

CONSTITUTIONAL BODIES

CONTENTS

1. *ELECTION COMMISSION OF INDIA*
2. *UNION PUBLIC SERVICE COMMISSION*
3. *STATE PUBLIC SERVICE COMMISSION*
4. *FINANCE COMMISSION*
5. *NATIONAL COMMISSION FOR SCs*
6. *NATIONAL COMMISSION FOR STs*
7. *SPECIAL OFFICER FOR LINGUISTIC MINORITIES*
8. *COMPTROLLER AND AUDITOR GENERAL OF INDIA*
9. *ATTORNEY GENERAL OF INDIA*
10. *ADVOCATE GENERAL OF THE STATE*

ELECTION COMMISSION OF INDIA

Election Commission of India is an important body in the World's Largest Democracy

- a permanent Constitutional Body.
- Article 324 of the Constitution establishes the Election Commission of India.
- established on 25th January 1950.
- supervises the conduct of elections to Parliament and Legislature of every State and elections to the offices of President and Vice-President of India.
- consists of Chief Election Commissioner and two Election Commissioners. Previously, there were no Election Commissioners.

Appointment of Election Commissioners

- The President appoints Chief Election Commissioner and Election Commissioners.
- tenure of six years, or up to the age of 65 years, whichever is earlier.
- status, salary and perks of election commissioners are equivalent to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through impeachment by Parliament.
- Other members can be removed by the President in consultation with the Chief Election Commissioner
- The President may appoint Regional Election Commissioners in consultation with the CEC before elections to the Parliament or Assemblies. The regional election commissioners resign after the elections
- The Chief Election Commissioner cannot hold any office of profit after retirement.
- The Chief Election Commissioner cannot be reappointed to the post

Powers of the Election Commission

- The EC enjoys complete autonomy and is insulated from any interference from the Executive
- It also functions as a quasi-judiciary body regarding matters related to elections and electoral disputes
- Its recommendations are binding on the President of India
- However, its decisions are subject to judicial review by High Courts and the Supreme Court acting on electoral petitions
- During the election process, the entire Central and state government machinery (including paramilitary and police forces) is deemed to be on deputation to the Commission
- The Commission takes effective control of government personnel, movable and immovable property for successful conduct of elections

Functions of the Election Commission

- Demarcation of constituencies
- Preparation of electoral rolls
- Issue notification of election dates and schedules
- Establish and enforce code of conduct
- Scrutiny of nomination papers of candidates
- Scrutiny of election expenses
- Allot symbols and accord recognition to political parties
- Render advice to the President and Governors regarding disqualification of MPs and MLAs
- Allot schedules for broadcast and telecast of party campaigns
- Grant exemptions to persons from disqualifications imposed by judicial decisions

UNION PUBLIC SERVICE COMMISSION

- the central recruiting agency in India
- independent constitutional body in the sense that it has been directly created by the Constitution
- Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC

Chairman and Members

- The Chairman and other members of a Public Service Commission are appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:
- As nearly as one-half of the members of every Public Service Commission shall be persons who have held office for at least ten year either under the Government of India or under the Government of a State
- The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.

Removal

- Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court on reference being made to it by the President had held an inquiry and recommended removal.
- removed from office by the president only in the manner and on the grounds mentioned in the Constitution
- enjoy security of tenure
- (a) The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- (b) The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state.
- (c) A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state.
- The chairman or a member or UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

In short, the functions are

Functions of the UPSC are to conduct examinations for appointment to the services of the Union.

- Recruitment to services & posts under the Union through conduct of competitive examinations;
- Recruitment to services & posts under the Central Government by selection through Interviews;
- Advising on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
- Advising the Government on all matter relating to methods of Recruitment to various services and posts;
- Disciplinary cases relating to different civil services: and

- Miscellaneous matters, relating to grant to extra ordinary pensions, reimbursement of legal expenses etc.
- ✓ The Supreme Court has held that if the government fails to consult UPSC in the matters (mentioned above), the aggrieved public servant has no remedy in a court.
- ✓ In other words, the court held that any irregularity in consultation with the UPSC or acting without consultation does not invalidate the decision of the government.
- ✓ Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the UPSC does not confer any right to the post upon the candidate.
- ✓ However, the government is to act fairly and without arbitrariness or malafides.
- ✓ The additional functions relating to the services of the Union can be conferred on UPSC by the Parliament.
- ✓ It can also place the personnel system of any authority, corporate body or public institution within the jurisdiction of the UPSC.
- ✓ Hence the jurisdiction of UPSC can be extended by an act made by the Parliament.
- ✓ The UPSC presents, annually, to the president a report on its performance.
- ✓ The President places this report before both the Houses of Parliament, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.
- ✓ All such cases of non-acceptance must be approved by the Appointments Committee of the Union cabinet.
- ✓ An individual ministry or department has no power to reject the advice of the UPSC.

