Election Commission: constitutional foundation

Article 324(1) places the superintendence, direction and control of electoral rolls and elections in the Election Commission of India.

Four electoral spheres:

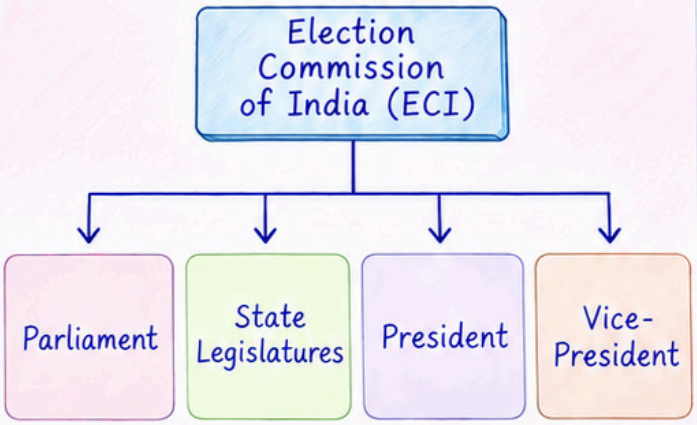
- Parliament;
- State Legislatures;
- President;
- Vice-President.

Article 324(2): The Commission consists of the Chief Election Commissioner and such number of other Election Commissioners as the President fixes. The Constitution does not itself prescribe a permanently fixed total of three.

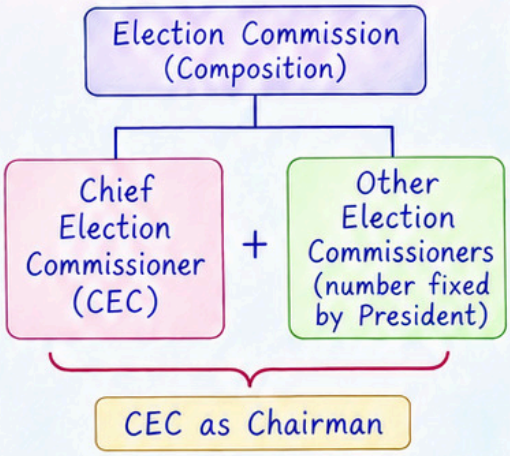
The President appoints the members, subject to any law Parliament makes on appointment.

Article 324(3): When other Election Commissioners are appointed, the Chief Election Commissioner acts as Chairman.

ECI and the four electoral spheres



Composition of the Commission



Institutional logic:

constitutional authority → independent election administration → democratic representation

Remember: Parliament and State Legislature elections include their respective Houses; do not reduce ECI jurisdiction to Lok Sabha and Assembly elections alone.

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Article 324: assistance and safeguards

Clause (4): The President may appoint Regional Commissioners after consulting the Election Commission. They assist the Commission.

When?

- Before each Lok Sabha general election;
- before each State Legislative Assembly general election;
- before the first election and each biennial election to a State Legislative Council where one exists.

Clause (5): Conditions of service and tenure are determined by presidential rules, subject to parliamentary law.

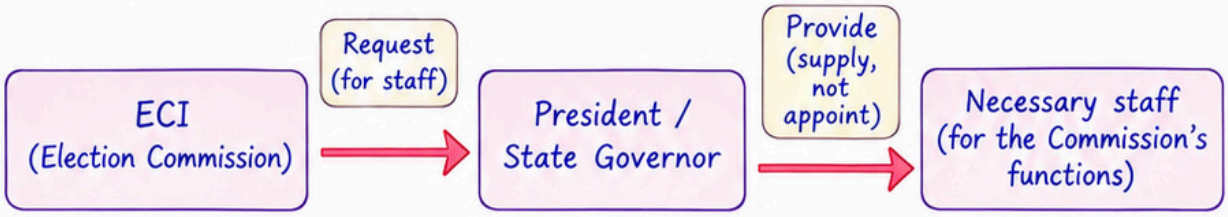
CEC: removal only in the same manner and on the same grounds as a Supreme Court Judge. Service conditions cannot be varied to the CEC's disadvantage after appointment.

Other Election Commissioners and Regional Commissioners: removal requires the CEC's recommendation. These safeguards are not worded identically to the CEC's protection.

