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## **GUARDIANS WITHOUT MANDATE; POWER WITHOUT LEGITIMACY**

AUTHORED BY - AMAN ARYAN

While the Indian Constitution explicitly divides power into three branches, India's governance framework reveals a more layered reality. In practice, the constitution of India operates through four, and not three branches. The contemporary governance framework in India no longer fits within the classical triptych design and hence gave way to the establishment of a set of independent constitutional and statutory bodies over time. Bodies such as the Election Commission (ECI), the Comptroller and Auditor General (CAG), the Reserve Bank of India (RBI), the Central Bureau of Investigation (CBI), the Enforcement Directorate (ED), and the Information Commissions (ICs), among others have come to exercise powers that run contrary to those of the traditional branches.

They are not mere administrative agencies, instead they are guardians of democracy as they are insulated from electoral politics, endowed with statutory or constitutional authority, and are designed to restrain majoritarian excess and they operate as safeguards against executive arbitrariness. Their logic seems to be counter-majoritarian. The legislature is elected, but in contemporary conditions, electoral success often produces overwhelming parliamentary majorities. The executive mirrors and acts as the operating arm of that majority in the house. Judicial review, on the other hand, is episodic and reactive. The fourth branch, by contrast, was designed as a continuous, technocratic, and structurally insulated check, as its members are unelected, precisely to free them from partisan pressure, and their authority flows directly from constitutional text or statute, and not political mandate.

In ideal conditions, this fourth pillar serves as institutional check-posts by auditing expenditure, supervising elections, regulating currency, investigating corruption, and enforcing transparency. The contemporary concern is not that these institutions lack power, but the crisis of legitimacy. With opaque procedure for appointments, selective accountability mechanisms, and an autonomy which is compromised by executive influence, these institutions risk transforming from constitutional sentinels into instruments of concentrated power.

## **Constitutional idealism and institutional design**

The institutional foundations of this fourth pillar reveal a striking constitutional asymmetry. While some of these bodies derive authority directly from the Constitution, others exist purely by statute. This distinction is not merely formal, instead it fundamentally shapes their insulation from executive overreach, accountability, and democratic legitimacy.

The ECI and the CAG of India are constitutional creations. While Articles 324–329 vest in the Election Commission the “superintendence, direction and control” of elections<sup>1</sup>, Articles 148–151 establish the CAG as the supreme audit authority of the Union and the States.<sup>2</sup> In both cases, removal safeguards are modelled on those applicable to Supreme Court judges. Their salaries are charged on the Consolidated Fund. Under Article 148(4), the CAG is ineligible for further office under the Government of India or any State after demitting office.<sup>3</sup> This provision acts as a constitutional barrier against post-retirement inducements. But this sort of provision is absent for other institutions in this fourth tier.

At first glance, this framework suggests substantial insulation from executive influence. Assuming an ideal system and presuming good faith, the Constitution remained silent on appointment procedure and panel. It has given removal safeguards but largely refrained from mandating participatory or bipartisan appointment mechanisms, creating an asymmetry of strong removal but weak appointment design, which has now put the same presumption under scrutiny.

Unlike CAG and ECI, institutions such as CBI, ED, RBI and ICs rest on a weaker foundation as they derive their authority not directly from the Constitution but from statutes. RBI, though statutory under the Reserve Bank of India Act 1934<sup>4</sup>, exercises monetary authority central to macroeconomic stability; CBI operates under the Delhi Special Police Establishment Act 1946<sup>5</sup>; and ED operates under the Prevention of Money Laundering Act 2002<sup>6</sup>. Apart from these, the Right to Information Act 2005 institutionalised ICs as guardians of transparency.<sup>7</sup>

<sup>1</sup> The Constitution of India, 1950, Arts. 324–329.

<sup>2</sup> The Constitution of India, 1950, Arts. 148–151

<sup>3</sup> The Constitution of India, 1950, Art. 148(4).

<sup>4</sup> The Reserve Bank of India Act, 1934, §3.

<sup>5</sup> The Delhi Special Police Establishment Act, 1946, §2.

<sup>6</sup> The Prevention of Money-Laundering Act, 2002.

<sup>7</sup> The Right to Information Act, 2005, §§12, 15.