Limitations

The UPSC is not consulted on the following matters:

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
 - (b) While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
 - (c) With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
 - (d) With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.
- ✓ The president can exclude posts, services and matters from the purview of the UPSC.
 - ✓ The Constitution states that the president, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted.
 - ✓ But all such regulations made by the president shall be laid before each House of Parliament for at least 14 days.
 - ✓ The Parliament can amend or repeal them.
 - ✓ The Constitution visualises the UPSC to be the 'watch-dog of merit system' in India.

STATE PUBLIC SERVICE COMMISSION

- ✓ All are same except, A State Public Service Commission consists of a chairman and other members appointed by the governor of the state.
- ✓ The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor
- ✓ The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years).

JOINT STATE PUBLIC SERVICE COMMISSION

- ✓ The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states.
- ✓ While the UPSC and the SPSC are created directly by the Constitution, a JSPSC can be created by an act of Parliament on the request of the state legislatures concerned.
- ✓ JSPSC is a statutory and not a constitutional body.
- ✓ The two states of Punjab and Haryana had a JSPSC for a short period, after the creation of Haryana out of Punjab in 1966.
- ✓ The chairman and members of a JSPSC are appointed by the president.
- ✓ They hold office for a term of six years or until they attain the age of 62 years, whichever is earlier.
- ✓ They can be suspended or removed by the president.
- ✓ They can also resign from their offices at any time by submitting their resignation letters to the president.
- ✓ The number of members of a JSPSC and their conditions of service are determined by the president.
- ✓ A JSPSC presents its annual performance report to each of the concerned state governors. Each governor places the report before the state legislature.
- ✓ The UPSC can also serve the needs of a state on the request of the state governor and with the approval of the president.
- ✓ As provided by the Government of India Act of 1919, a Central Public Service Commission was set up in 1926 and entrusted with the task of recruiting civil servants.
- ✓ The Government of India Act of 1935 provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

FINANCE COMMISSION

- ✓ Article 280 of the Constitution of India provides for a Finance Commission as a quasi-judicial body.
- ✓ It is constituted by the president of India every fifth year or at such earlier time as he considers necessary

Composition

- ✓ The Finance Commission consists of a chairman and four other members to be appointed by the

INDIAN POLITY-M.LAXMIKANTH

president. They hold office for such period as specified by the president in his order.

- ✓ eligible for reappointment.
- ✓ The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected.
- ✓ Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission.
- ✓ The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:
 1. A judge of high court or one qualified to be appointed as one.
 2. A person who has specialized knowledge of finance and accounts of the government.
 3. A person who has wide experience in financial matters and in administration.
 4. A person who has special knowledge of economics

Functions

The Finance Commission is required to make recommendations to the president of India on the following matters:

1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).
2. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
3. Any other matter referred to it by the president in the interests of sound finance.

Advisory Role

- ✓ the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government.
- ✓ It is up to the Union government to implement its recommendations on granting money to the states.
- ✓ 'It is nowhere laid down in the Constitution that the recommendations of the commission shall be binding upon the Government of India or that it would give rise to a legal right in favour of the beneficiary states to receive the money recommended to be offered to them by the Commission'.

Impact of Planning Commission (Now NITI Ayog)

- ✓ The Constitution of India envisages the Finance commission as the balancing wheel of fiscal federalism in India.
- ✓ However, its role in the Centre–state fiscal relations has been undermined by the emergence of the Planning Commission, a non-constitutional and a non-statutory body.
- ✓ Dr P V Rajamannar, the Chairman of the Fourth Finance commission, highlighted the overlapping of functions and responsibilities between the Finance Commission and the Planning Commission in federal fiscal transfers in the following way:
 - ✓ It is the setting up of the Planning Commission that has in practice restricted the scope and functions of the Finance Commission. I say 'in practice' because there has been no amendment of the

Constitution to confine the functions of the Finance Commission to merely ascertain and cover the revenue gap of each state, on a review of the forecast of revenue and expenditure furnished by the state.

