

1. Examine the provisions that safeguard various constitutional posts from executive interference.

Introduction

Constitutional Bodies in India are the permanent or semi-permanent organization within the machinery of government. These bodies are responsible for the administration of specific functions. The functions of these bodies are usually executive type.

Body

The Constitution of India specifies the setting up of following major constitutional bodies and has given appointment to various constitutional posts.

The major constitutional bodies in India are as under:

- Union Public Service Commission (UPSC)
- State Public Service Commission
- Joint State Public Service Commission
- The Comptroller and Auditor General of India
- Election Commission of India
- Finance Commission of India
- National Commission for Scheduled Castes (NCSC)
- National Commission For Scheduled Tribe
- Staff Selection Commission (SSC)
- Central Vigilance Commission (CVC)

Safeguards:

- Appointment & Tenure: Constitutional posts like EC, CAG, Chairman of UPSC etc are appointed by the President of India and has a fixed tenure. Eg The Chief Election Commissioner is appointed for a period of 6 years or upto 65 years of age, whichever is earlier.
- Salary and Allowances: The salary and pension are charged upon Consolidated fund of India, which can not be changed after their appointment. Moreover, fund from CFI is not subjected to vote in the parliament.
- Removal: Most of the constitutional post have stringent rules and procedure in the Constitution for their removal. It is not done on the whims and fancy of the Executive.
Eg the office of CAG can be removed by the President in the same manner as that of judges of Supreme Court, which requires special majority in both Houses of Parliament.

- Reappointment: to maintain the independency of the post there is no reappointment for most of the office of Constitutional posts. Example: No second term to the office of CAG, UPSC chairman etc.

Conclusion

A Constitutional body is formed under detailed instructions given in the Constitution. It is compulsory for the government to set up such a body and it cannot dispense off with it easily when it becomes uncomfortable. Such bodies or institutions are written into the Constitution of a nation and cannot be eliminated without amending that part of the Constitution which sometimes also requires consent of the states

2. How far do you agree with the statement of Dr. BR Amedkar that the CAG is the most important functionary in the Constitution? Substantiate your views.

Introduction

The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). He is the head of the Indian Audit and Accounts Department¹. He is the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state. His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. This is the reason why Dr. B R Ambedkar said that the CAG shall be the most important Officer under the Constitution of India.

Body

"I am of the opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in the Appropriation Act." —Dr. B.R Ambedkar

Constitutional Provisions

- **Article 148** broadly deals with the CAG appointment, oath and conditions of service.
- **Article 149** deals with Duties and Powers of the Comptroller and Auditor-General of India.
- **Article 150** says that the accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the CAG, prescribe.
- **Article 151** says that the reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the president, who shall cause them to be laid before each House of Parliament.
- **Article 279** Calculation of "net proceeds" is ascertained and certified by the Comptroller and Auditor-General of India, whose certificate is final.

- **Third Schedule** – Section IV of the Third Schedule of the Constitution of India prescribes the form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India at the time of assumption of office.
- According to **Sixth Schedule** the accounts of the District Council or Regional Council should be kept in such form as CAG, with the approval of the President, prescribe. In addition these bodies account are audited in such manner as CAG may think fit, and the reports relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.

CAG is the most important functionary in the Constitution.

- The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration. The accountability of the executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG.
- The CAG has 'to ascertain whether money shown in the accounts as having been disbursed was legally available for and applicable to the service or the purpose to which they have been applied or charged and whether the expenditure conforms to the authority that governs it'. In addition to this legal and regulatory audit, the CAG can also conduct the propriety audit, that is, he can look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the wastefulness and extravagance of such expenditure.
- For effective functioning of this important institution of the CAG it is paramount to ensure independence. There are several provisions enshrined in the Constitution to safeguard CAG's independence. CAG is appointed by the President by warrant under his hand and seal and provided with security of tenure, CAG can be removed by the President only in accordance with the procedure mentioned in the Constitution.