Removal: comparison of safeguards

CEC	Other ECs / Regional Commissioners
CEC: Removal only in the same manner and on the same grounds as a Supreme Court Judge. Service conditions cannot be varied to the CEC's disadvantage after appointment.	Other ECs / Regional Commissioners: Removal requires the CEC's recommendation. These safeguards are not worded identically to the CEC's protection.

Clause (6): On the Commission's request, the President or a State Governor must provide the staff necessary for its functions.



Do not confuse: Regional Commissioners assist the ECI; they do not replace it.

Articles 325-329: the electoral framework

325 – One general electoral roll for each territorial constituency. No exclusion or separate electoral roll on grounds only of religion, race, caste or sex.

326 – Lok Sabha and State Assembly elections rest on adult suffrage. Eligibility: Indian citizen, at least 18 on the legally fixed date, subject to legal disqualifications such as non-residence, unsoundness of mind, crime or corrupt/illegal practice.

327 – Parliament may legislate on election matters, including rolls and delimitation.

328 – A State Legislature may legislate for its own House or Houses, so far as Parliament has not made provision.

The electoral framework: a five-step sequence

1 Common roll	2 Adult suffrage	3 Parliament's law	4 State's residual provision	5 Election-dispute route
ELECTORAL ROLL (Constituency) →	POLLING STATION →	{ ——— →	{ ——— →	ELECTION PETITION
One general electoral roll for each territorial constituency (Art. 325).	Lok Sabha and State Assembly elections on adult suffrage; Indian citizen, 18 or above, subject to legal disqualifications (Art. 326).	Parliament may legislate on election matters, including rolls and delimitation (Art. 327).	A State Legislature may legislate for its own House or Houses, so far as Parliament has not made provision (Art. 328).	Elections may be challenged only through an election petition in the prescribed manner (Art. 329(b)).

Article 329: challenges and limits

329(a) – Courts cannot question the validity of delimitation or seat-allotment laws made under Articles 327 or 328.

{ ———

329(b) – Parliamentary and State Legislature elections may be challenged only through an election petition in the prescribed manner.

ELECTION PETITION

Contrast:

- Article 325 protects a common roll.
- Article 326 specifies adult suffrage for Lok Sabha and Assemblies.
- Article 326 is not a statement that every constitutional election is directly decided by all adult citizens.

Appointment: the constitutional and statutory stages

Before 2 March 2023:
The President appointed on the Government's recommendation. Article 324(2) made appointment subject to a law Parliament could enact; it did not prescribe a selection committee.

2 March 2023 – Anoop Baranwal v. Union of India:
A five-judge Constitution Bench directed a committee of the Prime Minister, the Lok Sabha Leader of Opposition (or leader of the largest opposition party if no recognised Leader of Opposition), and the Chief Justice of India.

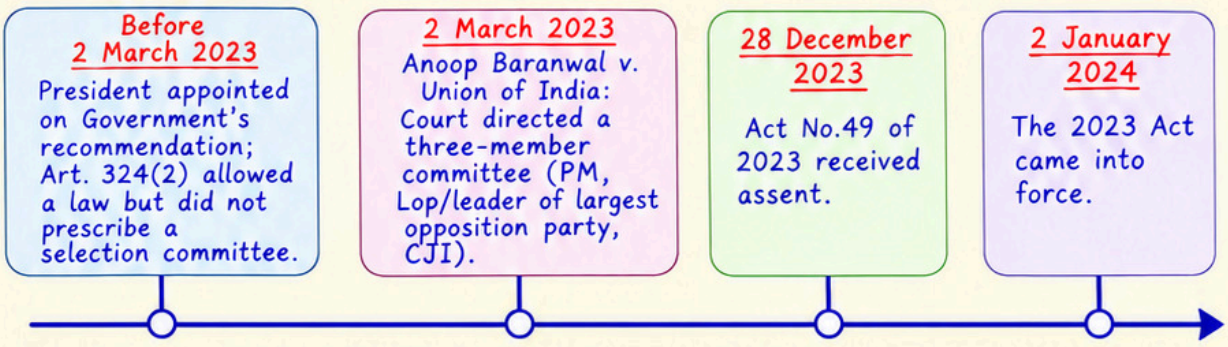
This was an interim arrangement: it would operate until Parliament made a law.

