Appointment of Election Commissioners

Why in news?

Supreme Court (SC) ruled that the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (EC) by the President will be based on the advice of a three-member high-level committee.

What were the petitions about?

- **PIL –** In 2015, a public interest litigation (PIL), contended that successive governments failed to set up a "fair, just and transparent process" for the selection of Election Commissioners.
- **Political leaning –** The Court noted that an Election Commissioner could be competent and honest but could have a definite political leaning which may show in office.
- **Not weak-kneed –** The SC observed that the country needed Election Commissioners who would not shirk from even taking on the Prime Minister if required, and not just "weak-kneed" yes-men.

What is the current process of selection of Election Commissioners?

- In *Anoop Baranwal vs Union of India,* the Supreme Court (SC) ruled that the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (EC) by the President will be based on the advice of a three-member high-level committee.
- **Article 324 (2) –** 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.

> *Dr B.R. Ambedkar – "There is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the executive."*

- **Tenure –** Under the *Election Commission Act, 1991*, an EC can have a tenure of *six years or up to the age of 65*, whichever is earlier.
- Typically, the *senior-most election commissioner is appointed as the CEC*.
- **Removal –** Once appointed, the *Chief Election Commissioner* can be removed from office only through *Parliamentary impeachment*.
- However, *no such protection of tenure is available to ECs*, who can be removed by the government on the recommendation of the CEC.

To know more click here.

What revision has the top court ordered?

- **3 Member Panel –** As per the SC's directions, a panel that includes the *Prime Minister, the Leader of the Opposition in Lok Sabha and the Chief Justice of India* will now advise the President regarding the appointment of Election Commissioners.
- This is *similar to the appointment of the Director of the Central Bureau of Investigation*.
- If the position of the Leader of the Opposition is vacant, the leader of the single largest opposition party will be on the committee.
- This system of appointment will be in force till the Parliament comes up with a specific law.
- **Funding –** The Parliament and central government to constitute an independent secretariat to deal with the expenditure of the Commission, and insulate it from any financial obligation to the government.

What are the positive outcomes of the verdict?

- **Constituent Assembly –** The framers' belief that delegation to Parliament would solve the vexing issue of the independence of the EC instead of constitutionalising it seems particularly naive.
- **Inaction from parliament –** Parliament has not acted, and the executive controls the appointments process, is contrary to the intention underlying Article 324.
- **Role of EC in democracy –** The ever-expanding scope, powers, and functions of the Election Commission, in the context of the role of free and fair elections in sustaining constitutional democracy.
- **Right to vote –** The *constitutional right to vote* cannot be actualised without an infrastructure of implementation in place.
- This, inevitably, has to take the form of an Election Commission charged with the superintendence, direction and control over elections.
- **Independence of the EC –** The absence of parliamentary legislation, coupled with the affirmative power vested in the Prime Minister to appoint the CEC and the ECs affect their independence.

What are the negative outcomes of the ruling?

- **Doctrine of separation of powers –** It flows from the Constitution, which sought to establish 3 institutional organs, namely the legislature, executive and the judiciary.
- **Against basic structure –** The Court's justification of these appointment making powers is contrary to the basic structure doctrine, which the Court itself has continuously championed.
- **National Judicial Appointments Commission (NJAC) –** In 2015, the SC observed that the *NJAC is unconstitutional* as a result of its violation of the basic structure doctrine.
- The NJAC sought to introduce a system that would enable a healthy system of checks and balances in the appointment of judges.
- However, the judiciary was reluctant to accept this proposal as it was viewed as a

threat to judicial independence, and therefore, the basic structure, and the collegium system was reinstated**.**

- While it sought to fiercely protect its position as per the basic structure doctrine in NJAC, it acted in complete contravention of the doctrine while deciding the present matter.
- **Undermining powers –** Through this verdict, the Court has undermined the legislature and the executive, including their powers, their roles, and the duties they owe to the Indian people.

References

1. The Hindu │ The Supreme Court's new rules for the appointment of Election Commissioners by the President
2. Indian Express │When judicial activism writes the law
3. The Wire │Decoding the Supreme Court's Election Commission Judgment

