

5. Chief Election Commissioner Immunity- Polity

The Supreme Court has agreed to examine the constitutional validity of the immunity granted to the Chief Election Commissioner (CEC) and Election Commissioners (ECs). The Supreme Court has agreed to examine the constitutional validity of Section 16 of the CEC Act, 2023, which grants the Chief Election Commissioner and Election Commissioners life-long immunity from civil and criminal proceedings for official acts. Critics argue this unprecedented statutory protection violates the doctrine of equality and lacks the constitutional mandate that similar high functionaries possess, potentially threatening the accountability of the poll body.

Context- Supreme Court's Scrutiny

Development- The Supreme Court has agreed to examine the constitutional validity of the immunity granted to the Chief Election Commissioner (CEC) and Election Commissioners (ECs).

Legal Basis- This immunity stems from the recently enacted Chief Election Commissioner and Other Election Commissioners Act, 2023.

Core Challenge- The plea challenges Section 16 of the Act, arguing that it creates an unconstitutional, life-long shield against accountability.

1. The Controversial Provision- Section 16 of the 2023 Act

Section 16 say

Bar on Proceedings- It mandates that "no Court shall entertain or continue any civil or criminal proceedings" against a person who is or was the CEC or an EC.

Scope of Immunity- The protection covers any act, word, or decision taken by them while acting in the discharge of their official duties.

Key Issues with the Provision

Life-Long Immunity- Unlike standard protections that may expire, this provision grants immunity that continues even after demitting office.

Unprecedented Nature- The plea describes this as "unprecedented," noting that even high constitutional functionaries like judges do not enjoy such explicit, permanent statutory immunity against all civil and criminal actions.

2. Arguments Against Section 16 (The Challenge)

The petitioners have raised several constitutional and ethical objections-

Violation of Equality (Article 14)- The plea argues that granting blanket immunity undermines the Doctrine of Equality (Equality before Law). It creates a separate class of citizens who are unaccountable for their actions, which is arbitrary.

Constitutional Violation

Argument- Parliament cannot legislate an immunity that even the Constitution framers did not provide.

Misuse of Article 324(2)- The government justified the law under Article 324(2), but petitioners contend this Article deals only with appointments, not with service conditions or granting immunity.

Comparison with Judiciary- Judges of Constitutional Courts (Supreme Court and High Courts) are protected by the Judges (Protection) Act, 1985, but the plea argues the immunity for ECs is broader and lacks similar constitutional backing.

Threat to Free and Fair Elections- The provision creates a "free hand" for the CEC/ECs to act for or against political parties without fear of legal consequences, potentially disturbing the level playing field. It weakens the accountability essential for a democratic watchdog.

3. Constitutional Framework for the Election Commission

Article 324 of the Constitution governs the Election Commission of India (ECI).

Article 324(2)

1. Mandates that the CEC and ECs shall be appointed by the President.
2. This appointment is subject to any law made by Parliament (which is the basis for the 2023 Act).

Article 324(5)

1. Empowers Parliament to determine the service conditions and tenure of the CEC and ECs.

2. Security of Tenure- Provides that the CEC cannot be removed from office except in the manner provided for a Judge of the Supreme Court.

4. Comparative Analysis- Immunity of Constitutional Functionaries

The following table compares the immunity status of various constitutional authorities-

Constitutional Authority	Immunity / Protection Status
President & Governors (Article 361)	Enjoy immunity from criminal proceedings only during their term of office. Civil proceedings can be initiated with 2 months' notice. Immunity is not permanent after leaving office.
Supreme Court / High Court Judges	Protected for judicial acts (Judges Protection Act). However, they can face inquiry (e.g., impeachment process) and do not have blanket statutory immunity for all acts "forever."
CAG & UPSC Members	No blanket statutory immunity from civil/criminal proceedings is explicitly provided in the Constitution or their respective Acts.
CEC & ECs (Under 2023 Act)	Life-long immunity from civil and criminal courts for official acts, continuing even after retirement.

5. Overview of the Chief Election Commissioner and Other Election Commissioners Act, 2023

This Act replaces the *Election Commission* (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

A. Appointment Process

Search Committee

1. Headed by- Union Minister of Law and Justice.
2. Members- Two officials of the rank of Secretary or above.
3. Role- Prepares a panel of five eligible candidates.

Selection Committee

Chairperson- Prime Minister.

Members

- a. Leader of Opposition in Lok Sabha (or leader of the largest opposition party).
- b. Union Cabinet Minister nominated by the Prime Minister.

Role- Recommends suitable candidates to the President.

B. Eligibility & Tenure

Eligibility- Must have held a post equivalent to Secretary to the Government of India.

Tenure- Six years or until the age of 65 years, whichever is earlier.

Reappointment- Expressly prohibited.

C. Status & Removal

Salary- Equivalent to a Judge of the Supreme Court.

Removal

CEC- Like a Supreme Court Judge (impeachment-like process).

ECs- Only on the recommendation of the CEC.

6. Evolution of the Selection Committee- Recommendations vs. 2023 Act

Various committees and the Supreme Court have suggested different compositions to ensure independence. The 2023 Act deviated significantly from the Supreme Court's 2023 directive.

Body / Committee	Suggested Members for Selection Committee
Goswami Committee (1990)	President consults Chief Justice of India (CJI) + Leader of Opposition (LoP).
Law Commission (2015)	Prime Minister + Leader of Opposition (LoP) + Chief Justice of India (CJI).
Supreme Court (Anoop Baranwal Case, 2023)	Prime Minister + Leader of Opposition (LoP) + Chief Justice of India (CJI).

The 2023 Act (Current Law)	Prime Minister + Leader of Opposition (LoP) + Union Cabinet Minister (Nominated by PM). (Note- The CJI was replaced by a Cabinet Minister, giving the Executive a 2-1 majority.)
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Conclusion

The challenge before the Supreme Court is to determine if the **Section 16 immunity** is a necessary shield for the CEC/ECs to function without fear of harassment or if it is an excessive privilege that violates the constitutional doctrine of equality and accountability.

Source- <https://timesofindia.indiatimes.com/india/supreme-court-to-examine-immunity-for-cec-ecs-after-pil-flags-law-onto-itself-risk/articleshow/126492154.cms>

