

1. What are the functions of the Prime Minister's Office (PMO) in India? Has its role undergone a transformation in the recent years? Critically assess.

Introduction

- The PMO is a staff agency meant for providing secretarial assistance and crucial advice to the Prime Minister.
- The PMO enjoys the status of a department of the Government of India under the Allocation of Business Rules, 1961. It has no attached and subordinate office under it.

Body

Functions

- Acting as the 'think-tank' of the Prime Minister.
- Faster decision making: It helps in faster decision making as it involves experienced and powerful decision makers. Assisting the Prime Minister in respect of his overall responsibilities as head of the government like Maintaining liaison with central ministries/departments and the state governments.
- It acts as the residual legatee of the Central Government, that is, it deals with all such subjects which are not allotted to any ministry/department. Certain functions like RAW, CBI, ISRO etc. report directly to them and they need to be kept out of politics of the day.
- It is not concerned with the responsibilities of Prime Minister as the chairman of the Union Cabinet.
- Specialists: Certain function needs specialists and also needs to be done away from public eyes for greater good. Ex: Pokhran-II, External intelligence etc.

Transformation or Evolution of PMO

The PMO came into existence in 1947 by replacing the Secretary to the Governor-General (Personal). Till June 1977, it was called as the Prime Minister's Secretariat (PMS). The evolution of PMO has a distinct stamp of incumbent prime ministers:

- During Nehru's period, secretariat was a low key affair manned by officer of the rank of joint secretary. Cabinet secretariat was the apex body in that era.
- Lal Bahadur shastri enlarged the role. And first time the body become to be known as prime ministers secretariat, manned by senior IAS officer of country. Still, the decision making power was comparatively lesser than cabinet secretariat
- The post of Principal Secretary to Prime Minister was created during the tenure of Indira Gandhi as Prime Minister.
- In 1977 Prime Minister Morarji Desai renamed the Prime Minister's Secretariat as the Prime Minister's Office. He also circumscribed its roles and functions significantly.

- In Rajiv Gandhi era it expanded qualitatively and quantitatively. It took keen interest in technology and in the field of science.
- Subsequently during the tenure of Prime Minister P.V. Narasimha Rao between 1991 and 1996, the Prime Minister's Office played a crucial role in reshaping economic policies in response to the balance of payments crisis of 1991.
- During the period of Vajpayee It was by any reckoning an active PMO in the triple area of economy, foreign policy and security framework.
- After a subdued tenure under last PM Manmohan Singh, it has again gained its vigor under the incumbent prime minister Narendra Modi.

Now PMO has become a necessity in last two decades due to:-

- Governance has increased in its complexity and scope.
- The international situation is more complicated.

PMO is the nerve centre of power. This office is the mirror to the incumbent's character, personality and style of functioning. Like in current government, PMO is more powerful due to influence of PM over political party internally, full majority in the lower house and dominating personality characteristics.

Since, Independence, there has been tussle between PMO and Cabinet secretariat for being the apex bureaucratic organization of country. Some critics call PMO as supra cabinet, micro cabinet, government of government etc.

Conclusion

A centralizing and powerful PMO is a hindrance to collective responsibility, against parliamentary ethos and democratic set-up of executive but a weak PMO might lead to anarchy, policy paralysis and inefficiency.

2. Do you agree with the assertion that the reporting hierarchy of investigation and intelligence agencies (e.g. CBI, IB, RAW, IT Department etc.) creates a platform for political vendetta? Critically comment.

Introduction

A ruling party misusing the investigating and intelligence machinery to selectively target their political opponents, by foisting cases against them is called as political vendetta.

Body

Reporting hierarchy of investigation and intelligence agencies don't create a platform for political vendetta.

