

## 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

1. [The Hindu | On Election Commissioner tenures](#)
2. [The Wire | How can we constitute a more impartial ECI?](#)
3. [ECI | The Election Commission of India](#)
4. [Vakilsearch | Election Commission of India \(ECI\)](#)

