

**1. What are your views on the provisions of compulsory retirements for civil servants under 56J? Don't you think such provisions affect the morale of bureaucracy? Critically comment.**

**Approach**

Introduce the issue with what is Fundamental rules of service and contextualise to demand of the question that is 56J. In next part start by giving examples of how recently there has been increased use of this provision. In next part write benefits of the compulsory retirement and then write what may be its drawbacks which might hurt morale of civil servants. In conclusion take a balanced stand on necessity of such provisions in light of safeguards in constitution.

**Introduction:**

According to Rule 56J of fundamental rules for civil services, the government shall have absolute right to retire any government servant (in public interest). Though this provision existed, but still the usage was minimal. However, the present government has evoked 56J to retire many civil servants has sparked off a debate on its utility in inducing efficiency and effects on morale of civil services.

**Body**

Rule 56J and recent scenario:

- The Rule 56(J) of Central Civil Services (Pension) Rules, 1972 provides for periodical review of the performance of government servants with a view to ascertain whether they should be retained in service or retired in public interest.
- Under 56 (j), the performance of an officer who has turned 50 or 55 or has completed 30 years of service (whichever is earlier,) is being reviewed to ascertain if he/she is liable for compulsory retirement.
- In 2019, The Central Board of Direct Taxes (CBDT) has compulsorily retired 15 more senior tax officers on corruption and other charges under Fundamental Rule 56(J) of the Central Civil Services (Pension) Rules. This was the fourth round of sacking of corrupt tax officials.
- In the previous three rounds, 49 high ranking tax officers, including 12 from the CBDT, were compulsorily retired.
- The action was in line with PM Modi's address to the nation from the Red Fort when he had said some black sheep in the tax administration may have misused their powers and harassed taxpayers, either by targeting honest assesses or taking excessive action for minor or procedural violations.
- There are ample protection in constitution under article 311 and with institutions such as CAT and courts to protect the honest officers.

Benefits of invoking Rule 56 J for better governance:

- For better administration, it is necessary to remove government servant who promotes the culture of corruption and unethical practices.
- Such moves would ensure efficient and effective work by other civil servant who is more vulnerable to corruption.
- This provision is not treated as punishment under Article 31 of Indian constitution (Supreme Court in Umedbhai Patel Vs. State of Gujarat 2003 case upheld this).
- Government employees whose integrity is doubtful, should be retired as they may be threat to the security of India as well as they may cause loss to exchequer.
- Government employees who are found to be ineffective if retired will send a strong signal to cadre and new civil servants to either perform or get out of the way of the growth of the nation.

Therefore these measures are necessary to impose accountability, ensure public trust and in the public interest of the nation. This will have check on corrupt practices and motivate the honest officers to stick to their ethical standards and promote competence in services.

Drawbacks of Compulsory retirement policy :Effect on morale of officers

- Such measure can be used to do away with the officers who do not align with the political parties in power and may be used to promote spoils system in appointments at important positions such as taxation, environment, law and justice etc.
- This may lead to uncertainty in tenure in the mind of civil servants which may make them nervous in making key decisions which may lead to policy stagnation.
- When Honest officers are wrongfully punished, this leads to inefficiency and demotivation for others in the department.
- This may lead a civil servant to blindly support every decision of the government of the day, thereby compromising on foundational values of civil services.
- Bureaucrats may lack the courage to make right choices if there is compulsory retirement without due procedures.

The compulsory retirement may lead to fear in mind of bureaucracy to take decisions, make them subservient to political leaders rather than the constitution and affect the public interest at large.

### **Conclusion**

The Constitution of India through Article 311, protects and safeguards the rights of civil servants in government service against arbitrary dismissal, removal and reduction in rank. Such protection enables the civil servants to discharge their functions boldly, efficiently and effectively. But the public interest and security of India is given predominance over the rights of employees. So conviction for criminal offence, impracticability and inexpediency in the interest of the security of the State are

recognised as exceptions. The judiciary has given necessary guidelines and clarifications to supplement the law in Article 311.



