in that State, but for the purposes of election to the Rajya Sabha, got enrolled as voters in that particular State by acquiring property or otherwise. The residency clause was flouted frequently by many.

Regarding adoption of open ballot, the reason is: in the context of the growing money power in RS elections, secrecy was thought to conceal corruption and so open ballot was introduced.

The amendments were challenged in the Supreme Court on the ground that 'basic Structure' of the Constitution is violated as federalism is a basic feature. It is argued that only those belonging to a State can represent it well.

In 2006 a five-judge Constitution bench of the apex court in the *Kuldip Nayyar Vs Union of India (2006)* case gave the following verdict

- residence is not a constitutional requirement but a matter of qualification prescribed by Parliament in exercise of its power under Article 84 and so the question of violation of basic structure does not arise
- as long as the state has a right to be represented in the council of states by its chosen representative, who is a citizen of the country, it cannot be said that federalism is affected.
- Constitution does not provide that voting for an election to the Council of States shall be by secret ballot. The manner of voting in the election to the Council of States can be regulated by the statute.

The court said that since the amendments have been brought in to avoid cross-voting, to wipe out the evil of corruption and to maintain the integrity of the democratic set-up, they can be justified by the State as a reasonable restriction under Article-19(2) of the Constitution on the assumption that voting in such an election amounts to freedom of expression under Article 19(1)-A.

Ques. 3 : The role of importance of the Chairman of the Rajya Sabha?

Ans. The Vice-President is the ex officio Chairman of Rajya Sabha (Art.64). In fact, the Vice President draws his salary as the Chairman of the Rajya Sabha which is his ex-officio role that is, by virtue of being the Vice president of India, he functions as the Chairman of Rajya Sabha. The Vice-President is elected by the members of an electoral college consisting of all the members of both Houses of Parliament both elected and nominated in accordance with the system of proportional representation by means of the single transferable vote. The Vice-President holds office for a term of five years from the date on which he enters upon his office.

As the Presiding Officer, the Chairman of the Rajya Sabha is the guardian of the prestige and dignity of the House. He safeguards the privileges and immunities of the members individually and the House collectively. He issues warrants to execute the orders of the House, where necessary. For example, to punish any one who commits contempt of House.

Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes (Art 100.1) However, during proceedings for his removal; he does not preside at that sifting. He cannot also vote at all on such resolution.

The Constitution also lays down certain powers and duties of the Chairman

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- he is empowered to adjourn the House or to suspend its sitting in the event of absence of quorum
- In case of resignation of a member from the House, the Chairman is required not to accept the resignation, if he is satisfied that such resignation is not voluntary or genuine
- under the Tenth Schedule to the Constitution, the Chairman determines the question as to disqualification of a member of the Rajya Sabha on ground of defection. He also makes rules for giving effect to the provisions of that Schedule
- enforce respect for privileges and
- the Chairman may permit a member who is unable to express himself in Hindi or in English, to address the House in his mother tongue

Various powers are conferred on the Chairman under the Rules of Procedure of the Rajya Sabha in connection admissibility of motions etc. The Chairman's consent is required to raise a question of breach of privilege in the House.

Parliamentary Committees where members are drawn from Rajya Sabha, whether set up by the Chairman or by the House, work under his guidance. He appoints Chairmen and nominates members to eight Departmentally related Standing Committees and they are under his administrative control. He himself is the Chairman of the Business Advisory Committee, Rules Committee and the General Purposes Committee.

The Chairman's rulings cannot be questioned or criticised and to protest against - the ruling of the Chairman is a contempt of the House and the Chairman.

The Chairman does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer. However, on a point of order raised or on his own, he may address the House at any time on a matter under consideration with a view to assisting members in their deliberations.

Maintenance of order in the House is a fundamental duty of the Chairman and he has disciplinary powers like suspension of member; and may also adjourn the sitting of the house in case of grave disorder.

Some statutes also confer duties on the Chairman

- rules made under the Salary, Allowances and Pension of Members of Parliament Act, 1954, do not take effect until they are approved and confirmed by the Chairman and the Speaker
- Under the Judges (inquiry) Act, 1968, the Chairman has to constitute a Committee, upon receipt of a motion for the removal of a Judge of the Supreme Court or of a High Court, for investigation into the grounds on which the removal of a Judge is prayed for.

The Rajya Sabha Secretariat functions under the control and direction of the Chairman.

Deputy Chairman

The Deputy Chairman is elected by the members of Rajya Sabha from among themselves. While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the President, the duties of the office of the Chairman are performed by the Deputy Chairman. He/She has - the same powers as the Chairman when presiding over a sitting of the House.

The Deputy Chairman can speak in the House, take part in its deliberations and vote as a member on any question before the House, but he/she can do so only when the Chairman is presiding.

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When the Deputy Chairman himself/herself is presiding, he/she cannot vote except in the event of equality of votes-casting vote to break the tie.

The Deputy Chairman holds office from the date of his/her election and vacates the office if he/she ceases to be a member of the House. He/She may resign his/her office by addressing the letter to the Chairman. The Deputy Chairman may also be removed from his/her office by a resolution of the House passed by a majority of all the then members of the House. Fourteen days' notice is required of the intention to move such a resolution.

The salary of the Deputy Chairman is charged on the Consolidated Fund of India and is not subject to the vote of the House.

Chairman Protem

When the offices of both the Chairman and the Deputy Chairman are vacant, the duties of the office of the Chairman are performed by such member of the Rajya Sabha as the President may appoint for the purpose (Art.91) The member so appointed is known as the Chairman protem. For the first time in the Rajya Sabha when the Vice-President (Shri B. D. Jatti) was acting as the President and the post of Deputy Chairman held by Shri Godey Murahari having fallen vacant in 1977 as the latter was elected to the Lok Sabha, the Vice-President acting as President appointed Shri Banarsi Das, a member of Rajya Sabha, as Chairman protem until the Deputy Chairman was chosen the election of the Deputy Chairman took place soon after and the protem Chairman vacated the office.

Leader of the Opposition is the leader in the Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Rajya Sabha.

Panel of Vice-Chairmen

The Chairman, from time to time, nominates from amongst the members of the house, a panel of not more than six Vice-Chairmen. In the absence of the Chairman and the Deputy Chairman, one of them presides over the House.

The Vice-Chairman, when presiding over a sitting of the House, has the same powers as the Chairman when so presiding. He is, however, free to participate fully in all discussions in the House. A Vice-Chairman while presiding cannot vote in the first instance, and has to exercise a casting vote in the case of an equality of votes.

Non-panel Member Presiding

When neither the Chairman nor the Deputy Chairman nor a Vice-Chairman is present

to preside, such other member as may be determined by the House acts as the Chairman. The practice is that the outgoing presiding officer requests a member to take the Chair with the approval of the House.

Leader of the House

The Leader of the House is an important parliamentary functionary who assists the Presiding Officer in the conduct of the business. Leader of Rajya Sabha is the Prime Minister, if he is a member of the House, or a Minister who is the member of the House and nominated by the Prime Minister to function as the Leader of the house.

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The Prime Minister, Manmohan Singh, who is a Rajya Sabha member, is the leader of Rajya Sabha while the former Union Minister, Arun Jaitley is the leader of Opposition.

Casting vote

Casting vote is the vote cast to break a tie when there is equality of votes. Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes. However, if at any sitting of the House a resolution for the removal of the Chairman from his office is under consideration, he is not to preside at that sitting. He cannot also vote at all on such resolution or on any other matter during such proceedings. While the former (casting vote being given) helps in the conduct of business and Legislation, the latter (casting vote being denied) is a moral imperative.

Utility of Rajya Sabha

- It is the permanent House and so has benefits like it can ratify proclamation of Emergency when the Lok Sabha is not in session and cannot be called into session immediately. It means the proclamation can continue.
- At the same time, it can ensure that emergency provisions are not misused- particularly the President's rule. Unless Rajya Sabha ratifies the proclamation of President's rule, it does not come into force. Thus, the interests of the States can be protected.
- Constitution can not be amended unless Rajya Sabha, sitting independently of the Lok Sabha passes the Bill. That is, there is no joint session in case of deadlock. Thus, the national and states' interests are protected.
- It has 12 nominated members who add to the quality of parliamentary proceedings and policy making
- It enables law making to become more sober when the representatives of the people are carried away by emotional issues.

Thus, Rajya Sabha has enormous utility, in. the Parliamentary democracy of ours.

Non-federal features of Rajya Sabha

The non-federal features of the Rajya Sabha are

- All states do not have same number of representatives in the Rajya Sabha like in the US Senate.
- Rajya Sabha has no special powers with regard to creation of states (Art.3) and thus can not defend the principle of indestructibility of the state concerned.
- Art.249 is also unfederal as the big 10 states can over run the rest while passing the resolution thus denying equality to states.

Vote in the House

In Rajya Sabha, as in Lok Sabha generally four methods of voting are adopted

- Voice vote
- Counting
- Division by going into the Lobbies
- Division by automatic vote recorder

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Voice vote

On the conclusion of a debate, the Chairman puts the question before the House and invites those who are in favour of the motion to say "Aye" and those against the motion to say "NO" Then the Chairman says: "I think the Ayes or the Noes, (as the case may be) have it".

Count

If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit, ask the members who are for "Aye" and those for "No" respectively to rise in their places and, on a count being taken, he may declare the determination of the House. In this case, also, the names of the voters are not recorded.

Division

A division is one of the forms in which the decision of the House is ascertained. As mentioned above, normally, when a motion is put to the House members for and against it indicate their opinion by sing "Aye" or "No" from their seats. The Chairman goes by the voices and declares that the motion is either accepted or negated by the House. If a member challenges the decision, the Chair orders that the lobbies be cleared. Then tie division bell is rung. After the bell stops,

all the doors-to the Chamber are closed and nobody can enter or leave the Chamber till the division is over. Then the Chairman puts the question for second time and declares whether in its opinion the -"Ayes" or the "Noes", have it.

