

Constitution

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Historical Underpinnings

Evolution

Features

Amendments

Significant Provisions

Basic Structure

Comparison With Other Countries

Presidential System vs Parliamentary System

1. We opted for parliamentary system because of a very important reason.
 1. The leaders of the INM were in a hurry to ensure quick social transformation and rapid economic development of the whole country and society which had suffered for long at the hand of the British.
 2. And they thought that the cabinet system of government which is responsible to the elected legislature and holds a majority there. So when we want quick legislations passed like say land reforms, the executive can get the bills quickly passed as they possess a majority in the legislature.
 3. America didn't want a strong executive, they wanted checks and balance. They had seen the tyranny of a parliamentary form of government and so wanted to secure individual liberty. So they wanted a weak government.
2. The demand for the change is based on the wrong reason. The problem is some of the parliamentary practices, not the parliamentary system itself. It is not the parliamentary system which is weak, our parliamentary system has become weak.
 1. Rules are not followed. We have borrowed certain rules only in letter, not in spirit. Inconvenient conventions and rules have simply not been borrowed.
 2. Titular head: This is a necessary requirement of the parliamentary system. Look at governors in India.

Due Process of Law (Art 21)

1. Due process includes equality, justice, good conscience.
2. We nearly adopted it but then ditched it. In US, in their enthusiasm for preserving individual liberty from majority tyranny, this has virtually given judiciary supremacy. The judiciary has over the time interpreted it to accord themselves primacy in determining the fate of any and every law. So judiciary has become very powerful there. "The US constitution is what the supreme court says what it is." Thus it has surrendered the system to a minority tyranny of judges.

Q. Distortion to British Parliamentary practices has led to the poor state of Indian politics today?

Q. Is a multi party system incompatible with the parliamentary form of government?

1. India follows first past the post system. So a person getting even a minority votes can win and then he will represent the entire constituency. This problem is definitely aggravated in

a multi party system - the more the number of parties, the less the number of votes the winner is likely to need to win. Thus even the most crucial decisions in India have been taken by a minority. No government in India has been elected by a majority of popular vote. But this can be overcome by a 2 stage voting.

Q. Utility of Rajya Sabha in comparison to Britain

1. Britain has higher number of nominated members from specialized fields.

Parliament and State Legislatures

Structure

Functioning

Conduct of Business

Powers and Privileges

Constitutional Bodies

CAG

Independence

1. Though he is appointed by president, he can be removed only by parliament (like judges) on grounds of - (a) proven misbehavior, and (b) incapacity.
2. His salary is charged on CFI and is statutory (can't be voted by parliament adversely during his tenure).
3. He can't hold any public office post his retirement (but can join a political party). He submits resignation to president.

Duties

1. Apart from auditing government accounts of states and center, he also audits accounts for any institution substantially funded by public funds. Thus it includes PSUs.
2. His job is to check if all expenditures are as per laid down by the law. This means its his duty to check for corruption in expenditure of public funds. Similarly all taxes have been collected as per law.

CAG's Jurisdiction

1. Art 149 of © states that CAG "shall perform such duties and exercise such powers in relation to the accounts ... as may be prescribed under law."
2. Parliament made a law CAG (Duties, Powers & Control) Act wherein it stated that CAG's duty is to 'audit' all expenditure from the CFI and states.
3. But the word 'audit' has not been defined anywhere. When audit is viewed as a partner in good governance, allegations of trespass into the executive territory lose their relevance. Another way is to look at international experience and conventions.
4. CAG has a responsibility to evaluate whether the collection and allocation of revenue was optimized or if the 'rules and procedures' fail to secure an effective check on the collection and allocation of the revenue. To this extent it can subject the policy to scrutiny

but can't make recommendations on its efficacy or implementation. So it can merely highlight the collection and allocation inefficiencies in its report to the parliament (which is exactly what CAG has done i.e. the delays in implementing a competitive bidding has led to a potential loss).

5. CAG can't question policy matters. But if in the making of the policy its financial implications were not considered at all or faulty assumptions were used, there is no record of a considered policy decision, or if the policy benefits some groups or individuals to the exclusion of public, or the implementation of the policy defeats the policy itself then CAG has a mandate to report it under the performance audit.

