

1. The post of the governor is essentially an apolitical one. However in the recent times, the role Governors has come under a lot of scrutiny and criticism. Why? Discuss

Approach

We need to mention instance where governor has worked under political influence and also mention reasons for such politically influenced act of governor.

Introduction

Articles 153 of the Indian Constitution mention that there shall be Governor for each State. The Governor acts as the chief executive head of the state but during the last few years, the governors of Karnataka, Madhya Pradesh, Kerala, Maharashtra and West Bengal have played their roles in such a way as to make them highly controversial and politically motivated.

Body

The role of Governors has come under a lot of scrutiny and criticism due to following reasons -

- Selecting the chief minister: Misuse of situational discretion by governor in calling state representatives of political party ruling in Centre to form government. E.g.: Maharashtra governor appointing Chief Minister in early hours of morning.
- Determining the timing for proving legislative majority.
- Time in giving assent to bills or reserving bills for the President.
- Commenting adversely on specific policies of the state government.
- Exercising powers of the governor as the chancellor of state universities: As an outsider to the state, governor is mostly not conversant with local dynamics to handle the affairs of state universities. This has led to governor working on advice of local members of the party ruling at the centre. E.g.: Tussle between the Governor and Chief Minister of Maharashtra over cancellation of University examinations.
- Demanding information about day-to-day administration in a way to block state initiatives is claimed to be politically motivated. E.g.: Lt Governor in Delhi, Governor of West Bengal.

Supreme Court in its judgment in the BP Singhal case in 2010, issued a clarification, that "Governor is the constitutional head of the state. He is not an employee or an agent of the Union government nor a part of any political team. Despite the criticism, governors continued to behave as political appointees who must obey the master's voice.

Recommendations made by various committees and commissions to make office of governor apolitical and more efficient -

- Fixed tenure in office for governor
- Chief Ministers of concerned states should be consulted before appointing a governor.
- In 1980s the BJP along with the left front government of West Bengal, suggested that the governor appointment should be made from a panel prepared by the state legislature and actual appointing authority should be the Inter-state Council.

Conclusion

Hence, rather than using the governor's office as an instrument for controlling state politics by exploiting his tenure insecurity or party loyalty, it is better for the country in the long run to respect such institution and to let the governor act on his sagacity and sound judgment.



2. Comment upon the clemency powers of the President. What are the restrictions on this power? Examine.

Approach

Candidates are expected to write about clemency powers of the president and comment on it. And then examine the restrictions on clemency powers of the president.

Introduction

A clemency is an act of mercy, forgiveness, pardon. The concept of clemency is an artefact of older times, of an age where an omnipotent monarch possessed the power to punish or remit any punishment. It became a symbolic attribute of a god-like king having control over his subject's life and death.

Body

Clemency powers of the president of India –

- Clemency is a broad executive power, and is discretionary which means the President is not answerable for his pardons, and does not have to provide a reason for issuing one with certain limitations.
- Under Article 72 of the Constitution, the President of India shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence where the sentence is a sentence of death.
- Article 72 is about a very old but creatively renewed principle of a sovereign's prerogative to adjudge capital crime against the backdrop of its circumstances, not legalistically but civilisationally.
- Executive clemency exists to afford relief from undue severity or plain mistake in the operation or enforcement of the criminal law. The administration of justice by the Courts is not necessarily always wise or certainly understanding of circumstances, which may properly alleviate guilt. It is a check entrusted to the Executive for special cases.
- *Kehar Singh v. Union of India*, the Court highlighted existence of a 'Pardon', by acknowledging the fallibility of human judgment being undeniable even in a supremely legally trained mind and therefore, any such errors can be remedied by entrusting power to a higher authority, which shall "scrutinise the validity of the threatened denial of life or the continued denial of personal liberty".
- The pardoning power of the president is not absolute. It is governed by the advice of the Council of Ministers. This has not been discussed by the constitution but is the practical truth. Further, the constitution does not provide for any mechanism to question the legality of decisions of President or governors exercising mercy jurisdiction.