When a division is about to be taken, only members of the House have the right to be present. In other words, the lobby has to be cleared for a division.

If the opinion so declared is again challenged, the Chair asks the votes to be recorded by operating the Automatic Vote Recording Equipment.

Special Mention

Under the Rules of Procedures and Conduct of Business in the Council of States, members are allowed to make special Mentions in Rajya Sabha. If a Minister so desires, he may make a statement on the subject with the permission of the Presiding Officer. The main advantage of this device is to bring to the notice of the House and the Government the matters and happenings of urgent public importance which take place in or outside the country.

Motion for Papers

There is no provision for adjournment motion in Rajya Sabha as the Council of Ministers is responsible only to the Lok Sabha (Art. 75.3). But there is a "motion for papers", like in the House of Lords in Britain. Adjournment motion sets aside the announced business of the House in preference for discussion on a matter of urgent public importance which in the end is voted upon. Under a "motion for papers", the Council could discuss any matter of real public importance and the right of the reply is given to the member moving the motion..

LOK SABHA

Lok Sabha is composed of representatives of the people chosen by direct election on the basis of universal adult suffrage. The maximum strength of the House envisaged by the Constitution is 552-upto 530 members to represent the States, up to 20 members to represent the Union

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Territories and not more than two members of the Anglo-Indian Community to be nominated by the President, if, in his opinion, the community is not adequately represented in the House. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

The actual strength of the Lok Sabha at present is 545 members including the Speaker and two nominated members referred to as the total membership.

Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting. However, while a Proclamation of Emergency is in operation, this -period may be extended by Parliament for a period not exceeding one year at a time and not extending beyond a period of six months after the proclamation has ceased to operate. The Constitution of India came into force on January 26, 1950. The first general elections under the new Constitution were held during the year 1951-52 and the first elected Parliament came into being in April, 1952, the Second Lok Sabha in April, 1957, the Third Lok Sabha in April, 1962, the Fourth Lok Sabha in March, 1967, the Fifth Lok Sabha in March, 1971, the Sixth Lok Sabha in March, 1977, the Seventh Lok Sabha in January, 1980, the Eighth Lok Sabha in December, 1984, the Ninth Lok Sabha in December, 1989, and the Tenth Lok Sabha in June, 1991, the Eleventh Lok Sabha in May, 1996, the Twelfth Lok Sabha in March, 1998, the 13th Lok Sabha in late 1999 and the 14th Lok Sabha elections were held in 2004.

Presiding Officers

Lok Sabha elects one of its own members as its Presiding Officer and he is called the Speaker. He is assisted by the Deputy Speaker who is also elected by Lok Sabha. The conduct of business in Lok Sabha is the responsibility of the Speaker.

Ques. : 'The Speaker of Lok Sabha has extensive functions to perform in matters of administrative, judicial and regulatory'. Discuss?

Ans. In the Lok Sabha, both Presiding Officers-the Speaker and the Deputy Speaker- are elected from among its members by a simple majority of members present and voting in the House. No specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that he should be a member of the House. One of the first acts of a newly constituted House is to elect the Speaker.

Usually, a member belonging to the ruling party is elected the Speaker. But in times of coalition governments, as in India since 1996, a member of a party other than the ruling coalition can be elected the Speaker. For example, Somnath Chatterjee of CPI(M), who belong to a party that only gives 'outside' support to the coalition.

The Speaker protem (sworn in by the President to swear in the newly elected members of House) presides over the sitting in which the Speaker is elected, if it is a newly constituted House. If the election falls later in the life of a Lok Sabha the Deputy Speaker presides.

Term of Office

The Speaker holds office from the date of his election till, immediately before the first meeting of the Lok Sabha which is newly constituted after the dissolution of the one to which he was elected. He is eligible for re-election. On the dissolution of the Lok Sabha, although the Speaker ceases to be a member of the House, he does not vacate his office. The Speaker may, at any time resign from office by writing under his hand to the Deputy Speaker. The Speaker can be removed from office only on a resolution of the House passed by a majority of all the then members of the House. It is mandatory to give a minimum of 14 days notice of the intention to move the resolution.

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At the Commencement of the House or twin time to time, the Speaker shall nominate from amongst the members a panel of not more than ten Chairmen, anyone of whom may preside over the House in the absence of the Speaker and the Deputy Speaker.

The Speaker has extensive functions to perform in matters administrative, judicial and regulatory. His decisions are final and binding.

Under the Constitution, the Speaker enjoys a special position

- he certifies Money Bills and is final (Art. 110)
- presides over joint sittings which are summoned to resolve a disagreement between the two Houses
- decides on granting recognition to the Leader of the Opposition in the Lok Sabha
- Following the 52nd Constitution amendment 1985, the Speaker is vested with the power relating to the disqualification of a member of the Lok Sabha on grounds of defection.

Though himself a member of the House, the Speaker does not vote in the House those rare occasions when there is a tie- equality of votes. Till date, the Speaker of the Lok Sabha has not been called upon to exercise this unique casting vote.

Speaker and the Committees

The Committees, constituted by him or by the House function under the overall direction of the Speaker. The Chairmen of most Parliamentary Committees are nominated by him. Committees like the Business Advisory Committee, the General Purposes Committee and the Rules Committee work directly under his Chairmanship.

He is the ex officio President of the Indian Parliamentary Group (IPG), set up in 1949, which functions as the National Group of the Inter-Parliamentary Union (IPU) and the Main Branch of the Commonwealth Parliamentary Association (CPA).

It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. He symbolises the dignity and power of the House. His unique position is illustrated by the fact that he is placed very high in the Warrant of Precedence in our country, standing next only to the President, the Vice-President and the Prime Minister. Speaker's salary and allowances are charged on the Consolidated Fund of India.

Ques. 5 : Briefly write about

(a) Protem Speaker

(b) Substantive Motions

(c) Difference between a resolution and a motion.

Ans.

Protem Speaker

Speaker pro Tempore or temporary Speaker the senior most member of the Lok Sabha is appointed and sworn in as the Protem Speaker by the President so that the newly elected members are administered oath by him. They in turn elect the Speaker. Protem Speaker continues till the new Speaker is elected. The Constitution does not specify any functions for the Protem Speaker.

Somnath Chatterjee who is the senior most MP of the 14th Lok Sabha was administered oath as protem Speaker by President A.P.J. Abdul Kalam in June 2004 , enabling him to preside over the proceedings of

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the first two days of the House when new members took oath. He was later elected Speaker of the House when he ceased to be the protem Speaker.

Procedure in the House

The Rules of Procedure and Conduct of Business in Lok Sabha and Directions issued by the Speaker from time to time regulate the procedure in Lok Sabha. For Various items of business to be taken up in the House the time is allotted on the recommendations of the Business Advisory Committee.

Time of Sittings

When in session, Lok Sabha holds its sittings usually from 11 AM. to 1 P.M. and from 2 P.M. to 6 P.M.

Question hour

It is the beginning hour of the Parliament on

Zero hour

Zero hour has no basis in the Parliamentary rules. It developed by convention to enable members to raise matters of public importance on the floor of the House. Zero Hour immediately follows question hour. It begins at 12 o'clock after Question Hour which is from 11.00 a.m. to 12.00 noon. Though called although euphemistically called Zero Hour, it may last for more or less than an hour.

Zero hour is observed in both the Houses of the Parliament.

Motions and Resolutions

'Motion': Process of passage and Different types of Motions

A motion is a proposal for eliciting decision or expressing the opinion of the house on a matter of public importance. Every question to be decided by the House must be proposed as 'Motion'. The consent of the Presiding Officer is essential to initiate a motion. A motion is so called as it sets the House in motion the business of the House essentially takes place on the basis of motions.

Government motions involve seeking approval of the House for a policy of the government Private members' motions focus on eliciting opinion of the House on a particular matter.

Motions fall into three principal categories:

- Substantive Motions
- Substitute Motions
- Subsidiary Motions.

A substantive motion is a self-contained independent proposal. It is drafted in such a way as to be capable of expressing a decision of the House. Some examples of a substantive motion are: the motion of thanks on the President's Address, motion of no-confidence, motions for elections, motion for impeachment of persons in high authority.

A substitute motion is moved in the place of the original motion. It proposes an alternative to the original motion.

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Resolutions

A Resolution is a procedural means to initiate a discussion on any matters of general public interest. A Resolution is actually a Substantive Motion.

Resolutions may be classified as private members' resolutions, government resolutions and statutory resolutions provision in the Constitution or an Act of Parliament. Government resolutions are initiated by ministers. Statutory resolutions may be moved either by a minister or by a private member.

Difference between a motion and a resolution.

All Resolutions fall in the category of Substantive Motions. But all motions need not necessarily be substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon. For example, the resolution to impeach the President of India.

Ques. 6 : 'Though according to the Constitution both Lok Sabha and Rajya Sabha enjoy equal status but Lok Sabha is relatively more powerful'. Examine?