28 December 2023 – Act No.49 of 2023 received assent.
2 January 2024 – The 2023 Act came into force.

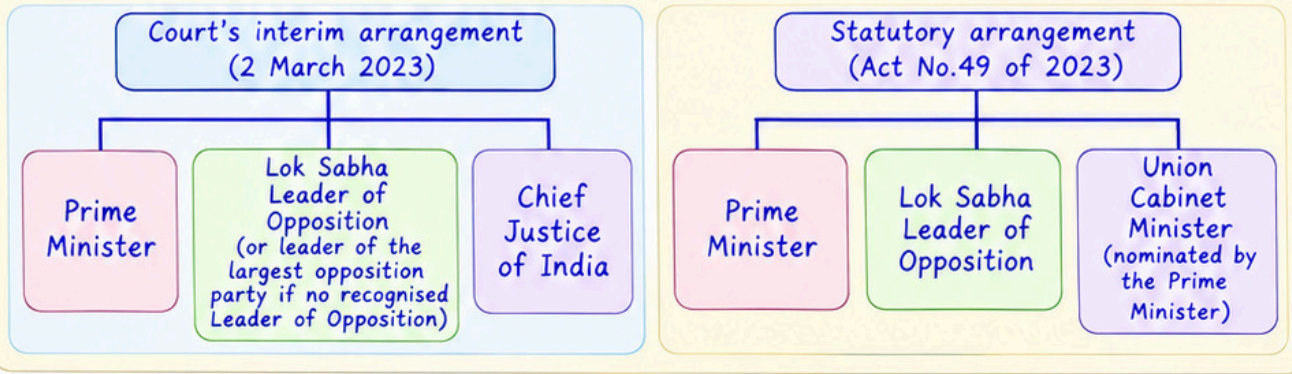
The statutory Selection Committee has the Prime Minister, the Lok Sabha Leader of Opposition, and a Union Cabinet Minister nominated by the Prime Minister. It does not include the Chief Justice of India.

Core distinction: The Court's interim arrangement and Parliament's later statutory arrangement are not simultaneous alternative methods.

Chronological timeline:



Three-member committee: comparison



The 2023 Act: search, selection, appointment

Stage 1 — Search Committee (section 6)

- Chair: Minister of Law and Justice.
- Two other members must be at least Secretary rank.
- The committee prepares a panel of five persons.

Stage 3 — Appointment (section 4)

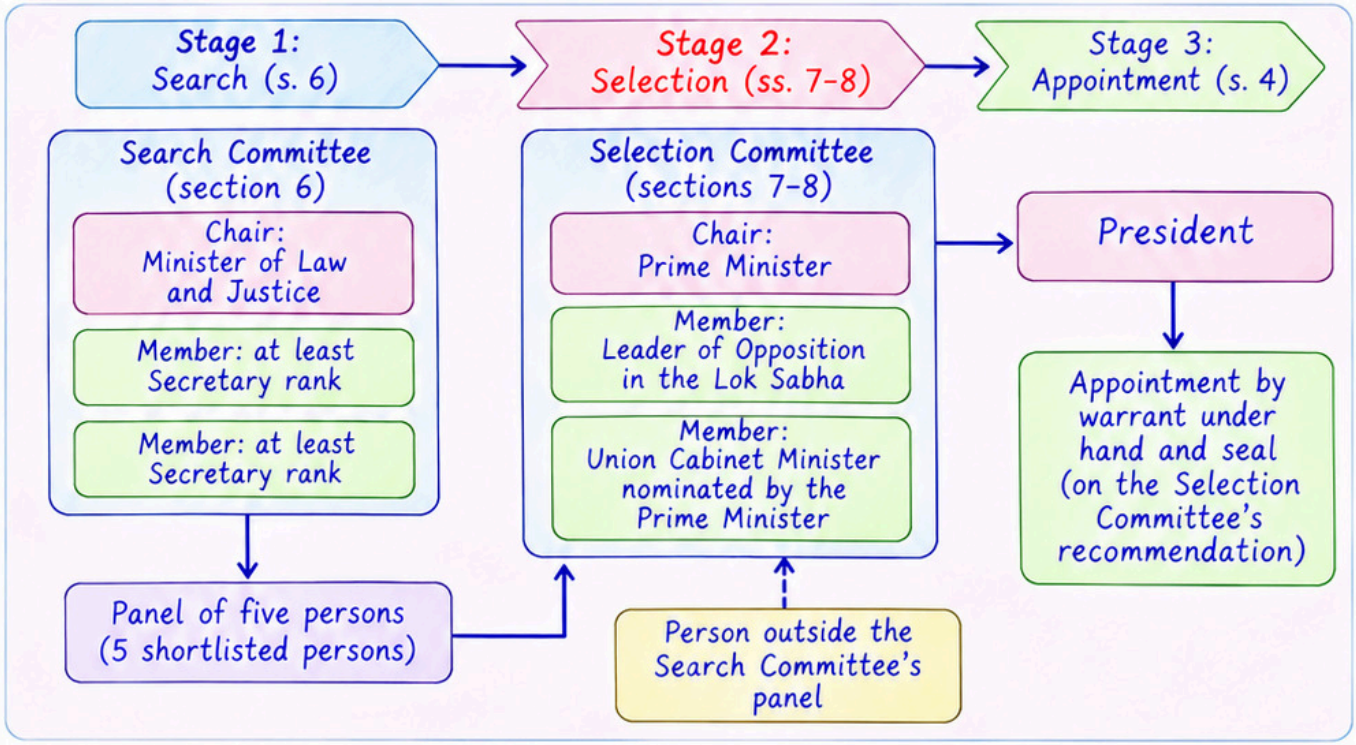
- The President appoints by warrant under hand and seal, on the Selection Committee's recommendation.

