

3. Law Commission of India

Prelims Level: Polity & Governance

Mains Level: GS-II Structure, organization and functioning of the Executive and the Judiciary

Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.

Context:

- Recently, the Union Cabinet gave its approval to set up the 22nd Law Commission. The Law Commission of India is a non-statutory, executive body constituted by the government for a fixed tenure of three years.

Law Commission of India:

- The Law Commission of India is neither a constitutional body nor a statutory body, it is an executive body established by an order of the Government of India. Its major function is to work for legal reforms.
- The Commission is established for a fixed tenure and works as an advisory body to the Ministry of Law and Justice.
- Its membership primarily comprises Legal Experts.

History of Law Commission in India:

- **Law Reforms:**
 - ✓ Law Reform has been a continuing process particularly during the last 300 years or more in Indian history.
 - ✓ In the ancient period, when religious and customary law occupied the field, the reform process had been ad hoc and not institutionalised through duly constituted law reform agencies.
- **Pre-Independence:**
 - ✓ From the 1800s, Law Commissions were constituted by the Government from time to time and were empowered to recommend legislative reforms to clarify, consolidate and codify particular branches of law where the Government felt the necessity for it.
 - ✓ The first such Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay which recommended codification of the Penal Code and the Criminal Procedure Code.
 - ✓ Thereafter, the Law Commissions that were constituted consecutively which, during a span of fifty years, contributed to enriching the Indian Statute Book with a large variety

of legislation on the pattern of the then prevailing English Laws adapted to Indian conditions.

✓ The Indian Code of Civil Procedure, the Indian Contract Act, the Indian Evidence Act, the Transfer of Property Act. etc. are products of the first four Law Commissions.

• **Post-Independence:**

✓ After independence, the Constitution stipulated the continuation of pre-Constitution Laws under Article 372 until they are amended or repealed.

✓ There had been demands in Parliament and outside for establishing a Central Law Commission to recommend revision and update of the inherited laws to serve the changing needs of the country.

• The Government of India established the First Law Commission of Independent India in 1955 with the then Attorney-General of India, Mr M. C. Setalvad, as its Chairman. Since then twenty one more Law Commissions have been appointed, each with a **three-year** term.

The Functions of Law Commission:

- The Law Commission, on a reference made to it by the Central Government or suo-motu, undertakes research in law and review of existing laws in India for making reforms therein and enacting a new legislation.
- It also undertakes studies and research for bringing reforms in the justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in the cost of litigation etc.

The other functions of the Law Commission Include:

- **Review/Repeal of obsolete laws:** Identification of laws which are no longer relevant and recommending for the repeal of obsolete and unnecessary enactments.
- **Law and Poverty:** Examines the Laws which affect the poor and carries out post-audit for socio-economic legislations.
 - ✓ Suggesting enactment of new legislation as may be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble of the Constitution.
 - ✓ For example, the 20th Commission worked on leprosy affected persons and their treatment in society, which it recognised as a Human Rights Issue.

- **Judicial Administration:** Considering and conveying to the Government its views on any subject relating to law and judicial administration that may be specifically referred to it by the Government through the Ministry of Law and Justice (Department of Legal Affairs).
- **Research:** Considering the requests for providing research to any foreign countries as may be referred to it by the Government through the Ministry of Law & Justice (Department of Legal Affairs).
 - ✓ Examine the existing laws with a view of promoting gender equality and suggesting amendments thereto.
 - ✓ Examine the impact of globalization on food security, unemployment and recommend measures for the protection of the interests of the marginalized.
 - ✓ Preparing and submitting to the Central Government, from time to time, reports on all issues, matters, studies and research undertaken by it and recommending in such reports for effective measures to be taken by the Union or any State.
- Performing such other functions as may be assigned to it by the Central Government from time to time.
- Before concretizing its recommendations, the Commission consults the nodal Ministry/Departments and such, other stakeholders as the Commission may deem necessary for the purpose.
- The recommendations of the commission are not binding on the government. They may be accepted or rejected. Action on the said recommendations depends on the ministries/departments, which are concerned with the subject matter of the recommendations.

Important electoral reforms suggested by Law commission:

- In 2014, the Law Commission headed by Justice AP Shah examined issues concerning the disqualification of candidates with a criminal background and the consequences of filing false affidavit.
- The Law Commission has proposed wide ranging reforms on the issue of candidate expenditure limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections.

Reforms required to Strengthen Law Commission:

- **Statutory Status:**
 - ✓ It must be a statutory commission. This is essential to ensure the strength and independence of the body.
 - ✓ In most countries, particularly western democracies, Law Commissions are statutory bodies.
 - ✓ If it becomes statutory, it must be answerable only to Parliament, and not to the Executive.
- **Continuity:**
 - ✓ It is important to ensure continuity. Presently, every Commission has a three-year term, and every time, there is a gap in the constitution of the Commission.
 - ✓ The three year term of the 21st Law commission ended on 31st August 2018, but setting up of the 22nd Law Commission has been approved only in February, 2020.
- **Appointment:**
 - ✓ The members of the Commission should be appointed only in consultation with the chairperson.
 - ✓ Present system has drawn allegations of favouritism on numerous occasions.
- **Independence:**
 - ✓ The presence of the law secretary and secretary, Legislative Department (who are presently ex-officio members of the Commission), affects its independence. They should not be a party to the Commission.
- **Funding:**
 - ✓ It needs sufficient funding, proper resources, tie-ups with law institutions and more assistance and support.
- The Law Commission of India, though an advisory body, has been a key instrumentality in the process of legal reforms in India. Law commission provides intellectual depth to the legal institutions including the Supreme Court. In a number of decisions the Supreme Court has referred to the work done by the Law Commission and followed its recommendations. It is therefore necessary to provide a proper statutory backing for the functioning of the Law Commission.