The Chief Election Commissioner and Other Election Commissioners Bill 2023

Why in news?

Recently, the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, was introduced in Rajya Sabha.

Current Setup of Election Commission

- Election Commission is a *permanent and an independent body* established by the Constitution of India directly to ensure free and fair elections in the country.
- Articles *(324-329) in Part XV* of the Constitution deals with Election.
- **Article 324-** The appointment of the CEC and other ECs shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
- The Election Commission shall consist of the *Chief Election Commissioner* and such number of other *Election Commissioners*, if any, as the president may from time to time fix.
- **Appointment-** The Law Minister suggests a pool of suitable candidates to the Prime Minister for consideration.
- The *President* makes the appointment on the advice of the PM.
- The President may also appoint after consultation with the Election Commission such regional commissioners as he may consider necessary to assist the election commission.
- **Term of office** - CEC and other ECs will hold office for a term of *6 years or until they reach the age of 65 years*, whichever is earlier.
- **Conditions of service-** The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the *President.*
- **Removal** – The Chief Election Commissioner can be removed from office in a manner similar to that of a *Supreme Court judge.*
- This is done through an order of the *President*, based on a motion passed by both Houses of Parliament in the same session by
    - majority support of total membership of each House, and
    - at least two-thirds support from members present and voting
- An EC can only be removed from office on the *recommendation of the CEC.*

What are the key features of the bill?

- **Repeal**- It repeals the Election Commission (Conditions of Service of Election

Commissioners and Transaction of Business) Act, 1991.

- **Appointment-** It adds that the CEC and other ECs will be appointed by the President on the recommendation of a *Selection Committee.*
- **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.
- If the Leader of Opposition in Lok Sabha has not been recognised, the leader of the single largest opposition party in Lok Sabha will assume the role.
- **Search Committee-** A Search Committee will prepare a panel of 5 persons for the consideration of the Selection Committee.
- The Search Committee will be headed by the Cabinet Secretary.
- It will have 2 other members, not below the rank of Secretary to the central government, having knowledge and experience in matters related to elections.
- The Selection Committee may also consider candidates who have not been included in the panel prepared by the Search Committee.
- **Eligibility for CEC and EC-**
  - Persons who are holding or have held posts equivalent to the rank of Secretary to the Central Government and
  - Persons having expertise in managing and conducting elections.
- **Salary and allowances -** The Bill provides that salary, allowance, and service conditions of the CEC and other ECs will be the same as that of the Cabinet Secretary.
- **Term of office** - The Bill retains the same tenure as mentioned in the 1991 Act. Also, the CEC and other ECs will not be eligible for re-appointment.
- **Conduct of business**- All business of the Election Commission is to be conducted unanimously.
- In case of difference of opinion between the CEC and the other ECs on any matter, it shall be decided through *majority.*
- **Removal -** The Bill retains the earlier removal procedure.
- **Resignation-** The Bill has the same provision of the 1991 Act in which the CEC and other ECs may submit their resignation to the President.

*In **Anoop Baranwal vs Union of India**, the Supreme Court ruled that the appointment of the CEC and EC by the President will be based on the advice of a 3-member high-level committee (Prime Minister, Leader of Opposition in Lok Sabha, and Chief Justice of India)*

What are the implications of the move?

- **Pros -** It proposes a search committee, headed by the Cabinet Secretary, with 2 other members to prepare a panel of 5 members for the consideration of the Selection Committee.
- Another positive feature of the Bill is that prescribing the qualifications for appointment to the posts.
- **Cons** - The composition of the Selection Committee in the Bill raises questions on whether the process is now independent or still rigged in favour of the Executive.

- With the PM and a Cabinet Minster nominated by the PM in the three-member panel, the LoP is outvoted even before the process begins.

Appointment norm in major democracies
• **United States**- The 6-member Federal Election Commissioners are appointed by the President and confirmed by the Senate. • **Canada-** The Chief Electoral Officer is appointed for a 10-year non-renewable term by a resolution in the House of Commons. The person reports directly to the President. • **United Kingdom-** Speaker's Committee with membership drawn from MPs within the Parliament, oversees the recruitment. • **France-** The 9-member Constitutional Council oversees the election of the President of the Republic and referenda.

References

1. Indian Express- Explained the features of the bill
2. The Hindu- Government lists bill in Rajya Sabha
3. PRS- Key highlights of the bill

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