Ans. The Constitution envisages that both Lok Sabha and Rajya Sabha have equal status and position. The two houses, at the same time enjoy special powers as given below

The Lok Sabha has the following special or exclusive powers

Union Council of Ministers is collective responsible to Lok Sabha (Art.75.3)

- Budget is presented in Lok Sabha (Art. 112)
- demands for grants can be introduced only in the Lok Sabha
- Money Bill (Art.110) or a Financial Bill (Art.117.1) can be introduced only in the Lok Sabha.
- Speaker's decision about whether a Bill is a Money Bill or not is final
- Prime Minister generally comes from the Lok Sabha
- Estimates Committee has its entire 30 members drawn from the Lok Sabha.
- Lok Sabha has 545 members which is substantially more than that of Rajya Sabha. Its numerical Superiority helps in the joint session of the Parliament which is presided over by the Speaker
- A joint session is presided over by the Speaker and in his absence the deputy Speaker of Lok Sabha

Lok Sabha has the power of moving a resolution for the discontinuation of national emergency as provided by the 44th Amendment Act (Art 352)

The Rajya Sabha has special or exclusive powers which are contained in Articles 249, 312, 352, 356 and 360.

- Under article 249, the Rajya Sabha can enable the Parliament, by passing a resolution supported by two-thirds of the members present and voting, that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, in national interest.
- resolution can be passed by the Rajya Sabha by a majority of 2/3rds of the members present and voting, under Article 312, for the creation of one or more all-India services by the Parliament, if it is deemed to serve the national interest. The services such as the Indian Administrative Service, Indian Police Service, Indian Forest service and All-India Judicial Service are the All India Services.

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- Under articles 352, 356 and 360, the Rajya Sabha can approve the Proclamations of emergency national, state and financial respectively initially or extend them subsequently while the Lok Sabha is not in session or under dissolution.

Except the above, there is equality between the two Houses:

- The Constitution requires the laying of a number of papers on the Table in both the Houses, notably amongst them are the Budget, supplementary demands for grants, Ordinances and Proclamations issued by the President, reports of Constitutional and statutory functionaries such as the Comptroller and Auditor-General, the Finance Commission, the Commissioners for the Scheduled Castes and Scheduled Tribes, the Backward Classes Commission, the Commissioner for Linguistic Minorities and the Union Finance Commission
- Both Houses also participate in matters of elections of the President and the Vice-President
- Both participate in impeachment of the President, a Judge of the Supreme Court or of a High Court and CAG.

Differences between Lok Sabha and Rajya Sabha

The following are the differences

Members of Lok Sabha are directly elected on the basis of universal adult franchise. Members of Rajya Sabha are elected by the elected members of State Assemblies in accordance with the system of proportional representation by means of the single transferable vote

- The normal life of every Lok Sabha is 5 years while Rajya Sabha is a permanent body
- Rajya Sabha has a nominated component- 12 members of intelligentsia-which Lok Sabha does not have

Vacation of Seats

If a member of one House becomes a member of the other House, his seat in the first House becomes vacant from the date on which he is elected to the other House. If he is elected a member of the state Legislature, he ceases to remain a member of Parliament, unless he resigns his membership from the State Legislature within a period of 14 days from the date of publication of the result in the State Gazette. If a person is chosen a member of both the Houses but has not taken his seat in either of them, then he has to intimate in writing to the Election Commission, within ten days of the publication of the result as to in which House he wishes to serve and thereupon his seat in the other House becomes vacant. If he fails to give such intimation, his seat in the Rajya Sabha becomes vacant after the expiration of that period. If a person is elected to more than one seat in the House, then all the seats become vacant unless he resigns within fourteen days all but one of the seats.

If a member does not attend the House for 60 days consecutively without the permission of the Presiding Officer, his seat may be declared vacant. Following reasons also can cause vacancy

- he holds any office of profit
- declared to be unsound mind or undischarged insolvent
- voluntarily acquires citizenship of another country his election is declared invalid by the court
- he is expelled by the House
- he becomes President, Vice President etc.
- disqualified for defection by the Presiding Officer

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Sessions of Parliament

The Rajya Sabha is not subject to dissolution unlike the Lok Sabha which, unless sooner dissolved, continues for five years from the date appointed for its first meeting.

The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed from its first sitting in the next session. 'The President may from time to time prorogue the Parliament or either House-prorogation means the termination of a session and normally follows the adjournment sine die of the House by the Presiding Officer.

A session is the period of time between the meeting of a Parliament and its prorogation. During the course of a session, either House may be adjourned for a few hours, days or weeks by the Presiding Officer for any reason. The period between the prorogation of Parliament and its reassembly in a new session is termed as a 'recess'. Normally Parliament meets, in three sessions in a year, namely Budget session in the months of February-March, April and May; Monsoon session in the months of July-August and Winter session in the months of November-December.

Since 1994, the Budget session runs like this: after the general discussion on the Budget in the Houses is over and vote on account is passed (Art. 116) by the third week of March, the Houses are to be adjourned for a fixed period (about a month) and the committees have to consider the Demands for Grants of the assigned Ministries during one month period.

Prorogation and its Effects

"Prorogation means the end of a session." "A prorogation terminates a session; an adjournment is an interruption in the course of session." Usually prorogation follows the adjournment of the House sine die. The time-lag between the adjournment of the House sine die and its prorogation varies between 2 and 10 days. It is not necessary that both Houses should be prorogued simultaneously.

The prorogation affects different categories of business pending before the House as follows:

Bills

Article 107(3) of the Constitution expressly provides that a Bill pending in Parliament shall not lapse by reason of the prorogation of the House. This saving also covers Bills pending before a Select or Joint Committee of the House(s). Notices of intention to move for leave to introduce Bills also do not lapse on prorogation and no fresh notice is necessary in the next session for that purpose.

Motions and Resolutions

On the prorogation, all pending notices except those relating to introduction of Bills as mentioned above, lapse and fresh notices must be given for the next session. This covers notices of motions, calling attention, resolutions, amendments, etc.

Effect of dissolution of Lok Sabha

All business pending before Lok Sabha lapses on its dissolution. However, the dissolution of LS also affects the business pending before the Rajya Sabha to a certain extent, as indicated below:

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- Bill pending in the Rajya Sabha which has not been passed by the Lok Sabha shall not lapse
- Bill which is pending in the Lok Sabha lapses
- Bill passed by the Lok Sabha and is pending in the Rajya Sabha lapses
- Under Article 108(5), a Joint Sitting of both Houses to resolve a deadlock on a Bill will be held notwithstanding the fact that dissolution of the Lok Sabha has intervened since the President has notified his intention to summon the Houses to meet in a Joint Sitting.
- Bills originating in the Rajya Sabha which are still pending in that House do not lapse.
- Bills originating in the Rajya Sabha which having been passed by the House and transmitted to the Lok Sabha and pending there lapse
- Bills originating in the Rajya Sabha and returned to that House by the Lok Sabha with amendments and still pending there on the date of its dissolution, lapse.
- A Bill passed by the two Houses of Parliament and sent to the President for assent does not lapse.
- A Bill returned by the President to the Rajya Sabha for reconsideration to the Houses does not lapse if the dissolution of the Lok Sabha takes place without the Houses having reconsidered the Bill. The Indian Post Office (Amendment) Bill, 1986, as passed by the Houses of Parliament was submitted to the President for his assent. The Bill remained pending before him till the dissolution of the Eighth Lok Sabha in 1989. The President returned the Bill to the Rajya Sabha later for reconsideration of the Houses and it survived Lok Sabha dissolutions till it was withdrawn in 2002.
- On the dissolution of the Lok Sabha, Joint Committees become defunct except the Statutory Joint Committees. Members of the Rajya Sabha elected to serve on the Committee on Official Language which consists of members of both Houses continue to remain on that Committee notwithstanding the dissolution of the Lok Sabha only the

members of the Lok Sabha on that Committee cease to be members of the Committee on the dissolution of that House. The reason for this position is that the Official Language Committee derives its authority from an Act of Parliament and the term of the members on that Committee is co-terminus with their term as members of the House.

Ques. 'Control over finances is the most important aspect of parliamentary system of government.' Examine?

Ans. Our Parliamentary system of Government based on Westminster model. The Constitution respects the principle 'no taxation without representation'.

Principles of the system of Parliamentary control over finance

- Legislative prerogative over taxation
 - legislative control over expenditure and
 - executive initiative in financial matters
- There are specific provisions in the Constitution of India containing these principles:
- Article 265 provides that 'no tax shall be levied or collected except by authority of law'
 - no expenditure can be incurred except with the authorisation of the Legislature (article 266)
 - President shall, in respect of every financial year, cause to be laid before Parliament, Annual Financial Statement (article 112).

These provisions of our Constitution make the Government accountable to Parliament.

With the emergence of Welfare State, role of Government expanded to provide social services to citizens like education, health, employment and housing. Government requires adequate financial resources to do so. Given the huge welfare role that the Government takes on and the security

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functions it has to perform, resources are necessarily scarce, The need for budgeting arises to allocate scarce resources to various Governmental activities.

Ques. 8 : 'Presentation of Budget and its passage over the years in India has become an exercise in toto and devoid of popular will'. Critically examine?

Ans. The 'Annual Financial Statement', laid before both the Houses of Parliament constitutes the Budget of the Union Government. President is responsible for having the Budget presented to the Lok Sabha (Art. 112). But, according to Article 77(3) the finance Minister has been made responsible by the President of India to prepare the Annual Financial Statement and pilot it through the Parliament. This statement takes into account a period of one financial year. The financial year commences on the 1st April each year. The statement embodies the estimated receipts expenditure of the Government of India for the financial year.

There is no single budget for the entire country as the states have their own budgets. Even the budget of Government of India is divided into the Railway and the General Budget.

Railway Budget

The Budget of the Indian Railways is presented separately to Parliament and dealt with separately, although the receipts and expenditure of the Railways form part of the Consolidated Fund of India and the figures relating to them are included in the Annual Financial Statement'.

Stages of Budget in the Parliament

In Parliament, the budget goes through five stages

- presentation of budget with Finance Minister's speech
- general discussion, after which there is adjournment of the Houses so that the Standing Committees can scrutinize the demands for grants for a month
- voting on demand for grants in Lok Sabha
- passing of appropriation bills
- passing of finance bill.

