Union Government Administration Part-2

Complete Course on Public Administration Paper-2

Rakesh Verma • Lesson 10 • Jan 23, 2022

Union Government and Administration Part 1


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Cabinet Secretariat and Prime Minister's Office

Cabinet Secretary

- The Cabinet Secretary is the top-most executive official and senior-most civil servant of the Government of India.
- He is the ex-officio head of the Civil Services Board, the Cabinet Secretariat, the Indian Administrative Service (IAS), and all civil services under the rules of business of the government.
- The Cabinet Secretary is the senior-most cadre post of the Indian Administrative Service, ranking eleventh on the Indian order of precedence.
- The Cabinet Secretary is under the direct charge of the prime minister.

- In the Government of India Allocation of Business Rules, 1961, the Cabinet Secretariat finds a place in the First Schedule to the Rules. The subjects allotted to this Secretariat are:

1. Secretarial assistance to Cabinet and Cabinet Committees,
2. Administration of the Rules of Business.

- The Cabinet Secretariat is responsible for the administration of the Transaction of Business Rules, 1961 and the Allocation of Business Rules, 1961 of the Government of India, facilitating smooth transaction of business in ministries/departments of the Government by ensuring adherence to these rules.

- The Secretariat assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst ministries/departments and evolving consensus through the instrumentality of the standing/ad hoc Committees of Secretaries. Through this mechanism, new policy initiatives are also promoted.
- The Cabinet Secretariat comprises of three wings:
  - Civil,
  - Military and
  - Intelligence.

Functions of cabinet Secretariat

- It has also emerged as the key governmental department through which the prime minister wields his power and is able to bypass, even overrule, his ministerial colleagues without prior consultation. This is because the secretariat has been so structured that it can function as a super-ministry over any existing ministry, and implement decisions in and through any governmental department.
- While on paper it is supposed to assist the Cabinet in discharging its functions, but in practice, it has its tentacles in every pie - domestic political activities, international espionage and sensitive economic decisions.

- Its 'people' are planted in every official organisation, be it the Home Ministry or an Indian mission abroad. The Cabinet Secretariat - through the use of secret intelligence agencies at its command - can virtually make or break civilian and political careers.

- It is the chief crisis manager, and therefore requires huge amount of information and data which is provided by Cabinet Secretary
- He assists the PM in carrying out administrative business
- It acts as apex decision making body and ensure effective governance of the country
- It also ensures that the President and Vice president are informed about decisions taken by the cabinet and about the major activities of all ministries by a report submitted monthly

- It commences the meetings of the cabinet on orders of PM, prepares and circulates the agendas, records minutes of the meetings, and watch its implementation of decisions. He is the custodian of the papers of the cabinet meetings
- There is however no fixed tenure, but the average has been < 3 years
- SARC (second ARC) emphasized on the need to give longer tenure to top level functionaries in both central and state governments and therefore GoI decided that tenure of CS could be extended even upto 4 years in public interest.

- The cabinet Secretary (CS) provides eyes and ears for the PM to keep in touch with the process of official business. Its business is to help, not to oversee.
- CS is expected to function in the background as a shock absorber without coming in lime light

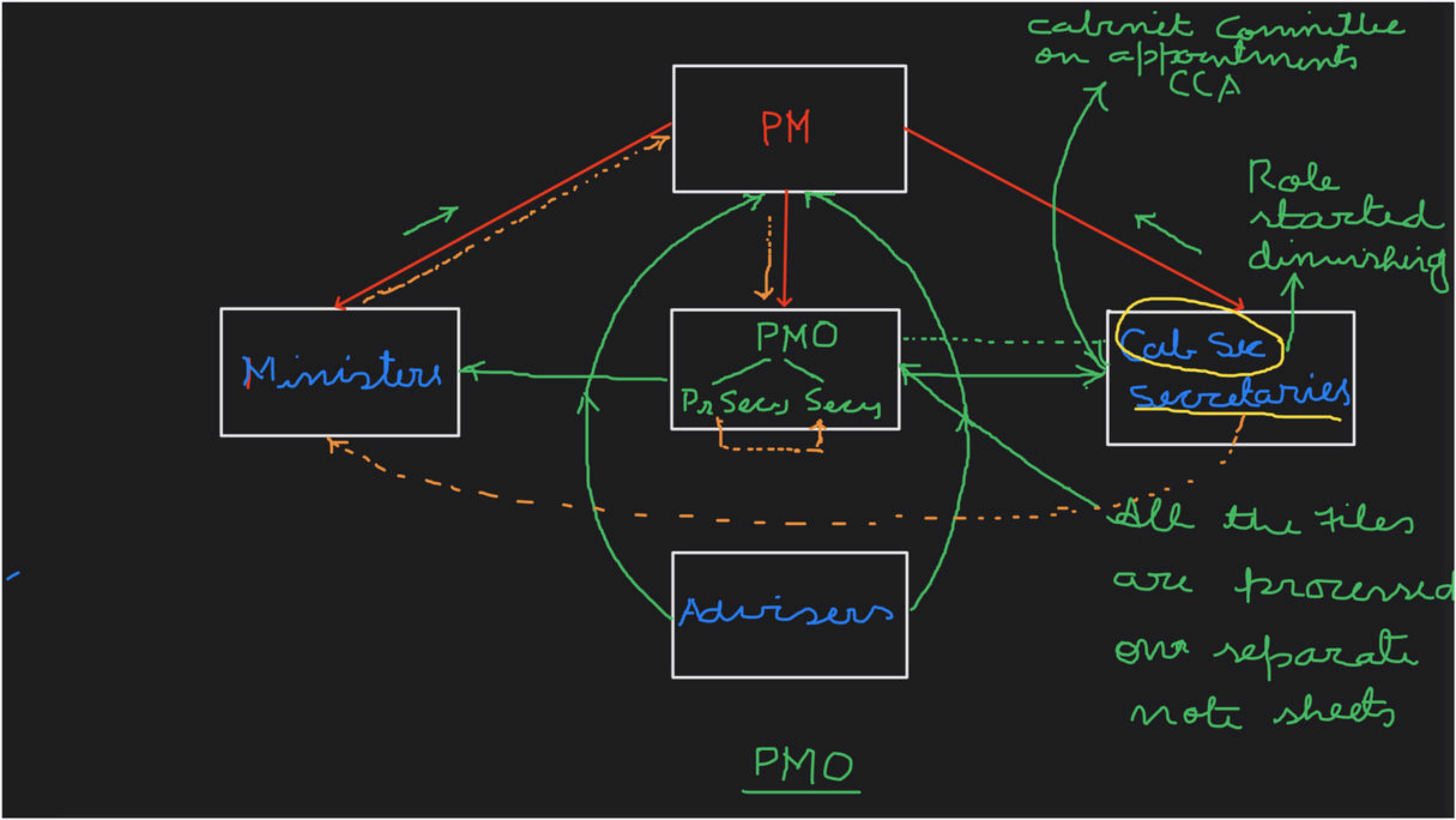
Role in Covid

- Cabinet Secretary chaired a high-level review meeting with Chief Secretaries, DG Police and Health Secretaries of all States/UTs, with focus on States/UTs that have been reporting very high rise in daily cases and daily mortality because of COVID-19. The meeting to review and discuss the COVID management and response strategy was attended by the Chief Secretaries, DGPs, and senior health professionals of all States/UTs along with the Member (Health) NITI Aayog, Union Home Secretary, Union Health Secretary, Union Secretary (I&B), DG ICMR, and Director of NCDC.

- The Cabinet Secretary exhorted the Chief Secretaries to galvanize the state administration and to use all resources at their disposal to tackle the recent surge of COVID cases. The need to expand the efforts to departments other than the Health Department through a “Whole of Government” approach was re-stressed at the meeting. It was emphasised that the Centre continues to provide all resources and support to all States and UTs for public health measures and clinical management for fighting COVID19

Prime Minister's office (PMO)

- Institutional arrangement have evolved over the years in the form of secretarial agencies or thinking cells to give direct assistance to prime minister in his official functions.
- **Functions performed by PMO**
- Assisting the prime minister in respect of his overall responsibilities as head of government like maintaining liason with council of ministers and state government.


Cabinet Committee on appointments CCA
PM
Role started diminishing
Ministers
PMO
Pr Secy
Secy
Cab Sec
Secretaries
All the files are processed one separate note sheets
Advisers
PMO

- Dealing with all the references which under rules of business have to come to pm
- Maintaining liaison with president governors and foreign representatives in the country.
- Acting as think tank of PM.

- The ‘erosion’ in the primacy of the Cabinet Secretary vis a vis the Prime Minister’s Office, was not a Nehru era legacy but one that began when Lal Bahadur Shastri succeeded him as Prime Minister in June 1964 with a decision that redefined the ‘fulcrum, the balance of power and governance architecture for decade to come’, writes veteran economist and bureaucrat N K Singh in his recently released autobiography.

- N K Singh who served in the Prime Minister's Office as Atal Bihari Vajpayee's Secretary from 1998-2001, closely traces the origin of the Prime Minister's Office and its growing influence over the decades from the start under Shastri, to the all powerful PMO of Indira Gandhi era, the course correction under Morarji Desai, the 'altered' political equations of a 'low key' PMO under Dr Manmohan Singh and the Modi PMO which leads to a questioning of the Westminister model itself.
- Westminster model is a type of parliamentary government that incorporates a series of procedures for operating a legislature. This concept was first developed in England.
- Let us see how PMO originated

Pt. Nehru and Lal Bahadur Shastri – the birth of PMO

- Under Jawaharlal Nehru, the office used to be headed by a joint secretary while the bulk of the coordinating work was carried out by the all powerful cabinet secretary. Nehru has a PMS (prime minister secretariat) which was not significant since he believed in 'institutional structure of cabinet office' rather than PMS.

- Things changed when Laxmi Kant Jha was appointed for the first time as a ‘first secretary’ to PM Shastri in 1964. The PMS now got a distinct status with a new insertion in the Allocation of Business Rules, which had the following explanation for the PMS- ‘To provide secretarial assistance to the PM.’ “This structural change permanently eroded the primacy of the cabinet secretary. The PMS rose in importance while the office of the cabinet secretary continued to diminish.