Conclusion

The legal basis for the auditoria functions of the Comptroller & Auditor General of India is provided by the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. Although India has a federal setup, the Constitution provides for a unitary audit by the Comptroller & Auditor General, who conducts audit of the accounts of both the Union and State Governments.

3. In the light of rapidly changing socio-economic dynamics brought in by the internet and social media, examine the challenges faced by the Election Commission as the watchdog of democracy in India.

Introduction

Election Commission (EC) acts as the watchdog of democracy in India and has reservoir of power under article 324 of the Indian constitution, as per the Supreme Court.

The need to address a large number of voters across spatial and social divides in a first-past-the-post system necessitates the deployment of new communication technologies for a more efficacious political campaign.

However, changing socio-economic dynamics brought in by the internet and social media have posed many challenges for EC.

Body

Rapidly changing socio-economic dynamics brought in by the internet and social media

- Suspension of norms of civility
- Use of bots and unfair means to trend on social media
- Phenomenon of fake news and misinformation
- Institutionalization of the democratic structure
- Othering/marginalization of some sections
- Dilution of public reasoning
- Allegations of hacking of EVMs

Challenges faced by the Election Commission

- Suspension of norms of civility - and responsibility owing to the anonymous nature of the engagement on internet and social media. Free and fair election is important not only for expression of the will of people but also to maintain social cohesion and democratic values of equality, fraternity etc. Enforcing Model Code of Conduct in such a scenario becomes extremely difficult.
- Use of bots and unfair means to trend on social media - The immediacy of the engagement, with deep penetration through the device of posts going viral, sometimes, allegedly, owing to the deployment of bots, creates challenge in conducting free and fair election.
- Phenomenon of fake news and misinformation - an important aspect of the role that social media are likely to play in the elections is the phenomenon of fake news and misinformation. The social rupture caused by such campaigns, including heightened insecurity for marginalised sections of society, is phenomenal.
- De-Institutionalization of the democratic structure - A relatively small financial cost lends the ability to a small number of users to bombard the electorate with party political messages with little political accountability or

responsibility. The net impact is in geometric proportion to the number of such platforms deployed. The result is the de-institutionalization of the democratic structure and a strengthening of what Lloyd Rudolph and Susanne Rudolph call a command polity.

- Othering/marginalization of some sections - This is the space where othering takes place with impunity and with only a miniscule risk of social censure. Absolved of the responsibility to defend their views in an open arena of co-equal citizens, regressive actors are able to campaign for their political viewpoints from the safety of a smartphone.
- Dilution of public reasoning - the fulcrum of **public reasoning** is shifting to the construction of the other. It therefore becomes less important for political actors to propose their own programme of action and more important for them to contest characterizations by others.
- Allegations of hacking of EVMs – When it's difficult to verify news and counter fake news, allegations like hacking of EVMs may gain traction. This will completely shake the credibility of EC and erode trust in the election process.

Some of the recent steps taken by EC

- EC conducted EVM hackathon.
- Banned prominent politician from campaigning for certain period in recent Lok Sabha election.
- Banned a biopic movie.
- Banned election campaign in Kolkata due to eruption of violence.
- SVEEP – Systematic voter's education and electoral awareness program.
- C-Vigil – to maintain the integrity of election process.
- Election commission has setup Media Certification and Monitoring Committee

Conclusion

Efforts to regulate social media and internet by the government have been contested and therefore its unregulated nature is most likely here to stay. The efforts at internal regulation through a voluntary code of conduct by some platforms is the need.

4. How far do the terms of reference of the 15th Finance Commission encapsulate the spirit of fiscal federalism? Critically examine.

Introduction

Finance Commission of India is an independent and non-partisan institution, which is a constitutional body, whose recommendations can have a drastic impact on the

nature of fiscal federalism in the country. The main tasks of the commission are to strengthen cooperative federalism, improve the quality of public spending and help protect fiscal stability.

Body

The Fifteenth Finance Commission was constituted in the backdrop of the abolition of Planning Commission, the abolition of distinction between plan and non-plan expenditure and the far reaching structural tax changes embedded in the Goods and Services tax.