- ✓ The reference in Article 275 to grants-in-aid to the revenues of states is not confined to revenue expenditure only.
- ✓ There is no legal warrant for excluding from the scope of the Finance Commission all capital grants; even the capital requirements of a state may be properly met by grants-in-aid under Article 275, made on the recommendations of the Finance Commission.
- ✓ The legal position, therefore, is that there is nothing in the Constitution to prevent the finance commission from taking into consideration both capital and revenue requirements of the states in formulating a scheme of devolution and in recommending grants under Article 275 of the Constitution.
- ✓ But the setting up of Planning Commission in-avoidably has led to a duplication and overlapping of functions, to avoid which a practice has grown which has resulted in the curtailment of the functions of the finance commission.
- ✓ As the entire plan, with regard to both policy and programme, comes within the purview of the Planning Commission and as the assistance to be given by the Centre for plan projects either by way of grants or loans is practically dependent on the recommendations of the Planning Commission, it is obvious that a body like the Finance Commission cannot operate in the same field.
- ✓ The main functions of the Finance Commission now consist in determining the revenue gap of each state and providing for filling up the gap by a scheme of devolution, partly by a distribution of taxes and duties and partly by grants-in-aid.
- ✓ We, therefore, recommend that in future the Finance Commission may be asked to make recommendations on the principles which should govern the distribution of plan grants to the states. In order that the Finance Commission may be able to make such recommendations, it will be necessary that it should have before it an outline of the Five Year Plan as prepared by the Planning Commission.
- ✓ The appointment of the Finance Commission will, therefore, have to be so timed that it will have before it this outline before it finalizes its recommendations.
- ✓ While the principles governing the distribution of the plan grants will be set out by the Finance Commission, the application of these principles from year to year will be left to the Planning Commission and the Government.

**Till Now -14th Finance Commission appointed so far starting from 1952-1957 to 2015-2020-Y.V.
Reddy Chairman-14th FC**

NATIONAL COMMISSION FOR SCs

- ✓ a constitutional body in the sense that it is directly established by Article 338 of the Constitution.
- ✓ On the other hand, the other national commissions like the National Commission for Women (1992), the National Commission for Minorities (1993), the National Commission for Backward Classes (1993), the National Human Rights Commission (1993) and the National Commission for Protection of Child Rights (2007) are statutory bodies in the sense that they are established

by acts of the Parliament

Evolution of the Commission

- ✓ Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working.
- ✓ He was designated as the Commissioner for SCs and STs and assigned the said duty.
- ✓ In 1978, the Government (through a Resolution) set up a non-statutory multi-member Commission for SCs and STs; the Office of Commissioner for SCs and STs also continued to exist.
- ✓ In 1987, the Government (through another Resolution) modified the functions of the Commission and renamed it as the National Commission for SCs and STs.
- ✓ Later, the 65th Constitutional Amendment Act of 1990 provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs.
- ✓ This constitutional body replaced the Commissioner for SCs and STs as well as the Commission set up under the Resolution of 1987.
- ✓ Again, the 89th Constitutional Amendment Act of 2003 bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled
- ✓ Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).
- ✓ The separate National Commission for SCs came into existence in 2004.
- ✓ It consists of a chairperson, a vice-chairperson and three other members.
- ✓ They are appointed by the President by warrant

Report of the Commission

- ✓ The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary.
- ✓ The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission.
- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.
- ✓ The President also forwards any report of the Commission pertaining to a state government to the state governor.
- ✓ The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission.
- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission

- ✓ The Commission is vested with the power to regulate its own procedure.
- ✓ The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - (a) summoning and enforcing the attendance of any person from any part of India and examining

him on oath;

- (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record from any court or office issuing summons for the examination of witnesses and documents; and
 - (e) any other matter which the President may determine.
- ✓ The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs.
 - ✓ The Commission is also required to discharge similar functions with regard to the other backward classes (OBCs) and the Anglo-Indian Community as it does with respect to the SCs.
 - ✓ In other words, the Commission has to investigate all matters relating to the constitutional and other legal safeguards for the OBCs and the Anglo-Indian Community and report to the President upon their working.

NATIONAL COMMISSION FOR STs

- ✓ Like the National Commission for Schedules Castes (SCs), the National Commission for Scheduled Tribes (STs) is also a constitutional body in the sense that it is directly established by Article 338-A of the Constitution.

