

Chief Election Commissioner and Other Election Commissioners Act, 2023

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The **Chief Election Commissioner and Other Election Commissioners Act, 2023** provides a statutory framework for the appointment, qualifications, conditions of service, term of office and transaction of business of the Election Commission of India (ECI). The Act gives legislative effect to Article 324(2) of the Constitution, which empowers Parliament to regulate the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (ECs).

Chief Election Commissioner and Other Election Commissioners Act, 2023 Background

The Constitution established the **Election Commission of India** as an independent constitutional body but left the appointment procedure of its members to be determined by Parliament.

- **Article 324(1)** provides for an Election Commission consisting of the **Chief Election Commissioner** and such number of Election Commissioners as the **President** may determine from time to time.

- **Article 324(2)** states that the Chief Election Commissioner and other Election Commissioners shall be appointed by the President, subject to any law made by Parliament.
- For several decades, Parliament did not enact a specific law governing appointments, and the President appointed the CEC and ECs on the advice of the Union Government.
- **The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991** regulated the service conditions, salaries and transaction of business of the Election Commission but did not provide a statutory appointment mechanism.
- By convention, senior civil servants were appointed as Election Commissioners, and the senior-most Election Commissioner generally succeeded as the Chief Election Commissioner.

The absence of a statutory appointment process led to concerns regarding transparency, institutional independence and public confidence in the neutrality of the Election Commission.

Supreme Court Intervention: Anoop Baranwal v. Union of India (2023)

The issue of appointments to the Election Commission came before the Supreme Court in **Anoop Baranwal v. Union of India (2023)**.

- The Supreme Court held that an independent Election Commission is essential for ensuring free and fair elections and preserving democracy.
- The Court observed that the Constitution envisages an Election Commission insulated from excessive executive influence.
- Referring to the Constituent Assembly Debates, the Court emphasised the need to protect the institutional independence of the Election Commission.
- Since Parliament had not enacted a law under Article 324(2), the Court directed that appointments should temporarily be made by a committee consisting of:
 - **Prime Minister,**
 - **Leader of Opposition in the Lok Sabha (or leader of the largest opposition party), and**
 - **Chief Justice of India.**
- The Court clarified that this arrangement would operate only until Parliament enacted an appropriate law under **Article 324(2)**.

Chief Election Commissioner and Other Election Commissioners Act, 2023 Key Provisions

Parliament enacted the Chief Election Commissioner and Other Election Commissioners Act, 2023 to establish a statutory framework governing the appointment, qualifications, conditions of service, term of office and functioning of the Election Commission of India. Its provisions are as follows:

Appointment Process

The Chief Election Commissioner and Other Election Commissioners Act, 2023 introduces a **two-stage appointment mechanism** involving a Search Committee and a Selection Committee. The Chief Election

Commissioner and other Election Commissioners are appointed by the President by warrant under his hand and seal on the recommendation of the Selection Committee.

Search Committee: The Search Committee prepares a panel of suitable candidates for consideration by the Selection Committee.

- It is headed by the Minister of Law and Justice.
- It consists of two other members not below the rank of Secretary to the Government of India.
- It prepares a panel of five suitable persons for appointment as the Chief Election Commissioner and Election Commissioners.
- The panel is submitted to the Selection Committee for consideration.

Selection Committee: The Selection Committee recommends names to the President for appointment.

- The Selection Committee consists of:
 - Prime Minister — Chairperson
 - Leader of Opposition in the Lok Sabha (or leader of the single largest opposition party where no LoP is recognised) — Member
 - Union Cabinet Minister nominated by the Prime Minister — Member
- The Selection Committee regulates its own procedure in a transparent manner.
- It may also consider persons other than those included in the Search Committee's panel.
- Appointment is not invalid merely because of a vacancy or defect in the constitution of the Selection Committee.
- Based on its recommendation, the President formally appoints the Chief Election Commissioner and Election Commissioners.

Qualifications of Chief Election Commissioner and Election Commissioners

The Chief Election Commissioner and Other Election Commissioners Act, 2023 prescribes following qualifications:

- The Chief Election Commissioner and Election Commissioners must be holding or have held a post equivalent to the rank of Secretary to the Government of India.
- They must be persons of integrity.
- They must possess knowledge of and experience in the management and conduct of elections.

Term of Office and Service Conditions

The Chief Election Commissioner and Other Election Commissioners Act, 2023 lays down uniform provisions regarding tenure, salary and service conditions.

- The Chief Election Commissioner and Election Commissioners hold office for **six years** from the date they assume office **or until attaining the age of 65 years**, whichever is earlier.
- They are **not eligible for reappointment**.
- Where an Election Commissioner is appointed as the Chief Election Commissioner, the combined tenure as EC and CEC **cannot exceed six years**.

