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## Is the Appointment of the Chief Election Commissioner and other Election Commissioners in line with Constitutional Spirit? - An Inquiry into the Chief Election Commissioner Act 2023

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*India has one of the highest percentages of voters worldwide because it is the largest democracy in the world and has also grown to be the most populous nation. The voters' unwavering interest in the democratic process of elections becomes crucial as a result. The Election Commission is mandated to guarantee the impartial and unhindered operation of the nation's electoral processes. This makes it crucial that the election commission be truly independent, which can only be guaranteed when it is devoid of all improper influences. The chief election commissioner and the other election commissioners make up the election commission, whose members are appointed in large part by the executive. Although it was expected that a law on the subject would provide the election commission with more independence, the reality is very different. The government has passed a law that will expand executive intervention, which will make the election commission less dynamic. The purpose of the study is to evaluate the commission's independence in light of the newly passed legislation. Because of the aforementioned, it will be evaluated in light of the constitution's provisions and spirit, with additional consideration given to the Rule of Law, Natural Justice, Separation of Powers, and Droit administration. The consequences have also been analyzed in various instances in the past, also stating the example of the Belarus Elections. To gain a broader understanding of the situation, a comparative analysis with international legislation has also been conducted. By implementing reforms in the Search committee for the appointment of the Chief Election Commissioner and other Election commissioners, suggestions have been made for the growth of democratic machinery.*

**Keywords:** *election commission, appointment, constitutional spirit, democracy, separation of power.*

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## INTRODUCTION

The appointment of the chief election commissioner and other election commissioners was notified in the gazette on December 28, 2023, in terms of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023. The act constitutes a search committee for a panel of persons for consideration for appointment as Chief Election Commissioner and other Election Commissioners.<sup>1</sup> Further, Section 7(1) also details the composition of the stated search committee which shall comprise - (a) the Prime Minister – chairperson, (b) the Leader of Opposition in the House of the People – Member and (c) a Union Cabinet Minister to be nominated by the Prime Minister – Member.<sup>2</sup>

The composition of the election commission is crucial for this study because of the power and authority it enjoys. The election commission can render quasi-judicial functions. It can act as a tribunal for the purpose of Article 136<sup>3</sup>, i.e. the Supreme Court can direct the election commission to perform the adjudicatory functions given under Article 324 of the Constitution<sup>4</sup>, while granting special leave petitions.<sup>5</sup> It is enshrined with legislative powers where it can pass any order for the conduct of an election when there is no law or rule made under the law.<sup>6</sup> Moreover, it is also responsible for contesting free and fair elections that form the basic feature of the Indian Constitution.<sup>7</sup> EC also renders administrative functions related to constituencies

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<sup>1</sup> The Chief Election Commissioner and Other Elective Commissioners (Appointment, Condition of Service and Terms of Office) Act 2023, s 2(d)

<sup>2</sup> The Chief Election Commissioner and Other Elective Commissioners (Appointment, Condition of Service and Terms of Office) Act, 2023, s 7(1)

<sup>3</sup> Constitution of India, art 136

<sup>4</sup> Constitution of India, art 324

<sup>5</sup> *APHL Conference, Shillong v W.A. Sangma* AIR 1977 SC 2155

<sup>6</sup> *N Krishnappa v Chief Election Commissioner* AIR 1995 AP 212

<sup>7</sup> *Indira Nehru Gandhi v Raj Narain* (1975) AIR 1590

and tackles election disputes according to the procedure established by Article 329<sup>8</sup> of the constitution.<sup>9</sup>

It is vital to emphasise that the act was presented in Rajya Sabha five months after the Supreme Court judgement which opined that the appointment of the chief election commissioner and the election commissioners shall be done by the president of India on the advice tendered by a committee consisting of the prime minister, the leader of opposition in the Lok Sabha and in case there is no such Leader then the leader of the largest party in the opposition in Lok Sabha and Chief Justice of India.<sup>10</sup> The newly introduced act poses many questions about the independence of the election commission and its unbiasedness. These questions have broadly been divided into two categories –

(a) Whether the said act is in contravention of constitutional provisions, and

(b) Whether the said act is in contravention of the constitutional spirit, which will be answered by the medium of the following study.