Separate Commission for STs

- ✓ The National Commission for SCs and STs came into being consequent upon passing of the 65th Constitutional Amendment Act of 1990.
- ✓ The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws.
- ✓ Geographically and culturally, the STs are different from the SCs and their problems are also different from those of SCs.
- ✓ In 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs.
- ✓ It was felt necessary that the Ministry of Tribal Affairs should co-ordinate all activities relating to the STs as it would not be administratively feasible for the Ministry of Social Justice and Empowerment to perform this role.
- ✓ Hence, in order to safeguard the interests of the STs more effectively, it was proposed to set up a separate National Commission for STs by bifurcating the existing combined National Commission for SCs and STs. This was done by passing the 89th Constitutional Amendment Act of 2003.
- ✓ This Act further amended Article 338 and inserted a new Article 338-A in the Constitution.
- ✓ The separate National Commission for STs came into existence in 2004.
- ✓ It consists of a chairperson, a vice-chairperson and three other members.
- ✓ They are appointed by the President by warrant under his hand and seal.
- ✓ Their conditions of service and tenure of office are also determined by the President

Functions of the Commission

The functions of the Commission are:

- (a) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- (c) To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state;
- (d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the President may specify.

Other Functions of the Commission

In 2005, the President specified the following other functions of the Commission in relation to the protection, welfare and development and advancement of the STs:

- (i) Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas
- (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law
- (iii) Measures to be taken for the development of tribals and to work for more viable livelihood strategies
- (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects
- (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place
- (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation
- (vii) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996
- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment

Report of the Commission

- ✓ The Commission presents an annual report to the President. It can also submit a report as and when it thinks necessary.
- ✓ The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.
- ✓ The President also forwards any report of the Commission pertaining to a state government to the state governor.
- ✓ The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission.
- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission

- ✓ The Commission is vested with the power to regulate its own procedure.
- ✓ The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record from any court or office;
 - (e) issuing summons for the examination of witnesses and documents; and
 - (f) any other matter which the President may determine.
- ✓ The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs.

SPECIAL OFFICER FOR LINGUISTIC MINORITIES

Constitutional Provisions

- ✓ Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities.
- ✓ Later, the States Reorganisation Commission (1953-55) made a recommendation in this regard.
- ✓ Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350-B in Part XVII of the Constitution.
- ✓ This article contains the following provisions:
 1. There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.
 2. It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution³. He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the governments of the states concerned.
- ✓ It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities.

Commissioner for Linguistic Minorities

- ✓ In pursuance of the provision of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957.
- ✓ He is designated as the Commissioner for Linguistic Minorities.
- ✓ The Commissioner has his headquarters at Allahabad (Uttar Pradesh).
- ✓ He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal).
- ✓ Each is headed by an Assistant Commissioner.
- ✓ The Commissioner is assisted at headquarters by Deputy Commissioner and an Assistant Commissioner.
- ✓ He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.
- ✓ At the Central level, the Commissioner falls under the Ministry of Minority Affairs. Hence, he submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

Role

- ✓ The Commissioner takes up all the matters pertaining to the grievances arising out of the non-implementation of the Constitutional and Nationally Agreed Scheme of Safeguards provided to linguistic minorities that come to its notice or are brought to its knowledge by the linguistic minority individuals, groups, associations or organisations at the highest political and administrative levels of the state governments and UT administrations and recommends remedial actions to be taken.
- ✓ To promote and preserve linguistic minority groups, the Ministry of Minority Affairs has requested the State Governments / Union Territories to give wide publicity to the constitutional safeguards provided to linguistic minorities and to take necessary administrative measures.
- ✓ The state governments and UT Administrations were urged to accord priority to the implementation of the scheme of safeguards for linguistic minorities.
- ✓ The Commissioner launched a 10 point programme to lend fresh impetus to Governmental efforts towards the preservation of the language and culture of linguistic minorities.

Vision and Mission

Vision

- ✓ Streamlining and strengthening implementation machinery and mechanism for effective implementation of the Constitutional safeguards for the Linguistic Minorities, thereby ensuring protection of the rights of speakers of the minority languages so as to provide them equal opportunities for inclusive and integrated development.

Mission

- ✓ To ensure that all the states / U.T.s effectively implement the Constitutional safeguards and the nationally agreed scheme of safeguards for the linguistic minorities for providing them equal opportunities for inclusive development.