- **Criminalization of Politics:** Criminalization of politics was never an unknown phenomenon in the Indian political system. The people with Criminal background are entering the parliament; one of the main objectives of investigating and intelligence agencies of India is to minimize criminalization and corruption. In the process when these agencies arresting a person seems political vendetta working behind these agencies.
- **Autonomy in decision making:** Most of the investigating and intelligence agencies in India have autonomy in investigating major criminal, corruption cases. These agencies work according to their code of conduct and not according political motives of the government or any political party. This shows that there is no platform for political vendetta.

Reporting hierarchy of investigation and intelligence agencies create a platform for political vendetta.

- Honorable Supreme Court of India pointed that the Central Bureau of Investigation (CBI) needs to be more independent when investigating high profile cases of graft, as the current administrative structure, with an overarching Executive, hampers the agency from doing its job. Dependence of investigating agencies on government order to conduct investigation of major criminal, corruption cases paves the way for Political vendetta.
- The ruling government has often been accused even by the judiciary of appointing higher rank officials including the director of shared political ideologies in these agencies creates platform for political vendetta.
- NIA had assumed jurisdiction over a Scheduled Offence even suo moto whereas the areas of policing and public order lie within the exclusive legislative competence of the States. The amendments to NIA act, 2008 provide sweeping powers to the police officers of NIA which can be misused for political vendetta.

Conclusion

Despite of the differences Investigating and intelligence agencies in India are important to solve high level and complex corruption and criminal cases and they are locally tracking the cases on the field can surely be equally efficient when it comes down to fighting a criminological phenomenon which is not only in-eradicable in our societies, but which annually causes drastic budgetary losses.

3. Examine the contentious issues related to judicial postings and promotions. What are your views in this regard? Substantiate your views.

Introduction

An effective judiciary forms the bed rock of functional democracy. However many contentious issues related to judicial postings and promotions have been raised recently.

Body**Contentious issues related to judicial postings and promotions**

- Collegium system – hampering transparency in judicial postings and promotions
- Conflict of Interest of Judges
- Corruption and favoritism in transfer and posting
- Vacancies and pendency due to inadequate postings
- Post retirement job taken by judges
- Poor gender representation in judiciary
- Political interference

My views in this regard

- Collegium system - NJAC bill was struck down by the Supreme Court. Collegium system has failed to fill the vacancies on time. Question against the quality of judges have also been raised.
- Judges must recuse themselves to avoid conflict of interest. Judiciary must bring itself under effective ambit of RTI act. Judges must declare their assets and relevant information proactively.
- Corruption and favoritism in transfer and posting as highlighted by justice Kehar in his report.

Judicial accountability bill 2010 can be passed and its provisions can be effectively implemented.

- National judicial oversight committee – a complain scrutiny panel
- Investigation committee
- Any person can complain to NJOC on ground of misbehavior.

Adoption of best practices

- Global measure of court performance – created by USA and Singapore.
- Denmark – special court of complaints has been empowered to hear complaints against judges.

Vacancies and pendency due to inadequate postings

- 3.5 crore cases pending in the judiciary (Economic survey).

Economic survey – to make Indian courts more productive

- Increase the number of working days by reducing holidays.
- Establishment of Indian courts and Tribunal services
- Use of technology like – e-courts; National judicial Data Grid

Post retirement job taken by judges – there must be a cooling off period as recommended by Justice Lodha

- India has token representation of women in higher levels of judiciary – presently there are three women judges in the Supreme Court – R Banumathi, Indu Malhotra and Indira Banerjee.
- Political interference – Justice HR Khanna was denied the post of CJI Justice Khanna due to his dissenting judgement during emergency. Maintenance of ‘separation of power’ is essential for independence of judiciary.

Conclusion

Judicial postings and promotions form the core of effective judiciary. Rule of law and justice in society is critically dependent on it. It must be done with transparency, accountability, efficiency.

4. What are the circumstances under which President’s rule can be imposed in a state? Has the executive misused these provisions of late? Critically examine.

Introduction

President’s rule refers to the suspension of state government and imposition of direct central government rule in a state. Article 356, which deals with president’s rule, was adopted by the Constituent Assembly bearing in mind the abnormal conditions the country was passing through like communal riots, refugee influx, the Telangana armed rebellion and much else.