Eligibility (section 5):

- Holding or having held a post equivalent to Secretary to the Government of India;
- integrity;
- knowledge of and experience in managing and conducting elections.

Stage 2 — Selection Committee (sections 7-8)

- Chair: Prime Minister.
- Members: Leader of Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister.
- If no Leader of Opposition is recognised, the leader of the single largest opposition party is deemed to hold that position for this purpose.
- The Selection Committee regulates its procedure transparently and may consider a person outside the Search Committee's panel.



Do not confuse:

- five shortlisted persons are not five Selection Committee members.
- Search and selection have different chairpersons.

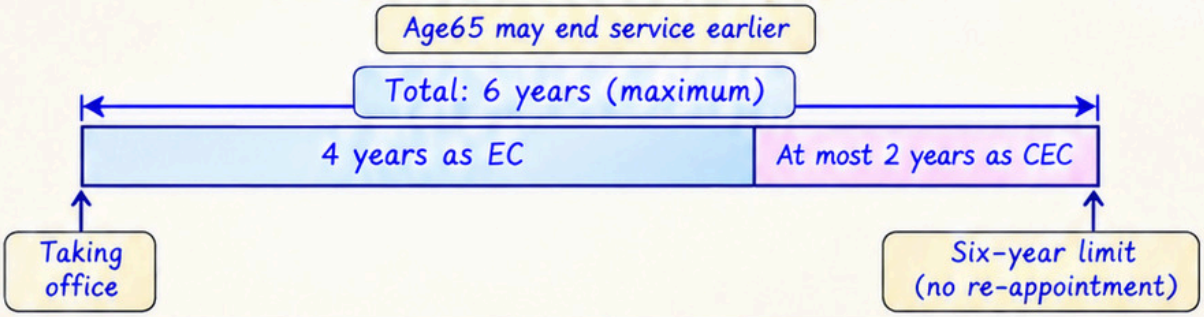
Tenure, pay and removal

Section 9: Six years from taking office OR age 65, whichever comes first. No re-appointment.

An Election Commissioner promoted to Chief Election Commissioner can serve no more than six years in the two offices together. Promotion does not restart a fresh six-year clock.

Example: Four years as EC leaves at most two years as CEC, and even that period ends earlier if age 65 is reached.

Six-year total tenure (with promotion)



Section 10: Salary equals that of a Supreme Court Judge. Salary, allowances and service conditions of members already in office immediately before commencement cannot be changed to their disadvantage.

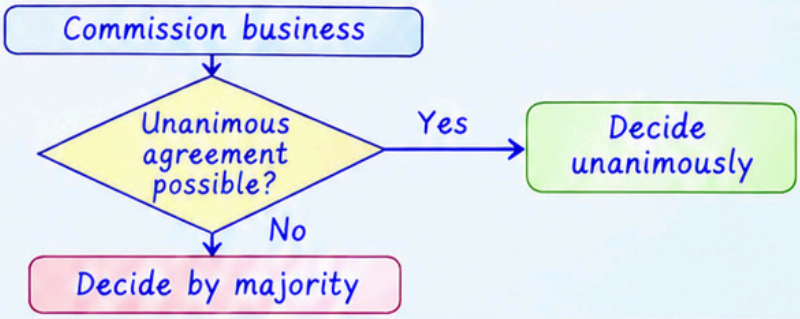
Section 11: A member may resign by writing to the President.