Functions and Objectives

Functions

1. To investigate all matters related to safeguards provided to the linguistic minorities To submit to the President of India, the reports on the status of implementation of the Constitutional and the nationally agreed safeguards for the linguistic minorities
2. To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, review mechanism, etc

Objectives

1. To provide equal opportunities to the linguistic minorities for inclusive development and national integration
2. To spread awareness amongst the linguistic minorities about the safeguards available to them
3. To ensure effective implementation of the safeguards provided for the linguistic minorities in the Constitution and other safeguards, which are agreed to by the states / U.T.s
4. To handle the representations for redress of grievances related to the safeguards for linguistic minorities

COMPTROLLER AND AUDITOR GENERAL OF INDIA

- ✓ 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 Department.
- ✓ 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.
- ✓ He is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.

Appointment and Term

- ✓ The CAG is appointed by the president of India by a warrant under his hand and seal.
- ✓ The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation:
 1. to bear true faith and allegiance to the Constitution of India;
 2. to uphold the sovereignty and integrity of India;
 3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will; and
 4. to uphold the Constitution and the laws.
- ✓ He holds office for a period of six years or upto the age of 65 years, whichever is earlier.
- ✓ He can resign any time from his office by addressing the resignation letter to the president.
- ✓ He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court.
- ✓ In other words, he can be removed by the president on the basis of a resolution passed to that

effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or incapacity.

Independence

The Constitution has made the following provisions to safeguard and ensure the independence of CAG:

1. He is provided with the security of tenure. He can be removed by the president only in accordance with the procedure mentioned in the Constitution. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
2. He is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
3. His salary and other service conditions are determined by the Parliament. His salary is equal to that of a judge of the Supreme Court.
4. Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
5. The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
6. The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament.
7. Further, no minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

Duties and Powers

- ✓ The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the states and of any other authority or body.
- ✓ Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) act, 1971.
- ✓ This Act was amended in 1976 to separate accounts from audit in the Central government.

The duties and functions of the CAG as laid down by the Parliament and the Constitution are:

1. audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
2. audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.
4. audits the receipts and expenditure of the Centre and each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
5. audits the receipts and expenditure of the following:

- (a) All bodies and authorities substantially financed from the Central or state revenues;
 - (b) Government companies; and Other corporations and bodies, when so required by related laws.
6. audits all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.
 7. audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
 8. advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).
 9. submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).
 10. submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).
 11. ascertains and certifies the net proceeds of any tax or duty (Article 279). His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
 12. acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.
 13. compiles and maintains the accounts of state governments. In 1976, he was relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalisation of accounts.
 - ✓ The CAG submits three audit reports to the President—audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings.
 - ✓ The President lays these reports before both the Houses of Parliament.
 - ✓ After this, the Public Accounts Committee examines them and reports its findings to the Parliament.
- ✓ The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

Role

- ✓ 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 is an agent of the Parliament and conducts audit of expenditure on behalf of the Parliament.
- ✓ Therefore, he is responsible only to the Parliament.
- ✓ The CAG has more freedom with regard to audit of expenditure than with regard to audit of receipts, stores and stock. "Whereas in relation to expenditure he decides the scope of audit and frames his own audit codes and manuals, he has to proceed with the approval of the executive government in relation to rules for the conduct of the other audits."

INDIAN POLITY-M.LAXMIKANTH

- ✓ 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.
- ✓ However, unlike the legal and regulatory audit, which is obligatory on the part of the CAG, the propriety audit is discretionary.
- ✓ The secret service expenditure is a limitation on the auditing role of the CAG. In this regard, the CAG cannot call for particulars of expenditure incurred by the executive agencies, but has to accept a certificate from the competent administrative authority that the expenditure has been so incurred under his authority.
- ✓ The Constitution of India visualises the CAG to be Comptroller as well as Auditor General. However, in practice, the CAG is fulfilling the role of an Auditor-General only and not that of a Comptroller.
- ✓ In other words, ‘the CAG has no control over the issue of money from the consolidated fund and many departments are authorised to draw money by issuing cheques without specific authority from the CAG, who is concerned only at the audit stage when the expenditure has already taken place’.
- ✓ In this respect, the CAG of India differs totally from the CAG of Britain who has powers of both Comptroller as well as Auditor General.
- ✓ In other words, in Britain, the executive can draw money from the public exchequer only with the approval of the CAG.

