



The selection process of the ECs

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(Mains GS 2 : Separation of powers between various organs, dispute redressal mechanisms and institutions)

Context:

The attendance of the Chief Election Commissioner (CEC) and his Election Commissioner (EC) colleagues at an “informal” meeting with the Principal Secretary to the Prime Minister has brought renewed focus on the independence and impartiality of the Election Commission of India (ECI).

Multiple accusations:

- The CEC’s initial hesitation when “summoned” was appropriate given that the ECI is a constitutionally mandated body that should maintain distance from the Executive, in perception and reality.
- Already, the ECI has faced multiple accusations of favouring, for instance, the Citizens’ Commission on Elections (CCE), chaired by the retired Supreme Court judge, Justice Madan B. Lokur, in its report titled “An Enquiry into India’s Election System,” highlighted several instances of inaction on the part of the ECI while conducting the 2019 general election.
- The government was also accused of hounding EC Ashok Lavasa when he favoured taking action against the Prime Minister for violations of electoral codes of conduct.

Suggest changes:

- The ECI is the institutional keystone holding up the edifice of Indian democracy, thus changes in the appointment process for ECs can strengthen ECI's independence, neutrality and transparency.
- The appointment of ECs falls within the purview of Article 324(2) of the Constitution, which establishes the institution.
- Pertinently, it contains a 'subject to' clause which provides that both the number and tenure of the ECs shall be "subject to provisions of any law made in that behalf by Parliament, be made by the President."
- This 'subject to' clause was introduced, in the words of Dr. B.R. Ambedkar, to "prevent either a fool or knave or a person who is likely to be under the thumb of the Executive."

Enact legislation:

- It is Parliament which enacts legislation regarding the appointment of ECs.
- Apart from enacting a law in 1989 enlarging the number of ECs from one to three, Parliament has so far not enacted any changes to the appointment process.
- Thus, In the face of legislative inaction, there is now a possibility that the judiciary will force parliament's hand.
- Three Writ Petitions, with one pending since 2015, are urging the Supreme Court to declare that the current practice of appointment of ECs by the Centre violates Article 14, Article 324(2), and Democracy as a basic feature of the Constitution.
- These petitions argue for an independent system for appointment of ECs, as recommended by previous Law Commission and various Committee reports.

Committee's recommendation:

- The Justice Tarkunde Committee in 1975, recommended that ECs be appointed on the advice of a Committee comprising the Prime Minister, Lok Sabha Opposition Leader and the Chief Justice.
- This was reiterated by the Dinesh Goswami Committee in 1990 and the Law Commission in 2015.
- The 4th Report (2007) of the Second Administrative Reforms Commission additionally recommended that the Law Minister and the Deputy Chairman of the Rajya Sabha be included in such a Collegium.

Sole appointer:

- Precedent does exist in the case of *Roger Mathew v South Indian Bank Ltd*, to argue against the Executive being the sole appointer for a quasi-judicial body.

- The Supreme Court had recognised that “Election Commission is not only responsible for conducting free and fair elections but it also renders a quasi-judicial function between the various political parties including the ruling government and other parties.
- In such circumstances the executive cannot be a sole participant in the appointment of members of the Election Commission as it gives unfettered discretion to the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation.”

Follow democratic principles:

- Establishing a multi-institutional, bipartisan committee for fair and transparent selection of ECs can enhance the perceived and actual independence of ECI.
- Such a procedure is already followed with regard to other Constitutional and Statutory Authorities such as the Chief Information Commissioner, Lokpal, Vigilance Commissioner, and the Director of the Central Bureau of Intelligence.
- The quasi-judicial nature of ECI’s functions makes it especially important that the appointments process conform to the strictest democratic principles.

Going ahead :

- Parliament would do well to pre-empt judicial strictures by going ahead and formulating a law that establishes a multi-institutional, bipartisan Collegium to select ECs.
- ECI’s constitutional responsibilities require a fair and transparent appointment process that is beyond reproach, which will reaffirm our faith in this vital pillar of our polity.
- Separation of powers is the gold standard for governments across the world; thus, the existing veil over the appointment process of ECs potentially undermines the very structure on which our democratic aspirations rest.

Conclusion:

The Election Commissioners supervise and hold elections across the Country, and this is the significance of their office, and their selection has to be made in the most transparent manner.