Body

Grounds for imposition of President’s rule-

Article 356 states that President rule can be imposed in any state on grounds of failure of Constitutional Machinery, and failure is of two types:-

- If President on receipt of report by Governor of a State or otherwise is satisfied that a situation has arisen in which govt of that state can’t be carried in accordance with the provisions of the Constitution then President Rule can be imposed.
- Article 365 states that every state shall comply with all directions given by Union on matters it empowers to do so. If any state fails to comply with directions of union then President Rule can be imposed.

In practice, president's rule has been imposed under any one of the following different circumstances:

- A state legislature is unable to elect a leader as chief minister for a time prescribed by the Governor of that state.
- Breakdown of a coalition leading to the Chief minister having minority support in the house and the Chief minister fails/will definitely fail to prove otherwise, within a time prescribed by the Governor of that state.
- Loss of majority in the assembly due to a vote of no-confidence in the house.
- Elections postponed for unavoidable reasons like war, epidemic or natural disasters.
- Article 356 state that the president can invoke president rule in a state on the report of the governor if the state machinery/legislature fails to abide by constitutional norms.

If approved by both houses, president's rule can continue for 6 months. It can be extended for a maximum of 3 years with the approval of the Parliament done every 6 months. President's rule can be revoked at any time by the president and does not need the Parliament's approval.

Misuse of President’s rule:

- Dr. Babasaheb Ambedkar had hoped that Article 356 would remain a “dead letter”. A cursory glance at the data shows that this has been far from the truth. Sarkaria Commission notes that since independence, it has been used over 100 times.
- The discretionary power of Governor under Article 163 is one of the major reasons behind misuse of president rule in India because he/she has no binding to consult Council of Ministers while preparing and sending the report to President.
- It is one of the centralising provision of the Indian constitution and it is seen by many as a threat to the federal state system.
- 1970s and 80s will be remembered for the most spiteful use of Article 356. From the year 1971 to 1984, it was used 59 times with maximum being used in the period 1977-79 during which Morai Desai government ruled.
- The frequency of using Article 356 has been greatly reduced since the mid-1990s despite an increasingly higher number of states being ruled by parties other than that in the central government.
- The mid-1990s was marked by the rise of regional parties which also rejuvenated other institutional safeguards - the courts and the President - against arbitrary imposition of Article 356.
- In 1994, the Supreme Court delivered the landmark SR Bommai judgment where the Court discussed at length provisions of Article 356 and related



issues. This case had a huge impact on Centre-State Relations. The misuse of Article 356 reduced after this judgment.

- But recent times have seen an increase in the instances of use of provisions of article 356 as evident from Uttarakhand and Arunachal Pradesh states where the Supreme Court had to intervene eventually.

Conclusion

The spirit of "cooperative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. The role of governor in this regard is indispensable for the successful working of the constitutional democracy which will ensure proper utilisation of provisions of article 356.

5. Examine the factors that have led to excessive pendency and delays in the disposal of cases in the Indian judicial system. Can you suggest some reforms to address this issue?

Introduction

As per the statistics of PRS India, the pendency of cases in Indian judiciary has increased drastically over the last decade. The pendency is around 3 crores across all the levels of the judiciary and it is around 54000 in supreme court and it is around 43 lakhs in high courts.

Body

Stats:

- In the High Courts, 23% of cases have been pending for over ten years. Further, over 29% of all cases have been pending between two and five years.
- In the subordinate courts, over 8% cases have been pending for over ten years. The maximum number of cases in subordinate Courts (47%) have been pending for less than two years (around 1.2 crore cases).
- As of 2015, there were over four lakh prisoners in jails. Of these, two-thirds were undertrials (2.8 lakh) and the remaining one-third were convicts.
- A total of 3,599 undertrials were detained in jails for more than 5 years.