The powers of Parliament in respect of enactment of budget are enshrined in the Constitution under Article 112 to 117. As per these, no demand or a grant or proposal for expenditure can be made except on the recommendation of the President. Parliament cannot increase tax though it can either reduce or abolish it. Charged expenditure is not to be subjected to Parliament's voting. Powers of Rajya Sabha is quite restricted in financial matters.

Along with the Annual Financial Statement, the finance Minister submits the following 5 documents to the Parliament

- key to the budget document (various definitions and the Constitutional provisions)
- budget at a glance(receipts and expenditure shown with various deficits and break tips)
- receipt budget
- expenditure budget
- memorandum explaining the process in the financial bill (impact of tax proposals on government finance)

There is a proposal that the Govt. take a look at the recommendation of Administrative Reforms Commission of 1967 which suggested changing of the financial year from April 1 to 31st March to October 1 to 30th Sept. The reason is that the Govt. can have a more realistic estimate based on the impact of Monsoon. Moreover, the financial year for the business class starts from the time of Diwali.

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Presentation

In India, the Budget is presented to Parliament on such date as is fixed by the President. The Budget speech of the Finance Minister is in two parts. Part A deals with general economic condition of the country while Part B relates to taxation proposals. The General Budget is usually presented on the, last working day of February i.e. about a month before the commencement of the financial year except in the year when General Election to Lok Sabha are held. In an election year, Budget may be presented twice, first to secure Vote on Account for four months conventionally and later in full. The election year budget is called interim budget. It is presented only if the elections are held in the first half of the calendar year. Since the incumbent government does not have the moral propriety to present a full budget, it presents interim budget which is nothing but the vote on account with the difference that period for which money is sanctioned by the Parliament in the interim budget is 4 months while normally the vote on account sanctions the amount for 2 months.

The General Budget is presented in Lok Sabha by the Minister of Finance. He makes a speech introducing the Budget and it is only in the concluding part of his speech that the taxation proposals are made. The 'Annual Financial Statement' is laid on the Table of Rajya Sabha at the conclusion of the speech of the Finance Minister in Lok Sabha.

The Finance Bill which deals with the taxation proposals made by Government is introduced immediately after the presentation of Budget. It is accompanied by a memorandum explaining the provisions of the Bill and their effect on the finances of the Country.

Vote on Account

The general discussion on the Budget begins a few days after its presentation. Since Parliament will pass the budget only by mid-May, there is a need to sanction an amount to the Government to maintain itself after the new year sets in. A special provision is, therefore, made for "Vote on Account" by which Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year (Art. 116). It is generally 2 months worth of expenditure. But during election year, the Vote on Account may be for a period exceeding two months- normally four months.

Discussion

The Budget is discussed in two stages in Lok Sabha. First, there is the General Discussion on the Budget as a whole. This lasts for about 4 to 5 days. Only the broad outlines of the Budget and the principles and policies underlying it are discussed at this stage.

Consideration of the Demands by Standing Committees of Parliament

After the first stage of General Discussion on both Railway as well as general. Budget is over, the House is adjourned for a fixed period, usually a month. During this period, the Demands for Grants of various Ministries/Departments including Railways are considered by concerned Standing Committees. These Committees submit reports to the House. The report of the Standing Committees are of persuasive nature. The report shall not suggest anything of the nature of cut motions. There are 24 such committees since 2004.

After the reports of the Standing Committees are presented to the House, the House proceeds to the discussion and voting on Demands for Grants, Ministry-wise. The time for discussion and Voting of Demands for Grants is allocated by Speaker in consultation with the Leader of the House. On the last day of the allotted period, the Speaker puts all the outstanding Demands to the

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Vote of the House, this device is popularly known as 'guillotine'. Guillotine, in other words, is passing the demands for grants without discussion. It is done for want of time.

Lok Sabha has the power to assent to or refuse to give assent to any Demand or even to reduce the amount of Grant sought by Government. Introduction and voting on demands is confined only to Lok Sabha. In Rajya Sabha there is only a General Discussion on the Budget. It does not vote on the Demands for Grants.

Expenditure is of two types:

Charged expenditure. It includes the emoluments of the President and the salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha and the Speaker and Deputy Speaker of Lok Sabha, Judges of Supreme Court, Comptroller and Auditor General of India and certain other items specified in the Constitution of India. Discussion in Parliament on 'charged' expenditure is permissible but such expenditure is not voted.

- Non-charged expenditure. It is the votable expenditure. Only so much of the amount is subject to the vote of Lok Sabha as is not a "charged" expenditure on the Consolidated Fund of India. The votable part is the demands for grants.

Cut Motions

Motions for reduction to various Demands for Grants are made in the form of Cut Motions seeking to reduce the sums sought by Government on grounds of

- economy or
- difference of opinion on matters of policy or
- to voice a grievance.

Cut Motions are divided into following three categories:

- Disapproval of Policy cut i.e., a motion "that the amount of the demand be reduced to Re. 1" representing disapproval of policy underlying the Demand. A member giving notice of such a Cut Motion should indicate in precise terms, the particulars of the policy which he proposes to discuss. It is open to the member to advocate an alternative Policy.
- Economy cut i.e., a motion "that the amount of the Demand be reduced by a specific amount" representing the economy that can be effected. And
- Token cut i.e., a motion "that the amount of the Demand be reduced by Rs. 100" in order to express a specific grievance.

It is generally the opposition party member who may seek to move a cut motion.

Admissibility of the cut motion is entirely the discretion of the Speaker. There is speculation as to what will happen if the cut motion is moved. It is the consensus opinion that in such a situation, the Government needs to show that it has majority by bringing forward a 'confidence motion' under Rule 184 of the Lok Sabha.

Appropriation Bill

After the Voting on Demands for Grants have been completed by late April or early May, Government introduces the Appropriation Bill. The Appropriation Bill is intended to give authority to Government to incur expenditure from the Consolidated Fund of India. The appropriation Bill will appropriate the sums that the Lok Sabha granted by voting demands for grants. It also includes the charge expenditure. The procedure for passing this Bill is the same as in the case of other money Bills.

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Ques. 9 : 'Budget is an important tool of legislative control over the executive'. Examine the statement in light of the working of Indian Parliament over the years?

Ans. The Finance Bill (one that contains taxation proposals and is presented as a part of the budget) is introduced in Lok Sabha immediately after the presentation of the General Budget. Certain provisions in the Bill relating to levy and collection of fresh duties or variations in the existing duties come into effect immediately on the expiry of the day on which the Bill is introduced by virtue of a declaration under the Provisional Collection of Taxes Act.

Parliament shall pass the Finance Bill within 75 days of its introduction.

Budget is an important tool of legislative control over the executive. It is also an instrument of economic and social policies in line with the five year plan.

Financial Bills

They are contained in Art. 117. There are two types:

Financial Bill which is a Bill in which there are provisions related to a Money Bill but also those of an ordinary Bill. It has two features in common with the Money Bill:

- President's prior recommendations are necessary and
- It can be introduced only in the Lok Sabha

Other provisions are similar to the ordinary Bill.

Financial Bill is an ordinary Bill with the difference that, when it is passed, it entails expenditure from the CFI. As far as procedure is concerned, it is passed like a Money Bill but before the commencement of the second reading (Consideration, stage two) in Both the Houses, the recommendation of the President is necessary.

Supplementary, Additional, Token, Excess and Exceptional Grants

Art. 115 contains provisions related to Supplementary, additional, and excess grants

- Supplementary grant may be made by the Parliament if the amount authorised in the budget passed originally for a particular service for the current financial year is found to be insufficient
- Additional grant may be made by Parliament for expenditure on some new service not contemplated in the annual financial statement for that year
- Excess grant is made by

Parliament if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year. In other words, it is a grant to retrospectively authorise excess of expenditure committed by the executive. CAG detects it while auditing the appropriation accounts and is satisfied that it is justified and the PAC, on the basis of the CAG report, recommends such retrospective regularization.

Token grant is one where the Department / ministry has the money to spend on a new service. The availability of money is by way of reappropriation- spending money sanctioned for one head on another head within the same ministry with the permission of the same Ministry. But it seeks a token sum of Rs. 1 from Lok Sabha.

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Exceptional grant is seeking money for a service that is not part of the current service of any financial year.

Budget of a State under President's Rule

Budget of a State under President's rule is presented to Lok Sabha. The procedure followed in regard to the Budget of the Union Government is followed in the case of State Budget also with such variations or modifications, as the Speaker may make.

Money Bill (Art. 110)

Bills which exclusively contain provisions for

- the imposition, abolition, remission, alteration or regulation of any tax;
- the regulation of the borrowing of money or the giving of any guarantee by the Government of India
- the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund
- the appropriation of moneys out of the Consolidated Fund of India;
- the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- any matter incidental to any of the matters specified above.

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Article 109, and when it is presented to the President for assent under Article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Money Bill can be introduced only in Lok Sabha and on President's recommendation. Rajya Sabha cannot make amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommend amendments in a money Bill, but must return all Money Bills to Lok Sabha within fourteen days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha is not returned to Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

President can assent to or reject a Money Bill but can not return it for repassage.

Consolidated Fund of India

The fund constituted under Article 266 (1) of the Constitution of India into which all receipts, revenues and loans flow. All expenditure from the CFI is by appropriation Bill.

Public Account of India

It includes those moneys where the Government acts as a banker. For example, PF, small savings etc Article 266 (2) of the Constitution of India. These funds do not belong to the government. They have to be paid back at some time to their rightful owners. Therefore, expenditure from it is not

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required to be approved by the Parliament. Some dedicated funds are also part of PAI. For example : Reserve Funds bearing interest (railway funds, telecommunication funds) and Reserve Funds not bearing an interest (the Central Road Fund, Sugar Development Fund).

