

6. Supreme Court on EC Appointments - Polity

1. Why in News

1. Supreme Court (May 2026) remarked Parliament's prolonged failure to enact law on Election Commission appointments reflects possible 'tyranny of the elected'
2. Questioned why Parliament failed for decades despite constitutional mandate
3. Judicial concern regarding executive influence over independent institutions
4. Court questioned whether Parliament adequately debated Anoop Baranwal judgment (2023)
5. Spirit of judicial recommendations not reflected in 2023 law
6. Debate on balance between parliamentary sovereignty and judicial oversight

2. Constitutional Position of Election Commission

Establishment and Composition

1. Established under Article 324 of Constitution
2. Originally: Only Chief Election Commissioner (CEC)
3. Since 1993: Multi-member body with CEC and two Election Commissioners (ECs)

Appointment

1. President appoints CEC and ECs
2. Article 324(2): Appointments subject to any law made by Parliament
3. Earlier: Union Law Ministry prepared candidate list → sent to PM → PM advised President → formal appointment

Functions

1. Supervises, directs, controls elections to: Lok Sabha, Rajya Sabha, State Legislative Assemblies and Councils, President, Vice-President
2. Prepares electoral rolls, conducts elections, enforces Model Code of Conduct
3. Recognizes political parties, allocates election symbols

Independence Safeguards

1. Security of tenure for CEC
2. CEC removal similar to Supreme Court judge (impeachment)
3. Service conditions cannot be altered to disadvantage after appointment

3. Anoop Baranwal Case (2023)

Petitioners' Challenge

1. Challenged absence of independent mechanism for EC appointments
2. Questioned executive monopoly undermining institutional independence

Supreme Court Observations

1. Election Commission is guardian of democracy
2. Electoral integrity requires institutional independence
3. Executive monopoly in appointments undermines public trust
4. Free and fair elections part of Constitution's basic structure

2023 Interim Arrangement

1. Court directed appointment committee comprising: Prime Minister, Leader of Opposition in Lok Sabha, Chief Justice of India

Constitutional Rationale

1. Relied on Constituent Assembly Debates
2. Dr. BR Ambedkar's concerns regarding executive influence
3. Basic structure principles of democracy and free elections

Important Observations

Election Commission as Guardian: Free and fair elections part of basic structure

Voting as Freedom of Expression: Linked voting rights with Article 19(1)(a) freedom of speech and expression

Institutional Independence: Recommended independent EC secretariat, charging EC expenses to Consolidated Fund of India insulating from executive financial pressure

4. Chief Election Commissioner and Other Election Commissioners Act, 2023

Enactment

1. Parliament enacted in 2023 replacing SC's interim arrangement
2. Replaced CJI in selection committee with Union Cabinet Minister nominated by PM

New Selection Committee

1. Prime Minister
2. Leader of Opposition in Lok Sabha
3. Union Cabinet Minister (nominated by PM)

5. Key Concerns with 2023 Law

Executive Dominance

1. Two out of three members belong to executive
2. Restores executive control over appointments
3. PM nominates both PM's presence and Cabinet Minister
4. Tilts balance heavily toward executive

Dilution of Judicial Neutrality

1. Removal of CJI weakens checks and balances
2. Reduces institutional neutrality in appointments
3. Undermines separation of powers principle
4. Judicial element providing independence eliminated

Wide Discretion in Selection

1. Section 8(2): Committee may choose persons outside search committee shortlist
2. Reduces transparency and objective scrutiny
3. Potential for arbitrary selections
4. Bypassing merit-based process

Validity Despite Vacancy

1. Section 7(2): Appointments remain valid even with committee vacancy
2. Undermines collective decision-making principle
3. Allows appointments without full committee participation
4. Reduces deliberative process quality

6. Suggested Reforms

Independent Collegium

1. Include Prime Minister, Leader of Opposition, Chief Justice of India
2. Balanced representation preventing executive dominance
3. Judicial element ensuring neutrality

Transparent Selection Criteria

1. Public disclosure of eligibility norms
2. Selection rationale transparency
3. Objective merit-based assessment
4. Reduces discretion and arbitrariness

Independent Secretariat

1. Reduce administrative dependence on executive
2. Separate EC secretariat with autonomous functioning
3. Operational independence from government ministries

Financial Autonomy

1. Charge EC expenditure to Consolidated Fund of India
2. Direct parliamentary allocation without executive intermediation

3. Insulates from financial pressure and budget cuts
4. Similar to judiciary, CAG funding

Parliamentary Scrutiny

1. Strengthen committee-based deliberations on constitutional appointments
2. Public hearings for transparency
3. Multi-party consensus building
4. Institutional memory and accountability

7. Way Forward

Legislative Reconsideration

1. Parliament should revisit 2023 Act addressing SC concerns
2. Restore judicial element in selection committee
3. Balance executive participation with independence safeguards
4. Align with constitutional mandate and Anoop Baranwal judgment spirit

Institutional Safeguards

1. Statutory provisions for EC's operational and financial autonomy
2. Clear criteria for appointments based on merit, integrity, experience
3. Fixed tenure security for all Election Commissioners
4. Protection from arbitrary removal

Transparency Measures

1. Public disclosure of selection process
2. Reasoned decisions for appointments
3. Parliamentary debates on appointments
4. Accountability mechanisms

Strengthening Democracy

1. Independent Election Commission crucial for free and fair elections
2. Basic structure doctrine requires protection from executive encroachment
3. Balance between parliamentary sovereignty and constitutional values
4. Upholding Dr. Ambedkar's vision of independent institutions

8. Conclusion

Supreme Court's 'tyranny of elected' remark highlights prolonged parliamentary failure enacting independent EC appointment mechanism despite constitutional mandate. 2023 Act replacing CJI with PM-nominated Cabinet Minister creates executive dominance with two of three committee members from executive, diluting judicial neutrality. Anoop Baranwal judgment emphasized EC as guardian of democracy requiring institutional independence, linking voting with Article 19(1)(a) freedom of expression. Reforms needed: Independent collegium including CJI, transparent selection criteria, independent secretariat, financial autonomy through Consolidated Fund, strengthened parliamentary scrutiny ensuring Election Commission's independence crucial for free and fair elections as basic structure of Constitution.

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