- Indira gandhi had PN Haskar as her Principle secy. At this time, the concept of committed office came to fore and meritocracy took a back seat. P N Dhar took charge as Secretary to Indira Gandhi in 1971 and the PMS soon acquired several joint secretaries reporting to either Dhar or Haksar leading to multiple layers of decision making. This disintegrated the chain of responsibility/accountability and led to the usual jostling for power and influence.
- This era marked the near complete 'emasculation of the Cabinet Office' as the PMS now mirrored a 'parallel government' undercutting the basic constitutional framework. And allowed a concentration of power in the PMS which was not intended or designed by the framers of the Constitution of India.

- Morarji Desai appointed Vidya Shankar as the principal secretary in the PMO and ‘a degree of normalcy was restored’ with Cabinet Secretary N.K. Mukherjee assuming greater powers than his predecessors. The PMS was rechristened the ‘Prime Minister’s Office,’ to signal a course correction.
- Rajiv Gandhi as PM brought in Bhalchandra Gopal Deshmukh as Secretary and the PMO once again became the most important hub of policy initiatives and the principal overseer of government functioning.
- More ‘settled times’ came only in 1991-1996 under Prime Minister Narasimha Rao when the PMO was a critical centre for orchestrating economic reforms, necessitated by the Balance of Payments crisis.

- When Dr Manmohan Singh became PM, the PMO again returned to a low profile phase because of this being a coalition government. A new organisation known as National Advisory Council (NAC) came into existence.
- The PMO presently is more influential than the Cabinet secretariat. This is reflected in the creation of a new post in the PMO as additional principal secretary not only to act as a 'countercheck vis-à-vis the other officers, but also to serve as an alternative source of management of government business'.

- In the PMO, he deals with major government appointments. This shows that the PM not only believed in division of work and application of the theory of checks and balances at the top in the PMO but also created an alternative source of advice that he considers more dependable.
- This also reflects that there is no bar on the way in which the PM wants to organise his office. By exercising his discretion in the constitution of the PMO, the PM has signalled that his PMO would be the hub of decision-making and play a crucial role in streamlining decision-making and interaction with other ministries

- The PM restructured the PMO by discontinuing many advisory committees, the group of ministers (GoMs) and economic group of ministers (EGoMs) constituted during previous periods.
- An empowered PMO is the idea which is not dependent on ministers for policy initiative and direction. The NITI Aayog is the brain child of the PM for policy initiatives and starting a new phase of union–state cooperative relations.
- The PMO in current period reflects the image of an efficient and effective organisation which is constantly engaged not only in grievance redressal but also in directing, supervising and monitoring different plans and projects. It also asks different organisations to initiate different policy initiatives.

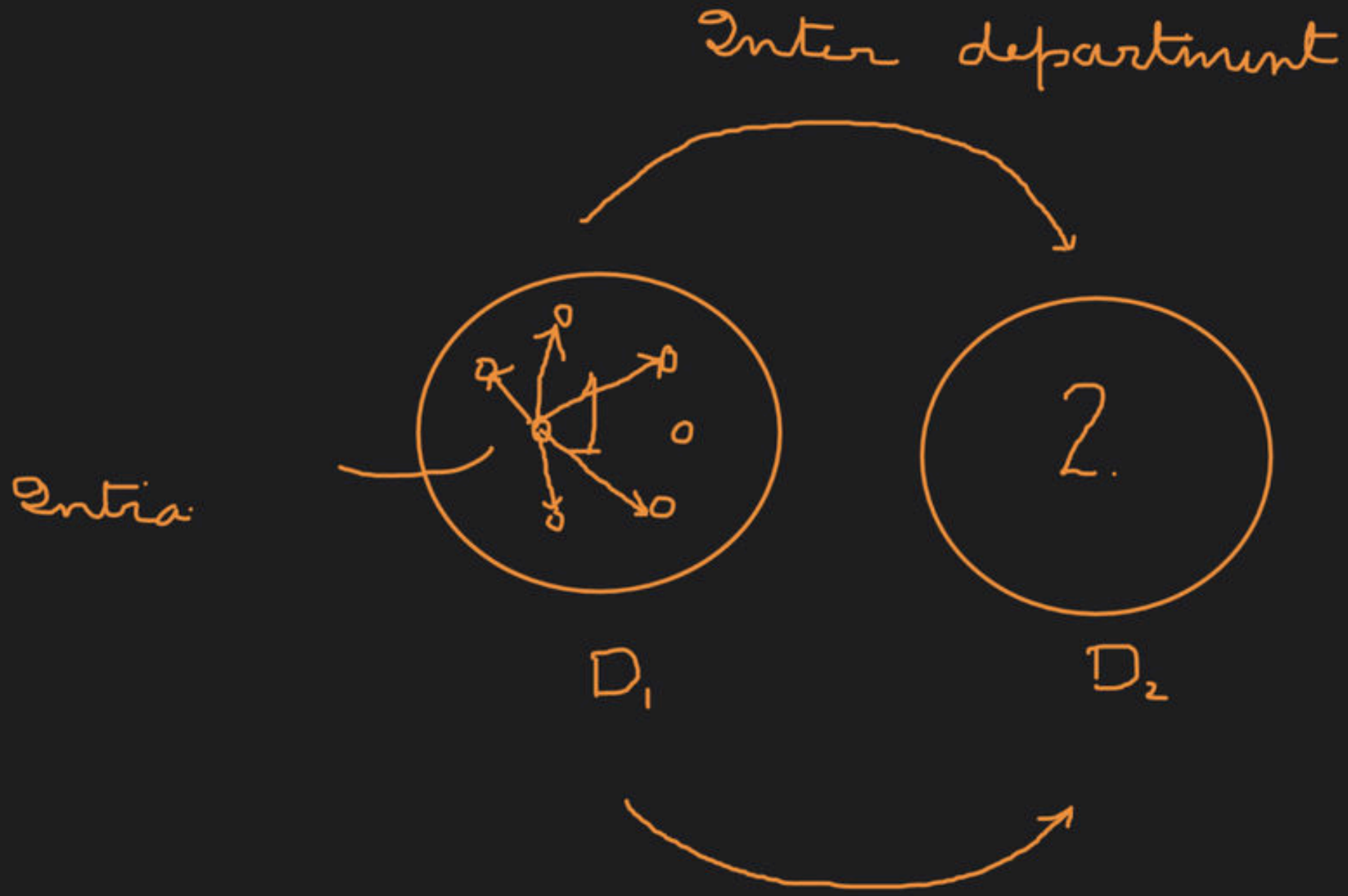
- It is common knowledge that the position and role of the Prime Minister's Office (PMO) very much depend on the political thinking, personality and the position of the PM in his party, his relations with his cabinet colleagues and his popularity with the masses. The PMO receives its authority from the PM and he alone decides how and in which way he wants to use his office.

- In the final analysis, it may be concluded that the PMO which started initially as a small organisation to assist the prime minister has developed into the most powerful centre of governance in India.
- However, this development in our polity points to two trends—the concentration of power in the PM and his PMO, and the apparent dilution in the functioning of cabinet secretariat and the cabinet secretary as viewed from time to time. The role and status of PMO and the cabinet secretariat has depended on the stature of the PM, his standing within his party and the cabinet and the political climate of the country.

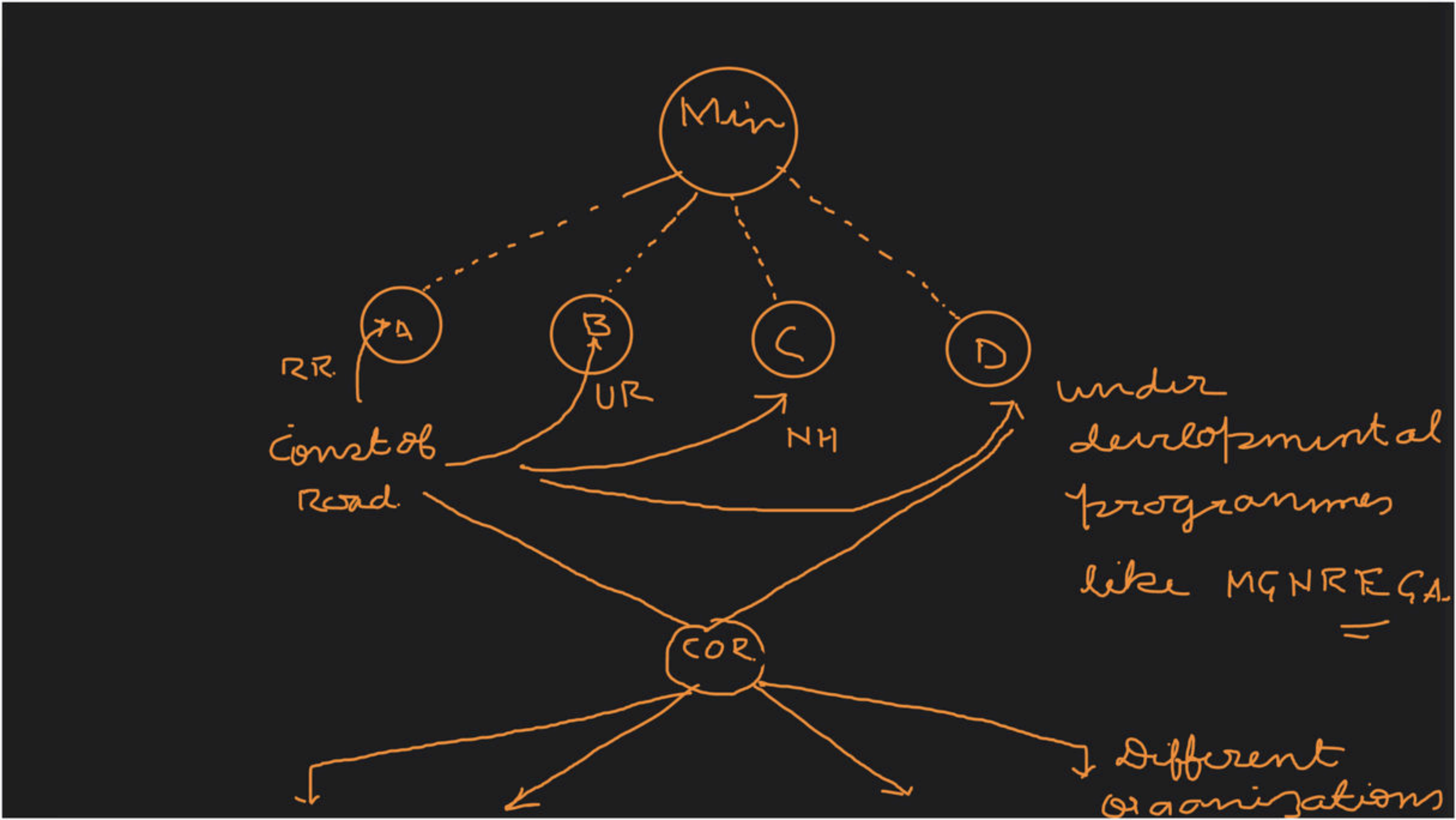
- It also depends on the personality of the officials occupying the position as PS to PMO and cabinet secretary.
- The moot point is whether the PM believes in centralised or decentralised functioning. It is the PM who has to do the balancing act between the PMO and the cabinet secretariat keeping in view the parliamentary traditions and democratic functioning.

