



## The CEC and Other ECs (Appointment, Conditions of Service and Term of Office) Bill, 2023

**For Prelims:** Proposed Bill for Selection of Chief Election Commissioner, [Chief Election Commissioner \(CEC\)](#) and Election Commissioners, [Supreme Court](#), [Public Interest Litigation](#), [Article 324](#), [Model Code of Conduct](#).

**For Mains:** Proposed Bill for Selection of Chief Election Commissioner, its Significance and Associated Concerns.

[Source: IE](#)

### Why in News?

Recently, the Government has introduced a bill in the Rajya Sabha aiming to alter the process of appointing the [Chief Election Commissioner \(CEC\)](#) and Election Commissioners (ECs).

- The Bill seeks to remove the [Chief Justice of India \(CJI\)](#) from a panel to select the CEC and ECs.
- This move has sparked discussions regarding the **composition of the selection committee and its implications** for the independence of the process.

### What is the Background?

- The [Supreme Court \(SC\)](#) in March 2023 ruled that CEC and ECs will be appointed by the President of India **on the advice of a Committee consisting of the Prime Minister, and Leader of Opposition in the Lok Sabha**, and the [Chief Justice of India](#) until a law is enacted by Parliament on their appointments.
- This ruling emerged from a [2015 Public Interest Litigation \(PIL\)](#) challenging the appointment process.

Note: The judgement by a bench led by **Justice KM Joseph came in a 2015 PIL**, challenging the constitutional validity of the practice of the **Centre-appointed members** of the Election Commission. In 2018, a two-judge bench of the SC referred the case to a larger bench since it required a **close examination of Article 324 of the Constitution**.

- **Article 324(2) Reads:** The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time-to-time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
- Since no parliamentary law was enacted as prescribed by [Article 324 of the Constitution](#), the Court stepped in to address the "constitutional vacuum."

- The Bill now seeks to address this **vacuum and set up a legislative process** to make appointments to the EC.

## How are the CEC and ECs Currently Appointed?

- Currently, there is **no specific legislative process** defined in the Constitution for the appointment of the CEC and ECs. There are just five Articles (324-329) in Part XV (Elections) of the Constitution.
- **Article 324** of the Constitution vests the "superintendence, direction, and control of elections" in an Election Commission consisting of the CEC and other ECs as determined by the President from time to time.
- Before the Supreme Court ruling of March 2023, the CEC and ECs were appointed by the President on the recommendation of the government.

## What are the Key Features of the Bill?

- **Composition of the Selection Committee:**
  - The Selection **Committee will consist of**,
    - the Prime Minister as Chairperson,
    - **the Leader of the Opposition in Lok Sabha** as member
      - If the Leader of Opposition in Lok Sabha has not been recognised, the leader of the single largest opposition party in Lok Sabha will assume the role.
    - a Union Cabinet Minister nominated by the Prime Minister as member.
- **Search Committee:**
  - The Bill proposes the establishment of a **Search Committee** to prepare a panel of five persons for **consideration for the positions of CEC and ECs**.
  - The Search Committee will be headed by the **Cabinet Secretary and will also include two members** not below the rank of Secretary who have knowledge and experience in matters related to elections.
- **Can not be Invalidated due to Vacancy:**
  - The appointment of the CEC and other ECs will not be **invalidated due to any vacancy or defect** in the constitution of the Selection Committee.
- **Repealing of Previous Act:**
  - The proposed Bill repeals the **Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991**.
  - The business of the Election Commission will be governed by the **new Act once it is passed**.
  - The 1991 Act provides that the **salary of the ECs will be equal to that of a Supreme Court judge**.
  - The Bill provides that salary, allowance, and service conditions of the CEC and other ECs **will be the same as that of the Cabinet Secretary**.
- **Unanimity and Majority Decision:**
  - The Bill maintains the provision that the business of the Election Commission should be **transacted unanimously whenever possible**. In case of a difference of opinion, the majority's view will prevail.

## What are the Concerns?

- **Balance of Power:**
  - The Prime Minister and a Cabinet Minister (nominated by the Prime Minister) forming part of the three-member committee, the Leader of **Opposition is left with a minority vote even** before the process begins.
  - This raises questions about the **balance of power within the committee** and whether the selection process truly ensures independence or remains skewed in favor of the Executive.
- **Impact on Electoral Governance:**

- The proposed changes may have **implications for the autonomy and functioning** of the ECI.
  - The independence of the Election Commission is crucial for **ensuring impartiality and integrity in the conduct** of elections. Any perceived influence of the Executive in the selection process **might raise concerns about the EC's ability to carry out** its responsibilities without bias.
- **Alignment with Framers' Intentions:**
- The SC, in its previous ruling, emphasized that the framers of the Constitution intended for an **independent body to oversee elections**.
  - Critics of the proposed Bill raise questions about whether the new composition of the Selection Committee **aligns with the framers' objective** of creating an impartial and independent body responsible for elections.

## **What is the Role of Election Commissioners in Ensuring Free and Fair Election in India?**

- **Election Commission of India:**
  - To ensure free and fair elections in India, the Election Commission of India was established in 1950.
  - The Election Commission consists of a **Chief Election Commissioner who is the Chairman** of the Election Commission and other Election Commissioners.
    - The number of other Election Commission members is fixed by the President.
- **Fair and Free Election:**
  - **Conducting Elections:** Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of **president of India and the office of vice-president of India shall be vested in the election commission.**
  - **Model Code of Conduct:** The ECI ensures that all political parties and candidates have **a level playing field during elections**.
    - It does this by enforcing the **Model Code of Conduct**, which lays down guidelines for political parties and candidates to follow during elections.
  - **Role with Respect to Political Parties:** To grant recognition to political parties and allot election symbols to them.
    - To act as a court for settling disputes related to granting recognition to political parties and allotment of election symbols to them.
  - **Voter education:** The ECI conducts **voter education programs** to increase awareness among voters about their rights and responsibilities.
    - **This includes educating** them about the importance of voting and how to cast their vote.
    - Monitoring election expenditure: The ECI monitors the **expenditure of political parties** and candidates during elections to ensure that they do not exceed the **limits set by the law**.
    - **Addressing Electoral Malpractices:** The ECI takes strict action against electoral malpractices such as booth capturing, bogus voting, and intimidation of voters.

## **Way Forward**

- The government should review the composition of the **Selection Committee** and consider making it more balanced. This might involve **giving the opposition a stronger representation** to ensure a fair decision-making process.
- To enhance the credibility of the selection process, the government should involve independent **experts, jurists, and civil society representatives** in the Search Committee or as observers in the Selection Committee. Their presence could help **maintain the integrity of the process**.
- Before finalizing the Bill, the government should engage in thorough consultations with opposition parties, legal experts, and stakeholders to gather diverse perspectives and ensure that concerns are addressed adequately.

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### Q. Consider the following statements: (2017)

1. The Election Commission of India is a five-member body.
2. Union Ministry of Home Affairs decides the election schedule for the conduct of both general elections and bye-elections.
3. Election Commission resolves the disputes relating to splits/mergers of recognised political parties.

**Which of the statements given above is/are correct?**

- (a) 1 and 2 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 3 only

**Ans: (d)**

PDF Reference URL: <https://www.drishtiias.com/printpdf/the-cec-and-other-ecs-appointment-conditions-of-service-and-term-of-office-bill-2023>