CAG and Corporations

- ✓ The role of CAG in the auditing of public corporations is limited. Broadly speaking, his relationship with the public corporations falls into the following three categories:
 - (i) Some corporations are audited totally and directly by the CAG, for example, Damodar Valley Corporation, Oil and Natural Gas Commission, Air India, Indian Airlines Corporation, and others.
 - (ii) Some other corporations are audited by private professional auditors who are appointed by the Central Government in consultation with the CAG. If necessary, the CAG can conduct supplementary audit. The examples are, Central Warehousing Corporation, Industrial Finance Corporation, and others.
 - (iii) Some other corporations are totally subjected to private audit. In other words, their audit is done exclusively by private professional auditors and the CAG does not come into the picture at all. They submit their annual reports and accounts directly to the Parliament. Examples of such corporations are Life Insurance Corporation of India, Reserve Bank of India, State Bank of India, Food Corporation of India, and others.
- ✓ The role of the CAG in the auditing of Government companies is also limited.
- ✓ They are audited by private auditors who are appointed by the Government on the advise of the CAG.
- ✓ The CAG can also undertake supplementary audit or test audit of such companies.

INDIAN POLITY-M.LAXMIKANTH

- ✓ In 1968, an Audit Board was established as a part of the office of CAG to associate outside specialists and experts to handle the technical aspects of audit of specialised enterprises like engineering, iron and steel, chemicals and so on.
- ✓ This board was established on the recommendations of the Administrative Reforms Commission of India.
- ✓ It consists of a Chairman and two members appointed by the CAG.

ATTORNEY GENERAL OF INDIA

- ✓ The Constitution (Article 76) has provided for the office of the Attorney General for India.
- ✓ the highest law officer in the country.

Appointment and Term

- ✓ appointed by the president.
- ✓ must be a person who is qualified to be appointed a judge of the Supreme Court.
- ✓ In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.
- ✓ The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal.
- ✓ He holds office during the pleasure of the president.
- ✓ This means that he may be removed by the president at any time.
- ✓ He may also quit his office by submitting his resignation to the president.
- ✓ Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- ✓ The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

Duties and Functions

As the chief law officer of the Government of India, the duties of the AG include the following:

1. To give advice to the Government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
 1. To discharge the functions conferred on him by the Constitution or any other law.
 2. The president has assigned the following duties to the AG: To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
3. To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
4. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

Rights and Limitations

- ✓ In the performance of his official duties, the Attorney General has the right of audience in all

INDIAN POLITY-M.LAXMIKANTH

courts in the territory of India.

- ✓ Further, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote.
- ✓ He enjoys all the privileges and immunities that are available to a member of Parliament.

Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:

1. He should not advise or hold a brief against the Government of India.
 2. He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
 3. He should not defend accused persons in criminal prosecutions without the permission of the Government of India.
 4. He should not accept appointment as a director in any company or corporation without the permission of the Government of India.
- ✓ However, the Attorney General is not a full-time counsel for the Government.
 - ✓ He does not fall in the category of government servants. Further, he is not debarred from private legal practice.

SOLICITOR GENERAL OF INDIA

- ✓ In addition to the AG, there are other law officers of the Government of India.
- ✓ They are the solicitor general of India and additional solicitor general of India.
- ✓ They assist the AG in the fulfilment of his official responsibilities.
- ✓ It should be noted here that only the office of the AG is created by the Constitution.
- ✓ In other words, Article 76 does not mention about the solicitor general and additional solicitor general.
- ✓ The AG is not a member of the Central cabinet.
- ✓ There is a separate law minister in the Central cabinet to look after legal matters at the government level.

ADVOCATE GENERAL OF THE STATE

- ✓ The Constitution (Article 165) has provided for the office of the advocate general for the states.
- ✓ the highest law officer in the state. Thus he corresponds to the Attorney General of India.

Appointment and Term

- ✓ The advocate general is appointed by the governor.
- ✓ must be a person who is qualified to be appointed a judge of a high court.
- ✓ must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.
- ✓ The term of office of the advocate general is not fixed by the Constitution.
- ✓ Further, the Constitution does not contain the procedure and grounds for his removal.
- ✓ holds office during the pleasure of the governor.
- ✓ This means that he may be removed by the governor at any time. He may also quit his office by

submitting his resignation to the governor.

- ✓ Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- ✓ The remuneration of the advocate general is not fixed by the Constitution.
- ✓ He receives such remuneration as the governor may determine.

Duties and Functions

As the chief law officer of the government in the state, the duties of the advocate general include the following:

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
2. To perform such other duties of a legal character that are assigned to him by the governor.
3. To discharge the functions conferred on him by the Constitution or any other law.
 - ✓ entitled to appear before any court of law within the state.
 - ✓ he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote.
 - ✓ enjoys all the privileges and immunities that are available to a member of the state legislature.