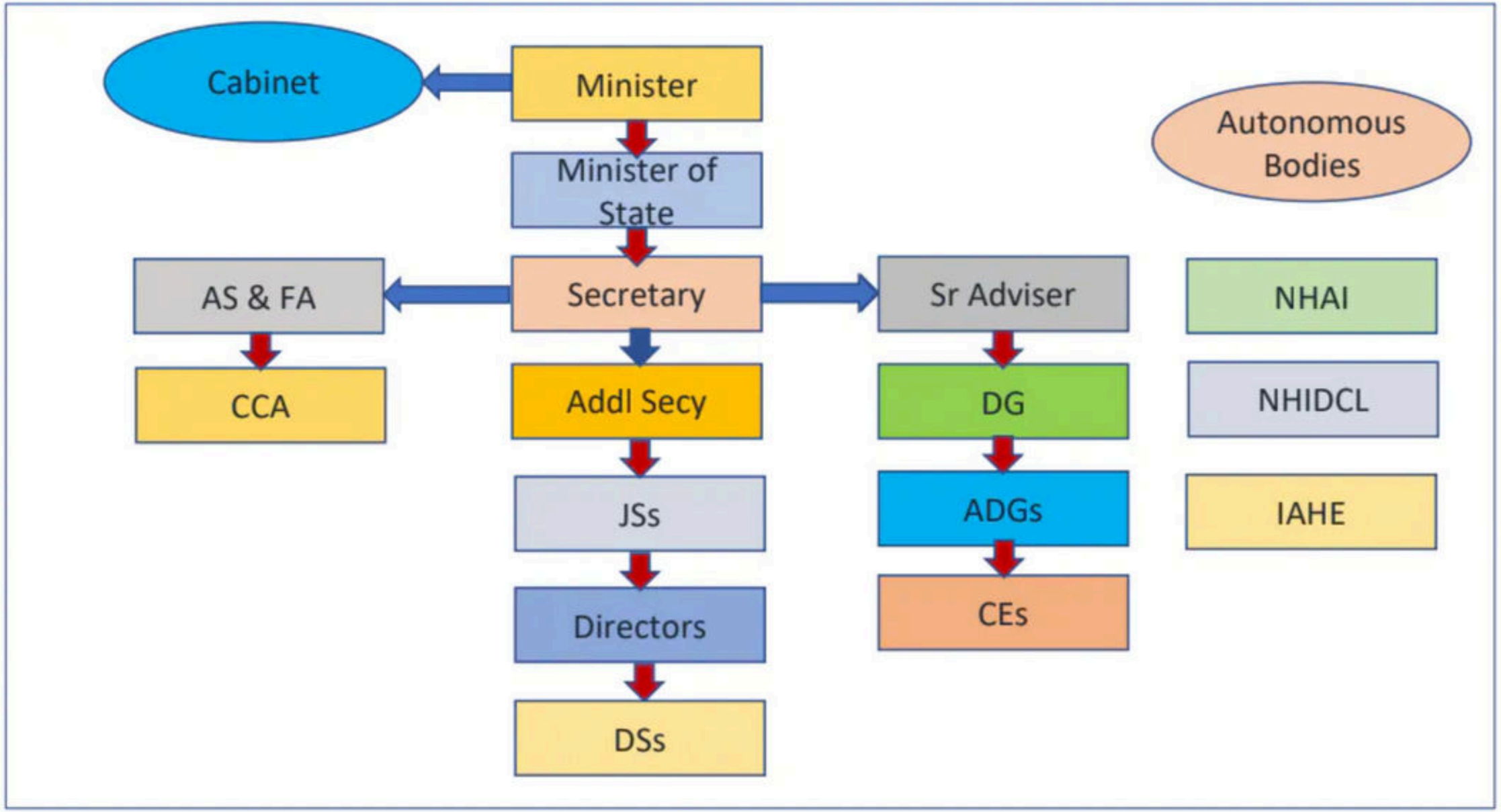
Intra Governmental relations

- The coordination wing in MHA (Ministry of Home Affairs) deals with intra-Ministry coordination work
- "For the first time, India adopted guiding principle of 'Minimum Government and Maximum Governance' and also rationalisation with a commitment to bring a change in the work culture and style of governance. It is a good beginning in transforming entity of assembled ministries to organic ministries. It will bring more coordination between different departments, will be more effective and bring a speed in process,".


Enter department
Entia:
2.
D_1
D_2

- “The focus is on convergence in the activities of various ministries where one Cabinet minister will be heading a cluster of ministries who are working in complementary sectors,”. The guiding philosophy is to cut the top layers while expanding the government at levels where it interacted with people.
- The roll out of Gati Shakti mission also envisages intra-governmental bonding and cut out the red tape.
- Further govt has restructred 77 ministries into 8 groups as a method of ‘hands on governance’ in order to increase inter-ministerial coordination. (we will study about it later)


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Road
under
developmental
programmes
like MGNREGA
COR
Different
organizations

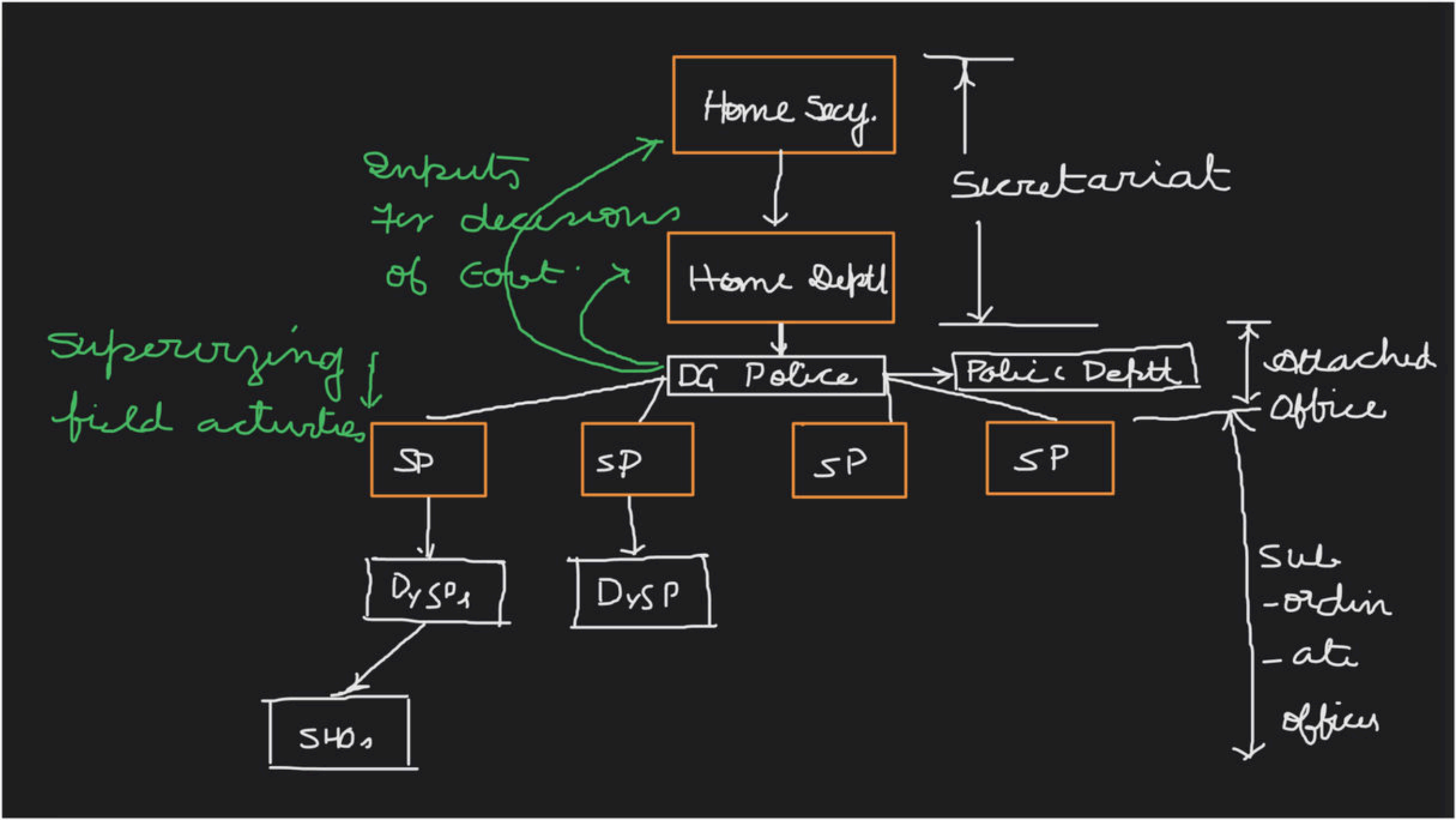

Cabinet
Minister
Minister of State
Secretary
AS & FA
CCA
Addl Secy
JSs
Directors
DSs
Sr Adviser
DG
ADGs
CEs
Autonomous Bodies
NHAI
NHIDCL
IAHE

- The idea of Pragati (pro Active Governance and Timely Implementation), the forum where secretaries meet each month with PM was itself meant to cut through department red tape. "The Prime Minister has been encouraging the officers to work together, even informally, to resolve inter-departmental issues among themselves instead of simply writing letters to each other. This has considerably diluted the earlier rigid watertight compartments in which departments used to work

Attached and Subordinate offices

- Attached offices are responsible for providing executive direction required in the implementation of the policies laid down by the ministry to which they are attached.
- They also serve as repository of technical information and advice to the ministry on technical aspects of questions dealt with by them.
- While, the subordinate offices function as field establishment or the agencies responsible for the detailed execution of the decisions of Government. They generally function under the direction of an attached office, or in cases where the volume of executive direction involved, is not considerable, directly under the ministry. Some are headed by deputy sec or by director.