## **2. Examine the provisions that safeguard various constitutional posts from executive interference.**

### **Approach**

Define in introduction what is meant by constitutional posts and give examples to substantiate. In next part write what are the various safeguards with help of examples. In next part mention limitations present in ensuring independence of constitutional posts especially in majority government. In conclusion write a reform orientated way to overcome these limitations.

### **Introduction**

Those bodies and posts whose formation is prescribed by the Indian Constitution itself are known as Constitutional Bodies. They derive their powers and authority from the Indian Constitution. These are some of the important constitutional bodies with important constitutional posts such as Union Public Service Commission (UPSC), State Public Service Commission, Joint State Public Service Commission, The Comptroller and Auditor General of India, Election Commission of India, Finance Commission of India, National Commission for Scheduled Castes (NCSC), National Commission For Scheduled Tribe, The President, The Chief Justice of India, Governor etc.

### **Body**

Safeguards provided to the constitutional posts and bodies :

- **Appointment & Tenure:** Constitutional posts like EC, CAG, Chairman of UPSC etc are appointed by the President of India and has a fixed tenure. Eg The Chief Election Commissioner is appointed for a period of 6 years or upto 65 years of age, whichever is earlier.
- **Salary and Allowances:** The salary and pension are charged upon Consolidated fund of India (CFI), which can not be changed after their appointment. Moreover, fund from CFI is not subjected to vote in the parliament. Further the service conditions cannot be changed adversely after their appointment.
- **Removal:** Most of the constitutional post have stringent rules and procedure in the Constitution for their removal. It is not done on the whims and fancy of the Executive. For example to remove a chief justice of India or any high court there is a three layer procedure and its effectiveness can be gauged from the fact that no High court or Supreme Court has been removed till now after Independence
- **Autonomy:** The constitutional post holders are independent in their domain and do not need to take orders from executives for their functioning, this keeps them independent and without undue pressure. For example, Appointment of judges is done by collegium, CAG prepares its audit reports independently.

- Reappointment: to maintain the independency of the post there is no reappointment for most of the office of Constitutional posts. Example: No second term to the office of CAG, UPSC chairman etc.
- Check on executive: Constitutional posts such as President and Governors act as check on executive if they do not perform their duties as per the constitutional mandate. For example various veto powers with President and Governor ensures effective check on government of the day.
- Staff : Institutions such as CAG, Supreme Court, High Court are given their own officers and staff to perform their duties independently without any interference from the executives.

Therefore the constitution and statutory laws have ensured that the various constitutional posts are independent from the interference of the executive. This is then upheld by the judiciary system of India.

Limitations which hinder independence of constitutional bodies :

- There is no qualification prescribed for appointment of election commissioners which gives ample discretion to government to appoint officers of their choice. Further the commissioner's are not debarred from future employment with government.
- UPSC is not consulted in appointment which are less than one year which might lead to appointment of Political affiliations. Further the role of UPSC has been reduced by the statutory body such as CVC.
- The recommendations of Finance commission is only advisory in nature. Further the government itself determines the terms of reference which limits the working of finance commission independently.
- CAG in India is just the auditor and the role of comptroller has still not been given to him. Further the executive have control on which report to table in parliament and when. Also appointment is made by government without any independent committee.
- The attorney general acts as agent of government rather than defender of constitution as he is appointed by the executive and works at pleasure of government.
- The National commission of Scheduled tribes and Scheduled Castes are not provided independent funds and officers for their functioning which affects their effectiveness.
- The judges are appointed to posts of governor, nominated to Rajyasabha and other posts which raises doubts of their integrity and control of executive on them.

