

# CENMUN 2019



# LOK SABHA (LOWER HOUSE OF THE INDIAN PARLIAMENT)

Threat to democratic institutions and ways to  
prevent it.

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India*

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Parliamentarians,

It gives us immense pleasure to welcome you in the Lok Sabha committee to be simulated at this year's Edition of CENMUN.

We are sure that your enthusiasm to debate and sincerity while researching will stand us in good stead while discussing the various aspects of the issue at hand.

We have tried my best to inculcate in this background guide all the required guidance which is needed to approach this Agenda. Remember that this agenda comprises of both theoretical and contemporary debate, thus it becomes necessary to understand what we mean by the Democratic institutions in the present context.

This committee being the Lower house in India has a responsibility to discuss on the matter from various aspects. You all need to understand that here we will be going to look into all the technicalities and practicalities of the issue.

It is important for you all to understand that this study guide just contains the basic introduction of the Agenda and it will act as starting point of your actual research work. This study guide is prepared without any data and statistics intentionally so that you can research on the data important and relevant for the stakeholders you are representing in an efficient manner. You need to research a lot in order to contribute in a significant way to the committee.

You should keep in your mind that it being the committee dealing with a major issue you need to focus more on the technical and evidential points rather than mere rhetoric. With this we wish all of you all the best for the committee and I hope that we will be having a very fruitful discussion.

Feel Free to reach out to us in case of any queries regarding the Agenda or regarding this study guide.

Regards,

Office of Speaker, Lok Sabha

## **What is Democracy?**

The term Democracy when traced back to its roots, turns out to be formed by two Greek words 'demos' meaning 'people' and 'kratia' meaning 'to rule' hence democracy simply refers to the rule of the people or citizens. Eliminating any scope of despotism, democracy works for the interest of general will where as at times this general will refers to the majority be it ethnic, racial, religious or otherwise. But in this contemporary world, particularly in India democracy successfully caters the diversity and other special aspects of Indian polity.

The Republic of India is the largest democracy in the world. India is the seventh largest and the second most populous country in the world. Under the Mughal Empire and Rajput control for much of its medieval history until its colonization by European powers in the mid-eighteenth century, the world's largest democracy by electorate was created after independence in 1947 under the leadership of its nationalist movement, the Indian National Congress.

## **Democratic Institutions**

Democratic Institutions is a multidimensional term referring to first, institutions having an internal democratic working and second, institutions protecting, addressing and facilitating democracy and its practice. In depth, education as an whole, keeping a check and balance on authoritarianism and political institutions like legislative, executive and democracy are considered as democratic institutions but in the present context bodies like election commission of India, provisions like that to file an RTI and exercise of freedom to speech and expression (not in order to harm the unity and integrity of the nation) through free press are actually embracing democracy and are helping it flourish.

Basically Democratic institutions can be interpreted in various ways and all the ways shall be correct in their own way. Thus it is necessary for having an operational understanding of Democratic Institutions.

***Operational Understanding-*** For the purpose of this simulation democratic institutions are all those institutions which facilitate the Democracy. Some of the important institutions are

discussed here but the list is not exhaustive and various other institutions can be considered as democratic institutions based on the merits.

## **Election Commission of India**

Free and fair elections with optimum choice of candidates is the backbone of Indian democracy and ECI being the pivotal guardian organ of electoral system has become a crucial democratic institution prone to politicization. ECI's has been given autonomy a uniform pavement for all the political factions to compete with equal resources and everything giving the voter regulated conditions to judge all the competing factions or leaders in same circumstances without any external influence. Election Commission is amongst the few institutions which function with both autonomy and freedom, along with the country's higher judiciary, the Union Public Service Commission and the Comptroller and Auditor General of India.