- The attached office have dual function. They provide technical information for the policy formulation as well an executive direction for its implementation. They have to coordinate the activities of the subordinate offices and keep the Secretariat informed about the various problems faced in the implementation of the policies. The attached offices, thus, could be considered as the headquarters of the field organisation rather than an extension of the Secretariat.
- While the attached offices have been able to better the conditions of service of their employees and achieve a higher status almost co-equal to that of the secretariat, the subordinate offices continue to slog in their subordinate status.


Home Secy.
Secretariat
Inputs for decisions of Govt.
Home Deptt.
Supervising field activities
DG Police
Police Deptt.
Attached Office
SP
SP
SP
SP
DySP
DySP
SHOs
Sub-ordinate offices

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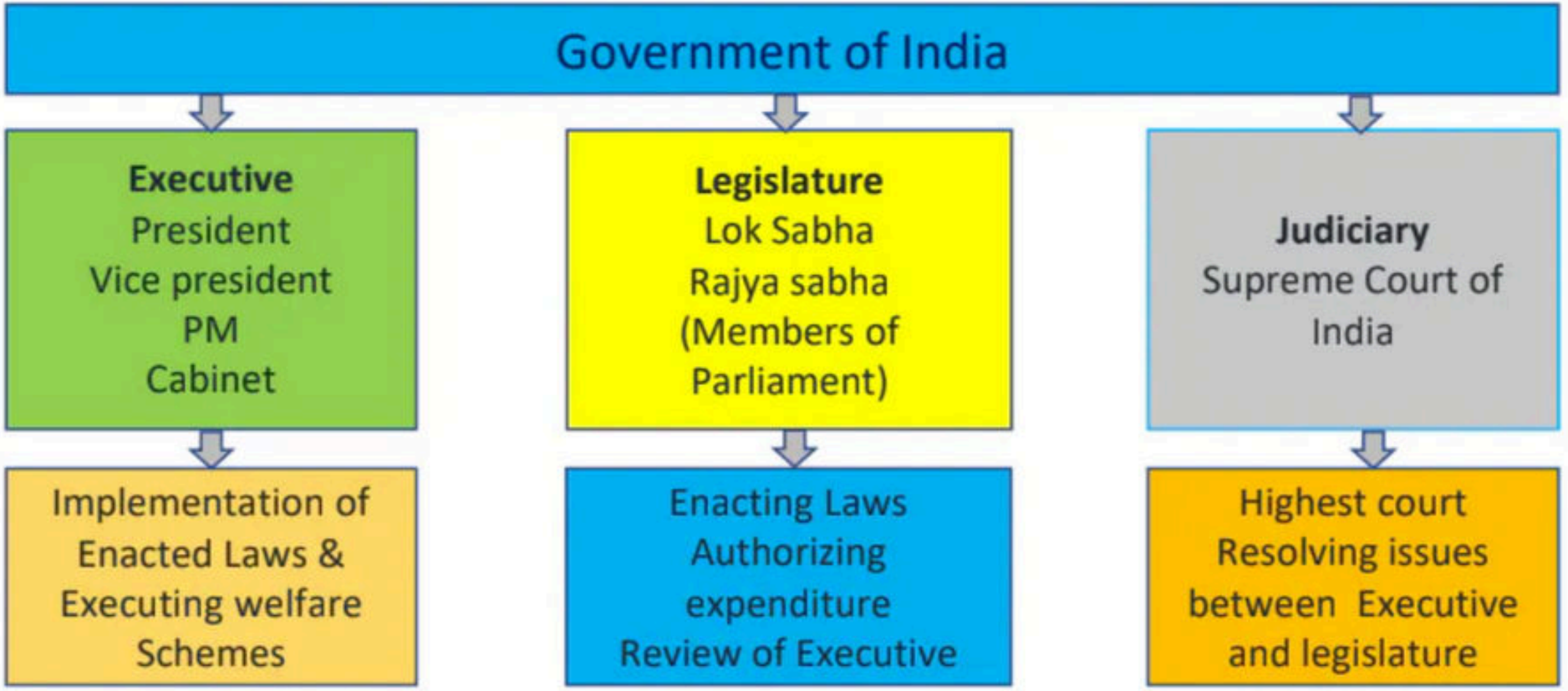
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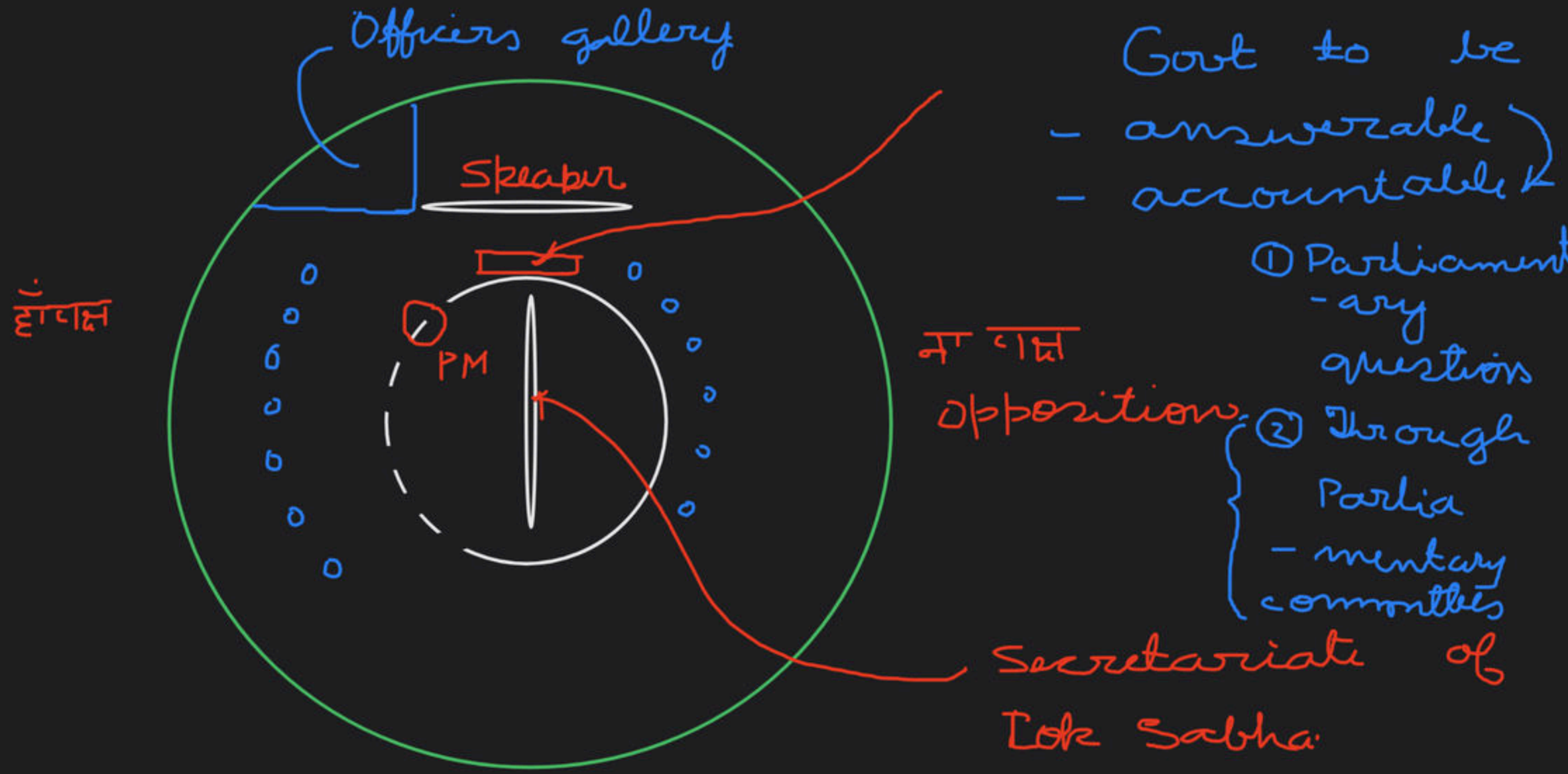
Structure of Governance at Centre



Legislature - Parliament

- India adopted a parliamentary form of legislature post independence as it provided for wider representation and better accountability of the government to the governed. More importantly, it was a tested mechanism.
- The union legislature is the microcosm (representing a large place, while itself being small in size) of Indian democracy. India being highly diverse ethnic cultural and linguistic state, is represented in the parliament.
- Indian legislature is a fine blend of UK’s Parliamentary system and USA's Presidential system. While the nominal head of state is president is not as powerful as that in USA but not as weak as that in UK.

- The doctrine of judicial review and legislative competence (working within the areas provided by constitution) are features of USA's administration present in India. We believe in Constitutional supremacy while UK believes in Parliamentary supremacy.
- The legislature scrutinise the functions of government and make it accountable and answerable. The government functions to serve the people, and is an institution on behalf of people.
- Let us see some basics of Lok Sabha and Rajya Sabha



Govt to be
- answerable
- accountable

① Parliament
- any
question

② Through
Parlia
- mentary
committees

Rajya Sabha

Rajya Sabha

- The Constitution provides that the Rajya Sabha shall consist of 250 members, of which 12 members shall be 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 238 representatives of the States and of the Union Territories.
- Elections to the Rajya Sabha are indirect; members representing States are elected by elected members of legislative assemblies of the States in accordance with the system of proportional representation by means of the single transferable vote, and those representing Union Territories are chosen in such manner as Parliament may by law prescribe.

