

3. A reminder about unfettered constitutional posts

Prelims Syllabus: Governance

Mains Syllabus: GS-II Polity; Powers, functions and responsibilities of various Constitutional Bodies



Why in News?

- The comments of the Supreme Court on the concept of independence of various constitutional bodies of India.
- The Court in the 'Sena versus Sena' case expressed concerns about the increasing role of Governors in the political process.
- Similarly, in an earlier case, the court divested the executive of its sole discretion in appointing the Chief Election Commissioner (CEC) and Election Commissioners (ECs).

Need for independent institutions:

- The Constituent Assembly recognized the need for independent institutions like the Election Commission of India (ECI), the Comptroller and Auditor General (CAG), the Public Service Commission (PSC), etc to regulate sectors of national importance.
- Democracy requires a system of checks and balances to restrict the arbitrary use of power by the government.
- The constitutional bodies should function without fear or favour and in the larger interests of the nation.

Details about Different Types of Appointments:

- **The Constitution uses the phrase ‘shall be appointed by the President’ in the appointment of:**
 - ✓ Prime Minister (Article 75), Attorney-General for India (Article 76)
 - ✓ Chairman and Members of the Finance Commission (Article 280)
 - ✓ Chairman and Members of the Public Service Commission (Article 316)
 - ✓ Special Officer for Linguistic Minorities (Article 350B)
- **It uses the phrase ‘subject to any law made in that behalf by Parliament’ for the appointment of:**
 - ✓ Chief Election Commissioner (CEC),
 - ✓ Election Commissioner (EC)
- **The words ‘shall be appointed by the President by warrant under his hand and seal’ is used for the purpose of appointing:**
 - ✓ Supreme Court and the High Court Judge (Articles 124 and 217)
 - ✓ CAG (Article 148)
 - ✓ Governor (Article 155), Chairman and members of the National Commissions for SCs, STs, and BCs (Article 338, 338A, and 338B).
- In N. Gopalaswami and Ors vs The Union of India case, SC held that the President should act on the aid and advice of the Council of Ministers, with the Prime Minister as the head.
- It should be noted that various amendments were moved in the Constituent Assembly to make the position of CAG stronger so that he is not influenced by anyone.
- Similarly, amendments were also made in the draft Constitution for the appointment of the Governor, and the clause ‘The Governor of a State shall be appointed by the President by warrant under his hand and seal’ was added.
- Notably, ‘by warrant under his hand and seal’ assigns special status to CAG, Judges, and Governors to distinguish them from other constitutional positions.

Way Ahead:

- Constitutional authorities should be kept free from political and executive pressure.
- A well-defined procedure and criteria should be established for the appointment of CAG.
- A Committee comprising the Speaker of the Lok Sabha, the CJI, and the Chairman of the Public Accounts Committee can be formed in this regard.
- Shortlisted names can then be sent to the President for final selection.