The current commission was established in 1950 when it had a Chief Election Commissioner appointed. Membership increased on 16 October 1989 to three with the increase of two Commissioners were appointed to the commission. That commission ceased on 1 January 1990 when The Election Commissioner Amendment Act, 1989 superseded the earlier the commission; it continues in operation. Decisions by the commission are by at least a majority vote. The Chief Election Commissioner and the two Election Commissioners who are usually retired IAS officers draw salaries and allowances as per with those of the Judges of the Supreme Court of India as per the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Rules, 1992.

The commission secretariat is based in New Delhi which includes the Election Commissioners, Deputy Election Commissioners (usually IAS officers) Directors General, Principal Secretaries, Secretaries and Under Secretaries.

Administration is generally by state with the Chief Electoral Officer of the State, who is an IAS officer of Principal Secretary Rank. At the district and constituency levels, the District Magistrates (in their capacity as District Election Officers), Electoral Registration Officers and Returning Officers perform election work.

Earlier this month, the Supreme Court indicated that it would hear the long-pending constitutional challenge to the electoral bonds scheme. The electoral bonds scheme, which was introduced by the government in early 2018, provides new channels for private funding of political parties, and has been subjected to severe criticism, including by a former Chief Election Commissioner. The Supreme Court's announcement that it would finally hear the constitutional challenge comes too late to have any impact on the impending general election. Nonetheless, how the Court decides this case will have a vital impact upon the future of our electoral democracy.

How do electoral bonds work? In short, they are issued by the State Bank of India (SBI), for specific amounts, ranging from Rs 1000 to Rs 1 crore, for a certain number of days in the year. The donor purchases the bonds, and then transfers them to the account of the political party in question, where they are converted into donations.

There are a number of features of the electoral bond scheme that merit constitutional scrutiny. The first — and most important — is that of anonymity. Neither the donor (who could be an individual or a corporate) nor the political party is obligated to reveal whom the donation comes from. This undercuts a fundamental constitutional principle: the freedom of political information, which is an integral element of Article 19(1)(a) of the Constitution (the free expression clause). In other words, the freedom to vote in a free and fair election, with access to all relevant information, is a fundamental right; in pursuance of this right, to take two examples, the Supreme Court has mandated the disclosure of candidates' past criminal records, and the addition of none of the above (NOTA) button.

If the voter cannot know who funds a political party — and is therefore in a position to exercise influence over it — then the process of voting is degraded into a farce. In this context, it is also important to note that not only is the electoral bond scheme opaque, but it is asymmetrically opaque: because the bonds are purchased through the SBI, the government is always in a position to know who the donor is. This asymmetry of information threatens to skew the process in favour of whichever political party is ruling at the time, something that was in evidence when figures revealed that the Bharatiya Janata Party has been the largest recipient, by some distance, of electoral bond funding.

The electoral bonds scheme must be understood in conjunction with other, recent changes to election law. These include the elimination of a former cap of 7.5% (that is, of average profits over three years) when it comes to corporate donations, the elimination of the requirement that corporations must reveal political contributions in profit and loss statements, and the elimination of the requirement that a corporation must be three years in existence. In other words, therefore, the result is that troubled companies, dying companies, shell companies can now donate to an unlimited amount, and do so anonymously. A more blatant perversion of the democratic process is difficult to imagine.

The stated justification of the electoral bond scheme is the removal of black money from elections, especially in the form of under-the-table cash payments. However, the provision of donor anonymity, and the elimination of regulations designed to ensure some kind of level playing field (however inadequate), far from reforming election funding, takes us several steps backwards. From a constitutional point of view, not only does it impact the freedom to vote in a free and fair election, as well as the constitutional right to vote per se, but — by accomplishing the exact opposite of what the government claims it wants to achieve — it fails the tests of rationality and non-arbitrariness.

For these reasons, it is imperative that the case have an urgent hearing before the court, and the scheme be struck down as unconstitutional.