- They receive a **salary equal to that of a Judge of the Supreme Court.**
- They are **entitled to Dearness Allowance** admissible to a Supreme Court Judge.
- They are **entitled to encashment of 50% of earned leave** at the completion of tenure.
- They may continue to receive pension and retirement benefits from previous government service in accordance with the provisions of the Act.
- They are entitled to subscribe to the **General Provident Fund (GPF).**
- Other service conditions relating to travelling allowance, medical facilities, leave travel concession, conveyance and related matters are determined by the President through rules framed under the Act.

Removal of Chief Election Commissioner and Election Commissioners

The Chief Election Commissioner and Other Election Commissioners Act, 2023 retains the constitutional safeguards regarding removal from office.

- The Chief Election Commissioner can be **removed only in the same manner and on the same grounds as a Judge of the Supreme Court.**
- Other Election Commissioners **can be removed only on the recommendation of the Chief Election Commissioner.**
- The Chief Election Commissioner and Election Commissioners may **resign by submitting a written resignation addressed to the President.**

Protection of Chief Election Commissioner and Election Commissioners

The Chief Election Commissioner and Other Election Commissioners Act, 2023 provides legal protection for official actions performed while discharging constitutional duties.

- **Section 16** provides that no court shall entertain or continue civil or criminal proceedings against a person who is or was the Chief Election Commissioner or an Election Commissioner for acts, words or actions done in the discharge or purported discharge of official duties or functions.

Transaction of Business of the Election Commission

The Chief Election Commissioner and Other Election Commissioners Act, 2023 lays down the procedure for decision-making within the Election Commission.

- The Election Commission may, by unanimous decision, regulate its own procedure and allocate business among the Chief Election Commissioner and Election Commissioners.
- As far as possible, decisions should be taken unanimously.
- Where unanimity is not possible, matters are decided according to the opinion of the majority.

Chief Election Commissioner and Other Election Commissioners Act, 2023 Major Changes

The Chief Election Commissioner and Other Election Commissioners Act, 2023 made following changes:

- It gives legislative effect to Article 324(2) of the Constitution by providing a statutory mechanism for appointing the Chief Election Commissioner and Election Commissioners.
- It replaces the earlier convention-based appointment process, under which appointments were made by the President on the advice of the Union Government without any statutory procedure.
- It introduces a two-stage appointment process involving a Search Committee and a Selection Committee.
- It replaces the Supreme Court's interim appointment mechanism laid down in *Anoop Baranwal v. Union of India* (2023) with a parliamentary law.
- It removes the Chief Justice of India from the Selection Committee and replaces the position with a Union Cabinet Minister nominated by the Prime Minister.
- It prescribes statutory qualifications, tenure, salary and service conditions for the Chief Election Commissioner and Election Commissioners.
- It provides statutory protection for official acts performed by the Chief Election Commissioner and Election Commissioners while discharging their duties.
- It repeals the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

Chief Election Commissioner and Other Election Commissioners Act, 2023 Concerns

The Chief Election Commissioner and Other Election Commissioners Act, 2023 has raised concerns about the independence of the Election Commission.

- Replacing the Chief Justice of India with a Union Cabinet Minister **may increase executive influence in appointments.**
- Since two of the three Selection Committee members are from the government, critics fear **government dominance.**
- Allowing the Selection Committee to consider names beyond the Search Committee's panel has raised **transparency concerns.**
- Supporters argue that Parliament has the power under Article 324(2) to decide the appointment process.

Current Judicial Scrutiny: The constitutional validity of certain provisions of the Act is presently under consideration before the Supreme Court.

Petitions have challenged whether the appointment mechanism under the Act is **consistent with the principles laid down in *Anoop Baranwal v. Union of India* (2023).**

- The Supreme Court is examining whether Parliament's law under Article 324(2) adequately safeguards the independence of the Election Commission.
- Separate petitions have also challenged Section 16, which grants protection to the Chief Election Commissioner and Election Commissioners from civil and criminal proceedings for acts performed in discharge of official duties.
- The Supreme Court has issued notice on the challenge to Section 16 but has not stayed the operation of the provision.

- The Court's final judgment is expected to clarify the constitutional balance between Parliament's legislative power under Article 324(2) and the independence of the Election Commission.

Chief Election Commissioner and Other Election Commissioners Act, 2023 Significance

The Chief Election Commissioner and Other Election Commissioners Act, 2023 marks a significant development in the evolution of India's electoral framework.

- It fills the long-standing legislative gap under Article 324(2) regarding the appointment of the Chief Election Commissioner and Election Commissioners.
- It replaces unwritten conventions with a statutory appointment process enacted by Parliament.
- It provides legal certainty regarding qualifications, tenure, service conditions and the functioning of the Election Commission.
- It strengthens procedural clarity by defining the roles of the Search Committee and Selection Committee.
- It reinforces the constitutional framework governing one of India's most important democratic institutions.

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