Removal:

- CEC removal: → Same manner and grounds as a Supreme Court Judge.
- Other ECs: → Removal only on the CEC's recommendation.

Section 18:

Commission business should be unanimous as far as possible. If members differ, the majority decides.



Contrast: CEC chairs the Commission, but disagreement is resolved by majority, not by a unilateral CEC veto.

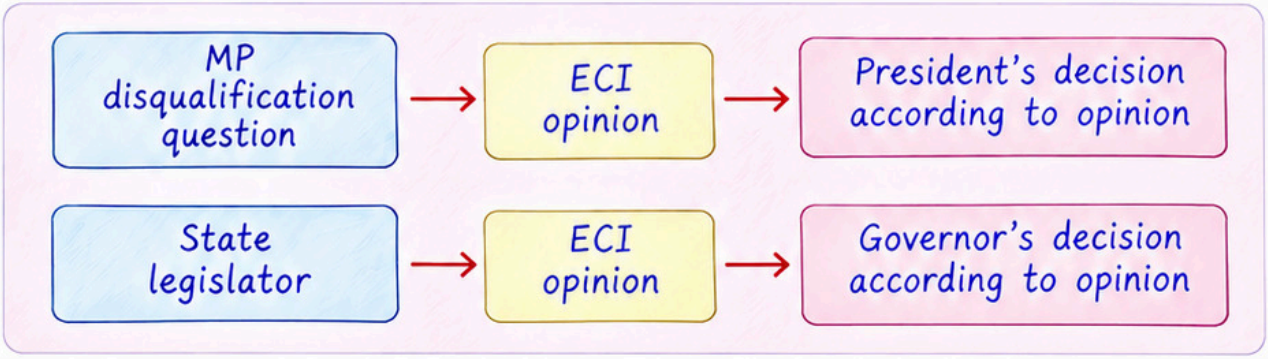
ECI powers: administration and binding opinion

Article 324(1): Superintendence, direction and control of electoral rolls and the elections within the Commission's constitutional jurisdiction.

Article 103: Questions about an MP's disqualification under Article 102(1) are referred to the President. Before deciding, the President obtains the ECI's opinion and acts according to it.

Article 192: For the corresponding State-legislator disqualification question, the Governor decides according to the ECI's opinion.

The ECI supplies the binding opinion; the formal decision is the President's or Governor's.



Party recognition and symbols: The Election Symbols (Reservation and Allotment) Order, 1968 provides the framework.



Model Code of Conduct:
Evolved through electoral practice; its origin is associated with the Kerala Assembly election of 1960.

Electronic voting:
EVMs were first used in 50 polling stations of Kerala's Parur Assembly constituency in May 1982.

Independence: protections and gaps

Constitutional safeguards

CEC removal follows the manner and grounds applicable to a Supreme Court Judge. The CEC's service conditions cannot be varied to disadvantage after appointment. Other ECs can be removed only on the CEC's recommendation.

Statutory safeguards

Fixed maximum term, age ceiling, no re-appointment and salary equivalent to a Supreme Court Judge.

Section 16 protects present and former members against civil or criminal proceedings for acts, things or words committed, done or spoken while acting or purporting to act in discharge of official duty or function. It is not a statement that every private act receives immunity.

Questions in debate

1. Selection: two members of the three-person statutory committee come from the executive.
2. Unequal removal protection: CEC and other ECs do not have identical safeguards.
3. Qualifications: Article 324 sets none; section 5 of the 2023 Act prescribes eligibility.
4. Later office: Article 324 contains no express bar on later government employment, unlike Articles 148(4) for CAG and 319 for UPSC Chairman.

Protection-versus-debate comparison

Protection (safeguard)	Debate (concern)
Removal of CEC: as Supreme Court Judge (manner and grounds)	Two committee members for selection come from the executive.
Service conditions of CEC cannot be varied to disadvantage	CEC and other ECs do not have identical safeguards on removal.
Other ECs removable only on CEC's recommendation	Article 324 sets no qualifications; section 5 of the 2023 Act prescribes eligibility.
Fixed term, age ceiling, no re-appointment and salary equivalent to a Supreme Court Judge	No express bar on later government employment under Article 324, unlike Articles 148(4) for CAG and 319 for UPSC Chairman.

