

STRENGTHENING OR STIFLING DEMOCRACY? EVALUATING THE CEC AND OTHER ECS (APPOINTMENT, CONDITIONS OF SERVICE AND TERM OF OFFICE) BILL, 2023

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ABSTRACT

Democracy is often considered the best form of government, as it ensures the participation and representation of the people in the decision-making process. However, with the advent of the CEC and Other ECs (Appointment, Conditions of Service, and Term of Office) Bill, 2023, the cardinal organ of Indian democracy and its future became the subject matter of controversy and uncertainty. The Chief Election Commissioner and other Election Commissioners are the guardians of free and fair elections in the country. They are bestowed with the duty to uphold the spirit of true democracy by maintaining transparency, keeping the conduct of political parties and candidates in check and ensuring the smooth functioning of the electoral process where citizens can exercise their voting rights freely. In order to achieve the objectives above, the Commission and the officers in charge need to be non-partisan, free from executive control and political interference and should follow the rule of law and the principle of equality. However, the lack of clarity regarding the appointment of the CEC and ECs in the constitution gave birth to many issues against some sections of the new bill, which may undermine the fundamental purpose of the institution. Furthermore, with the implementation of this bill, the grasp of the state on electoral functions will become more evident, both implicitly and explicitly. Various objectives of this essay are to understand the functionality of the EC, compare the existing and new selection process of the CEC and ECs from the perspective of various case laws, examine the selection processes of electoral heads of various global powers and conclude with a reasonable and just assessment of the bill.

INTRODUCTION

On December 12, 2023, the Rajya Sabha passed "The CEC and Other ECs (Appointment, Conditions of Service, and Term of Office) Bill 2023", which provides the Framework for the appointment, removal and salary of CEC and ECs. The bill seeks to replace the existing bill

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(Condition of Election Commissioners and Transaction of Business) Act, 1991 in action and proposes to create a selection committee comprising the Prime Minister, a Union Cabinet Minister, and the Leader of the Opposition or the leader of the largest opposition party in the Lok Sabha. The bill also seeks to remove the Chief Justice of India (CJI) from the selection panel, which goes against the Supreme Court's ruling from March 2023.¹ This has raised concerns over the autonomy and integrity of the EC. The lack of clarity on the appointment of the CEC and ECs in the constitution has resulted in the appointment of "independent commissioners" at the hand of the executive, that is, the parliament. In the constituent Assembly Debate, the appointment of CEC and ECs was poised to be an act that should be done by The President based on the aid and advice of The Prime Minister as the Constitution states the same, subject to the provisions of an act of parliament.

Based on the outcome of the debate of the constituent assembly, Parliament passed the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act.² However, it did not provide for their appointment process, which continued to be decided by the President. Dr BR Ambedkar, during his appearance in the constituent assembly, emphasised the importance of an independent EC and pointed out that the election machinery should be out of the control of the government.³ The Supreme Court, in its 2023 judgement, reiterated that ECI should be independent of the Executive's subjugation and directed that the selection should be done by the President based on the recommendation of a Selection Committee comprising The PM, The Leader of the Opposition of the Lok Sabha and The CJI. The new bill, however, with its certain sections, became the apple of discord between the opposition members and the current government. The concerns and dissent are mainly backed by the process in which a CEC will be appointed, which may make the guardian of Indian democracy subservient to the directions of the Executive. This Article discusses the background of the Election Commission & provides an overview of the New Bill & concludes with why the demerits raise concerns over the Future of Indian Democracy.

WHAT IS ELECTION COMMISSION?

Article 324 of the Indian Constitution states that the Election Commission will comprise the Chief Election Commissioner (CEC) and such number of Election Commissioners (ECs) as the president may decide. The Election Commission of India came into existence on 26 January 1950. Since then, this independent body has been conducting free and fair elections across the country, devoid of any executive pressure. The Election Commission, an autonomous

constitutional authority, is the backbone of India's Democracy which upholds the democratic values of the country by ensuring citizen's will and keeping the electoral process in check.

The Election Commission performs varied forms of functions which include regulating the model code of conduct, Preparing and issuing voter ID cards, campaign expenditures, etc. It also provides the political parties with unique symbols.

The Election Commission provides a model code of conduct to Political Parties and stipulates rules that are to be followed at the time or before the elections, failing which the Political Party/Individual may be disqualified from contesting elections.

