

## **Independent Collegium for Election Commission**

Recently, a petition was filed in the Supreme Court (SC) seeking the constitution of an independent collegium to appoint members of the Election Commission

Election Commission of India -It 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.Article 324 of the Constitution: It provides for appointment of a Election commission to superintend, direct and control the elections.

The structure of 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.

Appointment of commission-There is no prescribed procedure for appointment of the CEC and EC as per the Constitution.Under the Transaction of Business rules 1961, 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. Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 was passed to determine the conditions of service of the CEC and other ECs and to provide for the procedure for transaction of business by the ECI.It is under Article 324(5) that the Parliament has made laws till date, and not under Article 324(2) in which the Parliament can establish a selection committee for regulating the appointments made by the President.

Article 324(2) states that the President shall, with aid and advice of the Council of Ministers, appoint CEC and ECs, till Parliament enacts a law fixing the criteria for selection, conditions of service and tenure. There is a need for an independent collegium. Recommendation of the committees-The recommendation to have a neutral collegium to fill up vacancies in the Election Commission have been given by several expert committees, commissions from 1975.The recommendation was also part of the Law Commission's 255<sup>th</sup> report in March 2015.In 2009, the Second Administrative Reforms Commission in its fourth report suggested a collegium system for CEC and ECs.In 1990, the Dinesh Goswami Committee recommended effective consultation with neutral authorities like the Chief Justice of India and the Leader of the Opposition for the appointment in the Election Commission.In 1975, the Justice Tarkunde Committee recommended that the members of the Election Commission should be appointed by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.Insulation from Political and: The appointment of members of the Election Commission on the whims and fancies of the Executive violates the very foundation on which it was created, thus, making the Commission a branch of the Executive.

The election process is unfair. The Election Commission is not only responsible for conducting free and fair elections, but it also renders a quasi judicial function between the various political parties including the ruling government and other parties. In such circumstances, the Executive cannot be the sole participant in the appointment of members of the Election Commission as it gives unfettered discretion to the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation.

There are various challenges for demanding independent collegium for electoral commission. Other constitutional provision- similar demands can be raised where it is the imperative of the executive to make such appointments like for Attorney General or Comptroller & Auditor-General. For the appointment of Central Bureau of Investigation (CBI) director and the Central Vigilance Commissioner, committees are constituted. But these are statutory positions. As of now, there is no committee for constitutional appointments. There is a difference between the position of a CEC & EC. The appointments to both the positions may differ according to the task there. 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. The SC interprets any law on the basis of provisions of the constitution, and constitutionally the decision for appointment procedure of EC comes under executive domain. Thereby, decisions by the SC in this regard can possibly shake the harmonious balance of power.

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. There is a need for debate and discussions in the Parliament on the issue of independence of ECI and consequently passing of required legislation.