Shortcoming in CAG Appointment Process

1. The present selection process for the CAG is entirely internal to the Government machinery; no one outside has any knowledge of what criteria are applied, how names are shortlisted and how a final selection is made.
2. In most of the other countries there is no scope for the head of the Supreme Audit Institution to be chosen at the discretion of the Government.
3. Another related issue is that of the appointment of IAS officers as the CAG. This has had a demoralising effect on the IAAS cadre.
4. ICAI Code of Ethics states that an auditor's independence has two aspects- independence in fact and independence in appearance. The appointment of former secretaries as CAG may compromise the independence of this institution because of apparent/perceived conflict of interest.

Issues With CAG

1. Issues with the audit process

1. CAG's reports are not timely because there is substantial time gap between occurrence of an irregularity and its audit. It reviews programmes after these have run for a few years.
2. Audit findings are based exclusively on documents and files. The situation on the ground is quite different from what is reflected in the papers. There is practically no verification to validate the audit findings.
3. CAG reports tend to be unduly negative and their focus is on irregularities and faultfinding. They do not recognize the practical constraints under which the departments function.
4. They do not give due credit for good performance.
5. They do not discriminate between errors arising out of bonafide/malafide intentions. Audit as such could act as a dampener against new initiatives and risk taking.
6. They do not delve into the root causes of the problems and how to address them.
7. Reporting each year a large number of problems which are already known does not add value. Audit must therefore identify systemic problems.
8. The relationship between the auditor and auditee is not always harmonious. Generally interaction is confined mainly to the lower levels. Audit is viewed as a policing. There is poor response to external audit which seriously reduces the effectiveness of audit.
9. There is inadequate coordination between external audit and internal audit.

2. Issues with post audit process

1. There is hardly any accountability for not taking timely action on audit observations. Thousands of reports containing a huge number of observations are lying unattended in the departments. Audit Committees comprising representatives of audit and government agencies have been set up to review the departmental action taken on inspection reports but their functioning is not satisfactory.
2. Detailed examination of paras included in the Audit Reports by PAC is barely about 15-20 against the total number of 1000 - 1500 paras in the CAG reports.
3. The Ministries take only those audit paras seriously which come up for discussions in the PAC.
4. PAC and CoPU must form sub-committees and consider more paras this way. Other paras should be assigned to the respective Departmental Standing Committees.
5. Ministries are supposed to submit Action Taken Notes on the paras not discussed. But such Action taken Notes are largely formal rather than substantive.
6. In the State Legislatures, there is a huge pendency of Audit Paras to be examined by State PACs. Some of the pending paras are 10 to 20 years old.

National Backward Classes Commission

1. It has been given the mandate of examining requests for inclusion of any class of citizens as a backward class and hear complaints of over-inclusion or under-inclusion in such lists and tender advice to the Government.

National Commission for Scheduled Castes

Mandate

1. To monitor the safeguards provided for the SCs and to evaluate the working of such safeguards.
2. To inquire into specific complaints.
3. To advise on the planning process for SC development and to evaluate the progress of their development.

Powers

1. While investigating into matters, it has the powers of a civil court trying a suit. Such powers include:
 1. Summoning and enforcing the attendance and examine him under oath.
 2. Requiring the discovery and production of any documents.
 3. Receiving evidence on affidavits.
2. The Commission has offices in 12 States/UTs, which enables it to have a wide perspective.
3. The Commission is organized around four wings which look after administration, safeguards, atrocities and rights violations, and economic and social development respectively.

National Commission for Scheduled Tribes

1. The NCST functions through units which look after administration, coordination, socio-economic development, safeguards and atrocities. It has six regional offices which provide it with a regional perspective.

Election Commission

Powers

1. Its powers are plenary i.e. uncontrolled by the executive. But EC's powers apply only where © and laws are silent. EC can't override any law already made.
2. Its actions are subject to judicial review.

