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Recasting the Selection Process of the ECs

What is the issue?

Reports of the CEC and the ECs attending an informal meeting with the Principal Secretary to the Prime Minister last year has brought the focus on the independence and the impartiality of the ECI.

What are the constitutional provisions regarding the ECI?

- The Election Commission of India 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 in India, and the offices of the President and Vice President in the country.
- **Part XV (Article 324-329)** of the Indian Constitution deals with elections, and establishes a commission for these matters.
- At present, the Election Commission of India (ECI) is a **three-member body**, with one Chief Election Commissioner (CEC) and two Election Commissioners (EC).
- Under **Article 324(2)** of the Constitution of India, the President of India is empowered to appoint the CEC and the ECs.
- The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- Article 324(2) also empowers the President of India to fix from time to time the number of Election Commissioners other than the CEC.
- They draw salaries and allowances at par with those of the Judges of the Supreme Court of India.
- The CEC or an EC holds office for a term of **six years** from the date on which he assumes his office or until he attains the age of **65 years** before the expiry of six years term.
- They can resign anytime or can be removed before the expiry of their

term.

- The CEC can be removed from office only through a process of removal **similar to that of a SC judge** by Parliament.
- 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**.

What are the functions of the ECI?

Administrative functions

- ECI determines the **territorial areas** of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
- It prepares and periodically revises **electoral rolls** and registers all eligible voters.
- ECI **grants recognition to political parties** and **allot election symbols** to them.
- Election Commission ensures a level playing field for the political parties in election through strict observance of a **Model Code of Conduct** by the political parties.

Advisory Jurisdiction & Quasi-Judicial Functions

- The Commission also 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 courts are referred to the ECI for its **opinion** on the question of disqualified and, if so, for what period.
- The opinion of the Commission in all such matters is **binding** on the President or the Governor to whom such opinion is tendered.
- 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.
- The decisions of the Commission can be challenged in the High Court and the Supreme Court of the India by appropriate petitions.

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What are the charges leveled against ECI?

- **Favouring the ruling party-** Over the last seven years, the ECI has faced multiple accusations of favouring the ruling party.
- The Citizens' Commission on Elections (CCE), in its report titled "An Enquiry into India's Election System" has highlighted instances of inaction on the part of the ECI while conducting the 2019 general election.
- The Government was also accused of troubling the former Election Commissioner Ashok Lavasa when he favoured taking action against the Prime Minister for violations of electoral codes of conduct.
- **Absence of certain terms in the constitution**
 - The Constitution has not prescribed the qualifications of the members of the Election Commission.
 - The Constitution has not specified the term of the members of the Election Commission.
 - The Constitution has not debarred the retiring election commissioners from any further appointment by the government.
- **Appointment of ECs-** Writ petitions are urging the Supreme Court to declare that the current practice of appointment of ECs by the Centre violates Articles 14, 324(2), and democracy as a basic feature of the Constitution.
- These petitions argue for an independent system for appointment of Election Commissioners, as recommended by previous Law Commission and various committee reports

What can be done to strengthen the ECI?

- Changes in the appointment process for Election Commissioners can strengthen the ECI's independence, neutrality and transparency.
- **Appointments-** In 1975, the **Justice Tarkunde Committee** recommended that Election Commissioners be appointed on the advice of a committee comprising the Prime Minister, the Lok Sabha Opposition Leader and the Chief Justice of India.
- This was reiterated by the **Dinesh Goswami Committee** in 1990 and the **Law Commission** in 2015.
- The Fourth Report of the **2nd Administrative Reforms Commission** additionally recommended that the Law Minister and the Deputy Chairman of the Rajya Sabha be included in such a Collegium.

- Establishing a multi-institutional, bipartisan committee for the fair and transparent selection of Election Commissioners similar to the appointment of CIC, Lokpal, CVC, and the Director of the CBI is the need of the hour.
- Separation of powers is the gold standard for governments across the world.

References

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