

Q.1) "Examine the key features of the Chief Election Commissioner and other Election Commissioners Act, 2023. What are the concerns associated with it? Suggest reforms to enhance the autonomy of the Election Commission of India." (150 words, 10 marks)

Introduction

The Chief Election Commissioner and other Election Commissioners Act, 2023 replaces parts of the **1991 law**, setting **new rules for appointments**. However, it has sparked debate over its impact on the Election Commission's autonomy.

Body

Key Provisions of the 2023 Act

1. **Selection Committee:** PM (Chair), a Union Cabinet Minister, and Leader of Opposition in Lok Sabha (or largest opposition party).
2. **Search Committee:** Headed by Cabinet Secretary, includes two secretaries with election expertise; proposes a panel of five names.
3. **Eligibility:** Persons of integrity with experience in election management holding or having held Secretary-rank posts.
4. **Term:** 6 years or until age 65, with no possibility of reappointment.
5. **Salary & Service Conditions:** Equivalent to Cabinet Secretary, replacing the earlier parity with Supreme Court judge salary.

Positive Outcomes

1. **Legislative Clarity:** Fills a statutory void highlighted in *Anoop Baranwal v. Union of India (2023)*, which mandated an impartial selection process for ECs until Parliament enacted a law.
2. **Search Mechanism:** Institutionalizes a Search Committee, enabling **preliminary vetting** and broader candidate outreach.
3. **Qualified Pool:** Specifies professional eligibility, enhancing relevance to electoral integrity.
4. **Opposition Participation:** Inclusion of **LoP** adds non-executive representation, absent in previous models.

Key Concerns & Remaining Issues

1. **Executive Dominance:** With two out of three Selection Committee members from the government, concerns of bias persist.
2. **Judicial Exclusion:** Omits Supreme Court-recommended inclusion of the CJI or a retired SC judge, diverging from the model laid down in *Anoop Baranwal*.
3. **Opaque Oversight:** Search Committee's panel can be overridden, limiting transparency.
4. **Downgraded Status:** Cabinet Secretary-level compensation—set by executive pay commission—undermines statutory insulation that judicial pay enjoys under **Article 125**.
5. **Removal Asymmetry:** CEC removable via impeachment; ECs by presidential recommendation—raising equality concerns under **Article 14**.

Suggested Reforms

1. **Balanced Composition:** Reintroduce CJI or retired SC judge on Selection Committee, following **Law Commission**, and Supreme Court recommendations.
2. **Parity in Removal:** Extend Supreme Court-level removal safeguards to ECs via constitutional amendment.
3. **Enhance Transparency:** Publicize selection criteria/process; require Selection Committee to justify deviations from Search Committee suggestions.
4. **Cool-off Period:** Prohibit post-retirement appointments for CEC/ECs to reduce conflict of interest.
5. **Independent Secretariat:** Establish insulated ECI secretariat with administrative and budgetary autonomy, per recommendations of the **Goswami Committee, 2nd ARC, and Law Commission 255th Report**.
6. **Best Practice – South Africa:** Emulate South Africa's Electoral Commission model, where appointments involve a **multi-stakeholder panel** including judicial, legislative, and civil society representatives, fostering broad consensus and legitimacy.

Conclusion

To uphold *free and fair elections* as enshrined in **Anoop Baranwal and PUCL (2003)**, ECI's independence must be safeguarded. The 2023 Act, though progressive, needs reform to secure true institutional autonomy.

Q.2) "The Lokpal was envisioned as an independent anti-corruption watchdog to ensure integrity in public office. Assess its performance over the last decade and identify key factors behind the limited effectiveness of this accountability institution." (150 words, 10 marks)

Introduction

Inspired by the **Swedish Ombudsman model**, India's **first ARC** recommended a central anti-corruption body—Lokpal. Enacted in **2013** after public protests, the Act aimed to institutionalize **accountability**. But the Lokpal's actual impact has remained minimal.

Body

Key Provisions of the 2013 Act

1. **Institution of Lokpal:** Chairperson and up to 8 members (50% judicial, 50% from SC/ST/OBC/minorities/women).
2. **Jurisdiction:** PM (with limitations), Ministers, MPs, Group A–D officers, and NGOs receiving over ₹1 crore foreign donations.
3. **Selection Committee:** PM (Chair), Speaker, LoP, CJI/nominee, and an eminent jurist.
4. **Prosecution Wing:** Empowered to file charges based on Lokpal's inquiry.
5. **Lokayuktas:** States to establish Lokayuktas within a year.