### **ACT IN LINE WITH CONSTITUTIONAL PROVISIONS OR NOT?**

Article 324(2) of the constitution provides that until and unless a law is made by the parliament regulating the appointment of the CEC and election commissioner, until then the president shall have the authority over the appointment.<sup>11</sup> Historically, the president has actively participated in the appointment of the election commissioners this is evident through various notifications in the years 1989 and 1990. The constitution framers envisaged that the president shall have temporary power and in the long term, the parliament shall make the law governing the appointment of the CEC and election commissioners. The said Act is thus in line with the provisions of the constitution and the constitutional validity cannot be challenged on the grounds of contravention of Article 324<sup>12</sup>.

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<sup>8</sup> Constitution of India, art 329

<sup>9</sup> *Ponnuswamy NP v Returning Officer* (1952) SCR 218

<sup>10</sup> *Anoop Baranwal v Union of India* (2023) SCC 226

<sup>11</sup> Constitution of India, art 324(2)

<sup>12</sup> Constitution of India, art 324

## ACT IN LINE WITH THE CONSTITUTIONAL SPIRIT OR NOT?

Dr BR Ambedkar while discussing the formation of the election commission under Article 289 (now Article 324) said "...Without any kind of dissent, that in the interest of the purity and freedom of elections to the legislative bodies, it was of utmost importance that they should be freed from any kind of interference from the executive of the day."<sup>13</sup> He also apprehended that, 'There is no provision in the constitution to prevent the appointing of either a fool or a knave or a person who is likely to be under the thumb of the executive.'<sup>14</sup> These apprehensions might have come true with the introduction of the Act.

The Act replaces the chief justice of India from the committee with the cabinet minister appointed by the Prime Minister, resulting in an imbalance that will ultimately form the majority of the executive and hence the final say on the appointment. Since the executive under a parliamentary system is chosen from the ruling party, it participates in the electoral process. Thus, the independence of the election commission is under threat.

The Act also reduced the salary, allowance, and service conditions of the CEC and other ECs to bring them to par with the cabinet secretary.<sup>15</sup> The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 provided the salary of ECs will be equal to that of a supreme court judge.<sup>16</sup> This reduction symbolizes the depreciation in the status of the CEC and EC and equates them with the Cabinet Secretary who is directly under the government. A constitutional body that has the power to discipline the prime minister and the cabinet minister when required will be unjust if such a body is equated to a Cabinet Secretary.

It can be formulated that even if the Act is in line with the constitutional provision, it is draconian and arbitrary in nature. It is also against India's constitutional spirit of natural justice, separation

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<sup>13</sup> Dr. BR Ambedkar, *Constituent Assembly Debate* (1949)

<sup>14</sup> *Ibid*

<sup>15</sup> The Chief Election Commissioner and Other Elective Commissioners (Appointment, Condition of Service and Terms of Office) Bill 2023, s 10(1)

<sup>16</sup> The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act 1991, s 3

of power and rule of law. The said Act can also hamper the droit administrative ecosystem of checks and balances.

**a. Natural Justice:** In India, the principle of natural justice was recognized in the case of *Mohinder Singh Gill v Chief Election Commissioner*,<sup>17</sup> the court ruled that fairness should be a consideration in all decisions, whether they are judicial, quasi-judicial, administrative, or both. The principle of natural justice entails three rules that can be comprehensively understood as - (i) Hearing Rule, (ii) Bias Rule and (iii) Reasoned decision. The bias rule can be exponentiated by the English maxim of '*Nemo judex in sua causa*' which means that no one can be judged in his own case.<sup>18</sup>

Through this Act, the executive will be the umpire to decide the fate of the election commission. Article 329 empowers the election commission to settle electoral disputes.<sup>19</sup> It is also well established that in a parliamentary system like that of India, the legislative has a great influence on the executive and thus election commission dealing with the electoral disputes will hold against the principle of the *Nemo judex in sua causa*. Thus, the new Act will be in contravention of the principle of natural justice.

**b. Separation of power:** Within the framework of India's democratic government, the idea of the separation of powers is of utmost importance. In *I. C. Golak Nath and Others v. State of Punjab and Another*,<sup>20</sup> Justice Subba Rao held speaking for this Court, 'It (the Constitution) demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them. No authority created under the Constitution is supreme; the Constitution is supreme and all the authority functions under the supreme law of the land.'

