



## Ensuring Transparency in Election Commission of India

This editorial is based on [“Act Now, Recast The Selection Process Of The ECs”](#) which was published in The Hindu on 13/01/2022. It talks about the issues associated with the appointment of the members of the Election Commission of India (ECI).

**For Prelims:** Election Commission of India (ECI), Administrative Reforms Commission (ARCs), Appointment of Members of ECI, Article 324, Chief Election Commissioner, Justice Tarkunde Committee, Dinesh Goswami Committee, Election Commissioner Amendment Act 1989, Law Commission of India.

**For Mains:** Challenges to independent functioning of the ECI, Issues in Appointment of the members of Election Commission, Efficiency of an ECI Collegium in ensuring transparency in the appointment of members of ECI.

The [Election Commission of India \(ECI\)](#) is a constitutional body envisaged to **uphold the values of equality, equity, impartiality, independence** enshrined in the Indian Constitution and the rule of law in superintendence, direction, and control over the electoral governance.

It was established to **conduct the elections with the highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism.**

However, over the last years, the ECI has faced multiple accusations regarding its independence and impartiality in electoral governance and the process of appointment of its members.

Perhaps, a more **transparent and independent method in appointment of the members** of the ECI, that is also free from a dominant participatory role of the Executive, is what India requires for a better functioning of the body.

### Members of the Election Commission of India

- **Constitutional Provisions: Part XV** of the Indian constitution deals with elections, and provides for the establishment of the ECI.
  - [Article 324](#) to 329 of the constitution deals with powers, function, tenure, eligibility, etc of the commission and the members.
- **Statutory Provisions:** Originally the commission had only one election commissioner but after the enactment of the **Election Commissioner Amendment Act 1989**, it has been made a multi-member body.
  - The commission consists of one [Chief Election Commissioner](#) and two [Election Commissioners](#).
- **Role of Parliament:** The members of the ECI are appointed by the President of India **based on the recommendations made by the Prime Minister.**
  - However, **Article 324(2)** provides that the Parliament is **entitled to enact legislation**

regarding the appointment of Election Commissioners (ECs).

- **Recommendations for Appointment of ECs:** In 1975, the [Justice Tarkunde Committee](#) recommended that **ECs be appointed on the advice of a Committee** comprising the Prime Minister, Lok Sabha Opposition Leader and the Chief Justice of India.
  - This was **reiterated by the Dinesh Goswami Committee in 1990** and the [Law Commission in 2015](#).
  - The 4<sup>th</sup> Report (2007) of the [Second Administrative Reforms Commission \(ARCs\)](#) additionally recommended that the **Law Minister and the Deputy Chairman of the Rajya Sabha be included** in such a Collegium.

## Issues Associated

- **Failure of Parliament in Enacting Laws:** It is the Parliament responsible for making laws with respect to the appointment of the ECs,
  - However, apart from enacting a law in 1989 enlarging the number of ECs from one to three, Parliament has so far **not enacted any changes to the appointment process**.
- **Over-dependence on the Executive for Appointment:** The Election Commission renders a quasi-judicial function between the ruling and other parties. In such a case, the **executive cannot be a sole participant in the appointment of ECs**.
  - The current practice of appointment of ECs by the Centre **violates Article 14, Article 324(2), and Democracy as a basic feature of the Constitution**.

## Way Forward

- **Multi-Institutional Committee:** Given that **ECI is the institutional keystone holding up the edifice of Indian democracy**, establishing a multi-institutional, bipartisan committee for fair and transparent selection of ECs can enhance the perceived and actual independence of ECI.
  - The **quasi-judicial** nature of ECI's functions makes it especially important that the **appointments process conform to the strictest democratic principles**.
  - Such a procedure is already with regard to appointment of the authorities such as the Chief Information Commissioner, Lokpal, [Vigilance Commissioner](#), and the Director of the [Central Bureau of Intelligence](#).
- **Recommendations of Second ARC Report:** The Second ARC report recommended that an [ECI collegium](#) headed by the PM should make recommendations for the President for appointment of the ECI members.
  - The *Anoop Baranwal v. The Union of India (2015)* case also **raised the demand for a Collegium system** for the ECI.
  - A Bench comprising **Chief Justice J S Khehar** and **Justice D Y Chandrachud** had also noted that the ECs supervise and hold elections across the country and their selection has to be made in the most transparent manner.
- **Role of Parliament:** Parliament would do well to **pre-empt judicial strictures by going ahead and formulating a law** that establishes a multi-institutional, bipartisan Collegium to select ECs.
  - There is a **need for debate and discussions in the Parliament on the issue** of independence of ECI and consequently passing of required legislation.
  - After all, separation of powers is the gold standard for governments across the world.

## Conclusion

ECI's constitutional responsibilities require a fair and transparent appointment process that is beyond reproach, which will reaffirm the faith of the people in this vital pillar of the Indian polity. The existing veil over the appointment process of ECs potentially undermines the very structure on which India's democratic aspirations rest.

### ***Drishti Mains Question***

"Deficiencies in the present system of appointment of Election Commissioners needs to be removed and adequate safeguards must be put into place to ensure that ethical and capable people head the concerned positions". Comment.

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