Restrictions on the clemency power of president –

- Unlike the USA President, whose powers to grant pardons are almost unrestrained, the President of India has to act on the advice of the Cabinet. It is clear from the constitution that like other powers of the president, the power to pardon is also to be exercised on the advice of union cabinet which means the president yet again acts out as a rubber stamp fulfilling a prerogative as under the constitution.
- *Epiru Sudhakar & Anr vs Govt. Of A.P*, it was held by the Supreme Court that it is a well-set principle that a limited judicial review of exercise of clemency powers is available to the Supreme Court and High Courts. Granting of clemency by the President can be challenged on certain grounds such as order is mala fide and order suffers from arbitrariness etc.
- As per Supreme Court it is a matter of performance of official duty. The power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future.
- An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are fraught with discrimination.
- The court has earlier held that court has retained the power of judicial review even on a matter which has been vested by the Constitution solely in the Executive.

Conclusion

In the democracy the ultimate sovereignty lies with the people and through them vests with their representatives. Hence exercise of such power by the political executive by advising head of the state to grant pardon is legitimate. In India the processes have enough checks and balances but never the less more caution is needed to avoid political considerations and exigencies colouring the exercise of the powers of pardon as evident from the past experiences and cases.

3. The office of the Comptroller and Auditor General (CAG) is one of the most vital instruments of government accountability. Elucidate.**Approach**

Candidate can give constitutional provisions of the office of CAG, and then elucidate on the role institution plays for the effective governance and accountability of the government.

Introduction

The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). She/he is the head of the Indian Audit and Accounts Department. CAG is guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state.

Body

Constitutionally, Comptroller and Auditor General's Office has been mandated to enhance accountability of the Executive to the Parliament and State legislatures by carrying out audits in the public sector and providing out accounting services in the States in accordance with the Constitution of India and laws as well as best international practices.

Role of CAG as anti-corruption instrument –

- Article 148 of the Constitution provides for a CAG with the legal status of a Supreme Court judge.
- The CAG is sworn in under Article 148(3) to uphold the integrity of the nation.
- In order to preserve his independence, the CAG's expenses are charged (without vote) to the Consolidated Fund of India. He can be removed from office only under Article 124(4).
- It is the duty of the CAG to audit all receipts which are payable into the Consolidated Fund of India. The rules and procedures are designed to ensure an effective check on the assessment, collection and proper allocation of revenue.
- His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration.
- The accountability of the executive (i.e., the council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG.
- The CAG is an agent of the Parliament and conducts an audit of expenditure on behalf of the Parliament. Therefore, he is responsible only to the Parliament.

Accountability and role of CAG –

- CAG audit reports are handed over to the PACs i.e. Public Accounts Committee at the centre and at the state.
- Three CAG reports i.e. audit report on appropriation accounts, audit report on finance accounts and audit report on public sector undertakings are examined by PAC.
- At the central/state level, these reports are submitted by CAG to president/governor, who makes them to be laid in parliament/legislature. Here CAG stands different from other measures of accountability as the CAG reports are submitted to the executive.
- CAG also assists the committee in its deliberations by preparing a list of the most urgent matters which deserve the attention of the PAC.
- CAG also helps in making the actions of the committee clear to the witnesses and in making the action of the government clear to the committee.
- CAG position is sometimes one of interpreter and translator, explaining the officials' views to the politicians and vice-versa which in turn ensure accountability of the government.
- The responsibility of the CAG does not end here. He has to watch whether the corrective action suggested has been taken or not. In cases where it has not been taken, CAG reports the matter to the PAC which will take up the matter.
- Hence, CAG stands as a keystone in the arch of constitutional measure of accountability where CAG not only represents the structure of accountability but also holds together the structure of accountability.

Challenges faced by CAG –

- The CAG mostly find his reports hitting the junk pile of government records in the absence of any provision
- There is no deadline for the production of documents or replies nor any contempt proceedings for their denial.
- The CAG doesn't have the right to release these reports in the public domain if they are not presented in the legislature within a month of their submission.
- Nor can CAG enforce any of its findings by decree, akin to Parliament's Public Accounts Committee.
- Criticism of the CAG is rooted in uneducated opinion and deliberate suppression and/or obfuscation of facts. To that can be added the deep-rooted bureaucratic and political antipathy to accountability.