Official-duty protection and private-act immunity

Section 16 protection (distinction)

- Protection for acts, things or words while acting or purporting to act in discharge of official duty or function (official-duty protection)
- Not a statement that every private act receives immunity (no blanket private-act immunity)

Judicial suggestion: In Anoop Baranwal, Justice Ajay Rastogi favoured extending comparable removal safeguards to other ECs, subject to the CEC's recommendation.

The appointment dispute: distinguish arguments from findings

The challenge concerns the validity of provisions of the 2023 Act, particularly its selection process.

Concern raised: Replacing the Chief Justice of India with a Cabinet Minister nominated by the Prime Minister may strengthen executive influence over an institution meant to supervise elections independently.

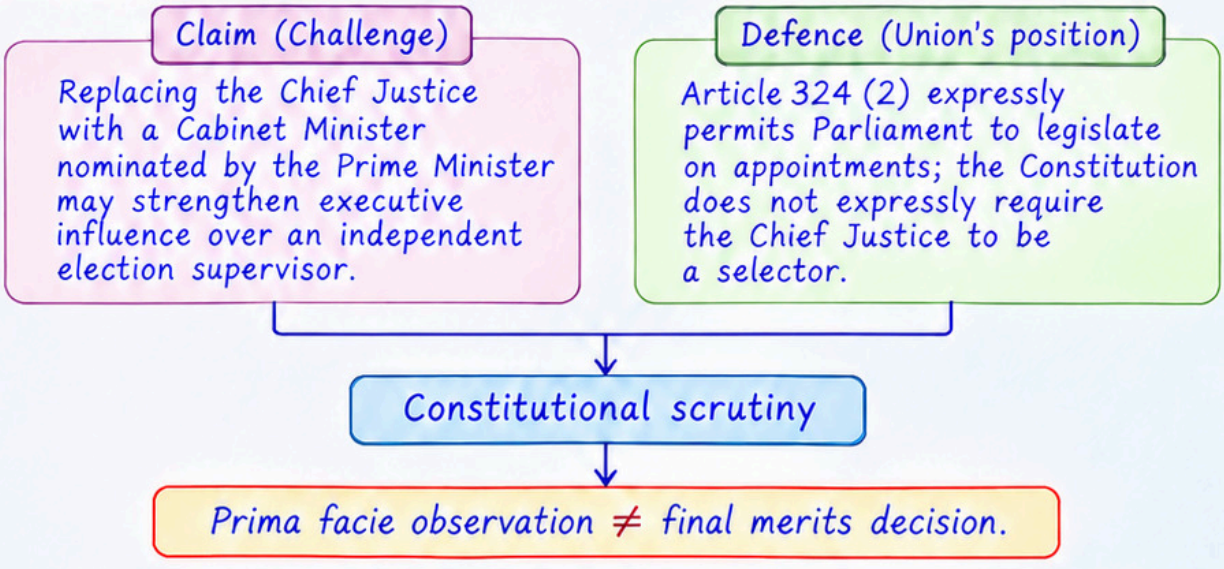
Defence raised: Article 324 (2) expressly permits Parliament to legislate on appointments; the Constitution does not expressly require the Chief Justice to be a selector.

23 September 2026: Justice Dipankar Datta found prima facie merit in the Union's argument that Parliament was not bound to include the Chief Justice. He also observed prima facie substance in the challenge concerning the Prime Minister's nominee.

Justice Satish Chandra Sharma treated the omission of a neutral selector as an important constitutional question requiring consideration.

These observations must not be presented as a final ruling that the Act is either valid or invalid.

Claim / Defence diagram:



Analytical balance: legislative authority under Article 324(2) must be examined alongside institutional independence and the constitutional requirement of free and fair elections.

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23 September 2026: what the Court actually ordered

Case: Dr Jaya Thakur and connected petitions challenging provisions of the 2023 Act.

Bench: Justices Dipankar Datta and Satish Chandra Sharma.

The judges differed on whether the issues should be considered by a Constitution Bench. Datta did not favour the requested reference; Sharma favoured a Bench of at least five judges.

Joint order: Papers were directed to the Chief Justice of India for considering the desirability of constituting a Constitution Bench to decide the validity of section 7 and other provisions.