Over the years, one of the greatest accomplishments of the Indian Election Commission is to conduct free and fair elections in a country with a population of over 1 billion people and have logistical challenges.

The Election Commission not only conducts Lok Sabha elections but also conducts state elections across 29 states. It also overlooks Presidential elections by assigning several votes to Electoral College members

A weak Election Commission by means of political tools and infringement by other bodies will result in the denigration of Democratic Ethos and values enshrined in the constitution, the very reason the "Autonomous" body was created to uphold in the very first place. Therefore, the individuals bestowed with the duty should be non-partisan and uphold the rights of the people.

BACKGROUND AND ROLE OF ELECTION COMMISSIONERS

Article 324 of the Constitution states that the Election Commission will comprise the Chief Election Commissioner (CEC) and such number of Election Commissioners (ECs), as the President may decide. The CEC and ECs constitute the Election Commission of India (ECI) and are responsible for managing the preparation of electoral rolls and conducting elections to Parliament, State Legislatures, and the offices of the President and Vice-President. The Constitution specifies that the President will appoint the CEC and ECs, subject to the provisions of an Act of Parliament. The Election Commissioners are appointed with the role of supervising elections and ensuring that free and fair elections happen all across the country. Other powers include Maintaining Electoral Rolls, Managing Election Staff, etc.

HOW WERE ELECTION COMMISSIONERS APPOINTED BEFORE

Owing to the ambiguity in the election process and the doubt of overrunning the independence of election commissioners, the election commissioner is appointed rather than elected. They are either retired judges, civil servants or people with extensive experience in public administration. The Supreme Court in *Anoop Baranwal vs Union of India* cites multiple suggestions made by commissions including the Goswami Committee where it was recommended that the selection of CEC shall be appointed by The President which would be based on consultation with the CJI and leader of the opposition & adding CEC at the time of appointing EC. In the National Commission to review the working of the constitution report, it was suggested that the appointment of CEC and ECs should be done on the recommendation of a body consisting of the PM, Leader of the Opposition in the Rajya Sabha, the speaker of the Lok Sabha the deputy chairman of the Rajya Sabha. However, the Supreme Court in its 2023 judgement suggested the Prime Minister + Leader of Opposition in Lok Sabha (or leader of the single largest opposition party in Lok Sabha) + Chief Justice for the appointment of the CEC.

WHAT DOES THE NEW BILL ENTAILS?

Under the New Bill, 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 Leader of Opposition/leader of the largest opposition party in Lok Sabha. The recommendations made by the Selection Committee will be valid even if there is a vacancy in the Committee. The bill eliminates the role of CJI in the appointment process of the CEC and further deepens the role of the Executive, which directly defies the 2023 judgement of the Supreme Court.

ISSUES AND CONTROVERSIES PERTAINING TO THE BILL

The new bill has been a matter of debate and concern. Many people have denounced the proposed bill owing to the lack of an independent selection process. The people were very quick to point out that this process would put a question mark on the neutrality of the selection panel as 2 members would be from the ruling government. Congress general secretary Mr Venugopal called it a "blatant attempt at making Election Commission a total puppet".

The bill raises questions on the Supreme Court's existing rulings which require an impartial panel and questions why the Prime Minister feel the need to appoint a biased election commission. Denouncers have called this bill a "Constitutional Breach" as it tries to make the judiciary subservient and undermines the impartiality of a constitutional body. Independence of the EC is paramount for a democratic country like India and various committees including the Goswami Committee have made suggestions such as administrative independence of the ECI and removal of the CEC and EC to ensure such independence, however the same has not been addressed in the new bill. The Supreme Court has time and again emphasised the importance of unbiased ECs and their appointment needs to be isolated from the influence of the executive or any other political body. Despite such judgements, several provisions of the Bill which include appointing a union minister by the PM as a member of the selection committee and considering third-party individuals other than those included in the committee unfortunately highlight the fact that the appointments of constitutional officers and guardians of Indian electoral system may only be left at the discretion of the Executive body.

WHAT ARE THE PROCEDURES FOLLOWED IN OTHER COUNTRIES?

As the Election Commission holds an important position in India, it holds an important portfolio across the globe. Its selection process varies across countries.

These posts are then approved by the House Of Commons and appointed by the British Monarch.