The meticulously designed system of India, a federal parliamentary democratic republic, aims to maintain checks and balances between its three major branches: the executive, the legislature,

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<sup>17</sup> *Mohinder Singh Gill v Chief Election Commissioner* (1978) AIR 851

<sup>18</sup> Phil Harris, *An Introduction to Law* (8th edn, CUP 2016) 474

<sup>19</sup> Constitution of India 1950, art 329(a)

<sup>20</sup> *Golaknath v State of Punjab* (1967) AIR 1643

and the judiciary.<sup>21</sup> Currently, the ECI has a separate secretariat of its own, and, similarly to other departments and ministries of the Government of India regarding union matters, the service conditions of its officers and staff are governed by the rules made by the President under Article 309 of the Constitution.<sup>22</sup> The current Act fails to formulate an independent secretariat. This secretariat can be similar to that of the independent secretariat for Lok Sabha and Rajya Sabha under Article 98(2). The same was recommended by the 255<sup>th</sup> law commission report in the year 2015.<sup>23</sup>

The Dinesh Goswami Committee in 1990 suggested the need for a select committee for the appointment that would consist of the chief justice of India. The committee recommendation was then pronounced as a judgement earlier this year. However, the recommendation of involvement of the CJI then poses a question of judicial overreach and judiciary functioning out of the realm of its affairs.

**c. Rule of Law:** The doctrine of the rule of law has three meanings in AV Dicey's book - (i) Supremacy of Law, (ii) Equality before the law and (iii) The predominance of legal spirit.<sup>24</sup> The fundamental significance of having an Election Commission that is fiercely independent, truthful, competent, and fair must be put to the test on the anvil of the rule of law as well as the lofty mandate of equality.<sup>25</sup> A democratic system of government is built on the fundamental foundation of the rule of law.<sup>26</sup> It simply means that established rules dictate how men conduct their affairs. It prevents a democratic government that was established via the power of the vote from betraying the people's confidence and devolving into a government of caprice, nepotism, and ultimately despotism.

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<sup>21</sup> MP Jain, *Indian Constitutional Law* (LexisNexis Butterworths 2010) 921

<sup>22</sup> Constitution of India, art 309(1)

<sup>23</sup> Law Commission, *Electoral Reforms* (Law Com No 255, 2015)

<sup>24</sup> Julian Sempill, 'The Rule of Law and the Rule of Men: History, Legacy, Obscurity' (2020) 12(54) *Hague Journal on the Rule of Law* 511-540 <<https://link.springer.com/article/10.1007/s40803-020-00149-9>> accessed 30 December 2023

<sup>25</sup> Manjari Katju, 'Election Commission and Functioning of Democracy' (2006) 41(17) *Economic and Political Weekly* <<http://www.jstor.org/stable/4418140>> accessed 30 December 2023

<sup>26</sup> *Ibid*

Additionally, the admirable characteristics that we have outlined as necessary for an election commission to possess are crucial for an unwavering commitment to the principle of equality in Article 14, which is also the second point of Dicey's concept. The majority of executives in search committees thus may hamper the rule of law.

By Article 19(1)(a), there is a portion of a citizen's right to vote that is a fundamental freedom.<sup>27</sup> In *Public Interest Foundation v Union of India*, it was acknowledged that the right of the citizen to learn more about and gather information about the candidates for whom he should cast a ballot is fundamental.<sup>28</sup> The selection of the Election Commissioners, including the Chief Election Commissioner, who has almost limitless authority and is required to uphold fundamental rights, cannot solely be made by the Executive Branch, especially without the use of any objective criteria, thus in contravention of the predominance of legal spirit which is the third principle of AV Dicey.

**d. Droit Administratif:** The French word 'Droit Administratif' translates to 'administrative law' in English. It alludes to the set of laws that control the operations, duties, and functions of governmental bodies, public authorities, and administrative agencies.<sup>29</sup> By making government entities and officials accountable for their acts, 'Droit administratif' fosters accountability. It necessitates openness in the decision-making process and the dissemination of pertinent information to those who may be impacted. Thus, it can be understood that the election commission by ensuring free and fair elections fosters an ecosystem relating to the Droit administratif, therefore, an independent and unbiased Search committee plays a vital role in maintaining the ecosystem of the Droit administration intact that could be disturbed by the introduction of the new Act.

