Election Commissioners Bill 2023

Why in news?

Recently Rajya Sabha passed The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Office and Terms of Office) Bill, 2023.

Constitutional Provisions for Election Commission	
About	**Description**
Election Commission	It is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country.
Article 324	It provides the power of superintendence, direction and control of elections to parliament, State legislatures, the office of President of India and the office of Vice-President of India shall be vested in the Election Commission.
Composition	It consists of the Chief Election Commissioner (CEC) and two other Election Commissioners (ECs)
Appointment	The CEC and EC appointment is subject to the provisions of any law made by Parliament, be made by the *President*.

What are the key features of Bill?

- **Election Commission**- It will consist of a Chief Election Commissioner (CEC) and other Election Commissioners (ECs). The President will periodically fix the number of ECs.
- **Appointment of the Commission**- The Commission will be appointed by the President, upon the recommendation of the *Selection Committee*.



- **Search Committee**- It is headed by the Cabinet Secretary, it will suggest five names to the Selection Committee.
- The Selection Committee may consider any person other than those suggested by the Search Committee.
- **Eligibility criteria**- The CEC and ECs must
  - Be a persons of integrity,
  - Have knowledge and experience in the management and conduct of elections, and
  - Be or have been Secretary (or equivalent) to the government.
- **Tenure**- Members of the Election Commission will hold office for six years, or until they attain the age of 65 years, whichever is earlier.
- **Reappointment-** Members of the Commission cannot be re-appointed. If an EC is appointed as a CEC, the overall period of the term may not be more than six years.

- **Salary, allowances and other conditions-** It will be equivalent to that of the Cabinet Secretary.
- **Pension provisions-** They will have an option to draw pension and other retirement benefits from the service that they belonged to previously.
- **Removal-** It retains the manner of removal of CEC and ECs as specified in the Constitution.
    - **CEC-** He/She may be removed in the same manner and on the same grounds as a Supreme Court Judge.
    - **EC-** They may be removed only upon the recommendation of CEC.

What is the issues with the Bill?

- **Lack of autonomy-** The Selection Committee may be dominated by the government and compromise the independence of the Election Commission.
- The Supreme Court had suggested to include Chief Justice of India instead of a Cabinet Minister, to ensure more balance and impartiality.
- **Government interference-** The Bill allows the Selection Committee to make recommendations even when there is a vacancy in the Committee, this may result in the monopoly of the government in selection of candidates.
- **Salary provisions-** It is equivalent to Cabinet Secretary, which may lead to government influence as it is fixed by the government, it should be equivalent to salary of Supreme Court judge, which is fixed by an Act of Parliament and requires more consensus.
- **Eligibility criteria**- It limits to senior bureaucrats, who have been or are at rank equivalent to Secretary to the government. This may exclude other suitable candidates especially those who have judicial experience or expertise.

What is the Supreme Court ruling regarding the appointment of CEC and EC?

- **Anoop Baranwal case, 2023** - It held that there has been a legislative vacuum due to the absence of any law by Parliament in the last 73 years (since the adoption of the Constitution) with respect to the appointment of the CEC and EC.
- The independence of the ECI is essential for ensuring free and fair elections that is paramount for a vibrant democracy.
- It drew reference to various other institutions supporting constitutional democracy that have independent mechanisms for the appointment of its head/members like the National and State Human Rights Commission, the Central Bureau of Investigation (CBI),etc.,
- **Committee recommendations**- *Dinesh Goswami Committee* and the *Law Commission report* on Electoral Reforms suggested that the CECs and ECs should be appointed by a committee consisting of the Prime Minister, the Chief Justice of India (CJI) and the Leader of the Opposition or the largest Opposition party in the Lok Sabha.
- **Interim arrangement**- The Court exercised its power under ***Article 142*** laid down that the CEC and ECs shall be appointed by a committee consisting of the Prime Minister, the CJI and the Leader of the Opposition or the largest opposition party in the Lok Sabha.

Article 142 grants special powers to the Supreme Court to provide complete justice in any cause or matter pending before it.

- The Bill removes Chief Justice of India from the selection process that was laid under Anoop Baranwal case.

References

1. The Hindu- Selection of Election Commissioners
2. PRS- Chief Election Commissioner Bill, 2023

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