



Appointment of CEC and EC

For Prelims: [Chief Election Commissioner \(CEC\)](#), [Chief Election Commissioner and other Election Commissioners \(Appointment, Conditions of Service and Term of Office\) Act, 2023](#), [Anoop Baranwal Case, 2023](#), [Election Commission](#), [LoP](#), [CJI](#), [Goswami Committee](#), [Law Commission](#).

For Mains: Concerns related to appointment of Chief Election Commissioner and way forward.

[Source: IE](#)

Why in News?

Gyanesh Kumar has been appointed as the [Chief Election Commissioner \(CEC\)](#) under the [Chief Election Commissioner and other Election Commissioners \(Appointment, Conditions of Service and Term of Office\) Act, 2023](#).

- **One of the members** of the selection committee **objected** that the selection process **bypassed** [Supreme Court \(SC\)](#) guidelines in the [Anoop Baranwal Case, 2023](#).

What are the Key Facts Regarding the 2023 Act?

- **About:** The Act replaces the [Election Commission \(Conditions of Service of Election Commissioners and Transaction of Business\) Act, 1991](#) to regulate the **appointment, tenure, service conditions** of CEC/ECs, and [Election Commission](#) procedures.
- **Judicial Background:** This Act followed SC intervention after several petitions challenged the **Centre's exclusive power** in appointing **CEC and ECs**.
 - In the [Anoop Baranwal Case, 2023](#), the SC ruled that a panel of the **Prime Minister, LoP, and CJI** would select **CEC and ECs** until [Parliament](#) passed a law.
 - Before the Judgement, the appointment of the **CEC** and other **ECs** was made by the **President** on the advice of the **Union Council of Ministers** headed by the **Prime Minister**.
- **Key Provisions:**
 - **Selection Committee:** The CEC and ECs will be appointed by the **President** based on the recommendation of a **Selection Committee** consisting of:
 - **Prime Minister (Chairperson)**.
 - **Leader of the Opposition (LoP)** (or leader of the largest opposition party) in the [Lok Sabha](#).
 - **Union Cabinet Minister** nominated by the Prime Minister.
 - **Search Committee:** A Search Committee, **led by the Law Minister** and comprising **two other members not below the rank of Secretary** to the Government of India, shortlists five candidates.
 - **Section 8** of the Act gives the Selection Committee the power to **consider names beyond the shortlisted five**.

- **Eligibility Criteria:** The CEC and other ECs must have held a **Secretary-level post in the Government of India and possess integrity, election management experience.**
- **Salary, Term, and Reappointment:** CEC and ECs receive a **SC judge's salary** and serve for **six years or until age 65**, whichever is earlier.
 - CEC and ECs **cannot be re-appointed**. If an EC becomes CEC, their total tenure **cannot exceed six years**.
 - A **CEC or EC** receiving a government pension (**excluding disability pension**) will have their **salary reduced by the amount of the pension received**.
- **Removal and Resignation:** The CEC can be removed only in the **same manner** and on the **same grounds as a SC Judge**, while an **EC** can be **removed** on the **CEC's recommendation**.
 - Both can **resign to the President**.

What are the Key Concerns Regarding the 2023 Act?

- **Exclusion of CJI:** The 2023 Act replaces the **SC-mandated panel (PM, LoP, CJI)** with a committee of the **PM, LoP, and a Union Minister** allowing the **executive to dominate** the selection process.
- **Violation of Separation of Power:** The Act is being challenged in SC by petitioners arguing whether **Parliament** has the **legal authority to override or modify a SC's Constitution Bench ruling** in the **Anoop Baranwal Case, 2023** through **legislation or ordinance**.
- **Vacancy in Selection Committee:** The Act allows the Selection Committee to **function despite vacancies**.
 - If the **LoP** post is vacant due to the **dissolution of the Lok Sabha**, only the **PM and a Union Minister** will remain for selecting candidates, effectively bypassing both the **judgment and the 2023 Act**.
- **Undermining Free and Fair Elections:** With the **executive holding two of three votes**, the Act raises concerns over ECs' independence and **potential alignment with the ruling party** that may undermine free and fair elections.
- **Impact on Credibility of EC:** The Act's Search Committee for CEC and EC candidates faces criticism for **increasing executive influence** even before appointment.
 - **Perceived bias** in EC selection could significantly impact **Indian democracy**, as elections determine political power.

Election Commission of India (ECI)

About

- **Autonomous Constitutional Authority** - Administers Union/state election
 - LS, RS, State LA, the offices of the President and VP
- Estd - **25th Jan 1950** (National Voters' Day)



Constitutional Provisions

Part XV - Article 324 to 329

Structure

- 1 Chief Election Commissioner and 2 Election Commissioners **appointed by President**
- **Tenure- 6 years, or up to the age of 65 years**, whichever is earlier
- Retiring ECs – **eligible for further appointment by the govt.**
- **Removal of CEC-** Resolution on the **ground of proven misbehaviour or incapacity**, with majority of 2/3rd members present and voting, supported by more than 50% of the total strength of the house



Major Roles and Responsibilities



- Determining Electoral Constituencies
- Preparing/Revising electoral rolls
- Notifying the schedules and dates of elections
- **Registering political parties and granting them the status of national or state parties**
- Issuing the Model Code of Conduct (MCC) for political parties
- Advising the President on **matters concerning the disqualification of MPs**

Challenges

- Truncated Tenure of CEC
- Executive Influence in Appointments
- Dependence on Centre for Finance
- Lack of Independent Staff



Drishti IAS

Global Practices in the Appointment of Electoral Body Members

- **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**.
- **United Kingdom:** Candidates for the electoral body are subject to approval by the **House of Commons**.
- **United States:** The President appoints members to the electoral body, and the appointments require **confirmation by the Senate**.

Way Forward

- **Reviewing Selection Process:** Restoring the **CJI's role in the Selection Committee** as per the **Anoop Baranwal Case, 2023** would introduce a **neutral element** in the process, reducing the risk of political bias.
 - A **retired Supreme Court judge** or the **Speaker of the Lok Sabha** can be included in the Selection Committee to **dilute executive dominance**.
- **Strengthening Independence of EC:** The **Goswami Committee (1990)** advised **barring** CECs and ECs from **government posts**, including **Governor**, to prevent conflicts of interest and ensure impartiality.
- **Financial Autonomy:** The expenditure of the Election Commission should be '**charged**' on the **Consolidated Fund of India (CFI)** so that it cannot be **altered or reduced** through voting.
- **Equality Between CEC and ECs:** The **255th Law Commission (2015) report on Electoral Reforms** recommended amending **Article 324(5)** to give ECs the same protection as the CEC, ensuring impartiality and resistance to external influence.
 - **Article 324(5)** mandates impeachment like **Supreme Court judges** for CEC removal, while **ECs** can be removed on the **CEC's recommendation**, making them more vulnerable.

Drishti Mains Question:

Q. Evaluate the concerns related to executive influence in the appointment process in the Election Commissioners and suggest measures to enhance its autonomy.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

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)

Mains

Q.Discuss the role of the Election Commission of India in the light of the evolution of the Model Code of Conduct. (2022)

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