### **Conclusion**

The constitutional bodies were designed to serve as effective safeguards against the arbitrary powers of government and to serve as check on executive. Recently however there have been doubts raised on the functioning of constitutional bodies ,especially with single party dominance as seen in 1970s and after 2014. Therefore its time to revisit some of the provisions through a independent commission to ensure that they



serve the constitutional role to safeguard the public interest and welfare rather than be subservient to the government of the day.



### **3. Should Delhi be granted full statehood? Share your views.**

#### **Approach**

Mention in introduction what is the status of Delhi in the gamut of federation of India. In next part mention what are the necessary reasons for Delhi to attain full statehood. In next part write what factors doesn't make it a viable option to give Delhi statehood. Write a way forward to suggest middle path

#### **Introduction**

Delhi is the union territory which is governed by special constitutional provisions other than which are applicable to the states. Though Delhi has its own legislature and government, it is not totally in control of its administration as the 69<sup>th</sup> amendment and article 239AA restricts powers on land, police and public order. In recent times there has been demand to accord full statehood to Delhi which has created frictions between government of union territory and the central government.

#### **Body**

Benefits which might accrue with statehood to Delhi :

- Delhi Development Authority (DDA): The Delhi government has no say over the affairs of DDA. This hinders the effective allocation, use of land and implementing welfare schemes. For example it has no say on regularising colonies or to approve land for important projects.
- Police: Due to absence of control over the police force, the Delhi government faces problem in proper maintenance of law and order in the state. For example the recent riots in Northeast Delhi, violence in JNU etc could be controlled more proactively and accountability can be ensured.
- Municipal Corporation of Delhi: Government of Delhi has no control over the MCD. The government is of the opinion that it hinders in implementing development measures.
- Role of LG: The role and power of LG and Delhi government's Council of Ministers has always been an area of contestation. The LG has often been accused of delays and disruptions in the work of the elected government
- Delhi Cadre in UPSC: The ever increasing population and diverse nature of Delhi necessitates a cadre of its own which would not be subjected to frequent transfers
- Smooth functioning: Better coordination and quicker decision making and interconnectedness on the political and bureaucratic fronts.
- Strengthens the democracy and prevents confusion and multiplicity of authorities on specific domains and prevents repetitive decision making.
- Important domains like law and order, police, etc. are outside the purview of state government making it difficult to deal with matters like riots, etc.

**Arguments against statehood:**

- **Critical infrastructure:** Being the national capital, Delhi hosts various critical infrastructures such as parliament, presidential estates, and embassies. Maintenance of these is extremely important and cannot be handed over to a different entity
- **Administration:** Granting statehood might lead to various administrative problems especially in law and order which would be detrimental for the national capital. Quality of governance might decline due to impact on finances
- **Security concerns :** Security of embassies, parliaments, Further, there is issue of safety and security of visiting dignitaries of different countries and also head of states. The responsibility of ensuring security to them lies on Centre and state cannot be entrusted with it
- **Land:** Control over land is required especially in areas with central government institutions, embassies
- **Capital of a country:** Renders it as a capital for everyone and not as a territory as a single state.
- **Financial and administrative viability:** Coordination between policies and implementation will be disrupted.

**International Cases:**

- **Washington DC:** The US Congress has not agreed to the demand for Statehood for Washington DC. The citizens of Washington DC do not have any representatives in the US senate. It has only one non-voting representative in the US House of Representatives.
- However, there are examples of city-states as well. Example: Brussels (Belgium) and Berlin (Germany)

**Way Forward:**

- Though granting absolute statehood is not desirable, there should be considerable sharing of power.
- The elected government in Delhi should be provided a decisive say in the municipal body for a cohesive approach, and proper urban planning
- The state government should also be given more authority on the police and made accountable in controlling crime
- The misuse of discretionary powers of the L-G of Delhi, if any, should be checked
- Coordinated efforts by Centre and Delhi government for effective governance and to uphold public interest
- The dispute over the powers of L-G of Delhi and elected government of Delhi should be resolved.