- The Rajya Sabha is not subject to dissolution; one-third of its members retire every second year.
- Rajya Sabha, at present, has 245 seats. Of these, 233 members represent the States and the Union Territories, and 12 members are nominated by the President.

- Rajya sabha, being a house of people with wisdom, knowledge, who cannot enter the push and pull of politics, acts as a dilated chamber which infuses wisdom and attitude in the whole law making process of the legislature.
- It allows the small and regional parties to assert their views on various bills, thus representing the whole country.
- There is no doubt that the Elders have played an important part in the functioning of our democracy. Even if they have less powers to stop a bill in its tracks (money bill), the fact that they do discuss and call for suggestions by itself shows that the system is hale and hearty. Also, given the fact that the composition of political parties varies especially in the Lok Sabha, the Rajya Sabha does help provide the required checks and balances. But a couple of trends cannot be missed.

- Many parties are now using the Rajya Sabha as a backdoor to get members elected, most of whom will not be able to win a Lok Sabha election. This is something that must be avoided as it amounts to taking the electorate for granted.
- Second, people get in from States they are least connected with. Even though we are moving towards a pan-India polity, this poses the question as to what the stand of the 'alien' MP with respect to the new constituency would be and what he or she is going to do for its development.
- There has to be a mechanism to ensure that qualified people reflecting the diversity of our country are represented in the Rajya Sabha. At best, the Elders can facilitate the smooth functioning of our democracy and be the spokespersons for the marginalised.

- The Rajya Sabha is not only a House for second thought but is also a guardian of a State's rights. As it has the role of a watchdog, it must assert itself as a House of correction. Its function is to improve legislation passed by the Lower House and is not one of obstruction.

Lok Sabha

- The Lok Sabha is composed of representatives of people chosen by direct election on the basis of adult suffrage. The maximum strength of the House envisaged by the Constitution is now 552. The total elective membership of the Lok Sabha is distributed among States in such a way that the ratio between the number of seats allotted to each State and population of the State is, as far as practicable, the same for all States.
- The Lok Sabha at present consists of 545 members. Of these, 530 members are directly elected from the States and 13 from Union Territories. However nomination of two Anglo Indians has been done away with by 126th Amendment of the Constitution(104th CAA).

- It is often noticed that the quality of discussions is degrading in the houses, proven by the fact that once 4 bills were passed in a same day.
- One of the chief reason for poor discussion is that if any parliamentarian tries to speak his/her mind, he is debarred from party ticket in next election, thus in fear of losing seat, one never speaks the truth.
- The whips are misused to seal the mouth of parliamentarians both in important and unimportant matters. Its purpose was to stop horse trading but is now getting misused sometimes to suppress the voice of members.

Speaker

- The Speaker of the House is a Constitutional post as enshrined in Article 93 of our Constitution. It provides for the position of a Speaker and a Deputy Speaker to be chosen among the members already elected in the Lower House of the Parliament of India i.e. The Lok Sabha.
- The office of the Speaker plays a focal and decisive role in our democracy. The Speaker represents the authority of the house and symbolizes the dignity and power of the house over which he is presiding. He/she is responsible for regulating the business of the house. Simpliciter, he is a guardian of the rights and privileges of the house, its committees and its members.

- The Speaker's responsibility is to ensure that the decorum of the house is maintained at all times and that there is smooth conducting of business. Although, the Speaker is generally chosen from the ruling party, he is expected to be bipartisan in his approach and conduct of proceedings of the house, the Speaker must conduct himself in a manner beyond reproach.
- Pandit Jawaharlal Nehru perfectly articulated the role of the Speaker saying, "The Speaker represents the house. He/She represents the dignity of the house, the freedom of the house, and because the house represents the nation, in a particular way, the Speaker becomes symbol of the nations freedom and liberty."

- In Britain, by convention, the Speaker also gives up the membership of his/her political party. This helps in securing the impartiality of the Speaker to a certain level.
- A watchful Parliament forms the foundation of a well-functioning democracy. The presiding officers of Parliament are the key to securing the effectiveness of this institution. The MPs look to them to facilitate debate, protect their rights and uphold the dignity of Parliament. The speaker needs to earn trust of the MPs by being neutral.

- With no security in the continuity of office, the Speaker is dependent on his or her political party for reelection. This makes the Speaker susceptible to pulls and pressures from her/his political party in the conduct of the proceedings of the Lok Sabha.
- She/ he will have to be vigilant to defend the sanctity of the institution and also have the vision to strengthen it.
- However, in recent times, there are many instances of misuse of anti-defection laws to disqualify MLAs when the house is not even in session (Rajasthan case).

Brief of Rajasthan case

- The rebel MLA and the deputy chief minister moved the high court regarding disqualification notices even when the house was not in session, and therefore the Rajasthan high court "requested" the speaker to delay the proceedings and wait for their reply.
- Outraged by this decision, the speaker moved supreme court, challenging high court's decision and interference in proceedings of speaker regarding disqualification, which usually is assumed to be their sole prerogative.
- However, the supreme court, in the spirit of constitution, rejected the plea, and provided for continuation of high court's decision.

- This is for the first time that the court had to interfere even before the final decision of disqualification was made by the speaker. However what is more important is to note here that, such arbitrary and partisan approaches followed by the speaker has caused a threat to democracy.
- Even the Supreme court recognised it as right to dissent of the rebel MLA's which cannot be suppressed. Earlier in 2020, supreme court had already asked parliament to set up an independent permanent tribunal to decide the disqualification petitions within a reasonable time, saying that this shall not be the prerogative of the speaker, as afterall he belongs to the party in power.

- The supreme court suggested that the tribunal could be headed by retired SC judge or retired chief justice of high court or some independent outside mechanism, to ensure that decisions taken are in spirit of the constitution upholding Indian democracy. This move will actually give teeth to the anti-defection law rather than leaving it to the discretion of the speaker.

Analysis of Parliamentary functioning in recent times

- Now let us analyse how the Parliament has been working in recent times
- Parliamentary committees are known to discuss matters in detail and formulate reasoned conclusions. It therefore assume a significant role in law making. An overburdened legislature may not be able to scrutinise each and every clause of the bill thereby referring it to a parliamentary committee is a part and parcel of stronger democracy.
- However, in recent times, merely 25% of the bills are referred to them as compared to 70% a decade ago.

- India's Parliament in 2021 passed the National Capital Territory of Delhi (Amendment) Bill, 2021, which significantly increases the powers of the Lieutenant-Governor (L-G) of Delhi. The bill requires the elected Delhi government to seek the opinion of the L-G before taking executive action. This is a major amendment that significantly alters the way the government in Delhi functions.
- It also recasts India's federal construct and makes the Centre even more powerful than it already is, while chipping away at the power from the duly elected government in Delhi.

- Despite the nature of changes this bill proposed, it was not sent to a parliamentary committee, and there was no formal consultation with stakeholders, civil society, or experts before passing it in parliament.
- It is important to note here that the bill was passed by both the houses in just 9 days (March 15 to March 24).
- It may have been more open heartedly accepted by people if some more time was given for scrutinization, maybe by civil society and experts, apart from Parliamentary committees. This procedure, if followed, will not only strengthen our democracy but increase the accountability of Administration, thereby fulfilling what Public Administration is all about.

- Today, we have several committees in Parliament — each dealing with a different subject matter. All committees have MPs representing different parties, in roughly the same proportion as their strength in Parliament. When bills are referred to these committees, they are examined closely and inputs are sought from various external stakeholders, including the public.
- Although committee recommendations are not binding on the government, their reports create a public record of the consultations that took place and put pressure on the government to reconsider its stand on debatable provisions. The Companies Bill, 2009, is an example of a legislation that was withdrawn, and later reintroduced with significant changes, due to the issues flagged by the committee that examined it.

- In the Winter Session (Dec 2021) of Parliament, a pattern of lack of discussions, disruption, avoidance of debates, and hasty unilateral passage of laws was seen. The result is that Parliament is not functioning as it is supposed to.
- Shashi Tharoor writes – “I fear it has been reduced to a combination of a notice board for unilateral government announcements and actions, a rubber stamp for the government’s legislative agenda, and a performance stage for Opposition protest.”

- When there are contentious or sensitive bills, rather than referring them to a Standing Committee, within the mandate they fall, the government has consistently preferred to name instead a Joint Select Committee, which is always chaired by the majority party, namely the ruling party. So for example, on the data protection Bill (Personal Data Protection Bill), it was not given to the committee on whose agenda the topic of data protection actually exists, and was given to a separate committee chaired by a ruling party MP.

System in other countries

- In countries such as Sweden and Finland, all bills are sent to committees. In Australia, a selection of bills committee, which includes members from the Opposition, is tasked with identifying the bills that should go to committees.
- Mandating the scrutiny of the bill will not only strengthen the governance in the country but also improve the quality of legislation.

Message from Vice-president

- The Vice President of India, in one of his speeches highlighted that it is the functioning of the legislatures and law making bodies that can make or mar any democracy. The trust deficit with people's perceptions about the legislators and legislatures needs to be addressed at the earliest.
- Continuing further, he urged the lawmakers to accord priority for the good and welfare of the people, instead of being preoccupied in self interest. Representing people is not a part-time activity and it shall be their prime responsibility. Proper commitment to the cause of people flows from getting priorities right.

- Parliament is a very sophisticated system which needs to be worked with a certain finesse (skills). Mutual trust, accommodation of each other's larger interests and respect for each other's views make it possible to build consensus on issues which come before the parliament.
- It is therefore needed to develop a strong connect with the people to properly assess and understand their difficulties and aspirations, right conduct both in public and inside legislature, character based on moral integrity, capacity to understand the emerging complexities and communication skills for effective communication with people are required in a legislator.

