



Supreme Court Verdict on ECI Appointments

For Prelims: Election Commission of India, Supreme Court

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

Why in News?

A five-judge bench of the [Supreme Court \(SC\)](#) unanimously ruled that **the appointment of the [Chief Election Commissioner](#) and the [Election Commissioners](#) shall be made by the President on the advice of a Committee consisting of the Prime Minister, the [Leader of the Opposition](#) of the Lok Sabha and [Chief Justice of India \(CJI\)](#).**

- In case no leader of Opposition is available, **the leader of the largest opposition Party in the Lok Sabha** in terms of numerical strength will be a part of such committee.

What are the Other Important Points of the Verdict?

- **SC Verdict:**
 - SC stated that a reading of the **debates of the Constituent Assembly (CA)** on the appointment of ECI makes clear that all the **members were of the clear view that elections must be conducted by an independent Commission.**
 - The deliberate addition of the words “subject to the provisions of any law made in that behalf by Parliament” further indicates that **CA envisaged parliament making norms to govern appointment to ECI.**
 - While ordinarily, the **court cannot encroach on a purely legislative power**, but in the context of the Constitution and **inertia of the Legislature** and the vacuum created by it **make it necessary for the court to intervene.**
 - On the question whether **process of removal** should be same **for CEC and the ECs**, SC stated that it **cannot be same** as CEC has special position and **article 324 becomes inoperable without CEC.**
 - SC left the question of **funding the EC, Permanent secretariat and need for expenditure to be charged on Consolidated Fund of India for the government to decide.**
- **Government Argument:**
 - The government had argued that **in the absence of such a law by parliament, the President has the constitutional power** and asked the SC to exhibit Judicial restraint.

What is the Challenge?

- As the constitution places the power to make any law on appointment of ECI in the hands of Parliament, SC ruling on this issue poses a **question of [Separation of Power](#).**
 - However, SC has stated that this ruling will be **subject to any law made by parliament**, which means parliament can bring a law to undo it.
- Another view is that since there is no law made by parliament on this issue, **the Court must step**

in to fill the “constitutional vacuum.”

What are the Existing Provisions for Appointment to ECI?

- **Constitutional Provisions:**
 - **Part XV (Article 324-329)** of the Indian Constitution: It deals with elections and establishes a commission for these matters.
- **Structure of ECI:**
 - Originally the **commission had only one EC** but after the Election Commission Amendment Act 1989, it was made a **multi-member body (1 CEC & 2 other ECs.)**.
 - According to Article 324, the **Election Commission shall consist of the CEC** and such number of other election commissioners, if any, as the President may from time-to-time fix.
- **Appointment Procedure:**
 - **Article 324(2): The appointment** of the CEC and other Election Commissioners shall be **made by the President, subject to the provisions of any law made in that behalf by Parliament.**
 - 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.**
 - The President determines the conditions of service and tenure of office of the Election.
 - They have a **tenure of six years, or up to the age of 65 years**, whichever is earlier.
- **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.

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)

- According to the Article 324 of the Indian Constitution, the Election Commission of India 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 in India, and the offices of the President and Vice President in the country.
- Originally the Commission had only one Chief Election Commissioner. It currently consists of a Chief Election Commissioner and two Election Commissioners. **Hence, statement 1 is not correct.**
- The Commission is vested with quasi-judicial power to settle disputes relating to splits/ mergers of recognised political parties. **Hence, statement 3 is correct.**
- It decides the election schedules for the conduct of elections, whether general elections or bye-elections. **Hence, statement 2 is not correct. Therefore, option (d) is the correct answer.**

Mains

Q.1 In the light of recent controversy regarding the use of Electronic Voting Machines(EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India? **(2018)**

Q.2 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)**

[Source:IE](#)

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