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<sup>27</sup> Constitution of India 1950, art 19(1)(a)

<sup>28</sup> *Public Interest Foundation v Union of India* (2019) 3 SCC 224

<sup>29</sup> C. Sumner Lobingier, 'Administrative Law and Droit Administratif: A Comparative Study with an Instructive Model' (1942) 91(1) *University of Pennsylvania Law Review and American Law Register* <<https://doi.org/10.2307/3309336>> 36-58 accessed 01 January 2024

## IMPLICATIONS OF UNFAIR CECS AND ECS

Chief Election Commissioner and other Election Commissioners thus the Forming the Election Commission as a whole entails ample power. In furtherance of Articles 324 to 329, the power of the election commission can be divided into three categories – Administrative, Advisory and Quasi-Judiciary powers.<sup>30</sup> Administrative power includes functions in accordance with the Delimitation Commission Act and determining every constituency's territorial boundary. It has the authority to register and unregister any political organisation or party, guarantee the application of the 'Model Code of Conduct' for political campaigns, and monitor the political parties' expenditures on elections. This guarantees equal opportunities for all political parties, regardless of their magnitude and financial resources. It has the authority to designate representatives from various Civil Services departments as observers for elections and expenditures.

**Misuse of Model Code of Conduct:** The Model Code of Conduct (MCC) is a collection of rules that the ECI released to regulate political parties and candidates before elections. This is done in furtherance of its power enshrined in Article 324 of conducting free and fair elections. Here, if the CEC is partial there lies a huge scope of preferential treatment for the candidates of the ruling party. The Supreme in the case of *Harpreet Mansukhan v Election Commission*,<sup>31</sup> answering a public interest litigation bashed the Election Commission for being toothless. The then Chief Justice Ranjan Gogoi chastised it for its lenient stance towards political contenders who deliver speeches that violate the model code of conduct by referencing religion and caste.<sup>32</sup> This was particularly aimed towards the statements of Chief Minister Yogi Adityanath's statement of 'Green Virus' aimed towards the Muslim Minority.<sup>33</sup> Ms. Mayawati appeal also made certain statements to the Muslim Minority. Such instances will only rise in the favor of the ruling party if the CEC and ECs remain biased by virtue of their appointment.

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<sup>30</sup> Constitution of India 1950, arts 324-239

<sup>31</sup> *Harpreet Mansukhan v Election Commission* WP (C) No 364/2019

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*



**More Opaque Mechanisms of Electoral Bonds:** The then finance minister Arun Jaitley with the purpose of evolving a transparent method of funding political parties introduced electoral Bonds. However, through various Finance Acts over the year, quite the contrary has occurred. The concerns are centred around facts that political parties won't be required to keep a record of contributions<sup>34</sup>, removal of the upper limit on the amount that a company can donate<sup>35</sup>, permit with union government to authorize any scheduled bank to issue electoral bonds<sup>36</sup> and change in the definition of the 'foreign source' to allow companies with a majority share in any Indian company to make political donations.<sup>37</sup> These are all the pertaining issues whose constitutional validity is being scrutinized by the Supreme Court in *Association for Democratic Reforms v Union of India*<sup>38</sup>.

Till the decision is pending and if the issues are viewed through the lens of the Chief Election Commission being biased, who is supremely responsible for all the transactions of a political party, it appears that it will only add up to the constitutional dilemma and democracy where the ruling party might have the clean chit by the Election Commission to accrue more donations without any check which shall be unfair to other contesting parties.

**Misuse of Advisory and Quasi-judicial Power:** The election Commission enjoys the power to advise the president or the Governors for the disqualification of the Member of Parliament and Steh Members of the State Legislative Assemblies. It also has a quasi-judicial power wherein it may act as a court in some matters. In the case of *Kailash Gahlot & Ors v Election Commission of India & Ors*<sup>39</sup>, Division Bench of Delhi High Court comprising of Justice Sanjiv Khanna and Justice Chander Shekhar opined that on January 19, 2018, the Election Commission recommendation given to the President to disqualify 20 MLAs for holding the office of profit is vitiated and 'bad in law' for 'failure to comply with principles of natural justice'.<sup>40</sup> The Bench

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<sup>34</sup> Representation of People Act 1951, s 29C

<sup>35</sup> Companies Act 2013, s 182

<sup>36</sup> Reserve Bank of India Act 1934, s 31

<sup>37</sup> Foreign Contribution Regulation Act 2010, s 2(1)(j)(vi)

<sup>38</sup> *Association for Democratic Reforms v Union of India* (2023) LiveLaw (SC) 612

<sup>39</sup> *Kailash Gahlot & Ors v Election Commission of India & Ors* WP (C) No 750/2018

<sup>40</sup> *Ibid*

ruled that 'There was a violation of natural justice, and no oral hearing was given to the AAP MLAs before disqualifying them as legislators.'<sup>41</sup>

Thus, in this case, it was quite apparent that the Election Commission wrongly used its advisory power by wrongly advising the president for disqualification and it misused its quasi-judicial power by not allowing AAP MLAs to be heard. Such cases can become more prevalent and recurrent if such an unbiased Election Commission continues to exist.

