

# Delay in Appointments to Law Commission

February 4, 2021

The Supreme Court recently asked the Home and Law Ministries to explain the nearly three-year-long lapse in making appointments to the Law Commission. The posts of Chairperson and Members have been vacant ever since the 21st Law Commission under the former Supreme Court judge, Justice B.S. Chauhan, completed its tenure on August 31, 2018. Thus the issue gains prominence in the UPSC polity and governance segments.

**In news:** SC asks government to explain delay in appointments to Law Commission

**Placing it in syllabus:** Law & Policy

**Dimensions**

- Law Commission of India and its Origins
- Nature & Composition
- Functions
- Contributions
- Weakness of the Commission
- Suggestions to strengthen it

## Content

### Law Commission of India and its Origins:

- The Law Commission of India is an executive body whose chief function is legal reforms in the country.
- The **first Law Commission in India** was established in **1834** under the **Chairmanship of Lord Macaulay**. This was done as per the provisions of **Charter Act of 1833**.
- The First Law Commission recommended **codification of the Indian Penal Code, the Criminal Procedure Code** and a few

other matters.

- Thereafter, the second, third and fourth Law Commissions were constituted in 1853, 1861 and 1879 respectively.
- During a span of fifty years contributed a great deal to enrich the Indian Statute Book with a large variety of legislations 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 labour of the first four Law Commissions.

### ***Post-Independence Developments:***

- After independence, the Constitution of India with its Fundamental Rights and Directive Principles of State Policy gave a new direction to law reform geared to the needs of a democratic legal order in a plural society.
- Though the Constitution stipulated the continuation of pre-Constitution Laws (Article 372) till they are amended or repealed, **there had been demands in Parliament and outside for establishing a Central Law Commission to recommend revision and updating** of the inherited laws to serve the changing needs of the country.
- The Government of India reacted favourably and 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** and with different terms of reference.

### **Nature & Composition:**

- Law Commission of India is an **executive body (non-statutory body)** established by an order of the Government of India.

- The Law Commission is **neither a statutory nor a constitutional body.**
- Its membership primarily comprises legal experts, who are entrusted a mandate by the Government.
- The commission is established for a **fixed tenure of 3 Years**
- In February 2020, **22nd Law Commission of India** for a period of 3 years was approved by the Cabinet chaired by PM Narendra Modi.
- However, it has not appointed the Chairperson and Members till date.
- The tenure of the 21st Law Commission of India was up to August 31, 2018.

#### ***Composition of the Commission is as follows:***

- It has a **full-time chairperson and four full-time members**, including a member-secretary.
- **Law and Legislative Secretaries in the Law Ministry** will be the **ex-officio members** of the commission.
- It is empowered to have **five part-time Members** depending upon the need and on the Approval of the Government.
- A **retired Supreme Court judge or Chief Justice of a High Court** will head the Commission.

#### **Functions of Law Commission:**

- Its **major function is to work for legal reform.**
- It works as an **advisory body to the Ministry of Law and Justice** and its **recommendations are not binding.**
- The Law Commission shall, on a reference made to it by the Central Government or *suo-motu*, undertake research in law and review of existing laws in India for making reforms therein and enacting new legislations.
- It shall also undertake studies and research for bringing reforms in the justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in cost of litigation etc.

## ***The Law Commission of India shall, inter-alia: –***

- identify laws which are no longer needed or relevant and can be immediately repealed
- examine the existing laws in the light of DPSP and Preamble
- consider and convey 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 Ministry of Law and Justice (Department of Legal Affairs);
- Consider the requests for providing research to any foreign countries as may be referred to it by the Government through the Ministry of Law and Justice (Department of Legal Affairs);
- take all such measures as may be necessary to harness law and the legal process in the service of the poor;
- revise the Central Acts of general importance so as to simplify them and remove anomalies, ambiguities and inequities;

## **Working of the Law Commission:**

- The Law Commission works in close coordination and under the general instruction of the Ministry of Law and Justice.
- It generally acts as the initiation point for law reform in the country.
- Internally, the Law Commission works in a research-oriented manner – Employing a number of research analysts (and even law students from 2007)
- The commission works upon the assigned agenda and primarily comes up with research based reports, often conclusive and with recommendations.
- The permanent members of the Commission generally are responsible for framing the exact topic and reference to work upon and often take the services of eminent law experts and jurists who are familiar with the matter

under review.