- The vice President said " Any legislature is as good as its members. Legitimacy of both of them are interdependent as each of them draws sustenance from the other." any legislator modelled on above mentioned positive attributes would most certainly like the house to Discuss, Debate, and Decide so that he/she can make useful contributions rather than being disrupted and that is the difference that able legislators can make to the functioning of the legislature.
- Any legislator has the option for either supporting the government or opposing it. Informed oppositions to the government's proposals in fact does certain good but opposing for the sake of doing it does harm.

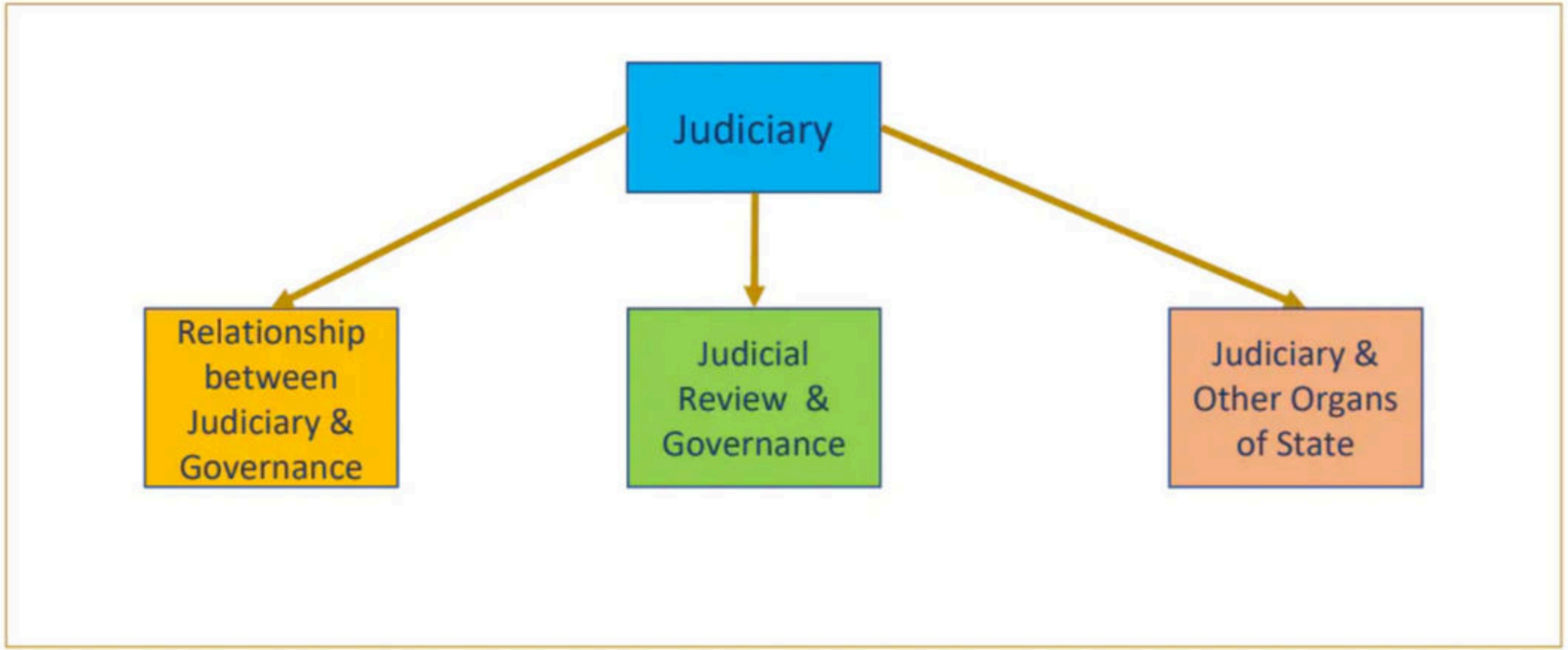
Reform agenda for Parliament

- Today, legislatures often falls short of attendance which decreases the quality of debates. The political parties must assure at least 50% attendance of their legislators. This is because many a times house is forced to being adjourned due to lack of quorum.
- The freedom of expression restricted by Whips needs a review so as to enable reasonable degree of dissent without impacting the stability of government. A thorough review of Anti-Defection law to identify the grey areas like incentivising legislators to resort to actions inviting expulsion from the party besides providing for time bound disposal of defection cases by the Presiding Officer are the need of hour.

- The department related standing committees need members for more than 1 year and promoting specialisation. This is because, before they are able to get into depth of the subject matter, one year is completed and new members are appointed to the committee.
- There may be introduced a pre and post legislative impact assessment. Every legislative proposal shall incorporate a detailed account of social, economic, environmental and administrative impact for wider awareness and subsequent assessment of the effect of legislation on ground.
- The need for the governments to be responsive to the concerns of the Opposition and the Opposition to be responsible and constructive during the debates and while criticising the government and opposing legislation is what ensures a true democracy.

- The other reform proposals include building consensus on simultaneous polls to let unfettered governance, enacting for reservation of women in legislatures, making rules that automatically take effect against erring members in case of interruptions and disruptions, regular publication of reports by the Secretariats of Legislatures on the attendance of Members and their participation in debates, doing away with the winnability as the sole criterion for selecting contestants by the parties to address the concern of rising number of legislators with criminal record.

Judiciary


Judiciary
Relationship between Judiciary & Governance
Judicial Review & Governance
Judiciary & Other Organs of State

Let Us Know More About Role of Judiciary

- Separation of power, but not the rigid separation of power, gives power to judiciary to keep check and maintain balances on the legislature and executive and allow them to make amendments in their amendments.
- In our country two types of laws exist simultaneously:
  - Laws made by the legislature that are known as statutory laws
  - Laws made by the courts through their judgements based on the interpretation of statutes.
- When judges make law, it is to ensure good governance and to correct the government that fails to fulfil its obligations towards the people.
- Law becomes the medium to get justice and serving justice ensures belief and faith on law.

- The power to interpretation, discretion, judicial review, giving judgements based on justice, equity and good conscience, and above all being an independent organ makes judiciary as significant as catalyst in a chemical reaction.

Judicial Review

- Judicial review is when the court reviews any law passed by the parliament and maintains its accountability and renders a law bad or null and void if it goes against the rule of law.
- It is a strong tool to keep check on the public bodies and rendering their accountability if their decisions and policies go outside the power vested in them by the provisions of the constitution.
- It maintains effective checks and balances over executive and legislature by controlling unbridled, arbitrary and unjust acts.
- The judicial review enshrines in the Articles 13, 32, 131-136, 142,143, 226 and 246 of the constitution.
- Thus even when laws are made, it is the judiciary that has the final say.

- The verdict of the Supreme Court on 99th constitutional amendment and the formation of National Judicial Appointment commission and declaring them to be ultra virus the constitution is another glaring example when any parliamentary Act is undone or overturned as by the judiciary, as unconstitutional on the grounds of judicial review.
- The Supreme Court had rejected the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment which sought to give politicians and civil society a final say in the appointment of judges to the highest courts.
- More recently, SC struck down the Maratha reservation by the state government; or the Tribunal Reforms Ordinance in 2021.
- Such power of review makes the judiciary the catalyst on change.

Judiciary and Other Organs of the State

- To keep the relationship of the organs of the state transparent and accountable, judiciary has introduced right to information.
- The Court relied on Articles 32 and 142 of the Indian Constitution to issue a set of directives to make the CBI more autonomous by delinking it from political control. SC has also issued directives in Prakash Singh judgement for reforms in police (which we will study in later chapters).
- Article 32 allowed the court to depart from traditional adversarial proceedings, and Article 142 authorized the court to pass a decree or order as may be necessary for doing complete justice between the parties.

Relationship Between Judiciary and Governance

- Judiciary is the means to reach the end of good governance as it safeguards the human rights and maintains the rule of law in the state, ensuring transparent and accountable processes and institutions.
- With its decisions and judgements, it ensures access to knowledge , information, health, education, duties of authorities , working of various institutions and establishments along with remedies to undo the damage done and strict guidelines to ensure implementations and action on law which ensures empowerment of people.

- As it is the people who themselves elect their representatives but in the back of their head, they know even if the government does something wrong, it is the court, their footsteps would lead to .
- The interwoven relationship between the aspects of good governance and judiciary displays the extent to which the role of the judiciary is important in promoting good governance.

- The legislature makes the law but if it violates any fundamental rights, it is the judiciary which declares it null and void. The judiciary by making suggestions and providing guidelines help in maintaining order in the society.
- It is after the recommendations of the judicial committee headed by Justice Verma, that rape laws were made strict ans sexual harassment laws were enacted.

- The power of interpretation allowed the courts to widen up the spectrum of Art 21.
- This has given rise to a word ‘ governance’
- If the policies and acts of the government deprive any of the rights ensured under this article, be it education, shelter, food or safety then it is termed as bad law and is under the scrutiny of the law as interpreted by the judiciary. This is how the government and judiciary work together.

Judicial Activism - A misnomer

- It is not wrong to say that democracy exists more during the elections rather than non-election years. It is because of a few power hungry people, having criminal records, tend to enter Parliament. 43% MPs in 2019 Lok Sabha have criminal records against them.
- The framers of Constitution were clear in their intentions. There must be checks and balances within the state. Parliament may not keep that check in case of over-majoritarian government. Here, the judiciary's role assumes great significance.

- If there was no constitution, there would have been no power to strike down laws and executive actions. Judicial review is foundational in the Indian constitution and the judiciary alone can interpret the constitution. In fact, it is their duty.
- The constitution establishes concepts and not conceptions. Clear provisions in the constitution emphatically say so. Framers gave citizens fundamental rights and enjoined the Supreme Court and the high courts to protect them under Articles 32 and 226 respectively.
- Judicial review of laws and administrative actions is thus expressly mandated. The constitution recognises one paramount principle: “Be you ever so high, the law is above you.”

- ‘Judicial activism’ is therefore a misnomer. The constitution delegates power to the courts to enforce its own conceptions of political morality so long as its conception is relatable to standard concepts, i.e., the articles thereunder.
- It is political skepticism which seeks to label this as judicial activism. Skeptics seek to restrict judicial power by fashioning labels of judicial restraint or judicial deference as democratic arguments, saying moral and political principles must be resolved by institutions which are politically responsible – which courts are not. Democracy does not mean so. In fact there is no rule limiting judicial review. Our Supreme Court has gone to the extent of holding that “there is no decision which is un-reviewable under the constitution.”

