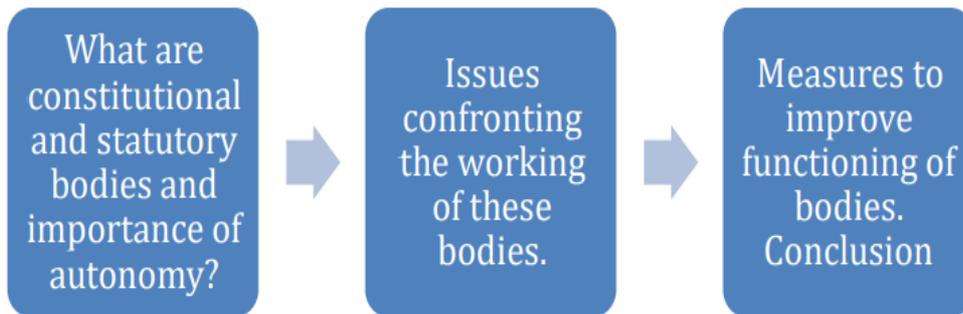


Constitutional and Statutory bodies in India need to maintain their independence to adequately perform their functions. Elaborate on issues surrounding their functioning and measures to improve the same.



Constitutional bodies are important bodies in India that derive their powers and authorities from the Indian Constitution like the Election Commission of India, Comptroller and Auditor-General of India (CAG) etc. while statutory bodies like NHRC, CVC, CIC derive their powers and authority from statutes or acts of Parliament. Institutional Independence has an inverse relationship with external influences over the authorities. Institutional independence, argues Pradeep Mehta is necessary for the healthy functioning of political and economic democracy.

Some of the primary issues surrounding the smooth functioning of constitutional and statutory bodies are highlighted by Devesh Kapur and P.B. Mehta:

- **Interference and lack of autonomy:** One of the core issues surrounding the working of constitutional and statutory bodies has been undue interference by the political executive. The EC has come under the scanner for increasing incidents of breach of the Model Code of Conduct during the 2019 general elections and 2020 state elections. Similarly, the issues regarding lack of oversight of NCSC and NHRC on issues of lynchings of Dalits and Minorities.
- **Personnel Failure:** The most basic reality of India's public institutions is the acute talent crunch they face for example CAG faces a paucity of competent government auditors. Similarly Central Vigilance Commission lacks a dedicated investigative agency, instead relying on the already overburdened Chief Vigilance Officers (CVOs) and the highly politicized CBI. Lack of staff remains one of the main reasons for underperformance of information commissioners in CIC.

- **Lack of prudent leadership:** Prudent leadership plays a huge role in institutional success for example the role played by T.N. Seshan in 1990's in improving credibility and performance of ECI. Increasing politicised appointments to constitutional bodies like ECI and CAG also impact the performance of these institutions.
- **Legal ambiguities:** While constitutional and statutory backing is important, there are a number of legal ambiguities that hinder the functioning of these bodies. For example, CAG presently does not have the full authority to audit the PRIs and ULBs. In most states, the examiners functioning under the Finance Department audit the accounts of local bodies. To make the working of CAG smooth it should be given full authority to audit the PRIs and ULBs. Similarly, the working of Lokpal and Lokyuktas is marred by against whom they can pursue complains.
- **Coordination Dilemmas: Institutions in India are marred by both horizontal** coordination between government agencies and vertical coordination between levels (or tiers) of governance. Since the emergence of the Central Vigilance Commission, the role of UPSC in disciplinary matters has been affected. Both are consulted by the government while taking disciplinary action against a civil servant. Further, in case of UPSC the increase in work has been manifold. Thus, there is a need for decentralisation to effectively align with this increase in workload.
- **Lack of Accountability:** Most constitutional and statutory bodies in India work in technocratic bubbles that even measures like RTI have not been able of burst. Further, government's responsibility in adhering to reports and recommendations of bodies like NCSC, NCST, NCBC remains limited. Similarly, is no compulsion on the government of the day to accept the outcomes of the meetings of the Inter State Council.

A number of measures to improve working of constitutional and statutory bodies have been suggested by various government reports as well as scholars. The key themes for improved functioning of these institutions include:

- **Discretion to Accountability:** There is an urgent need to improve and strengthen the working of RTI and citizen charters to improve the working of both constitutional and statutory bodies. Similarly, NCRWC suggested that operations of the office of the CAG itself should be subject to scrutiny by an independent body. To fulfil the canons of accountability, a system of external audit of C&AG's organization should be adopted for both the Union and the State level organizations.

- **Greater functional and financial autonomy:** Constitutional bodies like ECI need more financial autonomy to perform their functions effectively and without political interference.
- **De-politicisation of recruitments and more personnel:** Regular appointments for staff in bodies like CIC, CVC, CAG is a must for their effective functioning. Further, appointments to these bodies should be de-politicised and more diverse for example NCRWC recommended Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha.
- Similar procedure should be adopted in the case of appointment of State Election Commissioners.
- **Increasing teeth of bodies:** Both constitutional and statutory bodies like ECT, NCSC, NCST need to be given greater powers to ensure their effectiveness and autonomy. There is a need to maintain functional independence of constitutional bodies to ensure effectiveness and good governance in India. The same are the foundations of creating social and economic democracy that carries the mantle of India's political democracy.