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APPOINTMENT OF ELECTION COMMISSIONERS

This article covers "Daily current events" and the topic is about 'Appointment of Election Commissioners' which is in news, it covers "Constitutional post, power and functions assigned" In GS-2, the following content has relevance for UPSC.

For Prelims: Appointment of Election Commissioners

For Mains: GS-2, Constitutional post, power and functions assigned

Why in the news:

In the judgment, which orders to change the appointment process of Election Commissioners, the Supreme Court has stated that the method of appointment of Arun Goel as an Election Commissioner "throws up certain significant considerations".

MORE INFORMATION ABOUT THE NEWS

The petition

ON APPOINTMENT

- The Court is now reviewing a number of petitions requesting functional independence for Election Commissioners.
- They have sought an "independent, unbiased system" for their appointment that is not subject to political interference.

PROTECTION AGAINST REMOVAL

- Election Commissioners should be protected against dismissal in the same way that the Chief Election Commissioner is.
- The CEC, like an apex court judge, can only be removed from office by a special majority of Parliament. In contrast, Election Commissioners rely on the President's "pleasure" to remain in office.

THE SUPREME COURT'S VERDICT ON APPOINTMENT OF ELECTION COMMISSIONERS

- According to the Supreme Court, a perusal of the Constituent Assembly's (CA) deliberations on the establishment of the ECI reveals that all members were unanimous in their belief that elections must be handled by an impartial commission.
- The deliberate inclusion of "Subject to the terms of any law passed on that behalf by Parliament" implies that CA intended for parliament to make regulations governing ECI appointment.
- While ordinarily, the **court cannot encroach on a purely legislative power**, in the context of the Constitution, and **inertia of the Legislature** and the vacuum created by it **make it necessary for the court to intervene**.
- On the Subject of whether the removal process should be the same for CEC and ECs, the SC stated that it could not be the same because CEC has a special position and article 324 becomes inoperative without CEC.
- The Supreme Court deferred to the government the decision on paying the EC, Permanent Secretariat, and the necessity for expenditure to be charged to the Consolidated Fund of India.

GOVERNMENT ARGUMENT

- The government contended that in the absence of such a statute passed by parliament, the President has the constitutional power and asked the Supreme Court to exercise judicial restraint.

ISSUES ON ELECTION COMMISSIONERS' APPOINTMENTS

- As the constitution gives Parliament the authority to create laws governing the selection of ECI, the Supreme Court's decision raises the issue of Separation of Powers.
 - However, the Supreme Court has said that this judgment would be subject to any law passed by parliament, which means that parliament can pass legislation to overturn it.
- Another point of view is that, because no legislation has been passed by parliament on this subject, the Court must step in to fill the "constitutional vacuum."

CURRENT PROVISIONS FOR ELECTION COMMISSIONERS OF INDIA APPOINTMENTS

- **Constitutional Provisions:**
 - Part XV (Article 324-329) of the Indian Constitution: It deals with elections and establishes a commission for these matters.

- **Article 324:** Superintendence, direction and control of elections to be vested in an Election Commission.
- **Article 325:** No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
- **Article 326:** Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
- **Article 327:** Power of Parliament to make provision with respect to elections to Legislatures.
- **Article 328:** Power of Legislature of a State to make provision with respect to elections to such Legislature.
- **Article 329:** Bar to interference by courts in electoral matters



Appointment of Election Commissioners

- **Structure of Election Commission:**

- The commission initially had only one EC, but after the Election Commission Amendment Act of 1989, it became a multi-member organization (1 CEC & 2 other ECs).
- The Election Commission, according to Article 324, shall consist of the CEC and such other election commissioners, if any, as the President may from time to time appoint.

- **Appointment Procedure:**

- Article 324(2): The President shall nominate the CEC and other Election Commissioners, subject to the terms of any law passed by Parliament in this regard.
- The Law Minister recommends to the Prime Minister a pool of qualified candidates for consideration. The President makes the nomination on the advice of the Minister.
- The President establishes the terms of duty and the period of office of the Election.
- They have a tenure of six-year or up to the age of 65, whichever comes earlier.

Removal:

- They can resign at any time or be dismissed before the end of their term.

- The CEC can only be removed from office through a process identical to that of a Supreme Court judge by Parliament.
- Any other EC cannot be removed unless the CEC recommends it.

Source:
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