



Act now, recast the selection process of the ECs

CruX: A multi-institutional, bipartisan committee will ensure a transparent exercise, given the quasi-judicial nature of the ECI

The independence and the impartiality of the Election Commission of India (ECI)

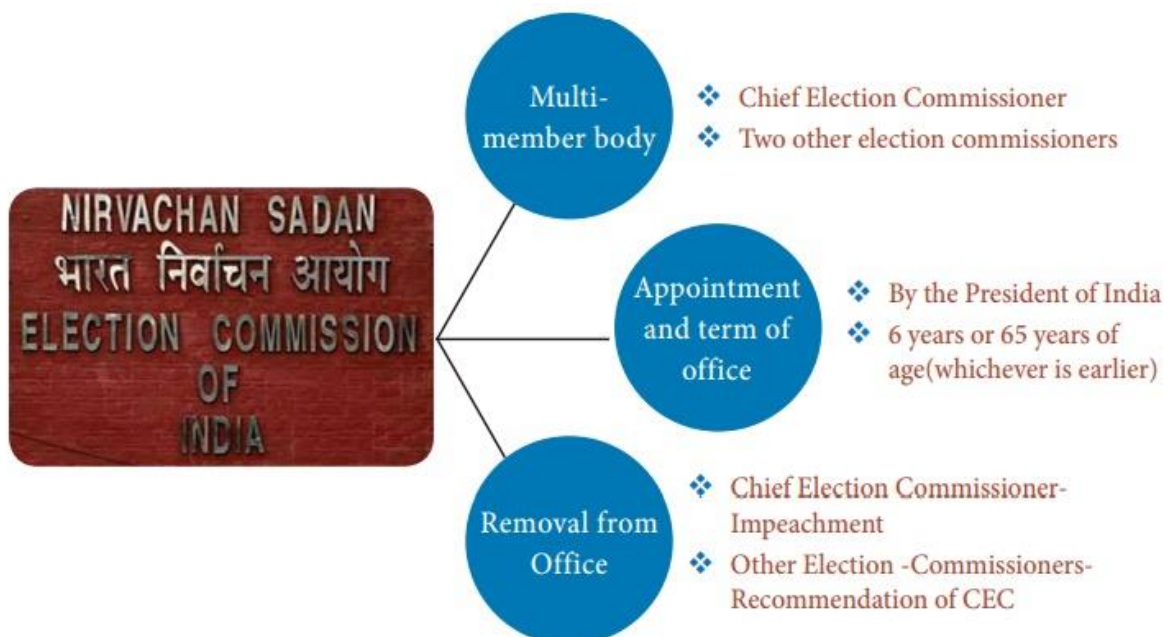
1. Reports of the Chief Election Commissioner (CEC) and his Election Commissioner colleagues 'attending' an 'informal' meeting with the Principal Secretary to the Prime Minister, late last year, has brought renewed focus on independence and the impartiality of the Election Commission of India (ECI).
2. The CEC's initial hesitation when 'summoned' was appropriate given that the ECI is a constitutionally mandated body that should maintain its distance from the Executive, in perception and reality.
3. Over the last seven years, the ECI has faced multiple accusations of favouring the ruling party. For instance, the Citizens' Commission on Elections (CCE), chaired by the retired Supreme Court judge, Justice Madan B. Lokur, in its report titled "An Enquiry into India's Election System", has highlighted several instances of inaction on the part of the ECI while conducting the 2019 general election.

Appointment:

1. Given that the ECI is the institutional keystone holding up the edifice of Indian democracy, we suggest that changes in the appointment process for Election Commissioners can strengthen the ECI's independence, neutrality and transparency.
2. The appointment of Election Commissioners falls within the purview of Article 324(2) of the Constitution, which establishes the institution. Pertinently, it contains a 'subject to' clause which provides that both the number and tenure of the Election Commissioners shall be "subject to the provisions of any law made in that behalf by Parliament, be made by the President".
3. It was left to Parliament to enact legislation regarding the appointment of Election Commissioners. Apart from enacting a law in 1991, which was subsequently amended to enlarge the number of Election Commissioners from one to three, Parliament has so far not enacted any changes to the appointment process.

The judiciary could act

1. In the face of legislative inaction, there is now a possibility that the judiciary will force Parliament's hand.
2. Three writ petitions, with one pending since 2015, is urging the Supreme Court to declare that the current practice of appointment of Election Commissioners by the Centre violates Articles 14, 324(2), and democracy as a basic feature of the Constitution.
3. These petitions argue for an independent system for the appointment of Election Commissioners, as recommended by previous Law Commission and various committee reports.
4. In 1975, the Justice Tarkunde Committee recommended that Election Commissioners be appointed on the advice of a committee comprising the Prime Minister, the Lok Sabha Opposition Leader and the Chief Justice of India.
5. This was reiterated by the Dinesh Goswami Committee in 1990 and the Law Commission in 2015. The Fourth Report of the Second Administrative Reforms Commission also recommended the bipartisan committee for the appointment of CEC.





The nature of the ECI

1. Precedent does exist in the case of *Rojer Mathew vs South Indian Bank Ltd.*, to argue against the Executive being the sole appointer for a quasi-judicial body.
2. The pending writ petitions, therefore, argue that the Election Commission is not only responsible for conducting free and fair elections but it also renders a quasi-judicial function between the various political parties including the ruling government and other parties.
3. Accordingly, the Executive cannot be a sole participant in the appointment of members of the Election Commission as it gives unfettered discretion to the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation.
4. Hence, establishing a multi-institutional, bipartisan committee for the fair and transparent selection of Election Commissioners can enhance the perceived and actual independence of the ECI.
5. Such a procedure is already followed with regard to other constitutional and statutory authorities such as the Chief Information Commissioner, the Lokpal, the Central Vigilance Commissioner, and the Director of the Central Bureau of Investigation.
6. The quasi-judicial nature of the ECI's functions makes it especially important that the appointments process conforms to the strictest democratic principles.

Functions of Election Commission in India

1. EC takes decision on every aspect of conduct and control of election from the announcement of election to the declaration of results.
2. It implements the code of conduct and punishes any candidate or party that violates it.
3. It can also order the government to follow some guideline, to prevent use and misuse of governmental power to enhance its chance to win elections, or to transfer some governmental officials
4. When on the election duty, government officers work under the control of the EC and not the government.
5. To give an advice to the President on some certain issues.