## **Right to Information**

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a— RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments

## Objective of the Right to Information Act:

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

### What does the RTI Act do?

Under the RTI Act, 2005, Public Authorities are required to make disclosures on various aspects of their structure and functioning. This includes: (i) disclosure on their organization, functions, and structure, (ii) powers and duties of its officers and employees, and (iii) financial information. The intent of such suo moto disclosures is that the public should need minimum recourse through the Act to obtain such information. If such information is not made available, citizens have the right to request for it from the Authorities. This may include information in the form of documents, files, or electronic records under the control of the Public Authority. The intent behind the enactment of the Act is to promote transparency and accountability in the working of Public Authorities.

### Who is included in the ambit of 'Public Authorities'?

'Public Authorities' include bodies of self-government established under the Constitution, or under any law or government notification. For instance, these include Ministries, public sector undertakings, and regulators. It also includes any entities owned, controlled or substantially financed and non-government organizations substantially financed directly or indirectly by funds provided by the government.

### How is the right to information enforced under the Act?

The Act has established a three tier structure for enforcing the right to information guaranteed under the Act.

Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
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<b>Term</b>	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
<b>Quantum of Salary</b>	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively.  Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
<b>Deductions in Salary</b>	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension.  Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	The Bill removes these provisions.

Public Authorities designate some of their officers as Public Information Officers. The first request for information goes to Central/State Assistant Public Information Officer and Central/State Public Information Officer, designated by the Public Authorities. These Officers are required to provide information to an RTI applicant within 30 days of the request. Appeals from their decisions go to an Appellate Authority. Appeals against the order of the Appellate Authority go to the State Information Commission or the Central Information Commission. These Information Commissions consists of a Chief Information Commissioner, and up to 10 Information Commissioners.

## What does the Right to Information (Amendment) Bill, 2019 propose?

The Bill changes the terms and conditions of service of the CIC and Information Commissioners at the centre and in states. Table 1 below compares the provisions of the Act and the Bill.

**Table 1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019**

### Freedom of press.

**Freedom of the press or freedom of the media** is the principle that communication and expression through various media, including printed and electronic media, especially published materials, should be considered a right to be exercised freely. Such freedom implies the absence of interference from an overreaching state; its preservation may be sought through constitutional or other legal protections.

With respect to governmental information, any government may distinguish which materials are public or protected from disclosure to the public. State materials are protected due to either of two reasons: the classification of information as sensitive, classified or secret, or the relevance of the information to protecting the national interest. Many governments are also subject to sunshine laws or freedom of information legislation that are used to define the ambit of national interest.

The United Nations' 1948 Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and to seek, receive, and impart information and ideas through any media regardless of frontiers".<sup>[1]</sup>

This philosophy is usually accompanied by legislation ensuring various degrees of freedom of scientific research (known as scientific freedom), publishing, and press. The depth to which these laws are entrenched in a country's legal system can go as far down as its constitution. The concept of freedom of speech is often covered by the same laws as freedom of the press, thereby

giving equal treatment to spoken and published expression. Sweden was the first country in the world to adopt freedom of the press into its constitution with the Freedom of the Press Act of 1766.

Citizens are the soul of democracy so media plays an important role manipulating the inclination of the voters changing the direction of the democracy. Media sub consciously consolidates votes for a particular faction, whereas the same media criticizes the deed of the parties delivering justice to democracy.

Threats on democratic institutions.

1. One nation one poll
2. Majoritarianism
3. Weak opposition
4. Anti defection law
5. Politicization and hindrance in autonomy of democratic institutes

Solutions

1. Separation of power
2. Autonomy of judiciary and such bodies to be preserved
3. Awareness and education
4. Regulation on paid media
5. Elected leaders to be kept out of such institutes that cater democracy in public interest

### **Aristotle on democracy**

For all Aristotle's reputation as the greatest of the ancient philosophers, most today rightly bracket off his defence of slavery and his dim view of the intellectual capacities of women as unfortunate examples of how even the greatest minds are still products of their times.

