



ROLE OF CONSTITUTIONAL BODIES IN STRENGTHENING DEMOCRACY

Constitutional bodies are the foundation of democracy as an institution. Their presence has been a critical factor in the resilience of Indian democracy.

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Democracy as an institution has evolved and grown to become more participatory. As is well known, Indian democracy is the world's largest because of the sheer size of the electorate.

Democracy is imagined as a form of governance premised on certain fundamental philosophies. The foremost is that people should be a part of the governance structure because they are the subjects and beneficiaries of the governance setup. In addition, numerous studies have shown that decisions made in a group are more balanced and better considered than those made by individuals

since they consider multiple points of view and must be adjusted according to stakeholder needs.

Considering the underlying philosophy and structural needs of democracy, constitutional bodies are needed to establish, protect, and perpetuate democratic ideals. The most essential democratic body has to be the elected legislature, which makes laws. The Indian Parliament, where both Houses are directly or indirectly elected, performs this primary function as a constitutional body. Democracy entails that people will be governed by the laws they have had a role in making. Thus, the members of the legislature whom the people have elected make laws

for the people. Accordingly, an elected legislature is a 'sine qua non' for establishing and strengthening democracy, which functions on a majority decision-making system.

More importantly, democracy is not only premised on the philosophy of collective decision-making as a singular idea. It is a product of the acknowledgement of the philosophy that an individual as a subject takes centre-stage in democratic decision-making. Consequently, this leads to the understanding that an individual also has certain fundamental or human rights that are inalienable and predate the advent of democracy or the Constitution. These rights, thus, must be protected at an individual level, and they cannot be taken away even by the majority's will through the legislature. Therefore, Constitution must entrench these rights so that they are too sacred to be taken away by anyone. Our Constitution does this in Part III as the Fundamental Rights. To protect these rights, another essential constitutional body is required, in the form of an independent judiciary.

The judiciary is there to address other issues at an individual level as well that are not limited to just fundamental rights. Courts, as constitutional bodies, have the critical function of safeguarding the Constitution itself, which sometimes means going against the people's will. In India, the apex court evolved the basic structure doctrine in the case of *His Holiness Kesvananda Bharti vs State of Kerala*, where essential features of the Constitution were put beyond the amending power of the Parliament. The courts also keep a check on all subordinate bodies created through laws and other constitutional bodies to ensure that they perform their functions as prescribed.

We have the unique distinction of having the world's largest and most comprehensive Constitution. Naturally, we have many more constitutional bodies than other jurisdictions. Our constitutional founders did this to ensure the rule of law system is deeply embedded in our governance system. Accordingly, the Election Commission of India, the Union Public Service Commission, the office of the Attorney General of India, etc., have been given constitutional status. This is not to say that in other jurisdictions, these offices do not exist, they do, but there, they are a creature of the legislature instead of the constitution. The benefits of prescribing constitutional status

to these bodies are manifold. Permanency begets consistency and predictability in the functions and aspirations of people approaching these bodies. All of these are essential features of the Rule of Law, which every democratic system seeks to establish. Rule of Law as a concept can be better understood by juxtaposing it with the opposing concept of Rule by a King, wherein the King or the monarch can rule by decree and can legally make arbitrary, discretionary, and even whimsical decisions that will be enforced as law.

In a Rule of Law governance system, the Law is supreme, every person and institution is subordinate to it, and there is no scope for discretionary and arbitrary decision-making. For instance, the government's decision must be justified on multiple levels. Firstly, the Parliament, as an elected body, needs to put that decision to the vote. Secondly, if even a single person feels they are being disadvantaged or discriminated against, they can challenge that law in court. This is how the constitutional bodies preserve the Rule of Law and further the goals of democracy by ascribing constitutional status to more bodies than is done elsewhere.

In a democracy, any act of the state needs to have legitimacy. Since constitutional bodies are state organs, their actions require democratic legitimacy. Democratic legitimacy means that an act is justified and legal because of the force of the will of the people behind it. The people elect the Parliament, and the laws passed by it are valid and enforceable because of that. Additionally, when the government authorises an entity to perform a particular act, that act will also have indirect democratic legitimacy. Thus, constitutional bodies must also be run by functionaries with democratic legitimacy, either directly or indirectly.

It is evident that constitutional bodies are the foundation of democracy as an institution. The Parliament establishes the procedural requirements of democracy; the judiciary protects the substantive aspects of democracy; the EC ensures free and fair elections; and the UPSC and CAG also play a vital role in preserving democratic ideals. The presence of strong constitutional bodies has been a critical factor in the resilience of Indian democracy. These bodies have helped protect citizens' rights, ensure the rule of law, and promote democratic values. □