



## A Reminder About Unfettered Constitutional Posts

This editorial is based on [“A reminder about unfettered constitutional posts”](#) which was published in The Hindu on 15/04/2023. It talks about why there should not be any dilution of the essential attribute of the independence of India’s constitutional bodies.

**For Prelims:** [Constitutional bodies](#), [President](#), [Governor](#), [CAG](#), [Election Commission](#), [National Commissions for Scheduled Castes](#), [Scheduled Tribes](#), [Finance Commission](#), [The Attorney-General for India](#), [Judges of the Supreme Court and the High Court](#)

**For Mains:** The Need for Independent Institutions, measures to strengthen independent constitutional bodies.

India's Constitution-makers recognized the need for independent institutions to regulate sectors of national importance without executive interference.

As a result, various constitutional authorities, such as the [Public Service Commission](#), the [Comptroller and Auditor General of India \(CAG\)](#), the [Election Commission of India \(ECI\)](#), the [Finance Commission](#), and the [National Commissions for Scheduled Castes](#), [Scheduled Tribes](#), and [Backward Classes](#), were created.

### How Appointment of Constitutional Authorities Done?

- The Constitution provides for the manner in which individuals heading these institutions are to be appointed.
  - The appointment of various constitutional authorities is done by the President of India.
    - **The Prime Minister** (Article 75),
    - [The Attorney-General for India](#) (Article 76),
    - The Chairman and other members of the **Finance Commission** (Article 280),
    - [The Chairman and other members of the Public Service Commission \(Article 316\)](#), and
    - [A Special Officer for Linguistic Minorities \(Article 350B\)](#)
  - However, the appointments done by the President using the words ‘shall be appointed by the President by **warrant under his hand and seal**’.
    - [Judges of the Supreme Court and the High Court \(Articles 124 and 217\)](#)
    - [The CAG \(Article 148\)](#)
    - [The Governor \(Article 155\)](#)
    - The same words have been used in **Articles 338, 338A, and 338B** authorising the President for appointing Chairman and members of the **National Commissions for SCs, STs, and BCs**.
- The **Constitution-makers crafted** the appointment process for these institutions **with specific**

**emphasis on independence.**

- The President appoints these individuals "**by warrant under his hand and seal.**" This wording **gives** the President **unrestricted and unfettered choice**, ensuring independence from the legislature.

## Why Unrestricted and Unfettered Choice Given?

- The **Supreme Court has held** (N. Gopalaswami and Ors vs The Union of India) that the **President acts on the aid and advice** of the **Council of Ministers**, with the **Prime Minister as the head** in all matters which vest in the executive.
- **However**, in cases where the appointment of a particular constitutional authority is to be kept independent of the executive, **the question arises whether such an interpretation** would be **in line with the thinking** which prevailed during the relevant **Constituent Assembly debates**.
  - **In the Constituent Assembly debates**, it was **recognised that individuals** heading constitutional bodies **must be independent of the legislature** or the **executive**.
  - The **Assembly discussed** that the **choice of the President should be unrestricted and unfettered to ensure the independence** of these individuals.
  - The **amendments made** to the Constitution **reflect this thinking**.

## What are the Recent Supreme Court Comments?

- Two recent comments of the Supreme Court of India have a direct bearing on the independence of various constitutional authorities in India.
  - **Sena versus Sena:**
    - In the "**Sena versus Sena**" case, the **Court expressed its "serious concern"** over the active **role being played by Governors** in State politics.
    - The Court observed that **Governors becoming part of political processes is disconcerting**.
  - **Election Commission of India case:**
    - Earlier, the Court divested the executive of its sole discretion in appointing the Chief Election Commissioner and Election Commissioners by forming a committee to suggest suitable names to man these constitutional posts.

## Why is the Need for Independent Institutions?

- **For Checks and Balances:**
  - **In a democracy**, it is **essential to have** a system of **checks and balances** to prevent the arbitrary use of power by the elected government of the day.
- **To Regulate Various Sectors:**
  - India's **Constitution provides** for various constitutional authorities **to regulate sectors of national importance** without executive interference.
- **Protecting the Rule of Law:**
  - **Without independent institutions**, there is a risk that those in power may abuse their authority, leading to a breakdown in the rule of law and undermining the principles of democracy.
- **Promoting Good Governance:**
  - Independent institutions are essential for promoting **good governance** by ensuring that government actions are fair, transparent, and in the public interest.
  - This helps to build trust in government and ensures that citizens are able to participate in the democratic process.
- **Protecting Human Rights:**
  - Independent institutions are often tasked with protecting human rights and ensuring that the rights of all citizens are respected.
  - This includes protecting vulnerable groups such as minorities, women, and children, and ensuring that their voices are heard in the decision-making process.

- These institutions **require complete independence to enable them to function without fear or favour** and in the larger interests of the nation.

## What Should be the Way Forward?

- **Clear and Transparent Appointment:**
  - Establish **clear and transparent** criteria for the appointment of individuals to these positions, including requirements for **expertise, experience, and integrity**.
    - Developing clear guidelines, involving experts in the selection process, establishing a selection committee can be some measures.
- **Accountability of Constitutional Authorities:**
  - Establish clear lines of accountability for individuals holding these positions, including **regular reporting requirements** and **mechanisms for investigating any allegations of misconduct or impropriety**.
    - Developing mechanisms for investigating misconduct, Enforcement of strict codes of conduct etc. can be helpful in ensuring accountability.
- **Training and Capacity building:**
  - Support the **development of training and capacity-building programs** for individuals appointed to these positions, **to ensure that they have the skills and knowledge** necessary to carry out their functions effectively.
    - Through lectures, case studies, simulations, and hands-on training.
- **Evaluation of Performance:**
  - Monitor and **evaluate** the **performance of individuals** holding these positions **on a regular basis**, to ensure that they are fulfilling their responsibilities and upholding the standards of independence and integrity.
    - Establish performance indicators, Feedback mechanisms, Publish performance reports.

### Drishti Mains Question

Unfettered constitutional posts play a critical role in ensuring the independence and integrity of important government institutions. Discuss the significance of these positions in promoting democracy and good governance.

## UPSC Civil Services Examination Previous Year's Question (PYQs)

### Prelims

#### Q. Consider the following statements: (2017)

1. The Election Commission of India is a five-member body.
2. Union Ministry of Home Affairs decides the election schedule for the conduct of both general elections and bye-elections.
3. Election Commission resolves the disputes relating to splits/mergers of recognised political parties.

#### Which of the statements given above is/are correct?

- (a) 1 and 2 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 3 only

**Ans: (d)**

**Exp:**

- According to the Article 324 of the Indian Constitution, the Election Commission of India is autonomous constitutional authority responsible for administering Union and State election processes in India.
- The body administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies in India, and the offices of the President and Vice President in the country. Originally the Commission had only one Chief Election Commissioner.
- It currently consists of a Chief Election Commissioner and two Election Commissioners. **Hence, statement 1 is not correct.**
- The Commission is vested with quasi-judicial power to settle disputes relating to splits/mergers of recognised political parties. **Hence, statement 3 is correct.**
- It decides the election schedules for the conduct of elections, whether general elections or bye-elections.
- **Hence, statement 2 is not correct.**
- **Therefore, option (d) is the correct answer**

## **Mains**

**Q.** “The Comptroller and Auditor General (CAG) has a very vital role to play.” Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise. **(2018)**

**Q.** Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine.

**Q.** To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful? **(2017)**

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