Notable Successes Since Enactment

1. **Institutional Setup:** Lokpal became operational in 2019 with appointments of Chairperson and members.
2. **Digital Complaint System:** Online portal was launched for public complaints, facilitating accessibility.
3. **Case Monitoring Framework:** Internal mechanisms for scrutiny, dismissal, and forwarding of complaints were formalized.

Criticism of Its Performance

1. **Delayed Constitution:** Lokpal appointed only in **2019**, six years post-enactment.
2. **Vacancies:** Chairperson post has been vacant since **May 2022**; several member seats remain unfilled, impairing functioning.
3. **Low Case Disposal:** Of over **8,700 complaints** received till **2023**, fewer than **5%** were fully disposed; pendency rate remains above **80%**.
4. **State Lokayuktas:** Many states still lack robust or independent Lokayuktas.

Reasons Behind Limited Effectiveness

1. **Executive Apathy:** Delays in appointments, funding, and operational independence reflect low political will.
2. **Opaque Appointments:** Selection Committee often not constituted promptly; eminent jurist seat regularly vacant.
3. **7-Year Limitation Clause:** Complaints older than seven years are barred unless exceptional circumstances—a statutory design flaw that curtails retrospective accountability.
4. **Judicial Delays:** Preliminary inquiries and prosecutions face court backlog, reducing deterrence.

Suggested Reforms

1. **Timely Appointments:** Enforce strict timelines for filling all vacancies to prevent paralysis, as emphasized by the Supreme Court.
2. **Independent Investigation Wing:** As recommended by the **2nd ARC**, create a separate investigative cadre under Lokpal's control.
3. **Amend Jurisdiction Clauses:** Broaden scope to include PM, MPs, and judiciary with necessary safeguards, as proposed by the **Law Commission of India**.
4. **Audit & Transparency:** Publish annual performance audits and public reports, a key recommendation of the **NCRWC 2000**.
5. **Empower State Lokayuktas:** Mandate uniform standards and autonomy for state Lokayuktas through a model law, as proposed by the **2nd ARC**.

Judicial Observation

In **Common Cause v. Union of India (2018)**, the Supreme Court observed that delays in Lokpal appointments defeat the very object of the Act and weaken anti-corruption efforts.

Conclusion

Despite its promise, the Lokpal has underperformed due to institutional design flaws and political indifference. Revitalizing it is essential to **uphold probity** in public life and fulfill citizens' faith in **democratic accountability**.

Q.3) The NHRC is often described as a 'toothless tiger' due to its limited enforcement powers. Critically examine the structural and functional issues hampering its effectiveness and suggest reforms. (150 words, 10 marks)

Introduction

The National Human Rights Commission (NHRC) was established under the **Protection of Human Rights Act, 1993** to safeguard fundamental freedoms. However, former Chairperson **HL Dattu** termed it a **"toothless tiger,"** highlighting its limited capacity to enforce rights effectively despite a broad mandate.

Body

Mandate and Powers of NHRC

1. **Investigating Violations:** Inquires into human rights violations or negligence by public servants, suo motu or on petitions.
2. **Prison Visits:** Visits prisons and detention centres to assess conditions and recommend improvements.
3. **Legal Review:** Reviews constitutional safeguards and suggests better implementation mechanisms.
4. **Spreading Awareness:** Promotes awareness, literacy, and research in the field of human rights.

Structural and Functional Issues

1. **Non-Binding Recommendations:** NHRC's recommendations are advisory in nature, leading to poor compliance and limited deterrence.
2. **Opaque and Delayed Appointments:** GANHRI deferred NHRC's accreditation citing lack of transparency and diversity in appointments.
3. **Limited Investigative Autonomy:** Without an independent investigation wing, it relies on state agencies, compromising impartiality.
4. **Resource and Capacity Deficit:** Shortage of staff and funds restricts outreach, pendency reduction, and proactive interventions.
5. **Restricted Jurisdiction:** Cannot investigate armed forces' actions directly and is bound by a one-year complaint window.
6. **Perceived Political Influence:** Dominated by retired judges and bureaucrats appointed by the government, affecting its independence.

Achievements and Interventions

1. **Notable Actions:** Suo motu action in extra-judicial killings in **Manipur** and police excesses in UP.

2. **Prison Reforms:** Exposed custodial torture and overcrowding; pushed for systemic jail reforms.
3. **COVID-19 Response:** Monitored human rights violations affecting **migrants** and vulnerable groups during the pandemic.