Contingency Fund of India

Parliament has by law established a Contingency Fund placed at the disposal of the President to enable advances to be made by him out of it for the purpose of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by Law (Art. 267). Earlier contingency fund was of Rs 50 Crore but was recently raised to Rs 500 crore by parliament.

Parliamentary Control Over Public Finance

The instruments of control that the Parliament has over the public finance are the following:

- Art.265 says that no tax can be levied and collected except by the authority of law
- Art.266 says that money can be drawn from the Consolidated Fund of India only by an Appropriation Bill passed by the Parliament
- Parliament, under Art. 292, can regulate the borrowing power of the Executive on the security of the Consolidated Fund of India
- Based on Art. 292 partly, FRBM Act was made in 2003 to bring public finance under parliamentary accountability- setting limits to borrowing and the FM having to explain to the Parliament on a quarterly basis the budgetary trends
- Cut motions available to Lok Sabha members during the passage of demands for grants can lead to compelling the Government to take up or drop any policy. However, cut motions have never been passed so far
- Budget under Art. 112 is a socio-economic statement Parliament can alter the priorities as it has to be approved by it to take effect other than the Constitutional provisions ,mentioned above, the following are the statutory and other developments that make the Parliamentary control over government finance effective.
- Outcome budget is being presented from 2004-05 onwards where for a given outlay the expected impact in socio-economic terms is quantified and declared. Parliament can hold the government answerable for the achievement of the outcomes
- Similarly, 54 gender budget cells are set up by the ministries in the Union Government (2008). Parliament can seek explanation from the government as to how far it has progressed in adopting a gender perspective in public policy.
- Parliamentary financial committees- PAC, Estimates Committee and CPU exercise control on the executive by ensuring that the moneys spent are not wasted and are well targeted
- Under parliamentary pressure, government is presenting the Tax Expenditure Statement since 2006 showing revenue foregone through tax breaks. In course of time, there will be greater parliamentary control on such losses of revenue through exemptions.

Thus, the control that the Parliament can exercise on public finance is enormous. Some controls are provided in the Constitution (Art. 112, 265, 266, 292 etc). Others are derived from statute and rules as shown above.

Parliamentary control over the executive

Art.75.3 says that the Council of Ministers enjoys power till it has support in the Lok Sabha. Parliament controls the executive through a variety of means and instruments in order to enable people to have responsible and accountable government. It takes place through the following instruments:

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- Motions like confidence motion, adjournment motion etc.
- Questions of various types

Ques. 10 : Bring out the difference between 'Adjournment Motion' and 'No-confidence Motion'?

Ans. An adjournment motion is moved to discuss a matter of urgent public importance and is available only in Lok Sabha and not in Rajya Sabha as it means severe criticism of the Government and is used to express dissatisfaction with the Government policies. Speaker's consent is necessary for moving the motion. After the motion is moved, it can be proceeded with only if 50 members endorse it. Speaker may not admit the motion in case there are other means of raising the matter for discussion. The motion shall not deal with any matter which is under adjudication by a court of law.

No-confidence Motion

Art. 75(3) says that the Council of Ministers is collectively responsible to the Lok Sabha. The Council of Ministers is in power only as long as it enjoys the numerical majority of the Lok Sabha. The opposition parties have an instrument in the form of 'no confidence motion' to remove the Government. The procedure for the NCM is not a part of the Constitution but is given in the Rules of Procedure and Conduct of Business of Lok Sabha. Rule 198 says that an NCM may be moved subject to the following conditions: Leave to make the motion shall be asked for by the member when called by the Speaker; Speaker reads the motion to the House and if 50 members support it, it should be taken up on such day, not being more than ten days from the date on which the leave is asked for as he may appoint.

If leave is granted, the Speaker may allot time for the discussion of the motion. After members speak for and against the motion, Prime Minister replies before vote is taken. If the motion carries majority vote, the Government has to resign.

Following needs to be noted regarding the NCM

- No grounds need be mentioned to move the motion
- No conditions of admissibility are mentioned.

Motion of Confidence' in the Council of Ministers

An essential tenet of the Westminster system is that the Government must be collectively responsible to the representative House. In India, the doctrine of collective responsibility of the Union Executive to the House of the People is specifically enshrined in the Constitution (Art. 75.3) Loss of confidence of the popular House requires the Government, to resign and facilitate installation of an alternative Government, if possible or the President dissolves the LS and general election to LS is held. The usual procedure to express want of confidence in the Council of Ministers is through a motion of no confidence under Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha.

The device of confidence motion is of recent origin. There is no rule in the Rules of Procedure relating to Motion of Confidence in the Council of Ministers. The need of raising debate through such a motion arose in the late seventies with the advent of minority Governments and later, by mid-1990s, formation of coalition Governments as a result of hung Parliaments. In the absence of any specific rule in this regard, such Motions of Confidence have been entertained under the category of motions stipulated in Rule 184 which are meant for raising discussions on matters of public interest in Lok Sabha.

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In the case of a Confidence Motion, there is no requirement for seeking leave of the House. The one line notice of motion under Rule 184 that “This House expresses its confidence in the Council of Ministers” is given by the Prime Minister at the behest of a Presidential direction. When admitted by the Speaker, it is bullet med. The date and time for its discussion is fixed in consultation with the Business Advisory Committee.

Confidence Motion and No-Confidence Motion have the same purpose: the government has to demonstrate its majority in Lok Sabha. The former is a Government initiative when called upon to do so by the President and the latter is moved by the opposition party member.

The notice of the first ever Motion of Confidence was given by the then Prime Minister Ch Charan Singh in 1979. This motion could not be moved as Ch. Charan Singh tendered the resignation. The first Motion of Confidence was moved by Shri V.P. Singh, the then Prime Minister in December, 1989 in the Lok Sabha which was adopted by the House by the voice vote on the same day. Since their ten Motions of Confidence have been moved (2008).

Censure Motion

Censure motion can be moved only in Lok Sabha under Rule 184. Speaker can disallow a censure motion. Grounds need to be mentioned unlike the NCM. It can be moved against an individual minister or a group of ministers unlike the NCM. The censured ministers need not resign, unlike the NCM. Under Rule 184, voting takes place at the end of the debate. Rule .184 is a way of parliament enforcing accountability of the executive.

Rule 184 and Rule 193 in Lok Sabha

Rule 184 is a censure motion as the debate ends with vote. It is classified as ‘No Day Yet Named Motion’ in the Rules. It relates to any matter of general public interest. Speaker decides the admissibility of the motion. If the Government loses for any reason, it has to come forward with a confidence motion to establish its numerical majority. In 2002, in relation to the developments of Gujarat, opposition moved a censure motion under Rule 184 and the Deputy Speaker allowed the same. The Government won the motion.

Rule 193 allows a short duration discussion and is not followed by vote. The matter should be one of urgent public importance and the notice of the member to raise the issue should be supported by at least two other members. In the Lok Sabha in the winter session Nov-Dec 2007, four Short Duration discussions under Rule 193 were held on the following issues:

- Proposal to set up Special Economic Zone in Nandigram, West Bengal and consequent large scale violence.
- Indo-US nuclear agreement
- Need for harmonious functioning of three organs of the State i.e. Legislature, judiciary and executive.
- Internal Security

In the Rajya Sabha, debate under Rules 167 and 170 ends in voting while Rule 191 does not need voting.

However, censure motion of the Lok Sabha type does not exist in Rajya Sabha.

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Question Hour

The first hour of every sitting of Lok Sabha is called the Question hour. Questions are of three types

- Starred
- Unstarred and
- Short Notice

A Starred Question is one to which a member wants an oral answer in the House and which is distinguished by an asterisk mark. To a starred question, members can put supplementaries because the Minister is orally answering the question.

An unstarred Question is one which is answered in writing and no supplementary questions can be asked.

Minimum period of notice for starred / unstarred question is 10 clear days (that's, excluding holidays).

Short Notice Questions

They do not require the normal period of notice of 10 days. They relate to matters of urgent public importance. A Short Notice Question may only be admitted if permitted by the Speaker. A Short Notice Question is taken up for answer immediately after the Question Hour.

A question may also be addressed to a Private Member provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the business of the House for which that Member is responsible.

Half-an-Hour Discussion

A Half-an-Hour Discussion can be raised on a matter of sufficient public importance which has been the subject of a recent question.

During the discussion, the member makes a short statement and not more than four members are permitted to ask a question each for further clarity. Thereafter, the Minister concerned replies. There is no formal motion before the House nor voting.

Rule 377

Under Rule 377 of the Rules of Procedure and Conduct of Business in the Lok Sabha members are allowed to raise matters which are not points of order or which cannot be raised under any other Rule.

Legislation or How a Bill becomes an Act

A Bill is the draft of a legislative proposal. It has to pass through three stages and receive the assent of the President before it becomes an Act of Parliament. It will come into effect after it has been notified by the Government. The Bills initiated by Ministers are called Government Bills and those introduced by Members who are not Ministers, are known as Private Members' Bills.

Depending on their contents, Bills may further be classified broadly into

- Ordinary Bills
- Constitution Amendment Bills
- Money Bills
- Financial Bills A and B

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- Other Bills where the procedure for passing of the Bill may be marginally different- for example, requiring the prior assent of the President (Art.3)
Process of passage of a Bill in each House is as follows.

First Reading

The legislative process starts with the introduction of a Bill in either House of Parliament--Lok Sabha or Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the later case it is known as a Private Member's Bill.

