Fourth Branch Institutions

Why in news?

There are issues in sorting out the method by which the Election Commission of India is constituted.

In what domain does election fall into?

- According to the classical understanding of modern democracy, there are three wings of state - the legislature, the executive, and the judiciary.
- The task of the Constitution is to allocate powers between these three wings, and to ensure that there is an adequate degree of checks and balances between them.
- Bodies that are involved with administrative and implementational issues (elections being among them) fall within the **executive domain**.

What is the need for fourth branch institutions?

> *Fourth branch institutions refer to institutions perceived variously as influencing or acting in addition to the three branches of the democratic government i.e. legislative, executive and judiciary.*

- Healthy constitutional democracies need "Fourth branch institutions" (integrity institutions).
- Fourth branch needs to exist as basic rights and guarantees cannot be effective without an infrastructure of implementation.
- Fourth branch institutions need to be functionally independent from the political executive because they are the vehicles for implementing rights against the executive.
- Extensive government control over the commissions, including control over appointments has led to it becoming a largely toothless and ineffective body.

> *The South African and Kenyan Constitutions have dedicated constitutional provisions for fourth branch institutions and requiring them to be independent.*

What about fourth branch institutions in India?

- The Indian Constitution provides for election Commission of India, Comptroller and Auditor General, and the Public Service **Commission, and National Commission for Scheduled Castes.**
- **Problem** - While the Constitution goes to some degree to protect the independence of fourth branch institutions, the power of appointment lies exclusively with the executive

(President, acting on the aid and advice of the Council of Ministers).

- The government decides who gets to be in charge of running fourth branch institutions.
- The **collegium system** for the appointment of judges arose as a response to executive abuse and attempts to control the judiciary.

*The ECI is an **autonomous permanent constitutional authority** established in 1950 for administering election processes in India. The ECI operates under **Article 324 (Part XV of the Constitution)** and the Representation of the People Act.*

What should the Court do in the case before it?

- It is obvious that the existing system where the executive has absolute power over appointments is unsatisfactory and damages the rule of law.
- It is for the Court to decide how best that might be achieved, but the guiding principles, must be functional and effective independence from the executive.

Reference

1. The Hindu| Upholding the autonomy of the Election Commission

SHANKAR IAS PARLIAMENT
Information is Empowering