Fairness and objectivity of Election Commission of India

Why in News?

The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) act on the appointment of the CEC and ECs has come up for hearing in the Court.

What are the provisions of the new bill?

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*.

- **New bill** – The new act replaces the previous Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.
- **Selection Committee**- The Selection Committee will consist of
  - Prime Minister as Chairperson
  - Leader of the Opposition in Lok Sabha as member,
  - Union Cabinet Minister nominated by the Prime Minister as member.
- **Search Committee** – It is headed by the Law Minister and two senior bureaucrats and will prepare a panel of five names for consideration.
- The selection committee will choose one person from the recommended list.
- **Security of Tenure** - The tenure of the Chief Election Commissioner and Election Commissioners remains ***6 years or until the age of 65***, whichever is earlier.
- Qualifications for CEC and EC- Persons who are holding or have held posts equivalent to the rank of Secretary to the Central Government.
  - Persons having expertise in managing and conducting elections.
- **Service conditions** - The salary and conditions of service of the CEC and ECs will be equivalent to that of Cabinet Secretary.

Under the 1991 Act, it was equivalent to the salary of a Supreme Court Judge.

What are the issues with new act?

- **Lack of independence of the members** - When the chairperson nominates one cabinet minister, this candidate will undoubtedly be subservient to the chairperson.
- **Infirmities in the selection process**– Dominance of the executive, Prime Minister and Cabinet Minister, affects the fairness of selection of process.

Historically, the Supreme Court has ruled that election commissioners should be individuals of high integrity, competence, and impartiality.

- **Threat to EC independence** - Government retains significant influence over appointments, compromising the neutrality of the ECI.
- **Mandate of the select committee** - It is mandatory for the President to appoint persons recommended by the select committee.
- **Constitutional violation** - The selection of the CEC and other ECs has a vital bearing on the conduct of free and fair elections which is a part of the basic structure of the Constitution.
- **Weakening of checks and balances** - Removing the CJI from the committee eliminates an impartial voice, reducing transparency in appointments.
- **Undermining the authority of EC** – Equating Chief Election Commissioner(CEC) to the Cabinet secretary reduces the constitutional position of CEC sub servient to the executive.
- **Potential for electoral manipulation** - A government-backed Election Commission could make decisions favoring the ruling party.
- **Limited eligibility criteria**- Limiting the selection field to senior bureaucrats, exclude other suitable candidates especially those who have judicial experience or expertise.

What can be done to ensure the independence of EC?

- **Restoring judicial oversight** - The Supreme Court’s earlier recommendation of including the Chief Justice of India (CJI) in the selection committee should be reconsidered.
- **Strengthening appointment mechanisms** - A more transparent appointment process with public disclosures of shortlisted candidates could enhance accountability.
- **Ensuring financial and functional independence** - The Election Commission should have financial autonomy, similar to the judiciary, to reduce government influence.
- **Expand the selection pool** – Include judicial role in the eligibility criteria for chief election commissioner.

Reference

The Hindu | Free and Fair Election

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