

25.02.21

#### 4. CAG Audit report as a basis for granting relief & initiating actions:-

The Constitutional mandate of Indian Democracy does not clarify whether the report of CAG could be taken by judiciary as a reference to initiate action against govt. of India or State govt. In *Atul Kumar Agarwal Case*, 2012, Supreme Court held that the Report of CAG is always subject to scrutiny by the Parliament & it is for the Parliament to decide whether further action against the govt. could be taken or not. It means that immediate & ultimate authority to take any punitive or disciplinary action lies in parliament & thereafter court ~~can~~ could intervene in the whole matter.

## 5. CAG as a tool of parliamentary control over Executive

The audit report of CAG are deeply discussed in Parliament & before a dedicated committee called as Public Account Committee. As a friend, philosopher & guide of the committee, CAG provides every relevant information & advice to review the accounts of those ministries & departments which are not comprehensively discussed in Parliament & such accounts carry high level of misappropriation or irrational reappropriation or misuse of Authority. By this function the office of CAG makes the Parliamentary control over executive much more complete & effective.

## 6. Power to conduct Performance Audit

Several arguments are raised in the recent past that the office of CAG does not enjoy the power to conduct performance audit & provisions in



the Regulation of Audit & Accounts Rule, 2004, are violative & unconstitutional.

Supreme Court in Arvind Gupta Case, 2013

held that the power of CAG to carry out performance audit in matters where public resources had been used is completely legitimate & constitutional.

### Conclusion:

Till early 2000, the office of CAG was regarded as a constitutional authority working as an extensive wing of govt. A mild friendly agency sympathetic to govt. in power, unwilling to express itself strongly as a guardian of purity & probity.

In the recent past, Nation has seen many scams like 2G Spectrum, Commonwealth Scandal, Coal Block Allocation issue etc. The disclosure done by CAG in all such matters define a new role of CAG as a fierce

to inculcate progressive values of probity in financial administration.

### Public Account Committee (PAC)

PAC is an institutional framework at the parliamentary level to reaffirm, re-examine & re-scrutinise the accounts of Govt. of India based on the report of CAG. PAC provide a continuity in the legislative business & completes the parliamentary control over executive. The report & recommendations of PAC also brings structural & behavioural change in the working of different ministries & department of Govt. of India.

### Relevance & Utility of PAC :

1. CAG is the guiding hand of PAC in conducting investigation, interrogating witnesses, & preparation of report. Subsequently, Committee is regarded as



a specialised ~~techn~~ technically competent forum to examine financial transactions of Govt. of India.

2. The composition of PAC is much more closer to the federal set up & federal values of Indian Polity. It is because the members of Rajya Sabha are getting direct representation to evaluate & scrutinise the financial transactions of Govt. of India.

3. It is a type of training platform for both politicians & bureaucrats. It is because the politicians came to know about the practical grassroot level administrative functioning & inherent problems faced by the bureaucracy to implement any policy or programme.

4. It also provides a type of training ground to those politicians which in

future can acquire any portfolio under govt. of India.

5. Committee generally takes national perspective into consideration while evaluating any account of any ministry of govt. of India. It is because the members of the committee are elected for one year by a system of proportional representation. Subsequently, any member of any political party coming from any state gets an opportunity to become the incumbent of this high powered parliamentary committee. At the same time, ministers are not allowed to become the incumbent of such committee. As a result, the committee becomes much more neutral & impartial in its functioning.



## Election Commission (E.C.)

Articles → 324-329

Elections are the manifestation of popular consent in <sup>any</sup> democratic society. Similarly, electoral democracy remains the notable feature constitutionally mediated Indian parliamentary system. In this organic & dynamic parliamentary system it is important to have impartial electoral process with the values of accountability, responsiveness & greater citizens participation. All these goals of parliamentary system are conditioned by an independent & autonomous authority called as Election Commission.

### Composition of E.C.

Under Article 324 it is the President that determines the composition of E.C. upto 15th, Oct, 1980, E.C. was a single member body

performing the function of ~~of~~ superintendence & control. However, on 16 Oct, 1989, the commission became a multi-member body based on the situation created by 61st Constitutional Amendment Act, 1988, that has reduced the age of adult suffrage ~~of~~ from 21 to 18 years.

Again on 1st Jan, 1990, the Commission became a single member body & other 2 Election Commissioners had to vacate their office by the regulation passed by President. This notification was challenged before S.C. where the court rejected the such contention saying that there was not need for the post of election commissioners at the time when appointments were made. Court also specified that there is absence of clear definition of the role of Election Commissioners. Subsequently, the creation & abolition of posts remains the prerogative of the executive.



In 1993 again, E.C. became a multi-member body based on the notification issued by President under Article 324(2).

Again this decision of govt. was challenged before S.C. where S.C. dismissed the petition & held that the scheme of Art 324 is that the Commission can be a single or multi-member body, the makers of the constitution incorporated the task of conducting election to the Commission & not to an individual. It is because the E.C. is a public body, performing a public function.

## Role of Election Commission

### 1. In the process of Electoral Reform

#### a) De-criminalisation of Politics:

Section 8 of RPA, 1951, deals with the disqualification on conviction for certain offences. In Kily Thomas Case 2013, Court held that Section 8(4) is unconstitutional which allows the MPs & MLAs to continue in office till an appeal against such conviction is disposed. It is a very profound adjudication given by the court for the decriminalisation of politics. Still, the persons with criminal background & accused of serious offences able to contest the election. This trends send a very negative signal about the Electoral Process.

E.C. proposed that a person charged with cognizable offences shall be prohibited from contesting the election at the stage when the charges ~~are~~ are



framed by competent court for the punishable offence of at least 5 years imprisonment or more. Although the case should be filed at least 6 months prior to the election.

b) Misuse of Religion:

Under the existing laws i.e. section 123(3), & 3A of RPA, 1951, an appeal on the grounds of Religion, Race etc for the promotion of feeling of animosity is considered as corrupt practices, questioned only by way of election petition. Although the petition can't be a subject of enquiry when the election is in progress & no further enquiry shall be conducted against a candidate who has lost the election.

In this case, E.C. proposed to amend the respective sections with the purpose to authorise the commission to conduct enquiry at any stage.