3)The speaker asks the Leader Of the House In South Africa, the appointing authority is the President and its core members include the President of the Constitutional Court, representatives of the Human Rights Court, A public prosecutor and a representative of the commission on gender equality.

In the United States, the appointing authority remains with the president and is confirmed by the Senate.

In the United Kingdom, The monarch in consultation with the House, remains the appointing authority. It is a complicated and democratic process. Steps include -

1. The Speaker's Committee on the Electoral Commission, with MPs and members, oversees the recruitment of election commissioners.

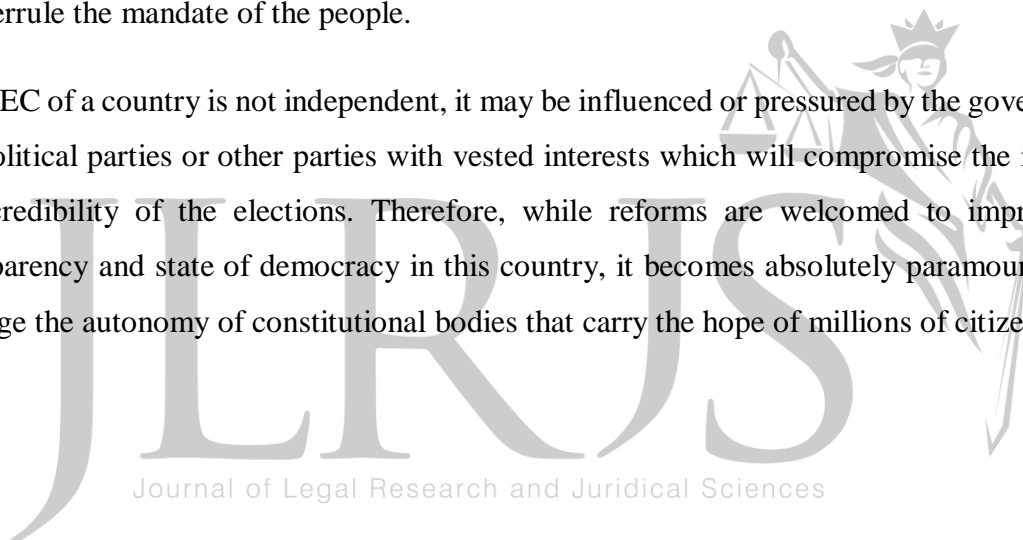
2. The candidates to table a motion for an address to appoint the recommended candidate.

CONCLUSION

Since its inception in 1950, the Election Commission of India has successfully administered 100s of elections, be it state elections or the general elections of this nation. Its autonomous partisan approach enabled crores of Indians to cast their constitutionally ensured right to vote, with a simple belief that whatever happens in the country, their democratic right to vote will be ensured by the mighty guardian and pillar of Indian Democracy.

However, the new bill introduced by the Indian Government paves the way for the weakening of the election commission. While the whole appointment process for ECs was left at the hands of the parliament, the very same institution now has introduced something that might be used to overrule the mandate of the people.

If the EC of a country is not independent, it may be influenced or pressured by the government, the political parties or other parties with vested interests which will compromise the integrity and credibility of the elections. Therefore, while reforms are welcomed to improve the transparency and state of democracy in this country, it becomes absolutely paramount not to infringe the autonomy of constitutional bodies that carry the hope of millions of citizens.



REFERENCES

1. *The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023*. (n.d.). PRS Legislative Research. <https://prsindia.org/billtrack/the-chief-election-commissioner-and-other-election-commissioners-appointment-conditions-of-service-and-term-of-office-bill-2023>
2. R, R. (2023, December 22). *On selecting Election Commissioners | Explained*. The Hindu. https://www.thehindu.com/news/national/on-selecting-election-commissioners-explained/article67648538.ece?_gl=1*6q8ctz*_ga*YW1wLWI2UDkxWE1yZnJFYU42Q0owZ0d4ZXAyUDU3S_WxJQ0VxNHQwcmFsdWZCOGZDd3JRUpwamU4THIBUlhoSFIWOUI
3. Supreme Court Observer. (2023, June 23). *Election Commission appointments: Judgement summary - Supreme Court Observer*. <https://www.scobserver.in/reports/election-commission-appointments-judgement-summary/>

