



? Supreme Court Refers CEC-EC Appointment Law Challenge to Constitution Bench Amid Dispute Over Electoral Independence

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Recent Developments:

- On 23 September 2026, a two-judge Supreme Court Bench comprising Justices **Dipankar Datta** and **Satish Chandra Sharma** delivered differing opinions on whether petitions challenging the **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023** should be heard by a larger Constitution Bench.
- Justice Datta considered a larger-bench reference unnecessary at that stage, while Justice Sharma considered the constitutional questions sufficiently significant to require consideration by a **five-judge Constitution Bench**. To avoid further procedural delay, both judges directed that the matter be placed before the **Chief Justice of India** for constituting an appropriately sized bench.
- The challenge principally concerns **Section 7 of the 2023 Act**, which determines the composition of the Selection Committee for recommending appointments of the CEC and ECs. The constitutional question is closely connected with the independence of the Election Commission and Parliament's power under **Article 324(2)**.

Constitutional Framework of the Election Commission:

Article 324 and the Election Commission:

- **Article 324** vests the superintendence, direction and control of elections to Parliament, State Legislatures, President and Vice-President in the **Election Commission of India (ECI)**.
- Article 324(2) provides that the Commission consists of the **Chief Election Commissioner and such number of other Election Commissioners as the President may determine**, with their appointments made by the President subject to any law enacted by Parliament.
- The ECI is a **permanent constitutional body** and currently consists of the CEC and two Election Commissioners, with decision-making based on majority in the multi-member Commission.
- Article 324(5) provides special removal protection to the CEC, whose removal follows the procedure applicable to a **Judge of the Supreme Court**; other Election Commissioners cannot be removed except on the recommendation of the CEC.

Why Institutional Independence Matters:

- The Supreme Court has repeatedly recognised **free and fair elections as part of the basic structure of the Constitution**, making the institutional credibility of the election machinery constitutionally significant.
- Independence of the ECI involves not only protection from direct interference but also a credible institutional framework for appointments, tenure, functioning and decision-making.

- The present litigation therefore raises a broader constitutional issue: **how should the appointment mechanism protect the autonomy and perceived neutrality of an institution responsible for administering democratic elections?**

Anoop Baranwal Judgment, 2023:

Judicial Intervention Before Parliamentary Legislation:

- In **Anoop Baranwal v. Union of India**, decided in March 2023, the Supreme Court examined the absence of a parliamentary law specifically regulating the appointment of the CEC and ECs.
- The Court noted that **Article 324(2)** contemplated parliamentary legislation concerning appointments, but such a comprehensive statutory framework had not been enacted.
- As an interim arrangement, the Court directed that appointments should be recommended by a committee comprising the **Prime Minister, Leader of Opposition in the Lok Sabha and Chief Justice of India** until Parliament enacted a law.
- The judgment therefore became an important reference point in the subsequent legislative debate over the institutional design of the appointment process.

Chief Election Commissioner and Other Election Commissioners Act, 2023:

Selection Committee under the New Law:

- Parliament enacted the **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023**, formally creating a statutory framework for appointments.
- The Act replaced the CJI in the selection mechanism with a **Union Cabinet Minister nominated by the Prime Minister**.
- The Selection Committee consequently comprises:
 - **Prime Minister — Chairperson;**
 - **Union Cabinet Minister nominated by the Prime Minister — Member;**
 - **Leader of Opposition in the Lok Sabha — Member.**
- The arrangement gives the Union executive **two positions on a three-member committee**, while the LoP constitutes the third member.
- The Act also regulates the **appointment procedure, service conditions, tenure and functioning** of the CEC and ECs. It came into force on **2 January 2024**.

Key Difference from the Anoop Baranwal Mechanism:

Aspect Anoop Baranwal interim mechanism 2023 statutory mechanism

Prime Minister Member Chairperson

Leader of Opposition Member Member

Chief Justice of India Member Removed from committee

Additional member None Union Cabinet Minister nominated by PM

Institutional character Executive + Opposition + Judiciary Executive + Opposition

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

- The central constitutional controversy arises from this **change in institutional composition**, particularly the replacement of the CJI with a Union Cabinet Minister.

Issues Before the Supreme Court:

Executive Influence and Independence:

- Justice Datta's reasoning raised concern that the composition of the Selection Committee may give the executive substantial influence over appointments to the body responsible for administering elections.
- His reasoning distinguished between **actual independence** and the **appearance of independence**, arguing that public confidence in electoral institutions can also depend upon the perceived neutrality of the appointment process.
- The concern is particularly relevant because a Cabinet Minister nominated by the Prime Minister is part of the Union executive and operates within the principle of **collective responsibility**.

