The Big Picture - Election Commission: Collegium System & Appointments

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Recently, the Supreme Court had agreed to hear a Public Interest Litigation (PIL) seeking the appointment of Chief Election Commissioner and Election Commissioners be done by a **three-member collegium.** The collegium will comprise of the Prime Minister, the Leader of Opposition in Lok Sabha and the Chief Justice of India. The PIL also seeks to **ensure more autonomy** for the office of Chief Election Commissioner and Election Commissioners and an **independent secretariat** for the Election Commission of India.

Election Commission of India

- The **Election Commission of India (ECI)** is an **autonomous constitutional authority** responsible for administering Union and State election processes in India.

- The body administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies, and the offices of the President and Vice President in the country.

Structure of the Commission

- Originally the commission had only one election commissioner but after the **Election Commissioner Amendment Act 1989,** it has been made a **multi-member body.**
- The commission presently consists of one Chief Election Commissioner (CEC) and two Election Commissioners (ECs).
- The secretariat of the commission is located in **New Delhi.**

Historical Demand for Appointment

- This demand was first raised in **1990** when the **Dinesh Goswami Committee** suggested the need for a selection committee or a panel to appoint the CEC (at that time ECI was a single-member body).
- Based on this recommendation, **70th Constitutional Amendment Bill, 1990** was introduced in the Parliament which demanded for the **selection committee** comprising of the Presiding Officers of both Houses and Leader of the Opposition in Lok Sabha.

  However, due to lack of political will, it was not passed and was withdrawn in 1993. Till date, no such bill was formed.
- **Global Practise:** In the USA, South Africa, Canada, etc. there is a mechanism for outside consultation with expert body for making suitable appointments.

Present System of Appointment

- **Constitutional versus Executive Power of Appointment:**
  - There is no prescribed procedure for appointment of the Chief Election Commissioner and Election Commissioners as per the constitution. Under the Transaction of Business rules, the **President shall appoint the CEC and EC based on the recommendations made by the Prime Minister.**

    Therefore, it is the **executive power of the President** to appoint CEC and ECs.
  - However, according to **Article 324(5),** the Parliament has the power to regulate the **terms of conditions of service and tenure** of ECs. It is under this article that the Parliament has made laws till date, and not under **Art. 324(2)** in which the Parliament can establish a selection committee for regulating the appointments made by the President.

- **Aberrations in Appointment:**
    - **Constituent Assembly Debates:** The issue was debated in the Constituent Assembly which finally left over to the government to decide the appointments.
    - **Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991** was passed to **determine the conditions of service** of the Chief Election Commissioner and other Election Commissioners and to **provide for the procedure for transaction of business** by the ECI. However, the Parliament at that time decided not to put any collegium system for appointment.

Challenges

- **Similar Demand:** For other **constitutional positions** similar demand can be raised where it is the imperative of the executive to make such appointments like for **Attorney General or Comptroller & Auditor-General.**

    The government has the right to decide such appointments like it did for CBI director or the **Chief Vigilance Commissioner**. But these are **statutory positions.** As of now, there is no committee for constitutional appointments.
- **Constitutional Dilemma:** According to **Article 324(2),** the President shall make the **appointment** till the time there is no law being made by the Parliament for this purpose.
    - Because of the absence of such law, the possible statutory appointment process has been made a constitutional appointment (done under executive domain) by the President.
    - Even in the debates of Constituent Assembly, it was argued that the appointments be made by the President in consultation with PM with the concurrence of **two-thirds of the majority of the joint session** of both the Houses of Parliament.
- **Distinction between CEC & EC:** There is a difference between the position of a CEC & EC. The appointments to both the position may differ according to the task they perform. Therefore, to differentiate the process of appointment which is still done on an **ad-hoc** basis (because of absence of any constitutional law) becomes a challenging task that needs to be addressed properly to ensure the independent working of the commission.
- **Demand for Collegium System-** In the recent past, this demand has gained prominence in the backdrop of **allegations raised by political parties** regarding the independence of the Commission. Therefore, it is due to political necessity and not legal conundrum that there is a demand for multiparty approach in appointment process.

- **Judicial Overreach:** The **Supreme Court** (SC) interprets any law on the basis of provisions of the constitution, and constitutionally decision for appointment procedure of EC comes under executive domain. Thereby, decision by the Supreme Court in this regard can possibly shake the harmonious balance of power.

Way Forward

- **Deficiencies** in the present system of appointment process needs to be **removed.** And adequate safeguards must be put into place to ensure that ethical and capable people head the concerned positions.
- **Independence:** There must be similar **election and removal procedure** for CEC and ECs, and they must exercise the same powers unless specifically prescribed by a law. Also the expenses of ECI must be **charged expenditure** on **Consolidated Fund of India.**
- **Transparency:** Appointments through collegium or any other system as discussed in constitutional debate can bring **more transparency** in the appointment process.
- **Autonomy:** Even, the **Law Commission in its 255th report on electoral reforms (2015)** for **ensuring greater autonomy** to the ECI, recommended for the constitution of a selection committee.
- **Legislation:** There is a need for debate and discussions in the Parliament on the issue of independency of ECI and consequently passing of required legislation.

Law Commission 255th Report on Electoral Reforms: Strengthening the office of the Election Commission of India

- The Commission in its report inter-alia suggested, the ECI must be strengthened by:
    - Giving equal constitutional protection to all members of the Commission in matters of **removability;**
    - Making the **appointment process** of the Election Commissioners and the CEC consultative; and
    - Creating a permanent, **independent Secretariat** for the ECI.
- **Article 324(5)** of the Constitution must 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, must 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 must be on the basis of seniority, unless the three member collegium/committee finds such Commissioner unfit.
    - Amendments must be made in the **Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991** to reflect this.
- It also recommended, to add a new sub-clause as **(2A)** 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.

Though there are various issues faced by the Election Commission of India, it has still managed to maintain its reputation worldwide by maintaining its integrity and faithfully discharging its duty by staying within the constitutional realms.