Why is it a Misnomer?

- Issues relating to fundamental rights should not be left to the majorities because our constitution seeks to restrain majorities.
- If so, can such issues be left to the majority so it can become the judge in its own cause? Definitely not, as that would be inconsistent and unjust. Disputes involving citizens' rights are best protected by courts rather than institutions of government, which may be hostile. The only effective review is in courts.
- It would be unconstitutional to allow those in political power to be the sole judges of their own decisions.

- Any argument of judicial tyranny is overshadowed by unfairness in allowing the majority to be a judge in its own cause. This is only to provide limits to the power of the majority and not to give any additional or unconstitutional power to the judiciary.
- Courts develop constitutional principles based on constitutional morality, plus a set of rules that justify governmental actions. Courts do indeed lean in favour of community morality or what is called the “public interest”; part of this process is to give meaning to life and dignity as encompassed in Article 21.

Few Examples

- The migrant crisis, involving violations of a bundle of those rights of hundreds of millions of citizens following the fateful lockdown demanded that the judiciary activate itself. If only the Supreme Court or a high court has stayed that declaration (about Lockdown) for a week or so to enable government to facilitate the transfer of migrant workers in a humane manner, the whole problem would have been solved without any affront to the government. This would have amounted to simple judicial function and not activism. The migrants had nowhere to turn.

- During the second wave of pandemic, Delhi High Court said that "Citizen can only fall back on the State. So you have to beg, borrow or steal (the medical oxygen) and ensure the protection of fundamental emergency".
- SC said that the private hospitals cannot refuse the patients, and included right to health at par with fundamental rights.

- The courts of today are not passive, with the attitude of merely striking down a law or preventing something from being done. Rather, the new attitude comprises issuing orders, positive affirmation cases and decrees directing remedial actions.
- One such example is the Public Interest Litigation (PIL), which is seen as a relaxation on the traditional rule of locus standi.
- We can say that Judicial activism is the use of judicial power to articulate and enforce what is beneficial for society whereas judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative and executive, thereby encroaching upon the legislature and executive's domains.

- Judicial Overreach→ When judicial activism crosses its limits and becomes judicial adventurism it is known as Judicial Overreach.
- When the judiciary overreaches the powers given to it, it may then interfere with the proper functioning of the legislative or executive organs of government at that particular time.
- Ex- the order passed by the Allahabad High Court making it compulsory for all Bureaucrats to send their children to government school, misuse the power to punish for contempt of court etc. are considered as Judicial Overreach.
- Judges can promote decision-making relating to policy issues without being the ultimate decision-maker.

Independence of Judiciary

- There is a view point that post retirement appointment is itself a scar on the judicial independence of the Judiciary.
- However, today many Retired justice of top courts are offered seats in Rajya Sabha. This may not be the first time, as earlier also many have been appointed as governors of state or head of NHRC etc. But several wrongs of the past do not make present things right.
- For the first time in history, an acting CJI was accused of sexual harassment charges. There are many recent incidents which shake the trust of citizens in the judiciary including choices made in selecting urgent cases amid lockdown.

- The Constitution of India, unlike the USA, does not follow strict Separation of Powers, but it has been reiterated in many cases that the independence of the judiciary is a basic part of the constitution.
- For the judiciary to be independent and impartial to serve the constitutional goals, the Judges need to act fairly, reasonably, free of any fear and favor. The judiciary stands between the citizen and the State as a rampart against misuse or abuse of power by the executive. Therefore, it is absolutely essential for the judiciary to be free from executive pressure or influence.

What type of independence are we talking about?

- The independence is not limited only from executive pressure or influence, but also from any other pressure and prejudices. It has many dimensions, fearlessness of other power centres, economic or political.
- Impartiality, independence, fairness and reasonableness in decision-making are the hallmarks of the judiciary. If “impartiality” is the soul of the judiciary, “independence” is its lifeblood. Without independence, impartiality cannot thrive. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where a judge can work with absolute commitment to the cause of justice and constitutional values.

- Its existence depends, however, not only on philosophical, ethical or moral aspects but also upon several mundane things namely security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures within (from others in the judiciary) and without (from the executive).
- Independence of the judiciary is a part of its basic structure. The constitutional ethos of an independent judiciary cannot be permitted to be diluted by acts of implied intervention or undue interference by the executive in the impartial administration of justice, directly or indirectly.

System in other countries

- In the USA, the tenure of judges is lifetime. Therefore no question of post retirement appointments arises. The reason is to provide judges with job security so that they can work according to the law and free from any kind of fear. In the USA, even the president cannot diminish the compensation of the federal judges. This is to exclude executive and legislative interference.

- A certain cooling off period may be imposed, which needs to be completed before reinstating any public office. It will make sure that there were no political or executive involvements in decision-making of the judge. The cooling off period can be at least 10 years so as to make sure that 2 terms of the Lok Sabha are completed, which will mitigate the chances of external interference.
- In India remuneration of judges is far less compared to other countries, this is considered to be a reason that almost all judges after retirement get involved in some kind of activity for financial gain, some in the private sector and some in the public. Increasing the salary and pension of judges may mitigate their involvement in the financial sector.

Need to restore trust

- The report of the investigation of a sexual harassment complaint against the CJI was not even made public citing I*ndra Jaising Vs. Supreme Court*. The judgment was delivered by the Hon'ble bench on the basis of a report which was not shown to anyone. It may be considered an infringement of the principle of natural justice that the report on which the allegations were denied was not even shown to the accused.

- The Constitution of India provides justice for all. Members of the Judiciary are the administrators of justice. The judges strive to ensure free and impartial administration of justice in order to provide its citizens fairness in application of law. The duty of judges is considered to be very pious, therefore the constitution has provided for independence of judiciary so that they can remain impartial to serve the constitutional goals, act fairly, reasonably, free of any fear or favor.

- The problem starts when the other organs, i.e. the legislature and the executive start to interfere with them. The external interference not only erodes the piousness of the profession, but curtails individuals of their rights. In the recent past it has been seen that retired judges takes public office within a very short span of time after their retirement. Due to this, they may give judgements in favour of government.These early-retirement appointments are a real issue to worry about.

Reforms in Judiciary

- The Law Commission even in 1958 strongly recommended a ban on post-retirement government employment for Supreme Court judges because the government is a large litigant in the courts.
- However, these recommendations never saw the light of the day. Today, the time is opportune to have a law in place either by way of a Constitutional amendment or a parliamentary enactment barring such appointments.

- In subordinate civil courts and High Courts, a significant time of daily proceedings is taken up by cases where only adjournments are sought for procedural matters like filing of replies. Both as a response to this crisis, as well as in the medium term, this system can be done away with.
- A system needs to be devised where cases are not listed before the court unless all the documents are filed within strict timelines and every procedural requirement complied with. The existing infrastructure is enough to enable this. Listing can be done before the court only in cases requiring urgent interim intervention from the court, while the matter is pending procedural completion, after verification of urgency by a judicial officer or a judge upon oral or written application.

- Reports show that SLPs (special leave petitions) comprise about 60-70% of the Supreme Court's docket. Out of this, 80-90% of SLPs are dismissed, which means only 10-20% of such cases raise important questions of law. This takes up a lot of time of the Court.
- A simple solution would be to do away with immediate oral hearing of SLPs. The Supreme Court Rules could be amended to provide for a structure of pre-hearing of SLPs. Every SLP must be accompanied by an application for oral hearing which must be decided first by the Court, and that too in chambers. To assist the Court for that, a cadre of judicial research assistants made up of qualified lawyers should be created.

- Thereafter, the Court may or may not allow applications for oral hearings based on whether such questions of law merit its attention. Only such SLPs in which oral hearing is permitted should be listed for hearing. SLPs in which no questions of law are raised, or frivolous ones are raised, should be dismissed without oral hearing and upon imposition of costs.
- This will ensure that only meritorious SLPs get judicial attention and will deter people from filing frivolous SLPs. It will also reduce pendency exponentially as the system will free up the Court's time to hear statutory appeals and matters pertaining to interpretation of the Constitution or constitutional validity of laws or executive actions

Pandemic has paved the way for reforms

- The pandemic has turned the world on its head. No aspect of life has escaped unscathed. This includes the functioning of courts and tribunals. The judiciary has limited its work to hearing urgent matters via video conferencing. A lot has been written about how this is an opportunity to improve IT infrastructure of courts so that they can move to video conference hearings as the norm. However, any such move without first revamping procedural law would be futile.

- Our judicial system is simply not designed for contactless operations. Most court processes—the submission of pleadings, the payment of court fees, the conduct of arguments—require person-to-person interaction. Even if the courts were only going to take up just a small fraction of all cases, they had to devise new contactless protocols in place of the ones in use.

- Virtually overnight, video conferencing facilities were set up to allow judges and lawyers to hear urgent matters virtually without litigants ever coming into the physical proximity of judges. Courts allowed e-filing of documents so that written pleadings could be submitted without any need to be physically present. Digital payment systems, including court-approved virtual wallets, were set up to let court fees be paid remotely

- Justice D.Y. Chandrachud said about incorporating cognitive technologies directly into the dispute resolution workflow. This does not have to mean using artificial intelligence to decide our disputes. It could be as simple as offering better ways of making informed decisions about litigation strategies.
- The biggest litigant in India is the State. Today, there is no incentive for the government not to appeal a decision that goes against it. On the contrary, government officials who decide not to appeal an adverse order often run the risk of having to justify why they did not pursue the matter more vigorously.

- The many cognitive technologies we have at our disposal today offer us the ability to generate data-driven reports on the chances of success of each appeal that the government is thinking of pursuing, based on an analysis of previous judgments. If the government uses reports like these to decide whether or not to pursue an appeal, we might be able to reduce the number of unnecessary appeals in the system and thus reduce the judiciary's workload.