It is necessary for a member-in-charge of the Bill to ask for leave to introduce the Bill. A Minister has to give notice of days and a private member 30 days for seeking leave of the House for introduction. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker/Chairman may, in his discretion, allow brief explanatory statements to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker/Chairman may permit a full discussion. Thereafter the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.

Publication in Gazette

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill may, with the permission of the Presiding Officer, be published in the Gazette. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

Reference of Bill to Standing Committee

After a Bill has been introduced, Presiding Officer of the concerned House can refer the Bill to concerned Standing Committee for examination and make report. If a Bill is referred to Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make report. The Committee can also take expert opinion or the public opinion who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House: The report of the Committee has persuasive value.

Second Reading or Consideration

The Second Reading consists of consideration of the Bill which is in two stages.

First Stage: The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the house to

- refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or
- to circulate it for the purpose of eliciting opinion or
- to straightaway take it into consideration.

If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee.

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If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move motion for consideration of the Bill.

Second Stage: The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussions take place on each clause of the Bill and amendments to clauses can be moved at this stage.

Third Reading or voting

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill or voting. At this stage debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage.

In passing an ordinary Bill, a simple-majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, called special majority is necessary.

Bill in the other House

After the Bill is passed by one House it is sent to the other House for concurrence with a message to that effect.

Consideration of the Bill at a Joint Sitting (Art.108)

If a Bill passed by one House is

- rejected by the other House, or
- the Houses have finally disagreed as to the amendments to be made in the Bill, or
- more than six months elapse from the date of the receipt of the Bill by the other house without the Bill being passed by it

The President may call a joint sitting of the two houses to resolve the deadlock. If, at the joint sitting of the Houses, the Bill is passed by a majority of the total number of members of both the Houses present and voting, with the amendments, if any, accepted by them, the Bill is deemed to have been passed by both the Houses.

Panchayati-Raj Institutions

Ques. 1 : 'The 73rd and 74th amendment was necessitated with the increase in the developmental interventions of the government'. Discuss.

Ans. P.V. Narasimha Rao government enacted the 73rd Constitution Amendment Act, which was passed by Parliament in 1992 and became effective from 24th April 1993 after the required number of State Legislatures ratified the same. The need & ratification was felt as local self Government is a State List item and the legislation of the Union parliament was vulnerable to judicial challenge even though the item is a Directive principle of State Policy.

The need for model national legislation is as follows: Legislations were passed by different States setting up PRIs. There was considerable variation from State to State in the constitution and

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composition of Panchayats at various levels starting from the village upto the district in different states, as also the manner of election of the office-bearers. Even in terms of functions entrusted to the PRIs at different levels, the position varied considerably. One important feature to be noted was the association of MPs and MLAs with these institutions and whether they had or did not have voting rights etc. Therefore, a national model legislation was needed.

It lays down a broad national pattern with sufficient regional flexibility; and there was federal consensus on such an initiative This Act added Part - IX to the Constitution of India. It is entitled as 'The Panchayats' and consists of provisions from articles 243 to 243-o. The Act gave Constitutional shape and teeth to Article 40 of the Constitution.

Giving the PRIs Constitutional status meant that in case the States did not comply with the provisions, judicial enforcement would be an option.

Since local self government is a State List item, states had to enact to FRI legislation for the 73 Amendment Act to come into force. Local variation was permitted. In the 73 Act States were given one year in which to conform to the Act one year from the date when the 73rd Amendment act was made. All states either introduced new legislation or amended existing legislation, to bring the state laws into line with the provisions of the 73rd Act.

Mandatory and Discretionary Powers

The Act mandatory (compulsory) and discretionary (voluntary) provisions: The distinction between the two is that mandatory provisions contain the word "shall". In the discretionary provisions, on the other hand, the word "may" is used.

Important mandatory provisions are

The establishment in every state (except those with populations below 2 million) of panchayats at the village, intermediate and district levels (Article 243B)

- direct, elections to all- seats in the panchayats (lowest elective tier) at all levels (Article 243 C)
- compulsory elections to panchayats every five years
- If a panchayat is dissolved prematurely, elections must be held within six months, with the newly elected members serving the remainder of the five year term (Article 243E)
- reservation of seats in all panchayats at all levels for SC/ST (Article 243D)
- reservation of one—third of all seats in all panchayats at all levels for women, with the reservation for women applying to the seats reserved for SC/STs (Article 243D)
- indirect elections to the position of panchayat chairperson at the intermediate and district levels (Article 243C)
- reservation of the position of panchayat chairperson at all levels for SC/STs in proportion to their share in the state population (Article 243D)
- reservation of one-third of the positions of chairperson at all three levels for women (Article 243D)

Following are the discretionary provisions

- Transfer of powers and functions to Gram Sabha.
- Mode of election of chairperson of a panchayat at village level.
- Reservation of OBCs.
- To decide the taxes, duties, tolls and fees for which a panchayat shall be authorised.
- To make provision for maintenance of accounts and auditing of panchayats.

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Ques. 2 : The institution of village Panchayats was developed earliest and preserved perhaps largest in India. Elaborate.

Ans. The institution of village Panchayat was developed earliest and preserved perhaps longest in India. The word Panchayat is derived from the word “pancha” literally means assembly (vat) of five (panch) elders of the village who enjoy a respectable position in the village. They are chosen to be members of assemblies to settle village problems, disputes and so on according to village customs

India’s federal democratic structure has three levels of governance - national or federal, state or regional and the grassroots level called the Panchayati Raj and Nagar Palika systems. Panchayati Raj system covers the village, the tehsil and the district; and the Nagar Palika system serves towns and cities.

Panchayati Raj is a three-tier structure of democratic institutions at district, block and village levels namely, Zila Prishad, Panchayat Samiti and Village Panchayats respectively; is a system of local self government aimed at securing gramswaraj; is based on the philosophy of decentralization ; enables pail participative governance; is a suitable institutional arrangement for achieving rural development through people’s initiative.

Panchayats as local self government institutions and vehicles of development have been part of the Indian system of governance since ancient times. In ancient India, Panchayati Raj system was in vogue during the Chola period. During the British rule, local self-government was given a statutory base.

In the modern period, Lord Mayo’s Resolution of 1870 initiated a the political and administrative process of decentralization by attempting to enlarge the powers and responsibilities of local self government institutions.

Lord Ripon’s Resolution on local self-government laid the foundation of local self- government in rural India. The 1882 Resolution was important for two reasons

- it set out general principles for development of local institutions in the future and
- provided the rationale behind functions of local bodies.

The Ripon Resolution was passed in 1885 as the Bengal Local Self-Government C.E.H. Hobhouse, Chairman of the Royal Commission on decentralization (1907), viewed that the local governance should begin at the village level and not district. Montague-Chelmsford Reforms 1919 made local self-governance a part of the ‘transferred subject’ via the newly enacted scheme of Dyarchy. Various provinces passed the village Panchayat Acts particularly in 1919 and thereafter. But, the Panchayats formed under these Acts were not democratic institutions as the government nominated most of their members.

Gandhi and Dr. Ambedkar

Mahatma Gandhi and Dr.BR Ambedkar differed on the issue of panchayats. Dr. Ambedkar argued in the Constituent Assembly that caste oppression through the hierarchical order would not be weakened by Panchayats. Gandhian members in the Assembly differed with him, predictably. Dr. BR. Ambedkar however accepted the ideal of Gram Swaraj through Panchayati Raj institutions to be placed in the Constitution of India in Part IV through Directive Principles of State Policy.

Reflecting the long history of Panchayats in India, the framers of the Constitution provided for Village Panchayats under the Directive Principles of the Constitution in Article 40 requiring that

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“the State shall take steps to organise village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government”.

After Independence (1947), Prime Minister Nehru introduced the Community Development Programme (CDP) on the birth anniversary of Mahatma Gandhi (October 2) in 1952. The CDP was followed by the National Extension Service in 1953. NES blocks represented the lowest rung of administration- closest to the people. The two programmes did not succeed as they were controlled by bureaucracy and participative development was not possible. Union Government setup Balwant Rai Mehta Committee in 1957 to review the functioning of the CD and NES Programmes.

CD Programme and Balwant Rai Mehta Committee

Community development programme was introduced in 1952 in India. Under community development, people of a community organize themselves for planning and action; define their individual needs and solve their problems; execute their plans with a maximum reliance upon community resources and supplement these resources, when necessary with services and material from Governmental and non-Governmental agencies outside the community. CD programmes are the essence of decentralization which refers to ensuring the participation of people at the lowest level in self-governance and socioeconomic development. It is an example of all around and multi-level democratization of governance.

Balwantrai Mehta Committee (1957) was set up to review the working of the CD programme. It observed that lack of - people's participation stands at the root of the failure of the CD programme.

The Committee suggested that a 'set of institutional arrangements' was required not only to secure people's participation but also to make it effective and meaningful. It suggested 'democratic decentralization' and village reconstruction through the introduction of a three tier system of panchayats. The committee felt that democratic government composed of controlled and directed by popular representation of the local areas is necessary the local level. The Report strongly recommended that training requirements of Panchayat personnel should be given high priority.

As per the Balwant Rai Mehta Committee recommendations, Panchayati Raj was launched on 2' October 1959 in Nagaur district of Rajasthan, Andhra Pradesh and many state governments followed Rajasthan.

Due to the interest generated by the panchayati raj institutions several states set up committees to assess their working and to recommend measures for improvement. The states and committees were:

• Andhra Pradesh

Pumushottain Pai Committee, 1964
Raachandra Reddy Committee, 1965
Narasirnhan Committee, 1972

• Karnataka

Basappa Committee, 1963

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• **Maharashtra**

Naik Committee 1961

Bongiwar Committee, 1963

• **Rajasthan**

Mathur Committee 1963

Sadiq All Committee 1964

G.L.Vyas Committee 1973

• **Uttar Pradesh**

Govind Sahai Committee 1959

Murti Committee, 1965.