The joint order also requested consideration of a permanent five-judge Bench for pure constitutional issues, given delays in resolving references.

Read the procedural stages separately:

Difference of judicial opinion → papers placed before Chief Justice → consideration of Constitution Bench

future adjudication

Referral is not a final decision on the Act's constitutional validity. A request to consider a Bench is not proof that the Bench has already been constituted.

Historical context: In March 2024 the Supreme Court had declined interim stay of the appointment law; that is a dated procedural event, not a substitute for checking later orders.

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ECI: milestones and changing composition

Composition timeline: key milestones and Commission strength

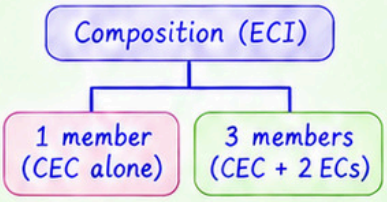
25 January 1950:	The Commission was constituted as a one-member body.	Composition: 1 member
21 March 1950:	Sukumar Sen became the first Chief Election Commissioner.	Composition: 1 member
16 October 1989:	S.S. Dhanoa and V.S. Seigell were appointed Election Commissioners, creating a three-member Commission.	Composition: 3 members
1 January 1990:	Presidential notifications rescinded the additional posts and appointments; the Commission returned to one member.	Composition: 1 member
12 December 1990–11 December 1996:	T.N. Seshan's tenure as CEC; associated with assertion of the Commission's autonomy and authority.	Composition: 1 member until 1993; 3 from 1 Oct 1993
1 October 1993:	Two additional Commissioners were appointed; the three-member arrangement resumed.	Composition: 3 members
25 January 2011:	First National Voters' Day, marking the Commission's foundation day.	Composition: 3 members
19 February 2025:	Gyanesh Kumar took charge as CEC; Dr Vivek Joshi took charge as EC. Dr Sukhbir Singh Sandhu had taken charge as EC on 15 March 2024.	Composition: 3 members

MCC milestone:

26 September 1968: A Minimum Code of Conduct was first issued under the CEC's signature.

Constitutional lesson:

Article 324(2) permits the President to fix the number of other ECs. One-member and three-member arrangements arose within the same constitutional framework.



Three distinctions to remember

1. Interim committee versus statutory committee

- The Supreme Court's 2023 committee included the CJI and operated until Parliament made a law.
- The 2023 Act provides a different committee.
- The September 2026 referral did not decide the Act's final validity.

2. ECI versus State Election Commission

Institution	Jurisdiction
ECI	Parliament, State Legislatures, President and Vice-President.
State Election Commission	Panchayat and municipal elections under Articles 243K and 243ZA.

3. Conducting elections versus deciding disputes

- ECI administers elections.
- Parliamentary and State Legislature election challenges proceed through election petitions under law, as required by Article 329(b).
- Disputes concerning election of President or Vice-President are decided by the Supreme Court under Article 71.

Election-dispute route

Election challenge (Parliamentary or State Legislature)
↓
Election petition under law (Article 329(b))
↓
Decision by the competent court under law

Disqualification route

Disqualification (in specified cases)
↓
Articles 103 and 192
↓
President or Governor to act according to the ECI's opinion

- One institution can administer an election without being the judicial forum for challenging its result.

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MCQ 1

Q1. Consider the following statements about the Election Commission of India under the Constitution:

1. Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may, after consultation with the Election Commission, appoint Regional Commissioners to assist the Commission.
2. Before deciding whether a Member of Parliament has become subject to a disqualification under Article 102(1), the President must obtain the opinion of the Election Commission and act according to it.
3. An Election Commissioner other than the Chief Election Commissioner can be removed from office only in like manner and on the like grounds as a Judge of the Supreme Court.
4. When the Election Commission so requests, the Governor of a State must make available to it such staff as may be necessary.

Which of the statements given above is/are correct?