Role of the Leader of Opposition:

- Justice Datta questioned whether the LoP can provide an effective institutional counterweight when the other two members belong to the executive.
- The constitutional debate therefore extends beyond the numerical composition of the committee to the question of whether its structure provides a **meaningful check and balance** during appointments.

Parliament's Legislative Power under Article 324:

- Article 324(2) expressly permits appointments to be made subject to a law enacted by Parliament, making Parliament's legislative competence an important component of the dispute.
- The constitutional question is therefore not simply whether Parliament can legislate on appointments, but whether the legislative framework must also conform to constitutional principles concerning **free and fair elections, institutional independence and separation of powers**.

Constitution Bench and Article 145(3):

Why a Larger Bench Matters:

- Article 145(3) requires a minimum five-judge bench when a case involves a substantial question of law as to the interpretation of the Constitution.
- Justice Sharma considered the constitutional issues raised by the challenge sufficiently significant to warrant consideration by a Constitution Bench, whereas Justice Datta did not consider such a reference necessary at that stage.
- Because the two judges differed, sending the matter to another bench merely to determine which opinion should prevail could create an additional procedural stage.
- The judges therefore chose to place the matter before the **CJI for consideration of a Constitution Bench**, with the objective of avoiding further delay.

Collegium Comparison and Separation of Powers:

Relevance of the Judicial Appointments Debate:

- The proceedings also involved discussion of the **judicial collegium system**, particularly the argument that an appointment mechanism can operate without a government representative.
- Justice Datta rejected a simplistic comparison between judicial and Election Commission appointments and highlighted the different constitutional contexts in which the two systems operate.
- For UPSC, the important conceptual distinction is that **institutional design must be assessed according to the constitutional function of the body concerned**, rather than by mechanically comparing different appointment systems.

Broader Governance Significance:

Electoral Integrity and Constitutional Democracy:

- The dispute illustrates the relationship between **electoral integrity, institutional independence and democratic legitimacy**.
- Since the ECI administers elections to Parliament, State Legislatures, President and Vice-President, its institutional autonomy has implications for the functioning of representative democracy.
- The case also demonstrates the constitutional tension that can arise when **Parliament legislates in an area previously addressed through judicial directions**.

Judicial Pendency and Constitution Bench Cases:

- Both judges also highlighted the broader concern of delays in adjudicating important constitutional questions.
- For constitutional governance, prolonged pendency can leave major questions of institutional design unresolved even after Parliament has enacted legislation.
- The case therefore raises a secondary institutional issue concerning the need for **timely adjudication of substantial constitutional questions**.

UPSC Perspective:

GS-II Connections:

- **Indian Constitution:** Article 324, Article 145(3), constitutional bodies, basic structure doctrine.
- **Polity and Governance:** Election Commission independence, separation of powers, checks and balances, institutional accountability.
- **Judiciary:** Constitution Bench, judicial review, interpretation of constitutional provisions.
- **Electoral Reforms:** Appointment mechanism, institutional autonomy, credibility of election administration.
- **Democratic Governance:** Free and fair elections, public confidence, representative democracy.

Key Constitutional Takeaways:

- **Article 324:** Constitutional foundation of the Election Commission.
- **Article 324(2):** Provides for appointment of CEC and ECs subject to parliamentary law.
- **Article 324(5):** Provides special removal protection to the CEC.
- **Article 145(3):** Provides for a minimum five-judge bench for substantial questions concerning constitutional interpretation.
- **Anoop Baranwal, 2023:** Established an interim appointment mechanism involving the PM, LoP and CJI until Parliament enacted a law.
- **2023 Act:** Replaced the CJI with a Union Cabinet Minister nominated by the PM.
- **Current status, September 2026:** The challenge remains unresolved on merits and has been placed before the CJI for consideration of an appropriately constituted Constitution Bench.

Value Addition for UPSC:

Constitutional Principle:

Electoral democracy requires not only periodic elections but also an election-management institution whose constitutional autonomy and credibility are adequately protected.

Mains Linkage:

- The controversy can be used in answers on **electoral reforms**, especially when discussing the need to balance **parliamentary legislative authority with institutional safeguards for independent election administration**.
- A balanced answer should distinguish between the **legal power of Parliament to legislate under Article 324(2)** and the separate constitutional question of whether the resulting framework adequately protects the **independence and credibility of the Election Commission**.