The Terms of Reference of this Commission are somewhat unique including monitorable performance criteria for important national flagship programmes, and examining the possibility of setting up permanent non lapsable funding for India's Security needs.

Conventionally, the Terms of References of FC can be seen as below:

- Principles governing the vertical devolution of taxes between union and states.
- Principles governing the Horizontal distribution between the states.
- Grant in aid to states, supplement the resources of PRI, ULBs from states' Consolidated funds.
- Performance Based incentives for States

In this regard, the performance based incentives for the states will be based on multiple criteria which will be helpful in promoting fiscal federalism in the following manner-

- Efforts made by the States in expansion and deepening of tax net under GST will help in realisation of a competitive tax environment where fiscal position of states will improve in turn improving the fiscal federalism.
- 'Progress made in increasing capital expenditure, eliminating losses of power sector, and improving the quality of such expenditure in generating future income streams' criteria can help tackle the stress of NPAs in power sector and improve the fiscal situation of states.
- 'Control or lack of it in incurring expenditure on populist measures' criteria can help arrest the burden of populist measures under political compulsions.
- 'Progress made in sanitation, solid waste management and bringing in behavioural change to end open defecation' criteria can help overcome the burden due to sanitation related health expenditure especially in poorer states.

At the same time, there has been considerable contestation over the new provisions of Terms of reference and these are seen as antithetical to the vision of Fiscal federalism due to the following factors-

- The ToR's are seen as too expansive, and that this expansiveness is in the direction of tilting the fiscal balance further in favour of the Centre.
- The call to revisit the previous FC's decision to increase the share of the states is worrying.
- The ToR states that the commission may also examine if revenue deficit grants are to be provided at all. To suggest that revenue deficit grants may not be provided is equivalent to demanding the Commission to disregard Articles 275. This is a violation of constitutional guarantees as well as fiscal federalism principles.
- The 15th Finance Commission has been mandated to use data from the 2011 Census, instead of 1971 Census, as the base for determining revenue share across states. This, southern states have argued, may penalize them for their successful efforts in controlling population growth, by decreasing their share in the overall resource pool.
- The TOR proposes that all states be judged, among other criteria, on how well they implemented flagship schemes of the Centre. However, it seems irrational considering there are many schemes of the Central government that the states have neglected because they have corresponding state schemes running successfully.
- The recent, last-minute addition of asking FC XV to suggest ways of allocating non-lapsable funds for defence and internal security can be surely considered as against the ideals of fiscal federalism as defence is a union subject.

These issues call for reform of the overall architecture of fiscal federalism. Three possible options can be considered-

- One option is to only allow transfers through untied tax devolution.
- A second option is to make the FC a permanent body and expand its mandate to undertake the resource allocation role of the erstwhile Planning Commission.
- A third option is to revive the Inter-State Council as an effective federal decision-making body.

Conclusion

Sustainable Development Goal SDG10 aims for reducing inequality within and among countries. Goal16 requires nations to build effective, accountable and inclusive institutions at all levels. An equitable distribution of revenue tied with performance incentives will help greatly in this regard as well as achieving the ideals of fiscal federalism.

5. How effective are the National Commission for Scheduled Castes (NCSC) and the National Commission For Scheduled Tribes (NCST) in addressing the the real issues of discrimination and exploitation of the affected groups? Critically evaluate.

Introduction

National commission for scheduled castes (NCSC) and National commission for scheduled tribes (NCST) are established under Article 338A and 338B of the Indian constitution through the Constitution (89th Amendment) Act, 2003.