However, by the mid-sixties, Panchyati Raj Institutions (PRIs) lost steam as they fell victim to a growing tendency of centralization. One reason for the weakness of the local self government institutions was that state governments saw them as rivals, rather than complements. Hence, Panchayats were not empowered with adequate functions and finances. These bodies were frequently superseded for long periods by state governments. But the need for the PRIs as a mechanism for democratic self-government and provider of services to local communities and as is undeniable and universally accepted. As the developmental interventions of the Government increased, the urgency to reform the PRIs and strengthen them was felt equally.

Therefore, in 1977, the Janata Government set up Ashok Mehta Committee to review and report on the PRIs. It suggested change in the Balwant Rai Mehta pattern of PRIs. The three- tier system of PRIs was to be replaced by a two- tier i.e. Zilla Parishad at the district level and Mandal Panchayat (consisting of a number of villages) below it; five year term should not be cut short; district should be the first point of decentralization; political parties should be allowed to participate as they are ubiquitous; social audit should be provided for; compulsory powers of taxation for the panchayats so that they become truly autonomous creation of Nyaya Panchayats; reservation for SC/STs; state minister for panchayats; significant role for the NGOs; training for the elected representatives;

The panchayati raj institutions, which came into being in certain states after the Ashok Mehta Committee's recommendations, could be considered the second generation Panchayats. The second generation Panchayats raj institutions can be said to have started when the west Bengal Govt. took the initiative in 1978 to give a new life to its Panchayats on the lines of the Ashok Mehta Committee's recommendations, west Bengal, Karnataka, Andhra Pradesh and Jammu & Kashmir either revised their existing panchayat raj acts or passed new acts based on Ashok Mehta Committee report. These states adopted the recommendations to suit their conditions

Dantwala Committee

The Working Group on Block level Planning headed by Prof. M.L. Dantwala submitted a report in 1978. It identified the remoteness of planning agencies, at the District Level from the grassroots as the major weakness of local area planning. Dantwala committee made the recommendation that Block level planning, (the same area which was covered by Community Development Blocks) should be the appropriate sub-state planning level for proper appreciation of the felt needs of the people.

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- The Hanumantha Rao Committee (1984) on District Planning has enumerated the following factors for peoples participation at local level:
- To take note of the felt needs of population;
- To mobilise local resources for plan implementation;
- To decrease the level of conflict during the planning the implementation stages;
- To increase the speed of implementation by securing the co-operation of the people;

Committee to review the Existing Administration Arrangements for Rural Development and Poverty Alleviation Programmes G.V.K. Rao Committee- was set up by the Planning Commission in 1985. It recommended for the revival of Panchayati Raj institutions and highlighted the need to transfer powers to democratic bodies at the local level. The two important suggestions that this committee made were:

- That the 'district' should be the basic unit of planning and programme implementation and
- Zilla Parishad could, therefore, become the principal body for the management of all development programmes which can be handled at that level.

The Government of India set up in 1986 L.M. Singhvi Committee to prepare a concept paper on the revitalisation of the Panchayati Raj institutions. It recommended that the Panchayati Raj should be constitutionally recognised, protected and preserved, by the inclusion of a new chapter in the Constitution. It also suggested a constitutional provision to ensure regular, free and fair elections for Panchayati Raj institutions. Accepting these recommendations, the Union Government headed by late Rajiv Gandhi brought in the Constitution 64th amendment Bill which was passed by the Lok Sabha in 1989: It could not be enacted as it was not approved by the Rajya Sabha.

Ques. 3 : The increasing participating movement in India has brought the need for a strong and effective Gram Sabha. Examine.

Ans.

- Gram Sabha means a body consisting of the electorate of the village
- Intermediate level means a level between the village and district levels
- specified by the Governor of a State by public notification
- Population means the population as ascertained at the last preceding census of which the relevant figures have been published;
- Village means a village specified by the Governor by public notification

243A. says that the powers exercised by and the functions performed by Gram Sabha are devolved to them by State Legislature. Gram Sabha has the responsibility to take decisions in common public interest, and to monitor the performance of elected representatives and government officials.

243C which talks of the Composition of Panchayats gives State Legislature power to make laws on the association of the following in the Panchayat bodies:

- members of the House of the People and the members of the Legislative Assembly of the State in the area.
- members of the Council of States and the members of the Legislative Council of the State.

It leaves it to the Legislature of the State as to how the Chairperson of a Panchayat at the village Level shall be elected - direct or indirect election by the members of the Panchayat. However, the Chairperson of a Panchayat at the intermediate level or district level shall be elected by, and from among, the elected members the Panchayats- indirect election.

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243D makes reservation compulsory for the Scheduled Castes and the Scheduled Tribes in every Panchayat in proportion to their population in the Panchayat. Such seats may be allotted rotation to different constituencies in a Panchayat.

There should be reservation within reservation- that is, not less than one-third of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of seats in every Panchayat shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.

There is similar reservation for the posts of Chairpersons of Panchayats also.

Legislature of a State is free to provide for reservation in Panchayat or offices of Chairpersons in the Panchayats in favour of other backward classes. It is a discretionary power of the Legislature while reservation for women, SC and ST is mandatory

243E relates to the duration of Panchayats, etc. It says that every Panchayat has a term of five years from the date appointed for its first meeting. It may be dissolved before the expiry of five years but a new Panchayat should be constituted before the expiration of a period of six months from the date of its dissolution on one condition. If the prematurely dissolved Panchayat has a remainder of life that is less than six months it is not necessary to hold any election for the dissolved panchayat to complete its original life term.

A Panchayat that is prematurely dissolved and reconstituted will last for the remainder of the term and not for the full five year term.

243F contains disqualifications for membership. It says that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified for the purposes the State Legislature. However, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years. If any question arises as to whether a member of a Panchayat has become subject to any of the disqualification,, the question shall be referred for the decision settled in such manner as the Legislature of State may, provide.

243G says that the Legislature of a State may confer the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level- Zilla, Taluk or Gram , subject to such conditions as may be specified therein, with respect to-

- the preparation of plans for economic development and social justice;
- the implementation of schemes for economic development aid social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

Ques. 4 : Despite effective political devolution of power there has not been enough financial devolution of power keeping the PRIs of state government mercy. Critically examine.

Ans. 244 H and 243-I. deal with the financial provisions. 243-I says that the Legislature of a State may:

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- Authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

244 deals with Constitution of Finance Commission to review financial position of i.e. Panchayats: The Governor of a State shall, within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

(a) the principles which should govern-

- the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
- the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayat;
- the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of the finance of the Panchayats

State Finance Commission - its composition, qualifications of its members and the manner in which they shall be selected; and functions of the Commission are laid down by law by the State Legislature.

The Commission presents the report to the Governor who shall cause the recommendation together with an explanatory memorandum as to the action taken thereon, to be laid before the Legislature of the State.

243J says that audit of accounts of Panchayats are done according to the law made by the Legislature of a State

243K relates to elections to the Panchayats

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine.

The State Election Commissioner is removed like and on the like grounds as a Judge of a High Court. The conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. The Governor of a State shall, when so requested by the

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State Election Commission, make available to the State Election Commission such staff as maybe necessary for the discharge of the functions conferred on the State Election Commission.

The provisions of this Part shall apply to the Union territories. President may, however, direct that it be applied with exceptions and modifications as he may specify.

243M says that the Act does not apply to Schedule VI Areas of Assam, Tripura, Meghalaya and Mizoram, State of Nagaland, hill areas of the State of Manipur for which District Councils exist and the District of Darjeeling in the State of West Bengal.

The amendment Act has not yet been extended to J&K

It further says that parliament may extend the provisions of this Part to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified, and no such law shall be 'deemed' to be an amendment of this Constitution for the purposes of article 368.

243-O bars interference by courts in electoral matters. It says that

- the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any court
- no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Ques. 5 : The increasing interference of centre in the form of linking devolution / grants of funds to the establishment of District Planning Committees (DPSC) is not a healthy development. In this context, examine the status of DPSC in various states.

Ans. DPCs should be constituted as per Article 243 ZD in all states except Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and the NCT of Delhi. All states must accordingly enact legislations for constitution of the DPCs and issue notifications bringing them into effect.

Composition

The DPC is generally composed of elected members of the local bodies within the district, both rural and urban, as well as some nominated members. The number of members varies with the population size of the districts larger the population, more the members. The ratio of members from Panchayats and ULBs is based on the ratio in which the population of the district is divided between rural and urban areas

The DPCs are to have at least four-fifths elected members as per Article 243 ZD.

Members should be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district. The actual pattern, however, varies across states. Nominated members usually represent the State & Central Government agencies.

Chairpersons

Three different patterns are observed among states:

- In some states the Chairperson / President / CEO of Zila Parishad or District Panchayat is the Chairperson of the DPC as well, for example, Kerala, Bihar, Karnataka, Andhra Pradesh, Rajasthan, Tamil Nadu and West Bengal

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- In some states the Minister-in-charge of the district or any other State Minister is the Chairperson, for example in Orissa, Gujarat, Madhya Pradesh, Chhattisgarh and Maharashtra. In Himachal Pradesh Cabinet Ministers of the State Government have been nominated as members and Chairpersons of DPCs.
 - In Haryana the Deputy Commissioner (DC) of the District is the Chairperson of the DPC.
- Functions, Role and Responsibilities of DPCs

The DPC is envisaged to play a nodal role in the district planning process by consolidating rural and urban plans prepared by the villages and towns in the district and then preparing a draft development plan for the district on the basis of the plans so received from within the district: DPC is thus crucial to the function of planning for economic and social justice. DPC provides the vital link between rural and urban plans as well as sectoral plans.