## **The Election Commission of India: Formal legality, perceptual fragility**

The Constitution's silence on appointments became constitutionally significant in *Anoop Baranwal v. Union of India*, where the Supreme Court held that, until Parliament enacted a law, appointments of the Chief Election Commissioner and other Election Commissioners would be made by a committee comprising the Prime Minister, the Leader of the Opposition in the Lok Sabha (or leader of the largest opposition party), and the Chief Justice of India.<sup>8</sup> The reasoning behind the decision was to insulate the Commission from executive dominance. However, the Parliament subsequently enacted the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, and replaced the Chief Justice of India in the selection committee with a Union Cabinet Minister nominated by the Prime Minister.<sup>9</sup> This led to numerical dominance of the executive. Although this has a subtle consequence, it is significant. While removal of the Chief Election Commissioner remains constitutionally protected, entry into office is shaped primarily by the political executive.

This lopsided design in the appointment of Chief Election Commissioner reveals the core tension in the fourth branch of government. The ECI's powers directly affect the democratic playing field and when such an expansive authority is combined with a lopsided appointment mechanism in which the executive retains influence, the question that arises is not of legality but legitimacy. A body entrusted with safeguarding electoral neutrality must not merely be independent, but must be seen so as well, because where the appointment process is seen as lopsided, even routine administrative actions risk being interpreted through a political lens.

The controversy surrounding the Special Intensive Revision (SIR) of electoral rolls under the newly appointed Chief Election Commissioner intensified scrutiny. Questions were not about the objective of cleansing rolls, but about timing; not *WHY?* But *WHY NOW?* With allegations of

<sup>8</sup> *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161.

<sup>9</sup> The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, §7.

political conspiracy<sup>10</sup> and targeted deletion in electoral rolls<sup>11</sup>, the issue that got highlighted seemed more about institutional trust and not about formal legality.

### **The Comptroller and Auditor General: From disruption to decline**

The CAG once epitomised assertive fourth branch oversight. Its reports on the 2G spectrum allocation and coal block allocations generated nationwide debate, parliamentary paralysis, and judicial intervention. Audit, in those years, functioned as democratic disruption.

Constitutionally, the CAG remains robust, but presents a different paradox. The CAG possesses sweeping authority to audit centre and state public expenditure, including that of government-owned corporations.<sup>12</sup> Its reports, tabled before Parliament and examined by Public Accounts Committees, have historically exposed fiscal irregularities of immense political consequence, and have sent shockwaves in many political camps. However, the same CAG has no enforcement power and its findings depend on legislative will for corrective action. In a political environment where the executive enjoys a stable majority, the effectiveness of audit oversight might get diluted.

This dilution is not just in theory, but it is the reality that the CAG has been facing lately. Recent data reveals a concerning decline in the number of audit reports tabled in Parliament. Only 18 audit reports on the Union government were tabled in Parliament in 2023, while on an average, 40 such reports were tabled in the years from 2014 to 2018.<sup>13</sup> On the other hand, an average of only 22 reports were tabled annually from 2019 to 2023, reflecting a significant numerical contraction.<sup>14</sup> As per the CAG's website there are only six reports for CAG as of now, out of which five are on Telangana and one on Sikkim. Out of these six reports only one is left to

<sup>10</sup> Times News Network, *Congress alleges political malice in deletion of 10 lakh names*, THE TIMES OF INDIA, October 24, 2024, available at <https://timesofindia.indiatimes.com/city/ahmedabad/sir-congress-alleges-political-malice-in-deletion-of-10-lakh-names/articleshow/127034895.cms> (Last visited on February 26, 2025).

<sup>11</sup> PTI, *Mamata alleges conspiracy to remove 1.2 crore voters from electoral rolls in Bengal*, DECCAN HERALD, February 19, 2025, available at <https://www.deccanherald.com/india/west-bengal/mamata-alleges-conspiracy-to-remove-12-crore-voters-from-post-sir-electoral-rolls-in-bengal-3911913> (Last visited on February 26, 2025).

<sup>12</sup> The Constitution of India, 1950, Art. 14.

<sup>13</sup> Scroll Staff, *Only 18 CAG reports on Centre tabled in Parliament in 2023*, SCROLL.IN, Dec. 21, 2023, available at <https://scroll.in/latest/1060938/only-18-cag-reports-on-centre-tabled-in-parliament-in-2023> (Last visited on February 26, 2025).

