



Safeguard the Election Panel's Independence

This editorial is based on [Safeguard the election panel's independence](#) which was published in The Hindustan Times on 17/08/2023. It talks about the recent changes in Election Commissioners appointment and the need to Safeguard the election panel's independence .

For Prelims: Selection of Chief Election Commissioner, [Chief Election Commissioner \(CEC\)](#) and Election Commissioners, [Supreme Court](#), [Article 324](#).

For Mains: Selection of Chief Election Commissioner, its Significance and Associated Concerns, Independence of Election Commission.

The Union government's introduction of the [Chief Election Commissioner and other Election Commissioners \(Appointment, Conditions of Service and Term of Office\) Bill, 2023](#) in the just-concluded monsoon session of the Parliament has caused significant controversy. A large part of the discussion is focussed on the fact that the bill replaces the mechanism for selection of the [Chief Election Commissioner \(CEC\)](#) that was devised by the Supreme Court in *Anoop Baranwal vs Union of India (2023)*, a verdict delivered a few months ago.

What did the Supreme Court say in the Anoop Baranwal Case?

- In that order, the [Supreme Court](#) held that the selection of the [CEC](#) must be done by a three-member committee comprising:

1. [The Prime Minister \(PM\)](#)
2. [The Leader of Opposition](#)
3. [The Chief Justice of India \(CJI\)](#)

However, the supreme court itself noted that this arrangement was temporary, until Parliament passed a law in this regard.

What does the Constitution say in this regard?

Clause 2 of the [Article 324](#) of the Constitution vests the power of appointment of the CEC and other Election Commissioners in the President, subject to any law that Parliament might make.

- However, the Parliament didn't pass any Law which effectively made the President's (i.e., the executive's) powers permanent to appoint CEC and ECs.
- The supreme court then found in the aforesaid case that giving the executive the power to appoint the CEC was incompatible with the independence of ECI.
 - The reason for this is obvious: **In a parliamentary system, the executive is drawn**

from the ruling party, and is, hence, a player in the electoral game.

- Giving the executive the power to appoint the CEC, therefore, is akin to giving a player the power to appoint the referee.

So, What is the issue with Respect to the new Election Commissioners bill?

- **Provides Executive Supremacy:** The Election Commissioners bill replaces the CJI with a cabinet minister nominated by the PM. Which again gives the Executive a clear majority — and, therefore, a decisive say — in the appointment of the Election Commissioners.
 - Now, the selection committee will consist:
 - The prime minister (chairperson)
 - The leader of opposition in the Lok Sabha (member)
 - A Union cabinet minister **nominated by the prime minister** (member)
- **Against the Will of the Constitution Framers:**
 - The intention of the framers of the Constitution was to secure and guarantee the independence of ECI. Which is why they provided the President (executive) the power to appoint ECs as a stop-gap arrangement, in the expectation that Parliament would enact a law that would secure and guarantee the independence of ECI.
 - The bill giving the executive more power submerges the idea of an Independent ECI as envisioned by the framers of the Constitution.
- **An Umpire who is Subordinate to the Team Captain:** A former chief election commissioner said that the most concerning aspect of the new legislation is the downgrading of the status of election commissioners as well as the CEC from being at par with Supreme Court judges to that of cabinet secretary.
 - He also said, **“The cabinet secretary** is directly under the government. So a constitutional body like the election commission, that is supposed to call even the ministers and prime minister to discipline if it comes to it, how can you equate that office with the cabinet secretary who is clearly subordinate to the government?”

Why is there the Necessity of Independence of the Election Commissioner in India?

- **Impartiality and Fairness:** The Election Commissioner is responsible for overseeing the entire electoral process, including the conduct of elections, delimitation of constituencies, voter registration, and more. It is important that this office remains impartial and free from political influence to ensure that all political parties and candidates have an equal and fair opportunity to participate in the electoral process.
 - As former US President Barack Obama said, “The right to vote is sacred. It’s how we choose our leaders and determine our destiny.” So, impartial and fair elections are very crucial in a democracy.
- **Prevention of Manipulation:** An independent Election Commissioner helps prevent any manipulation or bias in the electoral process. If the office is influenced by the ruling party or any other political entity, it could lead to electoral malpractices such as voter suppression, gerrymandering, or tampering with the election results.
 - For example, in 2018, Pakistan’s Election Commission faced allegations of rigging and interference from the military establishment, which cast doubt on the legitimacy of the election results.
- **Public Confidence:** An independent Election Commissioner helps build and maintain public confidence in the electoral process. When people believe that elections are conducted fairly and transparently, they are more likely to participate and accept the results, even if their preferred candidate or party does not win.
 - For example, in 2007, Kenya witnessed post-election violence that killed over 1,000 people and displaced over 600,000 people, after a disputed presidential election that was marred by irregularities and fraud.
- **Rule of Law:** The independence of the Election Commissioner upholds the principle of the rule of law. It ensures that electoral procedures are carried out according to established laws and regulations, rather than being subject to arbitrary decisions or political pressure.
- **Checks and Balances:** In a democracy, the separation of powers and the presence of checks and

balances are essential. An independent Election Commissioner acts as a check on the powers of the executive and legislative branches of government, ensuring that elections are not manipulated for political gain.

- **Long-Term Stability:** An independent Election Commissioner can help ensure the long-term stability of the electoral process. If the office is subject to frequent changes or political interference, it could undermine the credibility of elections and lead to instability.
 - For example, **T.N. Seshan**, who served as the **Chief Election Commissioner** of India from 1990 to 1996, is widely credited for ushering in electoral reforms that changed the face of Indian elections.
 - He enforced the authority of the **Election Commission** as per its powers laid out in the Constitution and introduced a list of 150 malpractices during elections, such as distribution of liquor, bribing voters, ban on writing on walls, use of religion in election speeches etc.
 - He also challenged the political parties and candidates who violated the election rules and took strict actions against them.
 - His legacy as an independent and fearless Election Commissioner has inspired many others to follow his footsteps and uphold the integrity and stability of the electoral process in India.
- **International Standards:** The concept of an independent election commission is upheld as a best practice internationally. Many democratic countries have established independent bodies to oversee elections, and India's Election Commission aims to align with these global standards.

What should be the Way Forward?

- **The government should review the composition of the Selection Committee** and consider making it more balanced. This might involve giving the opposition more balanced power to ensure a fair decision-making process.
 - For example, the **opposition could have equal seats, veto power, or rotating chairmanship in the Selection Committee**. This would ensure that the selection process is not biased or influenced by the ruling party.
- **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.
 - By involving these stakeholders, the government could increase the transparency, accountability, and public trust in the selection process. They could also provide valuable insights, feedback, and recommendations to improve the quality and suitability of the candidates.
- **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.

Drishti Main Question:

Highlighting the importance of independence of Election Commissioner, discuss the issues with the recently introduced Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023.

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)

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