Conclusion

The CAG has already to some extent achieved what he set out to do, especially when it comes to redefining the role of the office and the public perception of auditors. Despite the severest limitations, the CAG still creditably survives in the defence of accountability, a knight in shining armour amidst the overwhelming rot. The office is a unique combination of knowledge, integrity, commitment and fearlessness.

4. What are the key issues related to electoral funding? What reforms would you suggest to improve transparency in electoral funding? Discuss.**Approach**

Since the question is asking you to discuss so you have to use your skill at reasoning, backed up by deliberately selected evidence to make a case for and against an argument, or point out the advantages and disadvantages of a given context.

Introduction

An electoral bond is like a promissory note that can be bought by any Indian citizen or company incorporated in India from select branches of State Bank of India. The citizen or corporate can then donate the same to any eligible political party of his/her choice. These bonds were introduced to ensure that all the donations made to a party would be accounted for in the balance sheets without exposing the donor details to the public.

Body**THE KEY ISSUES RELATED TO ELECTORAL FUNDING –**

It is very surprising that electoral bonds are issued to ensure transparency in the political funding but the reality is totally different. The key issues include the following-

- Ever since the first issue of electoral bonds in march 2018, opposition against the move has gained momentum with some even accusing the union government of promoting a scheme which 'legalizes political corruption'.
- The objective of transparency in the political funding through electoral bonds remains a question as we do not know who is giving what to whom and what they are getting in return.
- Also, the other transparency issue is that only the government, through ministries, has access to this information.
- Removal of a cap on corporate donations that existed earlier—7.5% of three-year average net profit—enables businesses to make unlimited political donations without having to disclose the recipient's name.
- Since the identity of the donor has been kept anonymous, it could lead to an influx of black money. Thus, as far as utilising black money for electoral funding is concerned, that too will increase in this system.
- It is alleged that the scheme was designed to help big corporate houses donate money without their identity being revealed.
- According to civil rights societies, the concept of donor "anonymity" threatens the very spirit of democracy.

REFORMS TO IMPROVE TRANSPARENCY IN ELECTORAL FUNDING –

- The solution to this is setting up a national election fund where corporate houses and individual donors can contribute with 100% tax-free fund. The EC could be given the task of overseeing it. The money can then be divided among political parties mostly in kind and a part in cash
- There can be a system in which political parties are to be given money from the election fund in proportion to the number of votes that they have pulled in the previous election, then they would not be allowed to take money from anywhere else.
- There has to be a grand bargain that if you want to put public funding on the table, you're going to have to insist on much stricter norms and adherence to those norms by parties and candidates so that there should be a requirement that any funds raised be processed digitally.
- There has to be an independent third-party scrutiny of political party accounts.
- The EC has to be given greater power and authority to go after wrongdoers.

Conclusion

Political funding has been an expensive and opaque affair. Electoral bond is the NDA's attempt to curtail cash donations and political funding through banking channels. The fact that a donor has purchased bonds worth a specified amount and that parties have received specified amounts in aggregate, will become a record. Electoral bonds offer some element of transparency, though not full transparency. With the suggested reforms and with full disclosure and transparency, electoral bond can be a great way of political funding.

5. What are the constitutional bodies established to address issues arising out of India's federal structure? Explain.

Approach

Question is very straight forward in its approach, students are expected to mention the issues arising out of India's federal structure and how constitutional bodies in place address those issues, names of the constitutional bodies is important as explicitly mentioned in the question.

Introduction

Federalism is a system of government in which powers have been divided between the centre and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the centre or national level and second at the regional or provincial level. In a federation system, there are two seats of power that are autonomous in their own spheres. Indian model of federalism is called quasi-federal system as it contains major features of both a federation and union. It can be better phrased as 'federation sui generis' or federation of its own kind. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a union of states'. The word federation is not mentioned in the constitution. Elements of federalism were introduced into modern India by the Government of India Act of 1919 which separated powers between the centre and the provincial legislatures.

