



## Strengthening Guardian Body of Elections

This editorial is based on [“Is Election Commission becoming a victim of judiciary-government crossfire over appointments?”](#) which was published in Economic Times on 28/11/2022. It talks about the Election Commission of India and issues related to it.

**For Prelims:** Election Commission of India (ECI), Model Code of Conduct, Article 324, Consolidated Fund of India, Inner Party Democracy, Justice Tarkunde Committee (1975), 2nd Administrative Reforms Commission, Law Commission 255th Report on Electoral Reforms.

**For Mains:** Structure of the Election Commission, Powers and Responsibilities of the Election Commission, Recent Issues Related to the Election Commission.

The [Election Commission of India \(ECI\)](#) is an **autonomous and permanent constitutional body** responsible for organising **free and fair elections** in the **Union and States of India**.

The **Constitution grants the ECI** with the **power of direction, superintendence, and control of elections to Parliament, State legislatures, the office of President of India and the office of Vice-president of India**. The ECI does not deal with the elections to the urban bodies such as [Municipalities and Panchayats](#) in the states.

The **ECI has been caught in several controversies** in the recent past over its **independence and credibility** as the **guardian body of elections** in India especially in regard to the **appointment of the Chief Election Commissioner (CEC)**, which **needs special attention**.

### What is the Structure of the Election Commission?

- Originally the **commission had only one election commissioner** but after 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**.
  - The **President appoints Chief Election Commissioner and Election Commissioners**.
  - They have a **fixed tenure of 6 years, or up to the age of 65 years**, whichever is earlier.
  - They also enjoy the **same status** and receive salary and perks **as available to Judges of the Supreme Court of India**.

### What are the Powers and Responsibilities of the Election Commission?

The Commission's functions and powers with respect to elections are divided into three categories (**Administrative, Advisory, and Quasi-judicial**). These powers include:

- Determining the **Electoral Constituencies' territorial areas** throughout the country.
- **Preparing and periodically revising electoral rolls** and registering all eligible voters.
- **Notifying the schedules and dates of elections** and scrutinising nomination papers.
- **Granting recognition to the various political parties** and allocating them election symbols.
- The **Commission also has advisory jurisdiction in the matter of post-election disqualification** of sitting members of Parliament and State Legislatures.
- It is also **responsible for conducting bye-elections** in any constituency whenever the need arises.
- It issues the [Model Code of Conduct \(MCC\)](#) in elections for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.

## What are the Recent Issues Related to the Election Commission?

- **Truncated Tenure of CEC:** The Supreme Court of India has recently pointed out that **"No Chief Election Commissioner has completed a six-year tenure since 2004"**, and because of the **truncated tenure**, the **CEC is unable to do anything substantial**.
  - **Silence of the Constitution:** [Article 324](#) of the Constitution talks about the appointment of ECs. It, however, **only envisages the enactment of a law to this effect and does not lay down any procedure for these appointments**.
- **Executive Influence in Appointment:** The Election Commissioners are appointed by the current government and are therefore **potentially obligated to the government** or may feel that they are **held to a specific level of loyalty**.
  - The **Supreme Court** has remarked that **while an election commissioner may be proficient, competent, completely honest** and armed with an outstanding record of service, **they may also have personal political leanings**, compromising the institution's neutrality.
  - Also, the **Constitution has also not debarred the retiring election commissioners from any further appointment by the government**, so they might try to remain in good books.
- **Dependence on Centre for Finance:** Despite several provisions designed to make the ECI an independent body, the Union Government still controls its finances. **The expenses of EC are not charged on the [Consolidated Fund of India](#)**.
- **Lack of Independent Staff:** Because **ECI does not have its own staff**, it has to **rely on staff from Central and State Governments** whenever elections are held.
  - As a result, the **administrative staff is also responsible for ordinary administration, as well as electoral administration**, which is not conducive to the Commission's impartiality and efficiency.
- **No Statutory Backing for Enforcing Model Code of Conduct (MCC):** In regard to the **enforcing Model Code of Conduct (MCC) and other election-related decisions**, there is **no clarity regarding the scope and nature of the powers** available to the Election Commission of India (ECI).
- **Limited Power to Regulate Inner-Party Democracy:** The ECI is limited to advising parties on internal elections and has **no authority to enforce [inner-party democracy](#) or regulate party finances**.

## What Should be the Way Forward?

- **Reimagining Appointment of Election Commissioners:** Various committees like [Justice Tarkunde Committee \(1975\)](#), [Dinesh Goswami committee \(1990\)](#), [Law Commission \(2015\)](#) have recommended that **Election Commissioners be appointed on the advice of a committee comprising the Prime Minister, the Lok Sabha Opposition Leader and the Chief Justice of India**.
  - Also, the [2<sup>nd</sup> Administrative Reforms Commission](#) recommended that the **Law Minister and the Deputy Chairman of the [Rajya Sabha](#)** should also be included in such a Collegium.

- The **Anoop Baranwal v. The Union of India (2015)** case also raised the demand for a Collegium system for the ECI.

- **Equality Among Commissioners:** Equal **Constitutional protection** should be given to **all members of the ECI in matters of removability from office**. Curbing reappointment for ECs. And bringing in a **dedicated election management cadre** and **personnel system**.
- **Backing Model Code of Conduct:** It is necessary to provide statutory backing for the ECI Model Code of Conduct, especially when it comes to **election-related politicisation of social media**.
- **Law Commission 255<sup>th</sup> Report on Electoral Reforms:** The report recommends that **Article 324 of the Constitution be amended to provide for an independent and permanent Secretariat for the Electoral Commission of India (ECI)** along the lines of the **Lok Sabha/Rajya Sabha Secretariats**.
  - In addition, **state election commissions can be provided with similar provisions to guarantee their autonomy** and fairness in their elections.

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

The Election Commission of India is the bedrock of electoral democracy in India but concerns about its institutional credibility have emerged lately. Comment

## **UPSC Civil Services Examination, Previous Year Questions (PYQs)**

### ***Prelims***

**Q. Consider the following statements: (2017)**

1. The Election Commission of India is a five-member body.
2. The Union Ministry of Home Affairs decides the election schedule for the conduct of both general elections and bye-elections.
3. Election Commission resolves the disputes relating to splits/mergers of recognised political parties.

**Which of the statements given above is/are correct?**

- (a) 1 and 2 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 3 only

**Ans: (d)**

### ***Mains***

**Q. Discuss the role of the Election Commission of India in the light of the evolution of the Model Code of Conduct. (2022)**