<sup>14</sup> *Id.*

be tabled as of now. Interestingly, there are no audit reports on the Union Government for the year 2024.<sup>15</sup>

Unlike some jurisdictions, the Constitution does not mandate CAG to present a minimum number of audit reports annually. Nor does it prescribe time-bound tabling obligations beyond general parliamentary practice. The absence of such provision or compulsion creates a loophole. There is a visible independence in design, but in practice CAG is dealing with vulnerability. Audit is meaningful only when it is visible, and a dormant auditor is as problematic as a compromised one.

Decline in the number of high-impact audits, especially those scrutinising flagship schemes, has raised concerns about the dilution of operational assertiveness. Also, CAG remains a watchdog with teeth of exposure but no bite of enforcement. This supports the essay's core narrative that even constitutionally entrenched bodies require procedural transparency and mere security of tenure does not guarantee democratic vitality of such bodies.

### **The Reserve Bank of India: Monetary autonomy and political pressure**

Monetary stability demands insulation from political cycles, and inflation targeting and Monetary Policy Committee (MPC) decisions have reflected relative institutional continuity. Although the RBI enjoys statutory status only, it exercises significant power, such as regulation of currency, inflation control, supervision of banks, management of foreign exchange reserves, and oversight of financial stability. This affects credit availability, growth trajectories, public borrowing, and ultimately the political economy within which our democracy functions.

The 2016 amendments to the RBI Act formalised the MPC, and introduced a rules-based framework to target inflation. It introduced provisions for including external members, nominated by the Central Government.<sup>16</sup> While this reform appeared to enhance the procedural structure, it brought executive influence with itself into monetary policy deliberations. Apart from this, Section 7 of the RBI Act, though rarely invoked, permits the Central Government

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<sup>15</sup> COMPTROLLER AND AUDITOR GENERAL OF INDIA, *Status of Audit Reports*, available at <https://cag.gov.in/en/status-of-audit-reports> (Last visited on February 26, 2025).

<sup>16</sup> The Reserve Bank of India Act, 1934, §§45ZA, 45ZB.

to issue directions to the RBI “in the public interest”.<sup>17</sup> This overriding power shows the conditional nature of RBI’s autonomy.

Also, recent controversies including tensions preceding demonetisation and debates surrounding the Electoral Bonds Scheme, that later was struck down by the Supreme Court in 2024 for violating voters’ right to information, elucidate how monetary and financial regulation meets democratic legitimacy. Reports indicate that the RBI had initially raised concerns regarding the opacity and potential misuse of the Electoral Bonds Scheme, and warned about risks to financial transparency.<sup>18</sup> Despite these objections, the scheme was introduced. This episode showed that even statutory bodies with technocratic mandates might face executive pressure..

The RBI’s legitimacy rests primarily on expertise and not on democratic representation, but when that expertise is perceived as politically pressured, the credibility is the thing that gets tested.

### **CBI and ED: Investigative power, but selective focus**

Like the RBI, the CBI and ED also have no constitutional backing as they derive authority from the Delhi Special Police Establishment Act, 1946 (DSPE) and Prevention of Money Laundering Act, 2002 (PMLA), respectively.

Judiciary has intervened to save the CBI’s independence, like in *Vineet Narain v. Union of India*, where the Supreme Court introduced structural safeguards, including a high-level committee for appointing the Director and fixed tenure protections.<sup>19</sup> Later amendments introduced a selection committee comprising the Prime Minister, the Leader of the Opposition, and the Chief Justice of India (or nominee).

While, on paper, this appears to have balanced the executive influence, the deeper foundation remains executive-centric only. The CBI functions under the Department of Personnel

<sup>17</sup> The Reserve Bank of India Act, 1934, §7.

<sup>18</sup> ASSOCIATION FOR DEMOCRATIC REFORMS, *Electoral Bonds: How RBI continues to be pushed to the brink by the government*, available at <https://adrindia.org/content/electoral-bonds-how-rbi-continues-be-pushed-brink-government> (Last visited on February 26, 2026).

