Appointment of Election Commissioners

Why in news?

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The Supreme Court is hearing a PIL on the appointment of Chief Election Commissioner and Election Commissioners.

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What is the reason behind?

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- Article 324(2)of Constitution states that the President shall, with aid and advice of Council of Ministers, appoint CEC and ECs, till Parliament enacts a law fixing the criteria for selection, conditions of service and tenure.
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- But a law has not been enacted for the purpose so far.
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- Hence a PIL was filed in the Supreme Court seeking a fair and transparent procedure for appointment of CEC and ECs.
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- It has pointed out that the process for appointment of the CEC and ECs was different from those for other top constitutional positions.
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- The Supreme Court, earlier, acknowledged that till now good persons have been appointed in the poll panel.
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- Yet, it has questioned the mandate of the parliament to frame a law for this purpose and has recently referred the matter to the Constitution Bench.
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How does the electoral system evolve in India?

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- Electoral democracy in India owes a great deal to the foresight of the Constituent Assembly.

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- When the Constituent Assembly debated how free and fair elections should be ensured, three important questions arose.
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1. *Whether free and fair elections should be made a part of fundamental rights or an independent institution, outside the executive, should be established to conduct the elections?*
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- The Assembly opted for the latter and created the Election Commission of India.
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2. *Whether to have a single, centralised body for elections to the Lok Sabha and State legislatures or not?*
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- One proposal was that the ECI be confined to federal elections, and separate institutions be set up to conduct elections to State legislatures.
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- However, with increasing tension among communities, the Assembly feared partisan action in the States and opted for a single national institution, the ECI.
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- Originally, the Constitution had provided for tribunals set up by the ECI to hear election petitions.
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- But aggrieved parties approached the courts, and the courts decided to hear election petitions.
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- Then the ECI itself recommended that election petitions be heard by the judiciary, and in 1966, the law was changed accordingly.
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3. *How to ensure the independence of the ECI?*
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- The Assembly provided simply for the CEC to be appointed by the President, leaving it to the legislature to enact a suitable law, which never happened.
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- Also on removal, though the CEC is provided with a security of tenure and could only be removed through impeachment, other EC's can be removed on the recommendations of CEC.
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- Hence for the ECs, even the safeguard of removal was not provided, which is also a subject matter of the above-mentioned PIL.
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What has this resulted in?

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- From 1967 to 1991, the one-party dominance in the national politics was getting faded, political competition intensified.
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- The political actors stepped up violence and electoral malpractices.
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- The ECI could not arrest this deterioration.
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- Several State governments made large-scale transfers on the eve of elections and posted pliable officials in key positions, who sometimes flouted the ECI's orders.
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- However, during the 1996 general election, the ECI restored the credibility of the election process.
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- It publicly reprimanded politicians for violating the Model Code of Conduct, postponed/ cancelled elections if their credibility was compromised, intensified supervision of elections, and insisted on action against errant officials.
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- The ECI has since become an institution of some authority, but still controversies over appointments of ECs, allegations of partisanship, voter bribery and paid news prevail.
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What should be done?

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- A selection committee for appointment (CEC and EC) should be made which could involve –
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1. The prime minister
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2. The leader of opposition
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3. The speaker (presiding officer of the Lok Sabha)
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- Thus, though there can be no perfect process, any process involving greater inclusion, representativeness and diversity would be superior to the government of the day making the selection.
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Source: The Hindu

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