Suggested Reforms

1. **Make Recommendations Binding:** Empower NHRC with enforceable authority in serious cases like custodial deaths, as supported by **GANHRI's 2023 review**.
2. **Give It Investigation Powers:** Permit independent investigation of armed forces and non-state actors, in line with the **Second Administrative Reforms Commission's** recommendations.
3. **Improve Member Selection:** Introduce a transparent and pluralistic appointment process, incorporating civil society voices—echoing **GANHRI's accreditation** concerns.
4. **Ensure Timely Action:** Impose deadlines for completing investigations and make government compliance time-bound to improve efficacy.
5. **Increase Independence:** Allocate an independent budget and conduct regular audits, as recommended by the **ADR report** and in keeping with Paris Principles.

Judicial Observation

In ***DK Basu v. State of West Bengal (1997)***, the Supreme Court affirmed NHRC's critical role in combating custodial violence and safeguarding procedural rights.

Conclusion

To align with the **UN-endorsed Paris Principles**, NHRC must evolve through structural reforms. Strengthening its autonomy and enforcement power is essential to shift it from symbolic oversight to substantive rights protection.

Q.4) The National Commission for Women (NCW) works to protect women's rights, but its impact remains limited. What challenges does it face in performing its role effectively? Would giving it constitutional status make it more powerful and credible? (250 words, 15marks)

Introduction

The National Commission for Women (NCW), a statutory body formed under the **1990 Act**, serves as India's **primary watchdog for women's rights**. Despite growing gender issues, its impact has remained marginal due to structural and institutional limitations.

Body

Mandate and Powers of NCW

1. **Safeguarding Legal Rights:** Examines constitutional and legal safeguards for women.
2. **Complaint Redressal:** Inquires into complaints and takes suo motu notice of violations.
3. **Law and Policy Review:** Recommends changes to discriminatory or ineffective laws.
4. **Awareness and Research:** Promotes legal awareness and conducts studies.

5. **Advisory Role to Government:** Offers policy advice on women's welfare and development.

Achievements and Interventions

1. **Suo Motu Cognizance:** Took independent notice of high-profile crimes (e.g., **Hathras, Unnao**), and more recently, incidents in **Manipur**, highlighting the need for proactive intervention.
2. **Legal Strengthening:** Played a significant role in strengthening the **Domestic Violence Act, 2005** and **Dowry Prohibition Act, 1961**, making them more stringent and effective.
3. **Workplace Safety:** Monitored the enforcement of the **Sexual Harassment at Workplace Act, 2013**, aiding in workplace redressal mechanisms.
4. **Support Services:** Provided legal and psychological counselling to **victims of violence** and harassment, helping survivors seek justice.
5. **Gender Profiling:** Prepared Gender Profiles for all states and Union Territories (except Lakshadweep) to assess the socio-economic status of women.
6. **Awareness Campaigns:** Conducted workshops and campaigns on **child marriage, female foeticide**, and violence against women.

Challenges Faced by NCW

1. **Statutory Limitations:** Lacks binding powers—recommendations are often ignored or diluted in execution.
2. **Political Interference:** Alleged partisanship reduces public trust and institutional independence, as seen in its delayed and tepid response to the **Manipur sexual violence** case.
3. **Limited Resources:** Inadequate budget and human capital undermine outreach, particularly in violence-prone or remote areas.
4. **No Penal Powers:** Cannot penalize violators or enforce compliance; relies on other agencies to act on findings.
5. **Insensitive Handling of Cases:** The **2009 Mangalore pub attack**, where an NCW member blamed the victims, sparked national outrage and raised questions about gender sensitivity within the commission.

Significance of Constitutional Status

1. **Enhanced Legitimacy:** Like **Election Commission or CAG**, constitutional status may raise credibility and authority, enabling the NCW to be taken more seriously.
2. **Financial Independence:** Drawing funds from the **Consolidated Fund of India** could reduce dependence on executive goodwill and ensure autonomy.
3. **Binding Mandate:** Constitutional status may permit enforcement powers, allowing it to act beyond mere recommendations.
4. **Stronger Oversight Role:** Could independently monitor gender policies across states and audit the implementation of central schemes with rigour.

Cautions and Limitations

1. **Power ≠ Performance:** Mere status change won't guarantee effective functioning unless backed by training, empathy, and systemic reforms.

2. **Federal Balance:** Women's issues often intersect with state subjects; over-centralization may hinder state commissions' roles.
3. **Potential Politicization:** Without a transparent appointment process, even a constitutional body risks bias and inaction.