Body

Issues arising out of India's federalism –

- Regionalism - It is considered one of the significant issues arising out of federalism in India. The pluralist character of India gives rise to many factors including regionalism. People from far northeast sometimes feel themselves at a formidable distance from New Delhi and people in southern part of the country with bigger states feel neglected having been within larger states. The agitations for Gorkhaland, Bodoland, and KarbiAnglong have been revived. This is apart from the new demands for a separate Vidarbha State in Maharashtra, and Harit Pradesh and Poorvanchal in Uttar Pradesh. The more the number of states the more the centre will be held hostage to state parties on matters of national importance.
- Division of Powers- The general principle underlying the division of powers is that all matters of national importance, e.g. defence, foreign affairs, railways, currency are allotted to the Central government while matters that are primarily of local or regional importance e.g., education, public health, police, local administration are assigned to regional governments. Some matters which require the involvement of both the centre and states like criminal law,

forest, economic and social planning are assigned in the Concurrent List. However, in the case of conflict over the legislation on any of the subjects mentioned in the Concurrent List, the Centre supersedes the States.

- Unequal Representation of Units- With a view to preventing the evil of predominant influence of larger units over smaller units in a federation, most federations in the world have resorted to some constitutional mechanism like an equal representation of units or states in the Second Chamber and ratification of all amendments to the Constitution by states. In India, there is no such provision of an equal representation of states in the Rajya Sabha, the Second Chamber and nor the states have any substantial say over the amendments done to the Constitution from time to time.
- Language Conflicts- Diversity in languages in India sometimes causes a blow to the federal spirit of the Constitution. There are 22 languages constitutionally approved in India. Besides, hundreds of dialects are spoken across the country. Trouble arises when the strongest unit of the federation attempts to force a particular language on others. The tussle for official language in India is still a burning issue. The southern states' opposition to Hindi as the official language of India has led to deep-seated language crisis in India.
- Economic Incompatibilities of the units- Differences in economic standards and relative economic and fiscal incompatibilities among the constituent states also pose a threat to a federation. The forces of imbalance in the field are demands for economic planning and development and for regional economic equality and financial autonomy of states. Demand for a financial equality of a region creates problems in a federation.

Constitutional bodies and their role to address these issues –

- Article 263 of the Constitution provides for the establishment of the Inter-State Council. The Constitutional body is entrusted with the mandate, inter alia, to inquire into and advise on the issue of inter-state disputes and to coordinate on the matter of common interest to some or all states. It is an advisory and consensus-seeking forum. Being a body that guarantees full representation to each state, the Council has the potential to assure meaningful participation of the states.
- Article 280 of the constitution provides for the formation of a Finance Commission to redress the vertical imbalances between the taxation powers and expenditure responsibilities of centre and the states respectively and equalisation of all public services across the states thus creating a level playing field for all the states in terms of their financial capacities thus ensuring a homogenous development of India as a whole.
- Article 279A Goods and Services Tax Council a constitutional body for making recommendations to the union and state governments on issues related to Goods and Service Tax thereby evolving a process of wider consultation and achieving uniformity and removing compartmentalisation in indirect taxation thus realising the future potential of India in which states will be the key stakeholders in policy decisions.

- Article 262 also states that the parliament may provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of waters thus creating an appropriate authority for the adjudication of river water disputes between states. In spite of being very slow in the adjudication of disputes it is still a finest mechanism to deal with such issues.
- Article 350B of the constitution provides for the the appointment of special officer for linguistic minorities to investigate all matters relating to the safeguards provided for linguistic minorities under the constitution thus creating an environment for multilingual society where every language is given a guaranteed protection.

Conclusion

The very birth of India as an independent nation-state signifies the fact that the Union of India was a necessary corollary and it was not a creation of agreement among its constituents. The framers intended to provide a sturdy centre keeping the sovereignty and unity and integrity in mind considering wide diversity and pluralism in India. Their intention has found meaning. But for a constitutionally strong Union, India would have already been fragmented into pieces since long back. The Parliament of India enjoys sole power for formation, reformation, alteration of boundaries of states in India. Time and again divisive forces raise their ugly heads to secede from the Union. The Constitution, however, provides states with limited sovereignty for establishing a quasi-federal structure for the country. It did not intend to make India a unitary country with states functioning as municipalities and their survival dependent on the whims and fancies of the Union Government. The functioning of the Indian Constitution over the past 66 years doesn't establish a de facto unitary state. It is a fact that federalism has been going deep in India in tandem with global trends.