

* RS saw lowest no. of sittings ever in 2020

- 2020 winter session of Rajya Sabha cancelled
 - ↳ Just 33 days in 2020
- Budget & monsoon sessions cut short due to pandemic
- History
 - 1999 → 48 days
 - 2004, 2008 → 46 days
- Winter sessions cancelled
 - ↳ 1975, 1979, 1984, 2020
- But productivity not hit, a/q, to analysis by RS secretariat.
 - ↳ 2020 → Annual productivity is 82.7%.
 - highest in last 11 years
 - 39 Bills passed
- 2020 also saw
 - ↳ suspension of 8 Opposition MLs
 - ↳ Opposition moving a notice for removal of Dy. Chairman

* SC notice to Centre on plea to debar legislators

- Plea in SC

↳ to debar legislators, disqualified under the 10th schedule

↳ they should not be allowed to contest by elections during the rest of the tenure

- 10th schedule

- Added by 52nd CAA, 1985
- To curb political defections motivated by lure of office or other similar conditions which endanger the foundations of our democracy
- Disqualifies MPs/MLAs who is found to have defected.
- SC in Kihoto Hollohan V Zachillhu & others (1992)
 - ↳ upheld the 10th schedule
 - ↳ Speaker/Chairman acts as tribunal & order passed by speaker/Chairman is final but subject to judicial review

Recent controversies

- new trend of legislators resigning from ruling party to avoid "anti-defection law"
- Then Govts are toppled due to loss of majority
↳ as in MP & Karnataka
- Then those who resigned join the new govt as ministers
- Defeats the whole democratic process

Art 172

↳ makes membership of a House co-terminous with the term of 5 years except in circumstances mentioned there in.

* SC dismisses Aadhaar review petitions

- SC 2018 Judgement

↳ upheld the Lok Sabha Speaker's certification of Aadhaar law as a Money Bill.

- Again a series of petitions in SC with respect to -

Q1. Whether the Speaker's decision to declare a proposed law as Money Bill was "final" & cannot be challenged in court

Q2. Whether the Aadhaar Act, 2016 was correctly certified as a Money Bill under Art 110(1) of Constitution.

- 2018 judgement

↳ On first question, SC held that Speaker's decision could be challenged in court only under "certain circumstances".

↳ On second it concluded that Aadhaar Act was rightly called a Money Bill.

- In 2018 judgement, only one judge, Justice Chandrachud dissented on the 2nd question.

- Now again, though majority dismissed the series of petition, but Chandrachud dissented.

The absurdity of the anti-defection law

Resignation of MLAs from the ruling party in Puducherry that helped lower the numbers required for a no-confidence motion to succeed and bring down the existing government.

- A similar pattern was also seen recently in other states such as Madhya Pradesh and Karnataka.

Anti-defection law:

- The anti-defection law was included in the Constitution as the Tenth Schedule in 1985.

- The main purpose was to preserve the stability of governments and insulate them from defections of legislators from the treasury benches.

- The law stated that any Member of Parliament (MP) or that of a State legislature (MLA) would be disqualified from their office if they voted on any motion contrary to the directions issued by their party.

- The provision is not limited to confidence motions or money bills but also applies to all votes in the House. It even applies to the Rajya

Sabha and Legislative Councils, which have no say in the stability of the government.

- The Constitution was consequently amended to ensure that any person disqualified for defecting cannot get a ministerial position unless they are re-elected.

The recent events in Puducherry highlight the concerns associated with the anti-defection law.

1. Against the concept of representative democracy:

- The anti-defection provision goes against the concept of representative democracy envisioned in the Indian Constitution which envisages the MP or MLA as a representative of the people of the electoral constituency.

- Due to the anti-defection law provisions, an MP (or MLA) has absolutely no freedom to vote based on their judgement on any issue. They have to blindly follow the direction of the party.

- The anti-defection law provisions make the MP neither a delegate of the constituency nor a national legislator as envisaged under a representative democracy but make them just an agent of the party.

2. Reduces the accountability of the government:

• In a parliamentary form of government, the legislator is accountable to voters, and the government is accountable to legislators.

• The presidential form of government (such as in the United States) has higher stability but lower accountability as the President is elected for four years, and cannot be removed except for proven misdemeanour.

• In the parliamentary form like India, the government is accountable on a daily basis through questions and motions, and can be removed any time it loses the support of the majority of the members of the Lok Sabha.

• The Constitution drafting committee believed that India needed a government that was accountable, even at the cost of stability and hence chose the parliamentary form of government for India.

• In India, the chain of accountability has been broken by making legislators accountable primarily to the party. This means that anyone from the party having a majority in the legislature is unable to hold the government to

account. Hence, the anti-defection bill weakens the accountability mechanism.

3. Eroding legislatures:

- An important consequence of the anti-defection law is the hollowing out of our legislatures.

- Since the MP or MLA has no freedom to take decisions on policy and legislative proposals, he/she will have no incentive to understand the different policy choices and their outcomes.

- Hence, the core role of an MP to examine and decide on policy, bills and budgets is side-lined.

4. Using loopholes in the provisions of the anti-defection law:

- The anti-defection law was intended to end the evil of political defection and hence help ensure the stability of elected governments. However, the anti-defection law has failed to even provide stability.

- The political system has found novel ways to topple governments by exploiting the loopholes in the existing anti-defection law provisions.

- This includes methods like reducing the total membership through resignations.

- In order to escape the disqualification, sitting MLAs and MPs are resorting to resignation rather than voting against the party.