Many would deal with his negative views of democracy in the same way. Aristotle's favoured form of government was the rule by the best over the rest, an aristocracy based on merit rather

than blood. He even thought a good monarchy was better than a democracy. It is with good reason that few swallow his prescriptions for a healthy polis wholesale. But to dismiss all of his arguments completely would be a mistake. Aristotle's criticisms of democracy were often insightful and prescient. They are more relevant in the age of Trump than ever.

Aristotle's key objection to democracy was that it undermined the rule of law. A functioning state requires that everything is governed by laws. Without this there is nothing to stop those who hold the most power doing what they want and tyrannising everyone else. In a *pure* democracy, the will of the majority is sovereign, not the law, not the state. If the people decide someone should be executed, they are executed and no law against capital punishment can stop that. If the people decide that a person or company's assets should be seized, again, the fact that this requires tearing up the law book is irrelevant.

What we call modern democracies have traditionally accepted the need for the rule of law to stand between the expression of popular will and its implementation. In the contemporary west the rule of law is a core principle that stands alongside representative government by popular election. That means our cherished forms of government are not actually democracies in Aristotle's sense at all. They are rather what he called *polities*: good forms of government in which the many rule over themselves.

This kind of democracy is of course the corner stone of civilised society. The danger we face today, however, is that some people have lost patience with the rule of law and yearn for a purer form of democracy. This is what populist parties—left, right and centre—all promise. They tell the electorate that the only reason governments don't give them exactly what they want is that the political elites are in cahoots to defend their own interests and those of whom they rely on to maintain power. All talk of "rule of law" or "balancing competing interests" is just a smokescreen for not doing what the people demand.

So when populists argue that they offer a return to a purer form of democracy, they are in a sense right. However, Aristotle would caution that when you opt for this kind of democracy what you often get is demagoguery instead: an all-powerful leader who imposes their will without restraint, empowered by a supposed mandate from the people.

Signs that we are moving towards the degenerative form of democracy Aristotle warned against are everywhere. Consider, for example, the impatience of some who voted for the UK to leave the European Union and believed that once the referendum result was in, Brexit should have followed immediately. The idea that the UK has legal obligations and cannot just announce its departure from the EU is taken to be obfuscation rather than a statement of the obvious.

European populist parties show the same disregard for the rule of law, arguing that nations can and should unilaterally tear up legally-binding transnational agreements if that is what the people demand. In many countries, this unimpeded democracy is proving to be disturbingly popular. Vladimir Putin's popularity in Russia is in part because of, rather than in spite of, his disregard for the rule of law, which is seen as simply obstructing the muscular implementation of the popular will. In Hungary, Viktor Orbán's disregard for constitutional constraints and processes is considered a source of strength. His phrase "illiberal democracy" is as good a name as any for the form of government Aristotle warned against.

Some on the hard left also have little time for the rule of law when they demand the instant denationalisation of railways or the "clamping down" on excessive corporate profits. There are ways of doing both that follow due process but many are not interested in what they see as such niceties. Yet in a functioning state, businesses, like individuals, need to be able to trust that the rules of the game will not be changed by decree overnight because a government announces that "the people" demand it.

The greatest example of the rise of degenerative democracy is, of course, Donald Trump. Trump has no concern at all for the international rule of law and often, it seems, none for the national either. His campaign promise to have Hilary Clinton locked up if he won was classic example of democratic demagoguery.

However, Aristotle did not deny that there are possible good governments in which the many rule over themselves. We have reasons to think that he would have found much to admire in the democratic states we have built, in particular the way in which they put rule of law at their heart. But he would always have seen the risk that these systems might degenerate.

How can we save democracy? One major challenge is to persuade the electorate that the constitutional obstacles that stand between the expression of the people's will and its enacting are actually the best protection we have against the tyranny of the many over the few, or of leaders who claim to represent all while really standing only for themselves.