<sup>19</sup> *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

and Training, which is part of the Union executive.<sup>20</sup> Hence, administrative control, budgetary dependence, and sanction requirements has trapped the agency within the executive framework. This paradox was highlighted by the Supreme Court in its observation in the coal block allocation case in 2013 as it described the CBI as a “caged parrot speaking in its master’s voice”.<sup>21</sup> This hinted towards the agency’s alleged political instrumentalisation.

Even if one thinks that it's all water under the bridge and now the things are different then a look at the recent federal developments will surely raise eyebrows. Several states have withdrawn “general consent” under Section 6 of the DSPE Act. The CBI requires case-specific approval before investigating within a territory.<sup>22</sup> This has transformed criminal investigation into a site of centre–state political contestation, leaving the agency oscillating between executive proximity at the Union level and jurisdictional barriers at the state level.

CBI is an agency designed to combat corruption and abuse of power, but paradoxically the same is structurally located within the very executive hierarchy it may be required to investigate one day.

While the CBI symbolises investigative vulnerability, the ED comes with extraordinary coercive power coupled with limited transparency safeguards. The PMLA statute gives sweeping authority, including search, seizure, provisional attachment of property, arrest, and prosecution, to the ED. Bail provisions under Section 45 impose stringent twin conditions, and the burden of proof in certain contexts shifts to the accused. In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court upheld the constitutional validity of most PMLA provisions, including the non-supply of the Enforcement Case Information Report to the accused and the stringent bail conditions.<sup>23</sup>

Unlike the CAG, which audits without the teeth to enforce, the ED combines investigative and attachment powers with restrictive bail standards. Unlike the Election Commission, which regulates the process, the ED can directly curtail personal liberty and freeze economic assets.

<sup>20</sup> The Delhi Special Police Establishment Act, 1946, §4.

<sup>21</sup> PTI, *Apex court terms CBI a 'caged parrot'*, DECCAN HERALD, May 8, 2013, available at <https://www.deccanherald.com/india/apex-court-terms-cbi-caged-2259128> (Last visited on February 26, 2026)..

<sup>22</sup> The Delhi Special Police Establishment Act, 1946, §6.

<sup>23</sup> *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

Yet it remains a statutory body, with leadership appointed and administratively controlled by the executive.

A 2024 analysis reported that, out of 121 political leaders investigated by the ED since 2014, nearly 115 belonged to opposition parties.<sup>24</sup> While this is presented by critics to argue disproportionate targeting, the government has categorically denied political influence. The statistical claim, regardless of interpretation, had already entered public discourse and had shaped perception.

The Delhi Excise Policy case shows how investigative action intersects with electoral politics. After extensive ED and CBI probes into alleged irregularities and subsequent developments including the dismissal of charges of Arvind Kejriwal and Manish Sisodiya has prompted strong political reactions. Also, public statements by political leaders characterised the investigations as conspiratorial and politically motivated.

The ED is powerful, arguably may be more powerful than several other bodies, still its statutory foundation and executive proximity create a legitimacy tension. If enforcement appears to align disproportionately with political fault lines, public trust may erode; and if legitimacy is questioned once, it is very difficult to restore.

### **Information Commissions: From transparency to translucency**

Right to Information Act, 2005, arguably one of the most transformative statutes in independent India, arrived nearly six decades after independence. The Act, which established the Central Information Commission and its state counterparts, empowered citizens to demand information from public authorities, thereby institutionalising transparency as a democratic right. It transformed transparency into an enforceable right from administrative grace. They are the citizen-facing limb of the fourth pillar.

ICs were granted quasi-judicial powers, including the authority to summon officials, compel disclosure, and impose penalties for non-compliance. The original Act granted Chief

<sup>24</sup> NATIONAL HERALD, *Raids Tracker: BJP's playbook, ED, IT raids as a tool to target Opposition before polls*, Mar. 25, 2024, available at <https://www.nationalheraldindia.com/politics/raids-tracker-bjps-playbook-ed-it-raids-as-a-tool-to-target-opposition-before-polls> (Last visited on February 26, 2025).

