Independence of the Election Commission

Mains: *GS-II – Polity & Governance | Responsibilities of various Constitutional Bodies.*

Why in News?

In recent times, the fairness of the electoral process in India has been under question for many reasons, culminating in a resolution by the Opposition alliance to remove the Chief Election Commissioner (CEC).

What are the present issues?

- **Background –** In June 2025, the Election Commission of India (ECI) ordered a Special Intensive Revision (SIR) of Bihar's electoral rolls.
- During this exercise, about 65 lakh names were deleted from the voter list which was challenged in the Supreme Court.
- **Allegations –** The issue of alleged 'vote theft', and the manipulation of electoral rolls in the SIR.
- It has been alleged that the Election Commission (EC) has allowed massive irregularities in voter lists, specifically targeting minority and Opposition-supporting voters.

> ***Adult franchise*** *as provided in* ***Article 326*** *of the Constitution is the bedrock of democracy. Any procedural impropriety would affect its merit and sanctity.*

What is Constitutional & Legal Basis of Election Commission?

- **Constitutional Basis** – Article 324 of the Constitution establishes a permanent Election Commission.
- It grants the Commission with powers of superintendence, direction, and control over elections to the President, Vice-President, Parliament, and State legislatures.
- **Election Commission (EC)** – Article 324 establishes the Election Commission (EC) with
  - A CEC,
  - Other Election Commissioners &
  - Provision for Regional Commissioners.
- **Evolution of the Commission** – In 1989, the commission was made multi-member but the two additional posts were abolished in 1990.
- Again, on October 1, 1993, EC permanently made multi-member under Article 324(2), which was validated by the Supreme Court in *T. N. Seshan versus Union of India*

(1995).

- **Article 324 (3)** – Provides that when any Election Commissioner is so appointed the CEC, he/she shall act as the Chairman of the EC.
- The CEC is appointed and commissioned as the commissioner having certain exclusive powers, and in case of making the Commission multi-member, he shall preside over the meeting as its chairman.
- **Purpose –** The idea behind this provision is to ensure that the conduct of elections is done by an administrator and at the same time to make the decision of the Commission consensus-based or democratic.
- **Tenure of the CEC** – Under the 2023 Act, the CEC holds office for six years or until the age of 65, whichever is earlier.
- By far the most significant provision ensuring independence of the EC is the provision for the removal of the CEC and other election commissioners.
- **Conditions of Service** – Under Article 324(5), the CEC's conditions of service cannot be varied to their disadvantage during their tenure.

What is the issue that revolve around the appointment of Election Commissioners?

- **Appointment issues** – The process of appointing election commissioners had caused controversy with the passing of *Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Office and Terms of Office) Act, 2023*, replacing the 1991 Act.
- It regulates the appointment and removal of the Chief Election Commissioner (CEC) and other Election Commissioners.
- **Selection Committee for appointment** – The 2023 Act stipulates that election commissioners should be *appointed by the President* based on a selection committee comprised of the
  - Prime Minister,
  - A Union Minister and
  - The Leader of Opposition of LS.
- **Source of Controversy** – In *Anoop Baranwal vs Union of India (2023),* the Supreme Court held that the Chief Justice of India (CJI) should also be part of the selection committee.
- However, this provision was removed by 2023 act, which created a controversy on the grounds that the independence of the EC would be adversely affected.
- **Legal Challenge** – The Act has been challenged again in *Jaya Thakur versus Union of India, 2024,* the next hearing scheduled for March 2026.
- Petitioners argue that excluding the CJI violates the spirit of the Supreme Court's ruling and weakens democratic safeguards.

How are the CEC and Other ECs being removed & issues around it?

- **Removal of the CEC** – Article 324 (5) says that the CEC can be removed *only in the manner* prescribed for the *removal of a Supreme Court judge* under Article 124(4).
- **Grounds –** Either proved misbehaviour or incapacity.
- **Removal of Other Election Commissioners** – The removal of other election commissioners is done *by the President on the advice of the CEC.*

- However, the Supreme Court in *Vineet Narain versus Union of India, 1997* held that the CEC shall not give his advice suo motu.
- This provision strikes a balance between the executive power and the independence of the election commissioners.
- **Procedure to remove the CEC** – It is very complex and rigorous, a quasi-judicial Parliamentary procedure.
- The complexity of the process ensures its independence from any possible arbitrary action by the government.
- **Legal Framework**
  - **Representation of the People Acts (1950 & 1951)** – Focus on electoral procedures, voter registration, candidate qualifications.
  - **Section 11 of the** CEC and other ECs (Appointment, Conditions of Service and Terms of Office) **Act, 2023** - Gives the procedure to remove the CEC and other Commissioners.
  - **Section 3 of Judges (Inquiry) Act, 1968** – Deals with the investigation into misbehaviour or incapacity by a commission member.
- **Motion & Signatories** – It says that if notice is given to the Lok Sabha, at least 100 members must sign, while in the case of the Rajya Sabha, the minimum number of signatories to such a motion shall not be less than 50.
- **Presiding officer** – Following this, the Speaker or the Chairman *may admit or refuse* the motion.
- **3-member committee** – It is constituted by the Speaker or Chairman which comprising
  - Chief Justice of India or a Supreme Court Judge,
  - Chief Justice of a High Court and
  - A distinguished jurist.
- **Safeguards for Fairness**
  - If notices are given in both Houses, committee formed only after both accept the motion.
  - Definite charges must be framed and communicated.
  - CEC given reasonable time and opportunity to defend (ensures the Doctrine of Natural Justice by way of protecting the 'Rule of Fair Hearing').
  - In the case of allegations of any physical or mental incapacity, medical examination by a *medical board* appointed by the Speaker or Chairman, as the case may be, needs to be conducted.

What is the political angle?

- **Opposition's Motion Against the CEC** – The Opposition's motion against CEC is unlikely to get passed as the ruling alliance holds sufficient majority in Parliament.
- The ruling government has rejected the allegations of any bias.
- **Respect for Constitutional Bodies** – These bodies must be well-respected by all, be it citizens, ruling parties or the Opposition; otherwise, it sends a wrong signal to the masses across the country.
- **Role of Constitutional & Statutory Bodies** – All political parties need to consider that these bodies operate according to the provisions provided in the Constitution or in the respective statutes.

- While dissent against their actions is legitimate, politicisation of the Constitution or constitutional bodies can be harmful to democracy.
- **Safeguards & Sensitivity** – The Constitution provides political safeguards to protect fairness in elections and maintain the balance of power between government and independent institutions.
- Any dilution of these safeguards is politically sensitive, as it directly affects the credibility of the electoral process.

What lies ahead?

- The rule of thumb in Indian democracy is that it thrives on a blend of authority and liberty.
- It balances the command of the state with the freedom of citizens, ensuring both stability and inclusiveness.

Reference

The Hindu | On the independence of the Election Commission

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