Body

Functions of NCSC/NCST:

- To investigate & Monitor matters relating to Safeguards provided for SC/STs under the Constitution or under other laws or under Govt. Order, to evaluate the working of such Safeguards.
- To inquire into specific complaints relating to Rights & Safeguards of SC/STs.
- To participate and advise in the Planning Process relating to Socio-economic development of SC/STs, and to evaluate the progress of their development under the Union and any State.
- to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

Evaluation of NCSC and NCST:

NCSC has been successful towards achieving in its mandate through the works like

- Services Safeguards Wing of has worked towards complaints relate mostly to promotions, discrimination and harassment on various counts, conduct of departmental enquires, transfers etc.,
- NCSC monitors the implementation of the various legal provisions in force regarding atrocities against dalits. Over the years, the Commission has conducted several on-the-spot inquiries into complaints of atrocities.
- Both the commissions have also succeeded in institutionalizing the system of liaison officers and special SC and ST cells in all central ministries and public sector enterprises for the speedy and effective resolution of the grievances of employees of these communities.
- Both the Commissions monitors the levels of literacy and educational development of the Scheduled Castes and has taken special interest in female literacy rates.
- On economic front, they have recommended land ceiling and the redistribution of surplus land by various state governments, suggested a range of tenancy reforms and several measures to prevent the alienation of tribal land.

This is reflected in the statistics which shows

- The literacy gap has closed significantly in the last decade. SC/ST women made the most rapid progress as per the 2011 census. Literacy rate among SC/ST men and women increased by around 9% and 14 % respectively compared to 10% and 5% among non-SC/ST community.
- Representation of SC and ST members in central government and state government services is more than the prescribed percentage and has significantly increased in the last 2 decades as per a reply given by central government minister during question hour.
- The SC/ST population with houses and other basic amenities have increased by around 30% as per the TISS report.
- Health indicators including IMR, MMR etc., have improved and seen a reduction of more than 5% as per the report by Registrar General of India, Sample Registration System.

The above improvements, though have been realized collectively by the programs of various governments, NCSC and NCST have played a major role. However, the real issues of the communities seems to be not addressed completely.

- As per the Data received under the RTI Act, of around 16000 complaints received by NCSC, around 6000 complaints were related to atrocities in public places and 4000 complaints were related to 'Service Atrocities'. Further, over 22,000 complaints are pending for disposal.
- NCRB data shows a spike in the number of cases filed under SC/ST prevention of atrocities act which shows the discrimination and atrocities are only increasing.
- The incidents like dalit lynching in Una, Gujarat; caste related honour killings in Haryana shows that the commission has been ineffective in bringing behavioral change in the society.
- The case of Rohith Vemula reflect that the discrimination is not only due to backwardness, illiteracy, awareness in the society but is omnipotent and is practiced in best of the best universities and workplace. The commission has been ineffective in preventing the same.
- SC decision on diluting the provisions of SC/ST act demonstrated that the issue of SC/STs are seen as exaggerated even by the apex court. Commission mandate to bring awareness has failed even to reach the most enlightened office in the country.
- NCST was helpless and ineffective in stopping the eviction of tribals in the name of development which deprived them of their basic human rights. E.g.
 - The supreme court order to evict more than one million forest dwelling people went against the spirit of Forest rights act and the commission couldn't do anything.
 - The commission was not able to safeguard the tribal rights of Dongria Kondh community of odisha who faced eviction on a Vedanta development project and took public protest against the same.

- The rights of tribals over natural resources have been reduced over the years through the concepts of protected forests etc., and the commission has been lacking to secure the same.
- Tribal culture and identity has been declining. As per a report by People's Linguistic Survey of India, as much as 250 tribal languages have disappeared. NCST has failed to arrest the phenomenon.

These are due to various reasons like

- There are delays in conducting the inquiry and in delivering judgements. Also, there is a perception that the Commission tends to confirm the government's position on most cases.
- The commission inability to reduce the incidence of atrocities and violence against dalits, or to effectively fight the persistent scourge of untouchability is a biggest failure on its part.
- The Commission has been active in suggesting ways of streamlining procedures, implement reservations but is failing in bringing fundamental reforms.
- The commission decisions being only recommendatory, without a strong follow up mechanisms are mostly ignored. The annual Reports are often tabled two or more years after they have been submitted to the President. Further, they are not frequently discussed and hence mostly remain on paper.

Conclusion

Thus, there is a need to reform the institutions giving them more power to bring discernible change and address the real issues more effectively. The reforms like powers vis-à-vis criminal investigation, power to penalize, fixed time period for discussion of commission reports, suo moto powers etc., are needed.