Information Commissioner and Information Commissioners a fixed tenure of five years and salary parity with Election Commissioners, which symbolically aligned the transparency watchdog with constitutional guardians. However, the Right to Information (Amendment) Act, 2019 fundamentally altered this by removing the five-year tenure and salary equivalence. It authorised the Central Government to prescribe tenure and service conditions by rules.<sup>25</sup> Apart from this, reports have also documented significant backlogs in vacancies.<sup>26</sup> The Supreme Court has also expressed concern over the ‘absolutely inadequate functioning’ of the RTI machinery.<sup>27</sup> Delay and increased executive control over service conditions has eroded the transformative promise of RTI.

The constitutional equilibrium between power and restraint is at stake and not just the credibility of individual agencies and to argue over needed reforms, one must examine the theory of independent institutions itself.

### **Theoretical Framework: Understanding the Fourth Branch**

#### **Ackerman’s Accountability Safeguards**

Bruce Ackerman’s theory of *New Separation of Powers* rejects the classical tripartite model as an exhaustive map of modern democratic governance. Instead, he introduced the concept of pluralistic architecture of power in which independent institutions perform roles that cut across legislative, executive, and judicial functions. This is what is the fourth branch of governance. However, Ackerman also warns that independence without accountability risks producing *democratic anxiety*, making their authority controversial rather than stabilising.<sup>28</sup> The legitimacy of these bodies lies on features such as transparent appointment processes, well-defined reporting obligations, and public justification for decisions.

<sup>25</sup> The Right to Information (Amendment) Act, 2019.

<sup>26</sup> Anjali Bhardwaj, Amrita Johri, *20 years of RTI Act: Here is the report card on the performance of Information Commissions in India*, DOWN TO EARTH, Oct. 15, 2024, available at <https://www.downtoearth.org.in/governance/20-years-of-rti-act-here-is-the-report-card-on-the-performance-of-information-commissions-in-india> (Last visited on February 27 2026).

<sup>27</sup> CITIZENS FOR JUSTICE AND PEACE, *Supreme Court frowns upon the ‘absolutely inadequate’ functioning of the RTI machinery*, Mar. 25, 2024, available at <https://cjp.org.in/supreme-court-frowns-upon-the-absolutely-inadequate-functioning-of-the-rti-machinery> (Last visited on February 27, 2026).

<sup>28</sup> Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633 (2000).

Bodies like the CAG, ECI, RBI, CBI/ED, and ICs are not merely auxiliary agencies, but they are the integrity branch of governance. The Indian crisis also fits in the warning posted by Ackerman. Their legitimacy has come under strain when their appointments and accountability channels appear dominated by the executive rather than by independent, pluralistic safeguards. This reflects the very problem that Ackerman identified.

### **Pierre Rosanvallon's Counter-Democracy and the Politics of Distrust**

Pierre Rosanvallon reconceptualises democracy as extending beyond periodic elections and representative institutions. He argues that modern democracies operate through a parallel ecosystem of oversight, prevention, and judgment, which functions alongside electoral politics.<sup>29</sup> He said that democracy also includes vigilance exercised against the governing majority.

These institutions of vigilance are unelected, yet democratic in function and they derive their legitimacy not from representation, but from their role as permanent watchdogs. They embody *democracy of distrust*.<sup>30</sup> It is a system in which citizens also use vigilance to exercise their sovereignty. However, Rosanvallon emphasises that counter-democratic institutions are uniquely dependent on public credibility. Their authority is not sustained merely by legal mandate, but by sustained trust in their impartiality and when citizens begin to suspect biasness, legitimacy erodes even without formal constitutional change.

This insight directly reinforces the central idea of this essay that the crisis of the fourth pillar in the Indian context is also not rooted in textual invalidity, but in legitimacy deficits.

In conditions of strong parliamentary majority, executive dominance over appointments may tilt these institutions toward majoritarian alignment, and when this happens the fourth branch, which is a solution for the majoritarian democracy, itself reintroduces the same problem post its capture.

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<sup>29</sup> Pierre Rosanvallon, *COUNTER-DEMOCRACY: POLITICS IN AN AGE OF DISTRUST*, (translated by Arthur Goldhammer, Cambridge University Press, 2008).

