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The Post And The Person: On Strengthening The EC

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(The editorial is based on the article "The post and the person: on strengthening the EC" which appears in The Hindu for 22nd November 2018. It evaluates Election Commission.)

When India adopted democracy, the path to democracy was rough, as democratic institutions in pre-independent India were not allowed to be functioned democratically.

Competitive nature of election is an essential requirement for a functioning democracy.

That electoral democracy became a reality in India owes a great deal to the foresight of the Constituent Assembly. The Constitution of India provides for periodic elections, which ensure democratic transfer of political power from one set of representatives to other. **The Election Commission of India, a non-partisan constitutional body, conducts the largest electoral exercise in the world.**

The Constitution Bench of the Supreme Court is examining a public interest litigation (PIL) which seeks the strengthening of the Election Commission of India (ECI), includes a proposal to create an independent mechanism to appoint the Chief Election Commissioner (CEC) and Election Commissioners (ECs).

The petitioner has filed this **PIL under the Article 32** (guarantees the right to move the Supreme Court for the enforcement of all or any of the fundamental rights) **to provide same and similar protection to both the Election Commissioners** so that they shall not be removed from their office except in the like manner and on the like grounds as the Chief Election Commissioner.

Appointment

- **The appointment of the chief election commissioner (Article 324(2)) and other election commissioners are made by the president.** When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.

- The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- **The conditions of service and tenure** of office of the election commissioners and the regional commissioners shall be **determined by the president**.

Problems with the appointment of CECs

- A **Supreme Court bench pointed out that there is a “gap” due to the lack of a parliamentary law** which transparently spells out the eligibility criteria required for a person to be an election commissioner.
- Even the **selection procedure** of the CBI Director is formalised by a written law, but **not that of Election Commissioners**.
- It said the appointments were made by the President solely on the basis of the advice given by the political-executive at the Centre. This **situation allegedly gives “ample room for the ruling party to choose someone** whose loyalty is ensured and renders the selection process vulnerable to manipulations and partisanship which is violative of Article 14 of the Constitution”.

Background

- When the Constituent Assembly debated how to ensure free and fair elections, three important questions arose.
- The first was whether free and fair elections should be made a part of fundamental rights or an independent institution, outside the executive, should be established to conduct the elections. The Assembly opted for the latter and created the ECI.
- The second critical decision was to have a single, centralised body for elections to the Lok Sabha and State legislatures. One proposal was that the ECI be confined to federal elections, and separate institutions be set up to conduct elections to State legislatures. However, with increasing tension among communities, the Assembly feared partisan action in the States and opted for a single national institution, the ECI.
- Constitution provided simply for the CEC to be appointed by the President, leaving it to the legislature to enact a suitable law, which never happened. The Constituent Assembly did provide, though, that the CEC could only be removed through impeachment. For the ECs, even this safeguard was not provided, which is also a subject of the above-mentioned PIL.

The Election Commission(EC) of India

- Election Commission of India is a permanent Constitutional Body, which was
- established in accordance with the Constitution on 25th January 1950.
- The Commission conducts elections in accordance with the constitutional provisions,

supplemented by laws made by Parliament.

- The major laws include Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls, the Representation of the People Act, 1951 which deals, in detail, with all aspects of the conduct of elections and post-election disputes.

The Role of Election Commission in Strengthening the Democracy

- The ECI has been successfully conducting national as well as state elections since 1952. In recent years, however, the Commission has started to **play the more active role to ensure greater participation of people.**
- The Commission had **gone to the extent of disciplining the political parties** with a threat of derecognition if the parties failed in maintaining inner-party democracy.
- It **upheld the values enshrined in the Constitution** viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance.
- It conducts elections with the highest standard of **credibility, freeness, fairness, transparency, integrity, accountability, autonomy** and professionalism.
- It ensures participation of all **eligible citizens in the electoral process in an inclusive voter-centric and voter-friendly environment.**
- It **engages with political parties** and all stakeholders in the interest of the electoral process.
- **It creates awareness** about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.

Major Shortcomings

- The election process has deteriorated, political competition has intensified, and political actors have stepped up violence and electoral malpractices. **The ECI has been unable to arrest this deterioration.**
- Several State governments make large-scale transfers on the eve of elections and posted pliable officials in key positions, who sometimes flout the ECI's orders.
- In response, ECI has reprimanded the politicians for violating the Model Code of Conduct, postponed/ canceled elections if their credibility was compromised, intensified supervision of elections, and insisted on action against errant officials.
- The ECI is not adequately equipped to regulate the political parties. The ECI has no power in enforcing inner-party democracy and regulation of party finances.
- In the recent years, an impression is gaining ground that the **Election Commission is becoming less and less independent of the Executive** than in the earlier years of Independence because the choice of the Chief Election Commissioner has not always

been based on criteria, which would command the confidence of all sections of public opinion.

Way Forward

- As history shows, inadequate leadership is the bane of our public institutions. Safeguards to ensure that ethical and capable people head them are crucial.
- 2nd ARC report recommended that collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.

DRISHTI INPUT

- The Law Commission of India submitted its Report on “Electoral Reforms” to the Union Law and Justice Ministry:
 - The ECI should be strengthened by first, giving equal constitutional protection to all members of the Commission in matters of removability; second, making the appointment process of the Election Commissioners and the CEC consultative; and third, creating a permanent, independent Secretariat for the ECI.
 - Article 324(5) of the Constitution should be amended to equate the removal procedures of the two Election Commissioners with that of the Chief Election Commissioner. Thus, equal constitutional protection should be given to all members of the ECI in matters of removability from office.
 - The appointment of all the Election Commissioners, including the CEC, should be made by the President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister; the Leader of the Opposition of the Lok Sabha (or the leader of the largest opposition party in the Lok Sabha in terms of numerical strength); and the Chief Justice of India. Elevation of an Election Commissioner should be on the basis of seniority, unless the three member collegium/committee, for reasons to be recorded in writing, finds such Commissioner unfit. Amendments should be made in the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 to reflect this.
 - A new sub-clause (2A) should be added to Article 324 of the Constitution to provide for a separate independent and permanent Secretariat for the ECI along the lines of the Lok Sabha/Rajya Sabha Secretariats under Article 98 of the Constitution. This will further improve the independence of the ECI.
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