

ELECTION OF MEMBERS OF THE ELECTION COMMISSION

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Election Commission is a constitutional body. It has been established by the Constitution of India to regulate the procedure of elections in our country. In a democratic country like India, elections are held at regular intervals. To assuring free and fair elections in the country a commission to supervise the procedure of election. Article 324(2) of the Constitution states that the Election Commission shall consist of the Chief Election Commissioner(CEC) and such numbers of other Election Commissioner(EC) and the President shall, with aid and advice of the Council of Ministers, appoint Chief Election Commissioner and Election Commissioners, till Parliament enacts a law fixing the criteria for selection, conditions of service and tenure.

But any law has not been enacted till now for this purpose. Thereafter a PIL was filed in the Supreme Court demanding a fair and transparent procedure for the appointment of CEC and ECs.

Supreme Court has questioned the mandate of the parliament to frame a law for this purpose and has recently referred the matter to the Constitution Bench. Originally, the Constitution had provided for tribunals set up by the ECI to hear election petitions.

Developing of Constituent Majority rules system

- Electing a majority rules system in India owes an extraordinary arrangement to the premonition of the Constituent Gathering.

- At the point when the Constituent Get together discussed how free and fair races ought to be guaranteed, three significant inquiries emerged.

1. Whether free and fair decisions ought to be made a piece of crucial privileges or a free foundation, outside the chief, ought to be laid out to lead the races?

- They Got together and selected the last option and made the Political race Commission of India.

2. Whether to have a solitary, incorporated body for races to the Lok Sabha and State councils or not?

- One proposition was that the ECI be bound to government decisions, and separate organizations be positioned to direct races to State assemblies.

- Notwithstanding, with expanding pressure among networks, the Gathering dreaded sectarian activity in the States and settled on a solitary public organization, the ECI.

- Initially, the Constitution had accommodated councils set up by the ECI to hear political race petitions.

- Yet, bothered parties moved toward the courts, and the courts chose to hear political race petitions.

- Then the ECI itself suggested that political decision petitions be heard by the legal executive, and in 1966, the law was changed as needs are.

3. How to guarantee the freedom of the ECI?

- The Gathering gave basically to the CEC to be named by the President, passing on it to the governing body to sanction a reasonable regulation, which won't ever occur.

- Likewise on expulsion, however, the CEC is furnished with the security of residency and must be eliminated through prosecution, other ECs can be taken out on the proposals of CEC.

- Subsequently for the ECs, even the shield of expulsion was not given, which is likewise a topic of the previously mentioned PIL.

SUPREME COURT'S VIEW

Because of pending writs in Supreme Court(SC) clubbed four writs together and gave an important judgment in Anoop Baranwal v. Union of India on 2 March 2023 by constitutional bench including Justice KM Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, Justice CT Ravikumar.

It was alleged that the right to vote is a constitutional right, so the people of India are having a right to a fair and just election and for this purpose, it is important to be assured that there is transparency in the selection proceeding of CEC and Ecs. It is an authority that must be elected by fair proceeding. The ground for filing Public Interest Litigation has been the unconstitutionality of the current system of appointing members of the Election Commission of India. It was pleaded to the court to give direction to set up an independent system i.e. collegium system for the appointment of CEC and ECs.

The SC questioned the government for ignoring the mandate of Article 324(2) and its omission towards introducing a law in the Parliament to prescribe the procedure for the appointment of Ecs. On the other hand, the Union of India has defended saying the current procedure of appointing members of the EC is having an honest record of all past CECs. It also requested courts not to intervene as this matter falls within the domain of the executive.

The Apex Court after hearing arguments over the issue appealed to provide for a permanent Secretariat for ECI and to provide that the expenditure shall be charged on Consolidated Fund of India. SC held that it is for the union of India to consider all much-needed changes seriously.

In the same case, another question was raised that do ECI members have the security of tenure? It was held that CEC and ECs are on the same footing in terms of disposing of a business. However, when it comes to the questioning of security of tenure of CEC and ECs it is governed by different rules. CEC enjoys the same security as a judge of SC but ECs do not enjoy the same.

The SC has given the following directions regarding the appointment of members of ECs.

"Until the Parliament makes a law in consonance with Article 324(2) of the Constitution, the following guidelines shall be in effect:

(1) We declare that the appointment of the Chief Election Commissioner and the Election Commissioners shall be made on the recommendations made by a three-member Committee comprising of the Prime Minister, Leader of the Opposition of the Lok Sabha and in case no Leader of Opposition is available, the Leader of the largest opposition party in the Lok Sabha in terms of numerical strength and the Chief Justice of India.

(2) It is desirable that the grounds of removal of the Election Commissioners shall be the same as that of the Chief Election Commissioner that is on the like grounds as a Judge of the Supreme Court subject to the "recommendation of the Chief Election Commissioner" as provided under the second proviso to Article 324(5) of the Constitution of India.

(3) The conditions of service of the Election Commissioners shall not be varied to his disadvantage after appointment."