**Far-Reaching Consequences: Case Study of 2020 Belarus Presidential Election:** Belarus has been the center of controversies pertaining to presidential elections. Many sources claim that the 1994 elections were the only free and fair elections. The European Union, the United States and the OSCE recognized the 1994 elections.<sup>42</sup>In all these controversies, the Central Election Commission (CEC) of Belarus played a major role. The powers enjoyed by the CEC and the Indian Election Commission are more or less similar. The Electoral Code of Belarus through the European Commission for Democracy through Law (Venice Commission), Section 2, Article 14 provides a Constituency for the Election of President,<sup>43</sup> Article 19 provides the Lists of Citizens having the right to participate in elections, referendums, voting on recall of duty.<sup>44</sup> These are regulated by the CEC.

It has been widely acclaimed by critics that the CEC is not autonomous and is influenced by the state. The ruling regime's interests have been seen to be served by the commission's decisions and activities. Opposition candidates have occasionally encountered difficulties registering to vote before elections.<sup>45</sup> Opposition leaders were allegedly prevented from taking part in the election process by the CEC's imposed restrictions. International election observers have cited

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<sup>41</sup> *Ibid*

<sup>42</sup> Alesia Rudinik, 'Explainer: how do we know that Belarusian election was rigged and who won the race?' (*New Belarus Vision*, 01 September 2020) <<https://newbelarus.vision/explainer-elections/>> accessed 02 January 2024

<sup>43</sup> Electoral Code of Belarus, s2 art 14

<sup>44</sup> Electoral Code of Belarus, s2 art 19

<sup>45</sup> Oksana Antonenko et al., 'The Belarus Election and its Aftermath | An Expert Analysis' (*Wilson Center*, 12 August 2020) <<https://www.wilsoncenter.org/article/belarus-election-and-its-aftermath-expert-analysis>> accessed 02 January 2024

challenges in monitoring Belarus's electoral process.<sup>46</sup> Concerns regarding election transparency have been highlighted by the CEC's limitations on the attendance and actions of independent observers. Allegations of significant fraud and manipulation around Belarus's 2020 presidential election. There were charges of vote tampering after the CEC proclaimed Alexander Lukashenko, the president-in-office, the winner with a landslide majority.<sup>47</sup>

It shall be noted that the author is nowhere mentioning that the Election Commission of India will become like the CEC of Belarus. However, the appointment in the manner of the new act sets alarming bells to far-reaching consequences.

## COMPARATIVE ANALYSIS

To find a solution for the crisis of appointment of ECs and CECs it is pertinent to compare the Indian system with other legislations around the world.

**South Africa:** South Africa's system of appointment of CEC and ECs is quite innovative in itself. Following receipt of a nomination from the National Assembly inter-party committee, the president appoints the individuals on the advice of the national assembly.<sup>48</sup> This committee receives a list of eight candidates who are recommended by a Selection committee. The selection committee comprises The Constitutional Court President who serves as the panel's chairman, and members include the Public Protector, a representative of the South African Human Rights Commission, and a representative of the Commission on Gender Equality. It has also been stated that the nominated candidates should not have a 'high party-political profile'.<sup>49</sup>

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<sup>46</sup> Dr. Ian Anthony, 'The Belarus election: A challenge to stability and security in Northern Europe' (*Stockholm International Peace Research Institute*, 19 August 2020) <<https://www.sipri.org/commentary/expert-comment/2020/belarus-election-challenge-stability-and-security-northern-europe>> accessed 02 January 2024

<sup>47</sup> Yan Auseyushkin and Andrew Roth, 'Belarus election: Lukashenko's claim of landslide victory sparks mass protests' *The Guardian* (Moscow, 10 August 2020) <<https://www.theguardian.com/world/2020/aug/09/belarus-election-lukashenko-landslide-victory-fixing-claims>> accessed 02 January 2024

<sup>48</sup> Republic of South Africa, Government Gazette, Electoral Commission Act 1996

<sup>49</sup> Michael Stoddard, 'South Africa's elections: establishing democracy at the grassroots' (1997) 21(1) *The Fletcher Forum of World Affairs* <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/forwa21&div=14&id=&page=>> accessed 02 Jan 2024

Thus, according to the South African model, the executive has to elect a candidate based on the nominations made by an independent body. The present Act could take inspiration from this model and try to make the select committee more political in nature and hence ensure that the election commission is not under the influence of the executive.