(1) 1, 3 and 4 only

(2) 1, 2 and 4 only

(3) 2 and 3 only

(4) 1 and 2 only

Q1. Answer: (2) 1, 2 and 4 only

Explanation of each statement:

Statement 1 – Correct	Article 324(4) lets the President, after consultation with the Election Commission, appoint Regional Commissioners to assist it before each general election to the House of the People and to each State Legislative Assembly, and before the first general election and thereafter before each biennial election to the Legislative Council of a State that has one.
Statement 2 – Correct	Under Article 103 the question goes to the President, whose decision is final, but before deciding he "shall obtain the opinion of the Election Commission" and "shall act according to such opinion".
Statement 3 – Wrong	Only the Chief Election Commissioner has the protection of removal in like manner and on the like grounds as a Supreme Court Judge. Under Article 324(5) any other Election Commissioner shall not be removed except on the recommendation of the Chief Election Commissioner, and section 11 of the 2023 Act repeats this.
Statement 4 – Correct	Under Article 324(6), when the Commission so requests, the President or the Governor of a State shall make available to it such staff as may be necessary.

Why the other options are wrong:

Other options (incorrect)	(1)	Includes statement 3, which is wrong, and leaves out statement 2.
	(3)	Includes statement 3 and leaves out statements 1 and 4.
	(4)	Leaves out statement 4, which is correct.

MCQ 2

Q2. Consider the following statements about the Election Commission of India:

1. Under the 2023 Act, the Commission transacts its business unanimously as far as possible, and where the members differ, the opinion of the Chief Election Commissioner prevails.

2. The two Election Commissioners appointed on 16 October 1989 remained in office until 1 October 1993.

3. Under the 2023 Act, a person to be appointed Chief Election Commissioner or Election Commissioner must be holding, or have held, a post equivalent to the rank of Secretary to the Government of India.

4. Under the 2023 Act, an Election Commissioner who is appointed Chief Election Commissioner cannot serve more than six years in the two offices together.

Which of the statements given above is/are correct?

(1) 1 and 2 only

(2) 1 and 3 only

(3) 2 and 4 only

(4) 3 and 4 only

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Q2. Answer: (4) 3 and 4 only

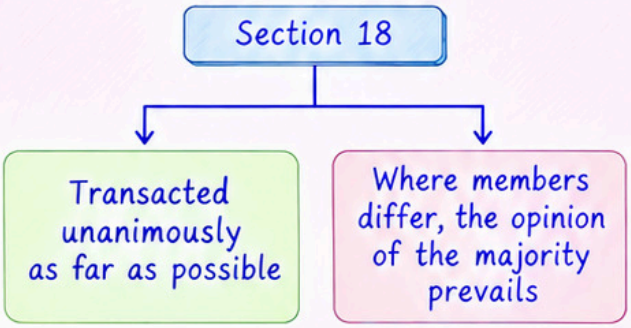
Statement 1 – Wrong: Section 18 of the 2023 Act says business is transacted unanimously as far as possible, but where the members differ, the opinion of the majority prevails. The Chief Election Commissioner chairs the Commission (Article 324(3)) but has no overriding vote.

Statement 2 – Wrong: S.S. Dhanoa and V.S. Seigell, appointed on 16 October 1989, lost office by a Presidential notification dated 1 January 1990, and the Commission became a one-member body again. The appointments of 1 October 1993 were of two new Election Commissioners under the 1991 Act.

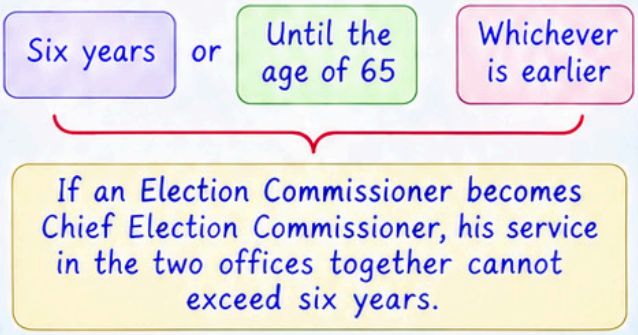
Statement 3 – Correct: Section 5 requires a person who is holding or has held a post equivalent to the rank of Secretary to the Government of India, of integrity and with experience in the management and conduct of elections.

Statement 4 – Correct: Section 9 gives a term of six years or until the age of 65, whichever is earlier, and where an Election Commissioner becomes Chief Election Commissioner, his service in the two offices together cannot exceed six years.

Business of the Commission (2023 Act)



Term of office (Section 9)



Why the other options are wrong:

- Option (1) → Has both wrong statements (1 and 2) and leaves out statements 3 and 4.
- Option (2) → Includes statement 1, which is wrong, and leaves out statement 4.
- Option (3) → Includes statement 2, which is wrong, and leaves out statement 3.