- In some instances, the Speaker – usually from the ruling party – has delayed taking a decision on the disqualification.

- This has led to members who continue to be part of the main Opposition party becoming Ministers (Andhra Pradesh in the term of the last Assembly).

5. Flawed argument:

- The premise that the anti-defection law is needed to punish legislators who betray the mandate given by the voters seems to be flawed.

- If voters believe that they have been betrayed by the defectors, they can vote them out in the next election. However, many of the defectors in States such as Karnataka and Madhya Pradesh were re-elected in the by-polls, which were held due to their disqualification.

•The issue with anti-defection law is that it attempts to find a legal solution to what is essentially a political problem.

6. Not in line with international practice:

•India's anti-defection law stands in stark contrast with other democracies.

•The U.S. system has a more liberal view of legislators not in line with the party's stand. In the recent vote on the impeachment of former U.S. President Donald Trump, seven members from his party in the U.S. Senate, the Republicans, voted to convict him.

•This would not lead to any legal repercussion on the republican senators. However, the party is free to take action. Also, voters may decide to reject the legislator for re-election, in line with the core design element of representative democracy.

RS approves Bill empowering Delhi L-G amid Oppn. Walkout

The Rajya Sabha passed the Government of National Capital Territory of Delhi (Amendment) Bill.

- The bill seeks to empower the Lieutenant-Governor in Delhi.
- The Bill states that the government in the national capital territory of Delhi means the Lieutenant-Governor.
- The legislation says that the L-G is necessarily granted an opportunity to give her/his opinion before any decision taken by the Council of Ministers (or the Delhi Cabinet) is implemented.

Criticisms:

- The opposition argued that the Bill would smother an elected government stating that the Bill is akin to dismissing the government.
- The proceedings saw a vociferous protest by the Opposition members accusing the government of going against democracy.

The ordinance route is bad, repromulgation worse

The central government has repromulgated the ordinance that establishes a commission for air quality management in the National Capital Region, called the Commission for Air Quality Management in National Capital Region and Adjoining Areas Ordinance, 2020.

- This has raised questions about the practice of issuing ordinances to make law, and that of re-issuing ordinances without getting them ratified by Parliament.

Ordinance:

- The Constitution permits the central and state governments to make laws when Parliament (or the State Legislature) is not in session.

- As lawmaking is a legislative function, this power is provided for urgent requirements, and the law thus made has an automatic expiry date.

- The Constitution states that the ordinance will lapse at the end of six weeks from the time Parliament (or the State Legislature) next meets.

Details:

- While an ordinance was originally conceived as an emergency provision, it was used fairly regularly. State governments also used this provision very often.
- In the 1950s, central ordinances were issued at an average of 7.1 per year. The last couple of years has seen a spike, 16 in 2019, 15 in 2020, and four so far in 2021.
- The issue was brought up in the Supreme Court through a writ petition by D.C. Wadhwa.
- In 1986, a five-judge Constitution Bench of the Supreme Court ruled that repromulgation of ordinances was contrary to the constitutional scheme.
- It said that it would be a colourable exercise of power for the Government to ignore the Legislature and to repromulgate the Ordinance.
- Such a scheme would be repugnant to the constitutional scheme as it would enable the Executive to transgress its constitutional limitation in the matter of lawmaking and to covertly and indirectly take on the law-making function of the Legislature.
- However, the judgment did not stop the practice.

- In 2017, a seven-judge Constitution Bench declared this practice to be unconstitutional.

- Even this judgment has been ignored.

Issues:

- Governments, both at the Centre and States, are violating this principle.

Central Government:

- The Indian Medical Council Amendment Ordinance was issued in September 2018 and reissued in January 2019.

- In the case of the ordinance on Commission for Air Quality Management, while the ordinance of October 2020 was laid in Parliament on the first day of the recent Budget Session, a Bill to replace it was not introduced. Now, the ordinance has been repromulgated.

State Government:

- In 2020, Kerala issued 81 ordinances, while Karnataka issued 24 and Maharashtra 21.

- Kerala has also repromulgated ordinances.

Conclusion:

- The legal position is clear, and has been elucidated by constitution benches of the Supreme Court.

- Ordinances are to tackle exigencies when the legislature is not in session, and expire at the end of six weeks of the next meeting of the legislature.

 - This time period is given for the legislature to decide whether such a law is warranted.

- Repromulgation is not permitted as that would be a usurpation of legislative power by the executive.

- The legislatures and the courts should check the practice. That is what separation of powers and the concept of checks and balances means. By not checking this practice, the other two organs are also abdicating their responsibility to the Constitution.

Jairam moves privilege motion against Minister

Privilege motion:

- Parliamentary privileges are certain rights and immunities enjoyed by MPs, individually and collectively, so that they can "effectively discharge their functions".
- When any of these rights and immunities are disregarded, the offence is called a breach of privilege and is punishable under law of Parliament.
- A notice is moved in the form of a motion by any member of either House against those being held guilty of breach of privilege

Privilege Committees:

• In the Lok Sabha, the Speaker nominates a committee of privileges consisting of 15 members as per respective party strengths.

• In the Rajya Sabha, the deputy chairperson heads the committee of privileges, which consists of 10 members.

Jairam Ramesh in the Rajya Sabha has moved a privilege motion against the serving Culture Minister

- Over the appointment of the Chairperson of the National Monuments Authority.
- As the person appointed to the post was not qualified to hold the post