

**03– 03 – 2023**

**News:** Panel of PM, CJI, LoP to pick CEC, says court

- A Constitution Bench of the Supreme Court on Thursday directed in a landmark judgment that the **Chief Election Commissioner (CEC) and Election Commissioners will be appointed by the President on the advice of a panel of the Prime Minister, Leader of the Opposition (LoP) in the Lok Sabha or the leader of the single largest party in Opposition and the Chief Justice of India (CJI).**
- For such a change, the **constitution has to be amended with the support of atleast half states.**

## **Election Commission of India (ECI)**

- Articles **324-329**, Part XV of Indian Constitution specifies about the Election Commission of India and its works.
- Article 324 of the **Constitution states that the Election Commission shall consist of the Chief Election Commissioner (CEC) and such number of other election commissioners (ECs), if any, as the president may from time to time fix.**
- The body was established as a **single member body in 1950**. Two election commissioners were added in 1989.

- Today, the Election Commission has been functioning as a **multi-member body consisting of three election commissioners** all of whom are **appointed by President on the advice of Union Cabinet headed by Prime Minister**.
- The **CEC and the two other ECs have equal powers and receive equal salaries, allowances** (similar to that of a judge of the Supreme Court).
- In case of difference of opinion amongst the CEC and/or two other ECs, the **matter is decided by the Commission by a majority**.
- **Term of Chief Election Commissioner is 6 years or, 65 years of age, whichever is earlier**.
- The **term** of EC members are determined by **President**.
- **Reappointment** of members of election commission is **possible**.
- The **constitution is silent about the qualifications to be possessed** by the members of Election Commission.
- **Salary is drawn out of Consolidated Fund of India but expenses made by the Commission are voted in Parliament**.
- The **CEC is provided with the security of tenure**. He cannot be removed from his office except in the same manner and on the same grounds as a **judge of the Supreme Court**.
- **Other ECs cannot be removed from office except on the recommendation** of the CEC. However, such **recommendation from CEC is not a binding** on the

President. In 2009, such a recommendation from the then CEC, was declined by the President.

### **Chief Electoral Officer (CEO)**

- The Chief Electoral Officer assists the Election Commission at the state level. He is appointed by the Chief Election Commissioner in consultation with the state government.

### **Returning Officer**

- The Returning Officer of a parliamentary or assembly constituency is responsible for the conduct of elections in the parliamentary or assembly constituency concerned as per section 21 of the Representation of the People Act 1951.
- The Election Commission of India nominates or designates an officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government/Union Territory Administration.
- In addition, the Election Commission of India also appoints one or more Assistant Returning Officers for each of the assembly and parliamentary

constituencies to assist the Returning Officer in the performance of his functions in connection with the conduct of elections.

- Recently, the Election Commission of India has proposed to link the Electoral Roll with Aadhar card with a view to curbing the menace of multiple enrolment of the same person at different places.
- The recommendation for elections is made by the Election Commission (EC) and the notification for election is issued by the President and Governors of the State concerned.
- Election Commissioner of India (ECI) represents the Republic of India in Association of World Election Bodies (A – WEB).

## **Powers**

- Conducting general & bye elections to Parliament and State legislatures.
- Conducting elections to the post of President and Vice President of India.
- Preparation of Electoral Roll.
- Granting of Party symbol and recognition of National, State parties based on recent election performance. The Election Symbols (Reservation and Allotment) order, first promulgated in 1968, mandates the Election Commission to provide for specification, reservation, choice and allotment of symbols at parliamentary and assembly elections, for the recognition of political parties.

- Issue of Model Code of Conduct.
- The ECI is endowed with the **power of setting limit on expenses of poll**. This limit is revised from time to time. This power is given with a view to secure fair elections by curbing the undue advantage, which may be gained by wealthy candidates.
- When on election duty, the government officers work under the control of the Election Commission and not under the government.
- When the Election Commission comes to an opinion that polling was not fair in some booths or even an entire constituency, it orders a repoll.
- If any **question arises as to whether a member of parliament has become the subject to any disqualification under Article 102** then the question shall be referred for the **decision of the president and his decision shall be final**. The president **shall obtain the opinion of the Election Commission and shall act according to such opinion**.
- However, the Election Commission **cannot disqualify a candidate who engages in electoral malpractice**. At best, the ECI may **direct the authorities to register a case against the candidate**.
- The ECI has power to decriminalize politics by putting **lifetime ban on convicted politicians, thereby preventing those from criminal background to contest in elections**. This has been envisaged in **Articles 102 and 191 of the**

Indian Constitution along with sections 7(b), 8 to 10-A of the Representation of People Act, 1956.

- The 44<sup>th</sup> amendment Act empowered the Election Commission in the case of President's Rule also.
- The 44<sup>th</sup> Amendment Act of 1978 introduced a new provision to put restraint on the power of the parliament to extend a proclamation of President's Rule beyond one year.

The 44<sup>th</sup> amendment Act provided that beyond one year the President's Rule can be extended by six months at a time only when two conditions are fulfilled:

- A Proclamation of National emergency should be in operation in the whole of India, or in the whole or any part of the state;
- The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.
- Passport, Driving License, Service Identity Cards with photograph issued to employees by Central/State Govt./PSUs/Public Limited Companies, Passbooks with photograph issued by Bank/Post Office, PAN Card, Smart Card issued by RGI under NPR, MNREGA Job Card, Health Insurance Smart Card issued

under the scheme of Ministry of Labour, Pension document with photograph, Official identity cards issued to MPs/MLAs/MLCs, and Aadhaar Card.

- Overseas electors shall have to produce their original passport only for identification.
- Previously, the Commission had allowed Photo Voter Slip (PVS) as a document for identification.
- However, it was found to be misused due to lack of security features, hence its use as a stand-alone identification document for voting has been discontinued.
- According to Sec. 73 of the R. P. Act, 1951, after the results of all Parliamentary constituencies are declared, the Election Commission will constitute the new Lok Sabha by notifying in the official gazette, the names of the elected members. The EC issues a notification to constitute the new Lok Sabha and then present it to the President enabling him to convene the new House.

## **Amending the Indian Constitution**

- Amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.

- This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.
- The power to amend the constitution is a feature borrowed from the constitution of South Africa.
- Article 368: “Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the ‘basic structure’ of the Constitution”. Article 368 of Part XX of Constitution of India provides for two types of amendments.
  - ✓ By a special majority of Parliament.
  - ✓ By a special majority of the Parliament with the ratification by half of the total states.
- In the infamous Keshavananda Bharati v/s State of Kerala, the Supreme Court profound the Doctrine of Basic Structure which wasn’t defined in the constitution. Further, the term basic structure was widened by the Supreme Court and high courts to include various elements.
- The amendment regarding the functioning of election commission requires a special majority along with the consent of states as if a federal matter.



- Special Majority here means acquiring two majorities simultaneously: 50% of effective members (A support vote greater than 272) and more than 66% of members present and voting (Majority that depends upon the number of present members and voting).
- The bill then is forwarded to the consent of states.
- The states would present the bill in their legislative assemblies and will be put to vote in a simple majority with no time constraint put on them.
- Once at least 15 legislative assemblies' passes the motion supporting the amendment, the same is sent to the President of India, who is mandated to sign the amendment. Here, the president is bound to assent it and no Veto powers shall be used as in the case of every constitutional amendments.