- The Malimath committee had recommended for→ reforms in criminal justice system as increasing judge to population ratio from 11 to 100 per 10 lakh population.
- Another idea proposed is that of the shift courts→ meaning that the courts can function in morning and evening shifts so that the existing infrastructure can be utilized.
- Another thing can be creation of more nyaya adalats and lok adalats.
- Malimath committee has highlighted the issue of discretionary adjournments passed by the judges, and therefore, it recommended that there must be fixed number of adjournments for a week, month or a year and any judge violating it must be fined for the same
- It also called for complaint and grievance redressal mechanism in Indian judicial system, where complaints against judges can be filed

- There have been cases of corruption wherein the individual judges were found to be corrupt but it tarnished the image of whole judiciary
- **JUDICIAL STANDARDS AND ACCOUNTABILITY BILL 2010** was lapsed due to dissolution of 15th lok sabha → it states that it tend to set standards for judicial system and making judges accountable for their lapses. It also required them to declare their assets and liabilities. It called for a national oversight committee who will deal with public complaints against the judges. It also required the judges not to have close relations with the members of the bar, especially those practising in the same court
- 2nd Administrative Reforms Commission (SARC) has remarked that the independence of judiciary is inextricably linked with judicial ethics. An independent judiciary enjoying public confidence is a basic necessity of the rule of law.

What has been done by Supreme Court

- The SC has adopted a charter on **"RESTATEMENT OF VALUES OF JUDICIAL LIFE",** known as code of conduct for judges. According to this, the judge must display impartiality, judiciousness, political neutrality, objectivity and impeccable integrity and make declaration of his/her assets.
- The SARC said that a senior judge of Supreme Court should be designated as judicial values commissioner who should be empowered to inquire into violation of code of conduct by the judges. It also recommended for national judicial council for appointing judges of higher courts (which would consist of vice president, PM, speaker, law minister, leader of opposition in LS and RS)

- **The 18th law commission** called for necessitating the courts to prescribe time limits for all cases, identifying and prioritizing the cases. The performance of court must be assessed by building the database, using technology to expedite the process of judgements being accessible(uploading them on website), e-filing and video conferencing
- **It can be concluded that → JUDICIARY IS NOT DEVOID OF VICES BUT STILL ARE AKIN TO TEMPLES OF JUSTICE**

AIJS- All India judicial services

- The AIJS is a national-level recruitment process for district judges on the lines of the Union Public Services Commission proposed by the Central government to “strengthen overall justice delivery system”.
- However, under the Constitution, the power to make appointments to the lower judiciary vests with the states. Currently, states conduct their own examinations in consultation with high courts, based on vacancies that arise. The AIJS has been seen as a dilution of state’s powers.

- “Arunachal Pradesh State is of the view that considering the fact that Arunachal Pradesh is purely a tribal state with its own peculiar and distinct tribal customs and ethos and the modes of rendering justice varies from tribes to tribes, the proposition of having a common judicial services would not be the right proposition and would create chaos and instability in their administration of justice

- **How are district judges currently recruited?**
- Articles 233 and 234 of the Constitution of India deal with the appointment of district judges, and place it in the domain of the states.
- The selection process is conducted by the State Public Service Commissions and the concerned High Court, since High Courts exercise jurisdiction over the subordinate judiciary in the state. Panels of High Court judges interview candidates after the exam and select them for appointment.
- The idea of a centralised judicial service was first mooted in the Law Commission's 1958 'Report on Reforms on Judicial Administration'.

- The idea was to ensure an efficient subordinate judiciary, to address structural issues such as varying pay and remuneration across states, to fill vacancies faster, and to ensure standard training across states. The idea was proposed again in the Law Commission Report of 1978, which discussed delays and arrears of cases in the lower courts. In 2017, the Supreme Court took suo motu cognizance of the issue of appointment of district judges, and mooted a “Central Selection Mechanism”.
- Reservations based on caste, and even for rural candidates or linguistic minorities in the state, could be diluted in a central test, it has been argued.

EXECUTIVE

Executive

The Union executive consists of the President, the Vice-President, and the Council of Ministers with the Prime Minister as the head to aid and advise the President.

President

- The President is elected by members of an electoral college consisting of elected members of both Houses of Parliament and Legislative Assemblies of the states in accordance with the system of proportional representation, by means of single transferable vote.

- To secure uniformity among state inter se, as well as parity between the states as a whole, and the Union, suitable weightage is given to each vote. The President must be a citizen of India, not less than 35 years of age, and qualified for election as member of the Lok Sabha. His term of office is five years, and he is eligible for re-election.
- His removal from office is to be in accordance with procedure prescribed in Article 61 of the Constitution. He may, by writing under his hand addressed to the Vice-President, resign his office.

- Executive power of the Union is vested in the President, and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Supreme command of defence forces of the Union also vests in him.
- The President summons, prorogues, addresses, sends messages to Parliament and dissolves the Lok Sabha, promulgates Ordinances at any time, except when both Houses of Parliament are in session, makes recommendations for introducing financial and money bills and gives assent to bills, grants pardons, reprieves, respites or remission of punishment or suspends, and remits or commutes sentences in certain cases.

- When there is a failure of the constitutional machinery in a state, he can assume to himself all, or any of the functions of the government of that state. The President can proclaim emergency in the country if he is satisfied that a grave emergency exists, whereby security of India or any part of its territory is threatened, whether by war or external aggression or armed rebellion.

Is President a rubber stamp office?

- The President is the head of the state, and is required by the constitution to act on the advice of ministers, thereby his office is criticised as rubber stamp → doing everything on direction of Union council of ministers.
- However, the president can ask ministers to reconsider actions, offer them private advice and convey warnings. They also make public speeches which indicate, at least subtly, "some differences of view with the government, and which may swing public opinion"

- Also, more importantly, after elections, presidents are free to act - and must act - without the advice of ministers if no party has been able to garner a parliamentary majority. They also have some freedom to decide whether to accept a prime minister's request for dissolving the parliament to enable a general election.

Presidents since Independence- How did they act?

- Let us in brief analyse how various Presidents have acted since independence
- India's first president, Rajendra Prasad, frequently disagreed with prime minister Nehru and sometimes subtly criticised the government in his public statements.
- From 1962-67, President Radhakrishnan even forced the PM to give a copy of report made on war with china. From 1947-67, both PM and President were powerful personalities, yet they resolved their differences through consultation, giving an example of a balanced polity.
- From 1967-90 – we see politicisation of the office of President. President VV giri gave consent to non-constitutional amendment 24^{th} and 25^{th} CAA.

- Fakruddin Ali Ahmed gave consent to imposition of emergency even without a written consent.
- The 7th president (Gyani Zail Singh had a stormy relationship with the PM Rajiv gandhi) withdrew his assent from a controversial bill. After the Bofors scam, the President wanted to remove the PM.
- Since 1990s, there had been activist Presidents.
- The ninth President Shankar Dayal Sharma returned two executive orders to the cabinet in 1996 because they had been "inappropriately" issued before a general election.

- And his successor, KR Narayanan, was arguably one of India's most assertive presidents. He delivered speeches which many believed were not vetted by the government and, in a surprising break from protocol, even gave an interview to a senior journalist.
- Mr Narayanan also sent back a proposal to impose direct rule in the northern state of Uttar Pradesh to the cabinet, asking the ministers to reconsider it. He bluntly said: "I am not a rubber stamp."
- The successor, Dr APJ Abdul Kalam also retired the office of profit bill back to Parliament because it was violative of the Constitution as it prevented the disqualification of parliamentarians holding offices of profit.
- Mr Pranab Mukherjee actively pointed out mistakes in many bills and sent them back to house for reconsideration. Presently, the President is largely seen to be following the advise of Cabinet in almost all matters.

Vice-President

- The Vice-President is elected by members of an electoral college consisting of members of both Houses of Parliament in accordance with the system of proportional representation by means of single transferable vote. He must be a citizen of India, not less than 35 years of age, and eligible for election as a member of the Rajya Sabha. His term of office is five years, and he is eligible for re-election. His removal from office is to be in accordance with procedure prescribed in Article 67 b.
- The Vice-President is ex-officio Chairman of the Rajya Sabha and acts as President when the latter is unable to discharge his functions due to absence, illness or any other cause, or till the election of a new President (to be held within six months when a vacancy is caused by death, resignation or removal or otherwise of President). While so acting, he ceases to perform the function of the Chairman of the Rajya Sabha.

Council of Ministers

- There is a Council of Ministers headed by the Prime Minister to aid and advise the President in exercise of his functions. The Prime Minister is appointed by the President, who also appoints other ministers on the advice of Prime Minister. The Council is collectively responsible to the Lok Sabha. It is the duty of the Prime Minister to communicate to the President all decisions of Council of Ministers relating to administration of affairs of the Union and proposals for legislation and information relating to them.
- The Council of Ministers comprises Ministers who are members of Cabinet, Ministers of State (independent charge), Ministers of State and Deputy Ministers.

Union Council of Ministers and Prime Minister

- Article 74(1) of our Constitution expressly states that the Prime Minister shall be "at the head" of the Council of Ministers and should aid and advise the President in the exercise of his functions.
- The Prime Minister is at the heart of the Cabinet. Under the Westminster model of government, policy formulation and decisions on important matters are the responsibilities of the ministers. Despite the constitutional provisions of the Westminster model of cabinet government in India, the Prime Minister is the undisputed chief of the executive.
- The office of the Prime Minister is often called "A moon among lesser stars."

Keeping a check on Executive

- The legislature has a few checks on the functioning of the executive. Illustratively, the legislature has the power to remove the council of ministers by moving a “no-confidence motion” (under Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha (“Lok Sabha Rules”)) and to ratify treaties and ordinances under Articles 253 and 123 of the Constitution respectively. Importantly, every administrative action is put to trial during the Zero Hour of Parliament wherein every minister to whom a question is posed has to defend his/her administrative act.

- Further, the legislature also places a check on the executive by constituting Parliamentary Standing Committees that are usually composed of members from across political parties. Such committees have the power to call for records and examine executive actions. Reports by such committees are then placed before Parliament.
- However, with legislatures having an absolute majority, the system of checks and balances may come to a standstill, and maybe that's why we need review of anti-defection laws as already discussed.