Composition

1. The number of ECs may be varied by president from time to time as per the law made by parliament. Currently the limit is CEC + ≤ 4 ECs.
2. CEC and ECs are appointed by the president and while appointing them the president just consults the CoM.
3. CEC and ECs are appointed for ≤ 6 years or 65 years of age. ECs if promoted to CEC can hold office only till their combined tenure as EC + CEC is ≤ 6 years. EC can't be reappointed as EC and CEC can't be reappointed as CEC.
4. ECs can be removed by president only on the recommendation of CEC and the president is not bound by such a recommendation. CEC cannot be removed except in a manner like SC judge.

Reforms suggested by EC

1. While appointing CEC and ECs, the president should consult a high level panel comprising of PM + law minister + leader of opposition in HoP. Such recommendation shall be binding.
2. ECs should be removed only in a manner like SC judge. Upon retirement the CEC and ECs shouldn't be allowed to hold any office of profit under the state (currently they are allowed to) neither be allowed to join any political party for ≥ 10 years from retirement.
3. While appointing CEC seniority principle should be followed.

Regional Election Commissioner

1. He is appointed by the president on recommendation of EC on the eve of an election to HoP or Legass or Legco to assist the EC in discharging its duties. So far none have been appointed and his functions have largely been taken care of by chief electoral officer who is a permanent officer.

Representation of People's Act

Salient Features

Issues in Political Reforms

BILL TO ALLOW PEOPLE IN JAIL TO CONTEST POLLS.

- Representation of the People (Amendment and Validation) Bill, 2013 provides for a change in the Act of 1951. The amendment to sub-clause 5 of section 62 of the RPA, if passed by Parliament, shall come into

Funding Reforms Attempts

1. Dinesh Goswami Committee in 1990 and later Indrajit Gupta Committee recommended limited support in kind while simultaneously recommending a ban on company donations.
2. Subsequent developments include parties being forced to file tax returns.
3. SC decision in 1996 clubbed expenditure by third party(s) as well as by the political party under the expenditure ceiling limits prescribed under the Representation of People Act.
4. Election and Other Related Laws (Amendment) Act
 1. Full tax exemption to individuals and corporates on all contributions to political parties.
 2. Repeal of Explanation I under Section 77 of the RPA. Expenditure by third parties and political parties now comes under ceiling limits, and only travel expenditure of leaders of parties is exempt.
 3. Disclosure of party finances and contributions over Rs. 20,000.
 4. Equitable sharing of time by the recognized political parties on the cable television network and other electronic media.
5. The 2002 amendment to RPA stipulates that every elected candidate shall, within ninety days file the details of his/her assets/liabilities.

Tightening of Anti-Defection law

1. The Election Commission has recommended that the question of disqualification of members on the ground of defection should also be decided by the President/Governor on the advice of the Election Commission. Such an amendment to the law seems to be necessary in the light of the long delays seen in some recent cases of obvious defection.

Disqualification

1. In cases of persons facing grave criminal / corruption charges framed by a trial court after a preliminary enquiry, disallowing them to represent the people in legislatures until they are cleared of charges seems to be a fair and prudent course. As a precaution against motivated cases, it may be provided that only cases filed six months before an election would lead to such disqualification.

False Declarations

1. The Election Commission has recommended that all false declarations before the Election Commission should be made an electoral offence. Government is opposing it in court!

Publication of Accounts by Political Parties:

1. Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. The Election Commission has reiterated this proposal. This needs to be acted upon early. The audited accounts should be available for information of the public.

Expediting Disposal of Election Petitions

1. Election petitions in India are at present to be filed in the High Court. Under the Representation of the People Act, such petitions should be disposed of within a period of 6 months. In actual practice however, such petitions remain pending for years.
2. Special election benches should be constituted in the High Courts earmarked exclusively for the disposal of election petitions.
3. Special Election Tribunals should be constituted. Each Tribunal should comprise a High Court Judge and a senior civil servant. Its mandate should be to ensure that all election petitions are decided within a period of six months.

Grounds of Disqualification for Membership

1. Article 102 provides for disqualification for membership of either House of Parliament under certain specific circumstances, which are as follows:
 1. If he holds any office of profit.
 2. If he is of unsound mind declared by a competent court.
 3. If he is an undischarged insolvent.
 4. If he is not a citizen of India.
 5. If he is so disqualified by or under any law made by Parliament. So far, no such law has been enacted.