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A process where free and fair elections will be a casualty

New Law for Appointment of Election Commissioners (2023)

Changes in the Appointment Process

- A new law was passed in **2023** to change how the **Chief Election Commissioner (CEC) and Election Commissioners (ECs)** are appointed.
- The law was enacted under **Article 324(5)** of the Constitution after a Supreme Court order in **March 2023**.
- Earlier, the **President appointed the CEC and ECs** based on the **Prime Minister's recommendation**.
- The Supreme Court found this process **unsatisfactory**, as it could **affect the neutrality** of the Election Commission of India (ECI).

Key Features of the New Law

1. Selection Committee Composition

- The selection panel includes:
 - **Prime Minister (Chairperson)**
 - **Leader of Opposition (LoP) in Lok Sabha**
 - **A cabinet Minister chosen by the Prime Minister**
- This **replaces the earlier proposal** which included the **Chief Justice of India (CJI)** in the selection panel.

2. Candidate Shortlisting Process

- A **search committee**, led by the **Law Minister** along with two senior bureaucrats, **prepares a list of five candidates**.
- The selection panel makes the final choice based on **majority voting**.

Concerns and Challenges Against the New Law



1. Supreme Court's Directive Not Followed

- The **new selection process** does not align with the **earlier Supreme Court order**, which aimed at ensuring a more independent selection.

2. Government Dominance in Selection Process

- The **Prime Minister and a cabinet Minister (who is chosen by the PM)** have a **built-in majority** over the **LoP** in the selection panel.
- This makes the selection **less independent**, as the government-backed candidate is likely to be chosen.

3. LoP's Objection

- The **LoP dissented** in the selection process, arguing that the process should be **paused until the Supreme Court reviews the law**.

Why the Selection Process Lacks Fairness?

1. Election Commission's Critical Role

- The **ECI ensures free and fair elections**, as mandated by the Constitution.
- With **960 million voters**, India's electoral system is the **largest in the world**, requiring **neutral leadership** in the ECI.
- The new selection method **does not guarantee impartiality** and may **impact election fairness**.

2. Selection Panel's Imbalance

- The **Prime Minister chairs the committee**, with a **cabinet Minister and LoP as members**.
- Since the **cabinet Minister is appointed by the PM**, their independence is questionable.
- The **President must accept the committee's recommendation**, giving the government full control over the selection process.

Issues of Objectivity and Transparency

1. Conflict of Interest in the Selection Panel

- A **cabinet Minister being directly appointed by the Prime Minister** cannot **objectively assess candidates**.
- This makes the **selection outcome predictable**, favoring the **government-backed candidate**.

2. Lack of Independent Oversight



- The law **does not include neutral members**, such as the **Chief Justice of India**, who could help ensure an unbiased selection.

Constitutional and Legal Concerns

1. Possible Violation of Article 14

- The law **may be arbitrary and lack a rational basis**, raising concerns under **Article 14 of the Constitution (Right to Equality)**.

2. Threat to the Basic Structure of the Constitution

- **Free and fair elections** are part of the **Constitution's basic structure**.
- If the **Election Commission is not independent**, it can **affect democratic fairness**.

3. Supreme Court's Role in Reviewing the Law

- The **Supreme Court will review the law** to decide whether it upholds **constitutional principles and democratic values**.

Conclusion

- The **new law raises concerns over government control in the selection process**, which could **undermine election fairness**.
- The **Supreme Court's decision** on the law's validity will be crucial in **determining its impact on democracy**.

Source: <https://www.thehindu.com/opinion/lead/a-process-where-free-and-fair-elections-will-be-a-casualty/article69271419.ece>