Issues with Appointment of Election Commissioner

Why in news?

The ongoing hearing before the Supreme Court on the need to have a neutral mechanism for appointment of Election Commissioners raises questions on the body's functional independence.

What is the structure of Election Commission of India (ECI)?

- **Establishment** - The ECI is an **autonomous permanent constitutional authority** established in 1950 for administering election processes in India.
- The Election Commission operates under **Article 324 (Part XV of the Constitution)** and the subsequently enacted Representation of the People Act.
- **Elections** - The body administers elections to the
    - Lok Sabha
    - Rajya Sabha
    - State Legislative Assemblies
    - Office of the President
    - Office of the Vice President
- **Composition** - Originally the commission had only a Chief Election Commissioner (CEC).
- Since 1993, it has become a multi-member commission with Chief Election Commissioner and two Election Commissioners (ECs).
- Article 324(2) empowers the President of India to fix from time to time the number of Election Commissioners other than the CEC.
- If the CEC and other ECs differ in opinion on any matter, such matter shall be decided by according to the opinion of the majority.
- **Appointment** - The President appoints Chief Election Commissioner and Election Commissioners.
- **Tenure** - They have tenure of 6 years, or up to the age of 65 years, whichever is earlier.
- They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
- **Removal** - The Chief Election Commissioner can be removed from office only through impeachment by Parliament.
- **State level** - At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State.

What are the major functions of the ECI?

- **Political parties** - Election Commission is responsible for conducting free and fair

elections across the country.
- The ECI is involved in the registration of political parties and ensures inner party democracy.
- The registered political parties are granted recognition at the State and National levels by the ECI according to criteria prescribed by it.
- The ECI ensures a level playing field for the political parties through strict observance by them of a Model Code of Conduct.
- **Advisory jurisdiction** - The Commission has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
- The cases of persons found guilty of corrupt practices at elections which come before the Supreme Court and High Courts are referred to the ECI for its opinion.
- The opinion of the Commission in all such matters is **binding** on the President or the Governor to whom such opinion is tendered.
- **Quasi-judicial functions** - The Commission settles disputes between the splinter groups of recognised parties.
- The Commission has the power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law.
- The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

What are the provisions available for ECI's independence?

- **Removal -** The Chief Election Commissioner can be removed from office only through impeachment by Parliament.
- The procedure is similar to the process of removal of Supreme Court judge.
- Election Commissioners cannot be removed from office except upon the recommendation of the CEC.
- **Service conditions** – The service conditions of CEC cannot be varied to their disadvantage after the appointment.

What is the current issue with appointments?

- **Appointments**- At present, the CEC and ECs are appointed by the president on the advice of the Cabinet under Transaction of Business Rules, 1961 of the Union cabinet.
- The current convention is to appoint ECs, and elevate them as CEC on the basis of seniority.
- The issue is related to the
    - likelihood of bias in the appointments
    - possibility of biased conduct by CEC and ECs in the future
    - scope for personal whimsy in appointments of EC
- Given the Court's vocal concern about the ECI's independence, the question is whether the Commissioners should be appointed on the recommendation of a high-powered committee independent body.
- **Tenure** – The Court has questioned the practice of appointing CECs close to the age of 65 so that they have only a brief tenure.
- Equal tenure security for CEC and Election Commissioners will boost their independence.

- The ECs must also be provided with security of tenure as they can be removed from office on the CEC's recommendation.

References

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