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ANALYSIS**

**TOPIC**

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**Selection and Election: On  
the Appointment of Election**

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## SELECTION AND ELECTION: ON THE APPOINTMENT OF ELECTION COMMISSIONERS

### In Context

- The President has appointed Election Commissioners (ECs) to fill up two vacancies which has attracted **justified criticism**.

### About

- The two officials are the first to be appointed under the new law governing appointments to the constitutional body, **the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023**.
- Critics have criticized the latest Act on the process of selecting the Chief Election Commissioner and other ECs **fall short of independence of the EC from the executive**.

### About the Process of appointment of EC

- In terms of new law, the CEC and ECs are appointed by the President upon the recommendation of a Selection Committee.
  - ♦ The Selection Committee will consist of the Prime Minister, a Union Cabinet Minister, and Leader of Opposition/leader of the largest opposition party in Lok Sabha.
- They are chosen out of a shortlisted panel of six names.
  - ♦ The shortlisting was done by a committee which, according to the Act, is headed by the **Union Minister for Law and Justice** and includes two officials of the rank of Secretary to the government.
- While there are **no specific qualifications prescribed by the Constitution for the appointment of Election Commissioners**, conventionally, senior civil servants of the rank of Cabinet Secretary or equivalent are appointed to these positions. This practice ensures that individuals with **significant administrative experience and a deep understanding of the electoral process** are at the helm of the ECI.

### Do you know?

- Article 324 of the Constitution vests the “superintendence, direction and control of elections” in an Election Commission.
- It also says the EC shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may fix from time to time.
  - ♦ This provision was subject to any law made on its behalf by Parliament.
- The Election Commission 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.

### Criticism

- The selection process of the Election Commission may be **dominated by the government**, which has implications for its independence.
- Accepting the Selection Committee’s recommendations in spite of a vacancy in its constitution may effectively **lead to a monopoly of government** members in selecting candidates.
- **ECs and ECs also perform quasi-judicial functions**.
  - ♦ Limiting these posts to senior bureaucrats may exclude other suitable candidates.
- The new Act has **removed the CJI from the selection panel** and has made a Union

Minister a member instead.

- ◆ This gives the executive a two-one majority in the three-member committee

### Supreme Court's observations

- In **Anoop Baranwal versus Union of India**, a five-member Constitution Bench ruled that it was the intention of the makers of the Constitution that the power to appoint the CEC and other ECs was not meant to be given exclusively to the executive and that the power was to be exercised "subject to any law made by Parliament.
- Recently, the Supreme Court dismissed the application seeking a stay on the new procedure for appointing new election commissioners while asking the Centre to file a response within six weeks on the petitions that challenged constitutional validity of the Chief Election Commissioner and Other Election Commissioners Act, 2023.
- The Court's emphasis was on the ECI's independence from the executive so that the elections the panel conducts are truly free and fair.

### Conclusion and Way Forward



- Over the years, India's electoral system has been greatly acclaimed globally, and it has been graced by an almost continuous presence of independent-minded and spirited election commissioners.
- Still there is a need to establish robust institutional mechanisms in order to ensure the credibility of the body.
- The fate of a democracy relies, for the most part, on the strength of its institutions.
- It should therefore be the greatest priority to further the process of strengthening our institutions to make them independent, autonomous and transparent.

### Mains Practice Question

**[Q]** How are the Election Commissioners selected, and why is the new law on their appointment being criticised?