- These experts may either work part-time with the commission or may have been requested to contribute to specific reports or issues under review.

## **Contributions:**

- The Law Commission of India, though **an ad hoc body**, has been key to law reform in India.
- Its role has been both advisory and critical of the government's policies.
- The Supreme Court of India and academia have recognized the commission as pioneering and prospective.
- In a number of decisions, the Supreme Court has referred to the work done by the commission and followed its recommendations.
- The fact that the chairman of the commission is generally a retired judge of the Supreme Court has helped the prominence of the commission.
- The power vested in the commission to *suo motu* take up matters for discussion and submit recommendations has also worked well to the advantage of India's legal system.
- The history of the commission is replete with such recommendations which have been made in the wake of the hour and where the law has needed change.
- Further, the commission has been often returned to review its earlier reports in the wake of changed scenarios and the aptness of law in such situations.
- **Euthanasia and related issues**, in particular, has been one such area where the commission has relooked the situation at least three times, with the latest being its **196th report** on the topic
- The commission has also been requested to work upon specific issues and submit its views by the Supreme Court on various occasions.
- The latest in regard has been the **205th report of the**

**commission** which has been prepared in view of the Supreme Court's request for assistance in determination of "certain legal issues relating to child marriage, and the different ages at which a person is defined as a child in different laws."

- A number of its reports have been taken receptively by the various ministries and have been worked upon to change the legal scenario.
- There are several good suggestions which are today the part of our judicial system.
- The **Fast track courts, Anti-defection law, Commercial Courts, Electoral reforms, different tribunals**, and amendment in numerous legal provisions including the Criminal Procedure Code, Civil procedure Code, and Indian Evidence Act are the brainchild of the Law Commission.

### **Weakness of the Commission:**

- The pace of the legal reform in the judicial system depends on the work output of the Law Commission of India.
- The implementation of the recommendation of the Law Commission of India is also one of the important factors for the reforms to be brought in the legal system.

***The Law Commission is facing several hurdles in its proper functioning. They include:***

#### ***1. Non-statutory status:***

- The Commission has neither any definite composition, definite appointment eligibility for the chairperson, secretary, and other members nor any fixed functions.
- Everything depends on the discretion of the government. The terms of reference are constituted every time as if it is an ad-hoc body
- The government has also been facing allegations of

favouritism in the appointment of the Chairman and the Secretary members.

## ***2.Lack of Finance:***

- The **part-time members of the Law Commission work as a service** to the Law Commission for the legal reforms without any kind of official payment.
- The **full-time officer bearers get very low remuneration as approx 1 lakh** rupees per month. The total financial budget of the Law Commission of India for the 2013-14 session was 13.61 crore (2014 data).
- It is quite tough to manage for a research institution to manage with such a low fund.

## ***3.Inadequate Implementation of the recommendations:***

- The recommendation of the Law Commission **has no binding value**. It lies over the discretion of the Ministry of Law and Justice that whether it will implement the recommendations or reject it.
- In India **merely half of the recommendations are implemented** by the Government of India.
- In comparison, **approximately 70 percent of the laws recommended by the Law Commission of UK** are implemented by the UK's Parliament since 1965
- Although the **Law Commission of India is an ideologically independent body, it sits in the domain of the Ministry of Law and Justice**.
- Sometimes it has given excellent ideas to the government but the government has destroyed it due to the politics and the working system of the bureaucracy.

## **Suggestions to strengthen the Commission:**

- The Government needs to provide the Law Commission with a statutory status setting the regulation for appointment and function of its penal members.
- The Government should consider this problem and increase

the budget of the Commission for its smooth functioning.

- The Government needs to take the issue of non-implementation seriously and address it so that the Commission's good suggestions can be implemented in the judicial system.

**Mould your thought:** Working under the executive shadow hampers the efficiency of the Law Commission of India. Critically Evaluate. ***Approach to the answer:***

- Introduction
- Write about the present working and functions of Law Commission
- Discuss the hurdles face by Law Commission
- Write the ways to correct these shortcomings
- Conclusion