<sup>30</sup> *Id.*

### **Integrity Institutions in other democracies**

In the United Kingdom, regulators such as the National Audit Office (NAO) report to Parliament rather than the executive. The Comptroller and Auditor General (UK) is an Officer of the House of Commons, appointed by the monarch on an address of the House, typically following bipartisan agreement.<sup>31</sup> The NAO audits public spending annually and produces almost 65 value-for-money reports each year.<sup>32</sup>

Independent regulatory commissions in the United States, such as the Federal Reserve Board and the Federal Election Commission (FEC), reflect a different model. The President appoints the members to these bodies but after the Senate's confirmation<sup>33</sup>. The Federal Reserve's Board of Governors serves staggered 14-year terms<sup>34</sup>, insulating monetary policy from immediate political cycles.

These examples show that Indian features have two weaknesses, of parliamentary or legislative anchoring of appointment processes, and explicit bipartisan composition requirements. If the crisis is one of legitimacy rather than legality, reform must be structural rather than symbolic.

### **Reform to restore legitimacy**

*Rebalancing appointments from executive primacy to pluralism* - Although the aforementioned offices enjoy post-appointment insulation, the selection process often remains executive-dominated. Hence, a Constitutionally mandated Appointment Commission should be established for major integrity institutions, including the CAG, ECI, ICs, CBI, and ED. The composition of this body must avoid lopsided control by any branch. A balanced model could include the Prime Minister, the Leader of Opposition, the Chief Justice of India, and one member elected by a two-thirds majority of a joint parliamentary committee. And, decisions should require a supermajority, like four out of five members. This will ensure cross-institutional consensus.

<sup>31</sup> The Budget Responsibility and National Audit Act 2011 (UK).

<sup>32</sup> NATIONAL AUDIT OFFICE, *The NAO's role in local audit*, available at <https://www.nao.org.uk/reports/the-naos-role-in-local-audit/> (Last visited on February 27, 2026).

<sup>33</sup> 52 U.S.C. §30106.

<sup>34</sup> 12 U.S.C. §241.

**Transparency in selection** - Pluralisation of appointment procedure alone is insufficient if done without transparency. The selection process must be publicly defensible.

A statutory public search mechanism should require publication of eligibility criteria, disclosure of shortlisted candidates, and a fixed period for public comment. Independence must be seen to be constructed.

**Post-retirement appointments and the perception of quid pro quo** - Democratic legitimacy requires not only independence from present political control, but insulation from partisan proximity. One of the most persistent concerns is the practice of post-retirement appointments to high constitutional or political office. In recent years, several former senior officials have been appointed to positions such as Governors, Members of Parliament, tribunal heads, and advisory authorities.

Among the most widely debated instances was the nomination of former Chief Justice of India Ranjan Gogoi to the Rajya Sabha in March 2020, only months after his retirement.<sup>35</sup> Justice Gogoi had presided over the Constitution Bench that delivered the Ayodhya judgment. Similarly, former Supreme Court judge S. Abdul Nazeer, who also sat on the Ayodhya bench, was appointed Governor of Andhra Pradesh shortly after retirement in 2023.<sup>36</sup> Former CAG Vinod Rai was appointed Chairman of the Banks Board Bureau in 2016,<sup>37</sup> while former CAG Rajiv Mehrishi had earlier been appointed immediately after serving as Union Home Secretary.<sup>38</sup> Former CBI Special Director Rakesh Asthana was appointed Commissioner of Delhi Police.<sup>39</sup>

<sup>35</sup> The Hindu Bureau, *Former CJI Ranjan Gogoi takes oath as Rajya Sabha member*, THE HINDU, Mar. 19, 2020, available at

<https://www.thehindu.com/news/national/former-cji-ranjan-gogoi-takes-oath-as-rajya-sabha-member/article3110632>

[Lece](#) (Last visited on February 27, 2026).

<sup>36</sup> Tribune News Service, *Retired judge on Ayodhya Bench, four BJP leaders among six new Governors*, THE TRIBUNE, Feb. 13, 2023, available at

<https://www.tribuneindia.com/news/uncategorized/retired-judge-on-ayodhya-bench-four-bjp-leaders-among-six-new>

[-governors-479147](#) (Last visited on February 27, 2026).

<sup>37</sup> BUSINESS STANDARD, *Ex-CAG Vinod Rai to head Banks Board Bureau*, Business Standard, Feb. 29, 2016, available at

<https://www.business-standard.com/article/current-affairs/ex-cag-vinod-rai-to-head-banks-board-bureau-1160229000011.html> (Last visited on February 27, 2026).