Suggested Reforms

1. **Amend NCW Act:** Expand powers to allow **binding recommendations** in select categories like workplace harassment or custodial violence.
2. **Institutional Autonomy:** Ensure a transparent and **multi-stakeholder appointment** process, including civil society and judiciary inputs.
3. **Strengthen State Commissions:** Provide uniform mandates and resources to state women's commissions for better coordination.
4. **Annual Reporting to Parliament:** Mandate **gender audit reports** with action taken notes for greater accountability.
5. **Multi-agency Coordination:** Formalize ties with police, judiciary, NGOs, and other commissions to avoid overlap and improve efficacy.

Judicial Observation

In **Vishaka v. State of Rajasthan (1997)**, the Supreme Court underscored the role of statutory bodies like NCW in shaping policy to prevent gender-based violence and discrimination.

Conclusion

Articles 39(a) and 42 of the Directive Principles envision **gender justice**. Strengthening the NCW—through constitutional status and reforms—can help realize this vision and empower women institutionally and meaningfully.

Q.5) Tribunalization of justice was introduced to ensure specialized and speedy resolution of disputes. Critically examine the role of tribunals in India, the key challenges they face today, and suggest reforms to enhance their effectiveness. (250 words, 15marks)

Introduction

Tribunals are **quasi-judicial bodies** established to deliver specialized and swift justice. The **42nd Constitutional Amendment** introduced **Articles 323A and 323B**, enabling their creation. However, issues of independence, pendency, and executive dominance raise concerns about their effectiveness and constitutional integrity.

Body

Constitutional Basis

1. **Article 323A:** Empowers Parliament to set up administrative tribunals for public service matters.
2. **Article 323B:** Enables Parliament and state legislatures to create tribunals for subjects like taxation, land reforms, etc.

Objectives Behind Tribunalization

1. **Specialized Adjudication:** Brings domain expertise to resolve technical disputes.
2. **Speedy Justice:** Aims to reduce pendency in traditional courts.
3. **Reduced Court Burden:** Eases workload on judiciary, especially High Courts.
4. **Accessible Redressal:** Ensures regionally dispersed benches for public reach.
5. **Efficient Service Resolution:** CAT and SATs expedite government service-related cases.

Successes and Contributions

1. **Domain Expertise:** Tribunals like **NGT** and **AFT** have addressed complex environmental and service disputes effectively.
2. **Reduced Delay in Specific Areas:** **CAT** and **Income Tax Appellate Tribunal (ITAT)** have significantly helped reduce delays in service and tax matters.
3. **Geographical Access:** Benches across states enhance outreach for litigants.
4. **Faster Redressal in Policy Areas:** Environmental and telecom disputes have seen faster outcomes compared to regular courts.
5. **Judicial Endorsement:** In **Chandra Kumar v. Union of India (1997)**, SC upheld tribunal constitutionality but mandated judicial review via High Courts.

Key Challenges in Tribunal System

1. **Lack of Independence:** Executive-heavy selection panels undermine neutrality; SC flagged this in **2019**.
2. **Pendency and Vacancies:** Armed Forces Tribunal had **18,829 pending cases in 2021** due to delayed appointments.
3. **Short Tenures:** Brief terms and reappointment options increase executive influence.
4. **Inconsistent Procedures:** Wide procedural variations cause legal confusion.
5. **Overlapping Jurisdictions:** Unclear division between courts and tribunals delays justice.
6. **Technical Members' Competence:** Some lack legal background or training.

Recent Developments

- **Supreme Court Ruling (2024):** Tribunals like Armed Forces Tribunal cannot direct the government to frame policy; policymaking lies with the executive.
- **Tribunal Reforms Act, 2021:** Merged tribunals, standardized tenure and qualifications; criticized for executive dominance.

Reform Suggestions

1. **Strengthen Independence:** Ensure judicial dominance in appointment panels – **Law Commission's 272nd Report** and **SC's Madras Bar Association judgment** support this.
2. **Timely Appointments:** Expedite appointments to prevent case backlog – **SK Pattnaik Committee (2017)** had recommended streamlining the process.
3. **Unified Procedure Code:** Harmonize tribunal procedures to eliminate inconsistency and confusion.
4. **Infrastructure and Accessibility:** Expand regional benches and invest in digital platforms for better access.

5. **Create National Tribunals Commission (NTC):** Oversee recruitment, functioning, and administration for greater uniformity.
6. **Improve Technical Competence:** Ensure that technical members have legal understanding or receive necessary training.

Conclusion

Access to justice is part of the **basic structure of the Constitution**, as upheld by the **Supreme Court**. Tribunals, if properly empowered and insulated from executive control, can serve as vital instruments to uphold this principle through speed, expertise, and inclusivity.