Factors leading to pendency and delays:

- Judicial vacancy: In high courts alone, over 5000 posts are vacant off the total 22000 sanctioned posts.
 - A cumbersome and opaque way of appointment of judges through the collegium system has resulted in delays which has resulted in the low judges to population ratio leading to pending cases.

- There is a delay in appointing the district judges due to lengthy process through examinations which are delayed in majority of the cases.
- Further, there is a conflict between Judiciary and Executive regarding the appointment of Judges to Supreme Court and various High Courts.
- Government litigation: As per as report, half of the litigations is by the government. The failure of national litigation policy is also a reason for increasing frivolous litigations by the government adding up to the number of cases.
- Appeals: The quality of judgements in the lower judiciary in India is rated low by 'state of Indian judiciary' report by Daksh. This in turn has increased the appeals over judgements by lower judiciary prolonging the cases and increasing the number of cases.
- Infrastructural constraints: There are no enough courts for starters. Further, Indian judiciary has insufficient resources. Budgetary allocations are inadequate and is as low as 0.3-0,4% of the total budget. Furthermore, Modernization and computerization have not reached all courts.
- Archaic laws and vague drafting of laws: This has resulted in multiple interpretations of laws by various courts are also reasons for prolonged litigation.
- Colonial legacy factors like paid long vacations specially in the high courts is adding up to the piling number of cases.
- New judicial inventions through judicial activism like PIL has increased the number of litigations filed.
- Increasing awareness of the common man regarding the constitutional rights: though this is welcome has resulted in increasing number of cases filed in the court.
- The mechanisms like Lok Adalats, Gram Nyayalaya, tribunals etc., have seen almost compulsory appeals to higher judiciary adding to the number of pending cases.

Factors leading to pendency and delays:

- Enhancing productivity:
 - Economic Survey 2018-19 suggests Increased number of working days, Establishment of Indian Courts and Tribunal Services to focus on the administrative aspects of the legal system, technology use in courts through projects like e-courts MMP and National judicial data grid for quick disposal of cases.
 - In 230th Law Commission in its report "reform in Judiciary" in 2009 recommended that there must be full utilization of the court working hours and Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.
- The proposed All India judicial service should be established as soon as possible to fill in the vacancy. The same is suggested by the 2nd ARC and law commission report.

- Indian Judicial Services: The proposal for an All India exam along the lines of Civil Services has been mooted many a time, the first instance being 1960. Setting standards of judicial recruitment examinations to improve the quality of district judges.
- Vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour.
- Case and court management: National Service and Tracking of Electronic Processes (NSTEP), Computerization and Automation (e.g. Virtual Court in Delhi), Professional Court Managers as suggested by the 13th Finance Commission are some of the measures that needs to be taken for expedited disposal of cases.
- Setting up of Tribunals, Fast Track Courts and Special Courts to dispense important cases at the earliest.
- Mechanisms such as ADR (Alternate Dispute Resolution), Lok Adalat, Gram Nyayalayas should be effectively utilized.
- The high courts have to fast track cases pending more than 10 yrs. Also, the chief justices of high court have additional responsibility to expedite the appointment process of lower judiciary.
- Additional benches of supreme court have to be established in different parts of India which would reduce the pendency of cases in supreme court by expedited proceedings of cases.
- Implementing recommendations of Malimath committee which suggested reforms in criminal justice system which helps in expedited judicial process.
 - Amending the Code of Criminal Procedure (CrPC), the Indian Penal Code (IPC) and the Indian Evidence Act to accommodate the changing nature of crimes and address provisions which are delaying judicial proceedings.
 - working days of the Supreme Court be raised to 206 days.
 - working days of the High Courts be raised to 231 days.

Conclusion

Aruna Roy observe that the proceedings towards justice itself is a punishment in Indian judicial system. Justice delayed is justice denied. Speedy Justice is not only a fundamental right but also a prerequisite of maintaining the rule of law and delivering good governance. Hence, reforms as suggested above needs to be taken in order to have a robust justice system ensuring timely justice.