

# What is a subpoena?

September 15, 2022

**In news-** The US Justice Department has issued subpoenas to former President Donald Trump & his aides furthering its criminal investigation into the 2020 presidential elections & US Capitol case.

## **About subpoenas?**

- A **subpoena is a writ issued by a government agency, usually a court to compel someone to appear before court** or a parliamentary inquiry committee, or provide documents that they possess.
- There are two types of subpoenas:
  - The **first is called subpoena ad testificandum**, which compels a **person to testify before a legal authority**.
  - **The second, subpoena duces tecum**, orders a person to **produce documents, letters**, information stored on devices or other physical evidence for use at a hearing or trial.
- **Subpoena means 'under penalty,'** and since **it is a court-ordered demand, failure to obey the subpoena** can subject the person to civil or criminal contempt of court charges.
- **Civil contempt** takes place **when someone fails to produce the documents or evidence that is requested**, or does not follow the terms of the subpoena and thus hinders the judicial process.
- **Criminal contempt**, on the other hand, is usually used as **punishment for disorderly conduct in court**, but can also take place when a person refuses to hand over documents.
- **While generally a subpoenaed person cannot refuse, in certain situations they can potentially legally deny giving testimony or documents.**

- In the US, it can be argued that the information sought from the court violates the Fifth Amendment constitutional right against self incrimination, which means the person cannot be forced to take the stand against their will.
- The person can also argue that the information sought is 'privileged' under doctor-patient or attorney-client confidentiality.
- However, there are exceptions to attorney-client privilege, such as in case the client communicated with the lawyer the intent to commit, further or cover up a crime, or if the client discussed the relevant information that had nothing to do with the law.
- **In India, subpoena is practice and it is also called summon.** It is summons sent by a court to person, may be a party in the case or court wants him to appear as witness in a criminal case or a civil case.