

## Appointment of Election Commissioners

### Why in news?

Supreme Court (SC) ruled that the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (EC) by the President will be based on the advice of a three-member high-level committee.

### What were the petitions about?

- **PIL** - In 2015, a public interest litigation (PIL), contended that successive governments failed to set up a “fair, just and transparent process” for the selection of Election Commissioners.
- **Political leaning** - The Court noted that an Election Commissioner could be competent and honest but could have a definite political leaning which may show in office.
- **Not weak-kneed** - The SC observed that the country needed Election Commissioners who would not shirk from even taking on the Prime Minister if required, and not just “weak-kneed” yes-men.

### What is the current process of selection of Election Commissioners?

- In *Anoop Baranwal vs Union of India*, the Supreme Court (SC) ruled that the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (EC) by the President will be based on the advice of a three-member high-level committee.
- **Article 324 (2)** - President shall with aid and advice of Council of Ministers, appoint CEC and ECs, till Parliament enacts a law fixing the criteria for selection, conditions of service and tenure.

*Dr B.R. Ambedkar - “There is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the executive.”*

- **Tenure** - Under the *Election Commission Act, 1991*, an EC can have a tenure of six years or up to the age of 65, whichever is earlier.
- Typically, the senior-most election commissioner is appointed as the CEC.
- **Removal** - Once appointed, the *Chief Election Commissioner* can be removed from office only through *Parliamentary impeachment*.
- However, no such protection of tenure is available to ECs, who can be removed by the government on the recommendation of the CEC.

To know more [click here](#).

### What revision has the top court ordered?

- **3 Member Panel** - As per the SC's directions, a panel that includes the *Prime Minister, the Leader of the Opposition in Lok Sabha and the Chief Justice of India* will now advise the President regarding the appointment of Election Commissioners.
- This is *similar to the appointment of the Director of the Central Bureau of Investigation*.
- If the position of the Leader of the Opposition is vacant, the leader of the single largest opposition party will be on the committee.
- This system of appointment will be in force till the Parliament comes up with a specific law.
- **Funding** - The Parliament and central government to constitute an independent secretariat to deal with the expenditure of the Commission, and insulate it from any financial obligation to the government.

### What are the positive outcomes of the verdict?

- **Constituent Assembly** - The framers' belief that delegation to Parliament would solve the vexing issue of the independence of the EC instead of constitutionalising it seems particularly naive.
- **Inaction from parliament** - Parliament has not acted, and the executive controls the appointments process, is contrary to the intention underlying Article 324.
- **Role of EC in democracy** - The ever-expanding scope, powers, and functions of the Election Commission, in the context of the role of free and fair elections in sustaining constitutional democracy.
- **Right to vote** - The *constitutional right to vote* cannot be actualised without an infrastructure of implementation in place.
- This, inevitably, has to take the form of an Election Commission charged with the superintendence, direction and control over elections.
- **Independence of the EC** - The absence of parliamentary legislation, coupled with the affirmative power vested in the Prime Minister to appoint the CEC and the ECs affect their independence.

### What are the negative outcomes of the ruling?

- **Doctrine of separation of powers** - It flows from the Constitution, which sought to establish 3 institutional organs, namely the legislature, executive and the judiciary.
- **Against basic structure** - The Court's justification of these appointment making powers is contrary to the basic structure doctrine, which the Court itself has continuously championed.
- **National Judicial Appointments Commission (NJAC)** - In 2015, the SC observed that the *NJAC is unconstitutional* as a result of its violation of the basic structure doctrine.
- The NJAC sought to introduce a system that would enable a healthy system of checks and balances in the appointment of judges.
- However, the judiciary was reluctant to accept this proposal as it was viewed as a

threat to judicial independence, and therefore, the basic structure, and the [collegium system](#) was reinstated.

- While it sought to fiercely protect its position as per the basic structure doctrine in NJAC, it acted in complete contravention of the doctrine while deciding the present matter.
- **Undermining powers** - Through this verdict, the Court has undermined the legislature and the executive, including their powers, their roles, and the duties they owe to the Indian people.

## References

1. [The Hindu | The Supreme Court's new rules for the appointment of Election Commissioners by the President](#)
2. [Indian Express | When judicial activism writes the law](#)
3. [The Wire | Decoding the Supreme Court's Election Commission Judgment](#)