**Canada:** The Dominion Election Act of 1920 ensured that to preserve his or her independence from the government, A House of Commons resolution designates the Chief Electoral Officer of 'Elections Canada' in Canada for a non-renewable ten-year term.<sup>50</sup> He or she consequently reports directly to Parliament. This Officer served continuously throughout election cycles rather than merely being appointed before each election, always looking for ways to make the electoral process better. The official was chosen by a vote of Parliament, and only Parliament could remove him or her by impeachment.<sup>51</sup>

KM Munshi made references to Section 19 of the Dominion Elections Act of Canada in the constituent assembly debates but as recommended by the government, it was instead left up to the President.<sup>52</sup> Even then, this raised some concerns. Members like Shibban Lal Saxena argued that a two-thirds majority of Parliament should choose the Chief Election Commissioner (CEC) since they questioned if this would allow for independence.

However, it can still be argued that an independent election commission ensures the long-term stability of the electoral process and vice versa. Canadian model exemplifies that long tenures (10 years) of electoral officers can allow them to work more independently. This can also be verified by the example of T.N. Seshan who held the office of chief election commissioner from 1990 to 1996 and is credited for various electoral reforms that revolutionized the scenario of Indian elections.<sup>53</sup>

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<sup>50</sup> Ailsa Henderson, 'Consequences of Electoral Reform: Lessons for Canada' (2006) 32(1) Canadian Public Policy / Analyse de Politiques <<https://doi.org/10.2307/3552242>> accessed 03 January 2024

<sup>51</sup> Frederick J. Fletcher, 'Mass Media and Parliamentary Elections in Canada' (1987) 12(3) Legislative Studies Quarterly <<https://doi.org/10.2307/439810>> accessed 03 January 2024

<sup>52</sup> KM Munshi, *Constituent Assembly Debate* (1949)

<sup>53</sup> T E Narasimhan, 'T N Seshan, the man who helped clean up India' s elections' Business Standard (11 November 2019) <[https://www.business-standard.com/article/beyond-business/-the-more-you-kick-me-112051200032\\_1.html](https://www.business-standard.com/article/beyond-business/-the-more-you-kick-me-112051200032_1.html)> accessed 03 January 2024

## SUGGESTIONS

The government should look forward to reforming the select committee and making it more balanced. This can be done by giving the opposition more power. The functioning of the Search Committee can take inspiration from the principle established by the United Nations Secretariat to ensure justness. The members of the search committee can be given veto power as is the case in the United Nations Security Council. There can also be a rotating chairmanship as in the case of the United Nations General Assembly.

Further, the government can also follow in the footsteps of the innovative model of South Africa by involving experts, civil society representatives and eminent jurists in the Search committee. The government could improve the selection process's accountability, transparency, and public trust by incorporating these stakeholders. They might also offer insightful opinions, criticism, and suggestions to raise the calibre and suitability of the applicants. Moreover, the government can bring in a mechanism wherein the search committee after due diligence and concurrence of the opposition party representative and all other stakeholders may only form a decision. Thus, it is held that the current Act although arbitrary in nature may pave the way for other reforms that make India a better democracy.

## CONCLUSION

It can hereby be concluded that the concerned Act although in line with Article 324, fails to address and uphold the constitutional spirit by making it subordinate to the executive. With the introduction of the Act, the scenario hasn't gone any better. The arbitrariness still exists the only change is that now there is a law to support arbitrariness due to the majority of political players in the select committee. This can entail severe consequences as the election commission is responsible for the very institution of election that forms the basis of democracy. It wouldn't be wrong to consider the functions of the election commission to be overlapping with that of a civil society organization that should have no association with political motives. Thus, it can be said that the appointment of the chief election commissioner and other election commissioners plays a vital role in ensuring the smooth functioning of a democracy. The government will have to

come up with innovative ideas to protect the independence of the Election Commission and ultimately protect the institution of democracy.