As per Article 243 ZD, DPCs should also pay special regard to issues of common interest between Panchayats and municipalities, such as spatial planning, sharing of physical and natural resources, infrastructure development and environmental conservation.

Consolidation of rural and urban plans

Consolidation of rural and urban plans is one of the key tasks of the DPC and is also of great significance in the light of urban expansion into rural areas. The sequence to be followed in consolidation of rural and urban plans is broadly as follows:-

- Gram Panchayats prepare Participatory Plans and communicate them to Intermediate Panchayat (Taluk, Mandal etc.)
- Intermediate Panchayat compiles information sent by the GPs in the block and along with its own information, prepares a Block Plan and sends to ZP
- ZP compiles information from Block Panchayats and along with its own information, sends to the DPC
- Urban Local Bodies send their plans to DPC
- DPC compiles information from

ZP and ULBs to form Draft Development plan (DDP)

DPCs play an integrative role between Panchayats and ULBs. They help provide the common platform for integrating rural and urban plans. They help identify planning projects of common interest and spread across both rural and urban areas, which can be jointly planned and funded. This may include extending link roads from rural areas to urban markets, or extending water supply and sewerage infrastructure to urban areas.

Thus, DPCs have a crucial role in district planning. In fact, the role is becoming more important. For example, in the Backward Region Grants Fund (BRGF) scheme. BRGF was approved by the Union Cabinet in 2006. It is a fund available to 250 selected backward districts with the purpose of catalysing development by providing infrastructure, promoting good governance and agrarian reforms, and capacity building for participatory district planning. In order to avail BRGF funds, states are required to establish DPCs as per article 243ZD, which will consolidate plans prepared by PRIs and ULBs in the district.

PESA

The Parliament passed Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. The Fifth Schedule covers Tribal areas (scheduled areas) in 9 states of India namely

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Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chattisgarh, Orissa and Rajasthan. Bihar had Scheduled Areas before the formation of Jharkhand but after the bifurcation, the tribal population in Bihar is insignificant).

PESA came into force in 1996. Under the Act, the Gram Sabha has been vested with powers for

- a. Ownership of minor forest produce
- b. Development, plans approval
- c. Selection of beneficiaries' under various programmes
- d. Consultation on land acquisition
- e. Manage minor water bodies
- f. Control mineral leases
- g. Regulate/prohibit sale of intoxicants
- h. Prevent alienation of land and restore unlawfully alienated land of STs
- i. Manage village markets
- j. Control money lending to STs
- k. Control institutions and functionaries in all social sector.

PESA recognizes the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources - land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas and ushers them in a new phase of self governance.

Panchayatraj and Rural Development

PRIs which are local self government institutions enable rural development planning in an effective way. The momentum to empower PRIs and give them Constitutional status began after the JRY programme was started. Greater involvement of Panchayats was institutionalized with the launching of the Jawahar Rozgar Yojana (JRY) in 1989-90, under which there was a substantial flow of funds to village Panchayats. In addition, Village Panchayats were required to prepare an inventory of assets and give details of the projects taken up under JRY. The works to be taken up were decided in the meetings of the Gram Sahha.

MNREGA is being implemented by the Panchayats. Panchayats have a critical role in the operationalization of the NRHM. PRI participation can be achieved through the following, stages.

- Participation in decision making
- Participation in implementation of development programmes and projects;
- Participation in monitoring and evaluation of development programmes;
- Participation in sharing the benefits of development
- Participation in the popularization of the programme

Devolution Index

The progress in effective decentralisation of governance under the Panchayati Raj Act is not uniform across the states. The Union Ministry of Panchayati raj (MOPR) asked the National Council for Applied Economic Research (NCAER) to develop a working Devolution Index to measure how states are performing in devolution of governance. The index ranks the performance of individual states on identified basic action points.

NCAER submitted an interim index in 2006 which has since been subject to further refinement.

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The Devolution Index essentially assesses three dimensions

- Functions (types of work under Schedule XI of the constitution)
- Finances (funds devolved)
- Functionaries (manpower available)

(Three Es)

The index is a first attempt at quantifying the environment for effective decentralization. Each of the three dimensions is equally important in achieving effective decentralization of governance in rural India. It identifies the 'mandatory' elements of devolution and assigns a score of zero when they are not complied with. Based on the values of various indicators for any given state, it is possible to calculate a score for each sub-index as well as for an overall Devolution Index. The value of each state will indicate how far away the state is from an ideal performance.

TFC

TFC recommendations of local body grants and inter-state distribution

The Twelfth Finance Commission (TFC) was required to make recommendations on the measures needed to augment the Consolidated Funds of the States to supplement the resources of the Panchayats and Municipalities on the basis of the recommendations of the State Finance Commissions (SFCs). TFC has given recommendations on this term of reference, which have been accepted by the Union Government.

The Twelfth Finance Commission (TFC) has recommended grants amounting to Rs.25,000 crores payable during the period 2005-10 (Rs 20,000 crores for Panchayats and Rs.1000 crores for Municipalities) to States for Rural and Urban Local Bodies. The inter-State allocation recommended by TFC for Panchayati Raj Institutions (PRIs) and for Urban Local Bodies (ULBs) is based on factors and weights assigned by the TFC as under:

Criterion	Weight
i) Population	40
ii) Geographical area	10
iii) Distance from highest per capita income	20
iv) Index of deprivation	10
v) Revenue effort	20
of which (a) with respect to own revenue of states	10
(b) with respect to GSDP	10

TFC felt that grants for PRIs should be used to improve the service delivery by the Panchayats in respect of water supply and sanitation.

Comptroller and Auditor General of India audits the release and use of the local bodies grants. Government of India may take appropriate decision about withholding grants of a State if the Comptroller and Auditor General of India reports that the State has

- either not transferred the grants to the local bodies or has
- diverted the funds or

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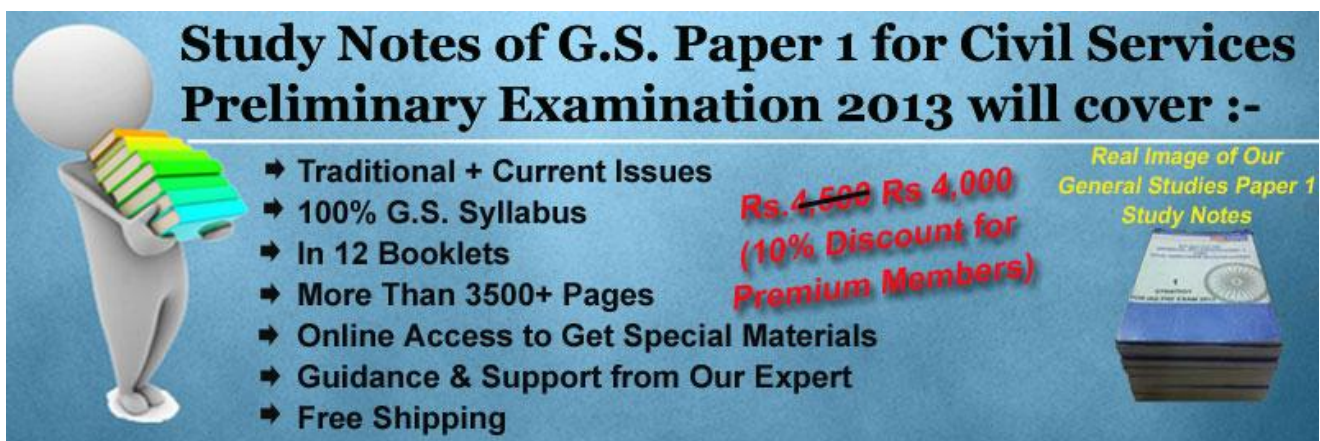
- that local bodies have not been able to give priority to water supply and sanitation for the rural areas and on schemes of solid waste management in the urban areas

Critical analysis

Panchayati Raj in India, in terms of the size of the electorate, the number of grassroots institutions (about 2.4 lakh), the number of persons elected - 36 lakh in the Panchayats and Nagarpalikas, higher than the entire population of Norway and in terms of the empowerment at the grassroots of women, is the greatest experiment in democracy ever undertaken anywhere in the world. No less than 10 lakh women have been elected to our Panchayati Raj Institutions, constituting some 37 per cent of all those elected and rising to as high as 54 per cent in Bihar which has 50 per cent reservations for women.

While many women have benefited because of the caste and other reservations, as many as 50,000 women have been elected without any reservation or quota provisions. They have contested elections against menfolk and won. SC/ST/OBC groups have been given reservation. Elections have been held in all the states; State Finance Commissions have been constituted. However, there are problems

- Powers have not been devolved adequately as the Devolution Index shows.
- lack of adequate financial resources to carry out the administration. Grant-in-aids is the major component of the PRIs revenue. This needs to be supplemented with the adequate collection of taxes by the PRIs and a compulsory transfer of some of the state government's revenue on the recommendation of the state finance commission.
- lack of training programmes for the participants of the PRIs.
- domination of the bureaucracy over the PRIs. Bureaucracy continues to be the vehicle for implementation of various development schemes.
- Various parallel bodies such as the DRDA have undermined the importance of the PRIs. Either they have to be disbanded, or made accountable to the PRIs.
- professionalization of audit functions is another area where the PRIs lack.
- Representation of members of parliament and state legislatures in the PLUs is a contentious issue. That is a clash of interest between the legislatures and PR representatives.
- the elite control over the system is a fact even today
- state level leaders still see PRI leadership as a challenge to their power, to a great extent.



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