<sup>38</sup> Ashutosh Sharma, *Rafale deal: CAG Rajiv Mehrishi's BJP connection and conflict of interests*, NATIONAL HERALD, Feb. 11, 2019, available at

<https://www.nationalheraldindia.com/india/rafale-deal-cag-rajiv-mehrishis-bjp-connection-and-conflict-of-interests> (Last visited on February 27, 2026)

<sup>39</sup> Arvind Gunasekar & Neeta Sharma, *Rakesh Asthana, Ex CBI, Becomes Delhi Top Cop 3 Days Before Retirement*, NDTV, Jul. 27, 2021, available at

Opposition parties have characterised such appointments as indicative of *quid pro quo* arrangements. They alleged that the prospect of future office might influence decision-making of incumbents in service. The nomination of Justice Gogoi was described by critics as a “scar” on judicial independence.<sup>40</sup>

Even the appearance of reward can erode institutional credibility. In Rosanvallon’s words, counter-democratic institutions depend not merely on legality, but on sustained public trust.

Therefore, to reinstall some trust in these institutions, a provision of cooling-off period should be introduced for such office-holders. They should be banned from accepting any office under the Union or State governments, or nomination to political office, for a period of not less than ten years after demitting office. A pre-appointment eligibility clause should also be introduced that would restrict appointment if in the preceding six years the person has held office in a political party, contested elections on behalf of a political formation, or acted in an official campaign capacity.

***Insulating investigative agencies*** - The investigative and prosecutorial functions should be institutionally separated, with set up of a distinct Prosecution Directorate, insulated from investigative command structures, that would ensure that decisions to prosecute are grounded in legal sufficiency rather than strategic leverage. A similar provision exists in the United Kingdom, police investigate, but the Crown Prosecution Service independently decides whether to prosecute.<sup>41</sup>

For ED, the attachment powers should be subject to stronger judicial supervision and provisional attachments should require judicial approval beyond a short emergency window, and attachments should undergo periodic judicial review.

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<https://www.ndtv.com/india-news/rakesh-asthana-former-cbi-special-director-appointed-delhi-police-commissioner-2496352> (Last visited on February 27, 2026).

<sup>40</sup> Apurva Vishwanath, *Former CJI Ranjan Gogoi’s nomination to Rajya Sabha: What the Constitution, SC says on post-retirement appointment*, THE INDIAN EXPRESS, Mar. 18, 2020, available at <https://indianexpress.com/article/india/india-chief-justice-of-india-ranjan-gogoi-bjp-rajya-sabha-nomination-on-post-retirement-appointment-independence-of-judiciary-6319549> (Last visited on February 27, 2026).

<sup>41</sup> CROWN PROSECUTION SERVICE, *About the CPS*, available at <https://www.cps.gov.uk/about-cps> (Last visited on February 27, 2026).

***Fixed reporting and time-bound obligations to prevent institutional hollowing*** - Institutional independence cannot rest solely on appointment safeguards. It will be ineffective if reporting is delayed, vacancies are prolonged, or procedural obligations are left undefined.

While the Constitution ensures security of tenure and removal protections for CAG, it does not mandate reporting frequency or strict tabling timelines. This gap allows executive discretion in scheduling and tabling audit reports, which dilutes the immediacy of oversight. Hence the provisions should be amended to impose minimum annual performance audit requirements, ensuring that systemic and sectoral audits are not selectively limited.

The new provision should also add the limitation period and once an audit report is submitted under Article 151, it should be mandatorily laid before Parliament within thirty days and any report not tabled within forty-five days of submission shall automatically enter the public domain.

In ICs, prolonged vacancies and delayed appointments have frequently reduced their effectiveness. The RTI Act should mandate the commencement of the process of appointing a new Information Commissioner at least ninety days prior to the anticipated vacancy. The vacancy itself should be filled within sixty days of its occurrence.

### **Conclusion**

The fourth branch is a buffer against executive overreach and majoritarian excess, but its architecture frequently allows the same majoritarian legislature to reshape the contours of its independence. These institutions are powerful, but they are structurally vulnerable because its independence remains contingent upon the political will of the branches it was designed to check. And that is the crisis: NOT OF POWER, BUT OF LEGITIMACY.