



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

**For Prelims:** [Election Commission of India](#), [Chief Election Commissioner \(CEC\)](#), [Supreme Court of India](#), [Article 324 of the Constitution](#)

**For Mains:** Election Commission of India and its functions, Independence, appointment procedure

[Source: TH](#)

## Why in News?

The [Rajya Sabha](#) recently approved the **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023**, which outlines the procedures for appointing the [Chief Election Commissioner \(CEC\) and Election Commissioners \(EC\)](#).

- The legislation aims to bring transparency to the appointment process, responding to [a directive from the Supreme Court of India in the Anoop Baranwal v Union of India case, 2023](#).

## What is the Supreme Court Ruling on the Appointment of CEC and ECs?

- In March 2023, the Supreme Court emphasised the critical role of an **independent Election Commission of India (ECI)** in ensuring free and fair elections, addressing a longstanding legislative gap since the [Constitution's adoption](#) regarding the appointment of the CEC and ECs.
- The SC drew attention to other institutions supporting constitutional democracy that have independent mechanisms for appointing their heads/members.
  - Mentioned examples such as the [National and State Human Rights Commission](#), [Central Bureau of Investigation \(CBI\)](#), [Information Commission](#), and [Lokpal](#).
- The SC noted recommendations from the **Dinesh Goswami Committee on Electoral Reforms (1990)** and the **Law Commission's 255<sup>th</sup> report on Electoral Reforms (2015)**.
  - Both committees suggested a committee comprising the **Prime Minister**, [Chief Justice of India \(CJI\)](#), and the **Leader of the Opposition** for appointing the CEC and ECs.
- The SC, using its powers under **Article 142 (to issue directions for doing 'complete justice' in any matter)**, laid down that the CEC and ECs shall be appointed by a committee consisting of the **Prime Minister, the CJI and the Leader of the Opposition or the largest opposition party in the Lok Sabha**.
  - SC ruled that this mechanism shall be in place till Parliament enacts a law on this matter.

## What are the Key Provisions of the Bill?

- The **Bill replaces the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991**.
- It addresses the appointment, salary, and removal of the CEC and ECs.

- **Appointment Process:**
  - The CEC and ECs will be **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 the Leader of Opposition/leader** of the largest opposition party in **Lok Sabha**.
    - Recommendations of the Selection Committee will be valid **even when there is a vacancy in this Committee**.
  - A Search Committee headed by the **[Cabinet Secretary](#)** will propose a panel of names to the Selection Committee.
    - Eligibility for the posts includes holding (or having held) a post equivalent to the **Secretary to the central government**.
- **Changes in Salary and Conditions:**
  - The salary and conditions of service of the CEC and ECs will be equivalent to that of the **Cabinet Secretary**.
    - Under the 1991 Act, it was equivalent to the salary of a **[Supreme Court Judge](#)**.
- **Removal Process:**
  - The Bill retains the constitutional provision (**Article 324(5)**) that allows the CEC to be removed like a Supreme Court Judge, while ECs can only be removed on the recommendation of the CEC.
- **Protection for CEC And ECs:**
  - Bill safeguards CEC and ECs from **legal proceedings related to actions taken during their tenure**, provided such actions were carried out in the discharge of official duties.
    - The amendment aimed to shield these officials from civil or criminal proceedings related to their official functions.

## How are the CEC and ECs Currently Appointed?

- **Constitutional Provisions:**
  - There are just five **Articles (324-329) in Part XV (Elections)** of the Constitution.
  - The Constitution does not lay down a specific legislative process for the appointment of the CEC and ECs.
  - Article 324 of the Constitution vests the **“superintendence, direction and control of elections”** in an Election Commission consisting “of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix”.
    - The President makes the appointment on the advice of the Union Council of Ministers headed by the Prime Minister.
    - The Law Minister suggests a pool of suitable candidates to the Prime Minister for consideration. The President makes the appointment on the advice of the PM.
- **Removal:**
  - They can resign anytime or can also be removed before the expiry of their term.
  - The CEC can be removed from office only through a process of removal similar to that of a SC judge by Parliament.
  - Any other EC cannot be removed except on the recommendation of CEC.

## What are the Concerns Regarding the Bill?

- **Transparency and Independence:**
  - Allowing the Selection Committee's recommendations to be valid even with a vacancy could result in a **monopoly of ruling party members** during certain circumstances, undermining the diversity and independence of the committee.
- **Shift from Judicial Benchmark to Executive Control:**
  - Equating the salary of the CEC and ECs with that of the **Cabinet Secretary**, whose salary

- is determined by the executive, raises concerns about **potential government influence**.
- Unlike the salary of a Supreme Court Judge, which is fixed by an Act of Parliament, this shift may compromise the **financial independence of the EC**.
- **Limiting Eligibility to Civil Servants:**
    - Restricting eligibility to individuals who have held a position equivalent to the Secretary to the government **may exclude potentially qualified candidates**, limiting the diversity of backgrounds and expertise in the ECI.
  - **Concerns About Lack of Parity:**
    - The Bill retains the constitutional provision that allows the CEC to be removed like a Supreme Court Judge, while ECs can only be removed on the recommendation of the CEC.
      - This **lack of parity in removal processes** may raise questions about fairness.

## Global Practices in the Appointment of Electoral Body Members

- **South African Model:**
  - In South Africa, the selection process involves key figures such as the **President of the Constitutional Court, representatives of the Human Rights Court, and advocates for gender equality**.
  - Emphasis on diverse representation ensures a broader perspective in the electoral body.
- **United Kingdom Approach:**
  - In the U.K., **candidates for the electoral body are subject to approval by the House of Commons**.
  - Parliamentary involvement adds a layer of scrutiny and accountability to the selection process.
- **United States Procedure:**
  - In the U.S., the **President appoints members to the electoral body, and the appointments require confirmation by the Senate**.
    - The dual-check system ensures a balance of power and prevents unilateral decisions.

## UPSC Civil Services Examination Previous Year Questions (PYQ)

### Prelims

#### Q.1 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)

### Mains

Q.1 To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful? (2017)

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

