# Election Commissioner Appointment Law

**Mains:** *GSII – Governance*

## Why in News?

*The Supreme Court referred the 2023 Election Commissioners appointment law to the CJI for consideration by a five-judge Constitution Bench following a split verdict by a two-judge Bench.*

## How are Election Commissioners appointed?

- **Election Commission of India (ECI)** – Article 324 of the Constitution vests the superintendence, direction and control of elections in the ECI.

  ***ECI** is an autonomous constitutional body established on 25 January 1950. Its foundational authority is enshrined in **Part XV (Articles 324 to 329)** of the Constitution of India.*

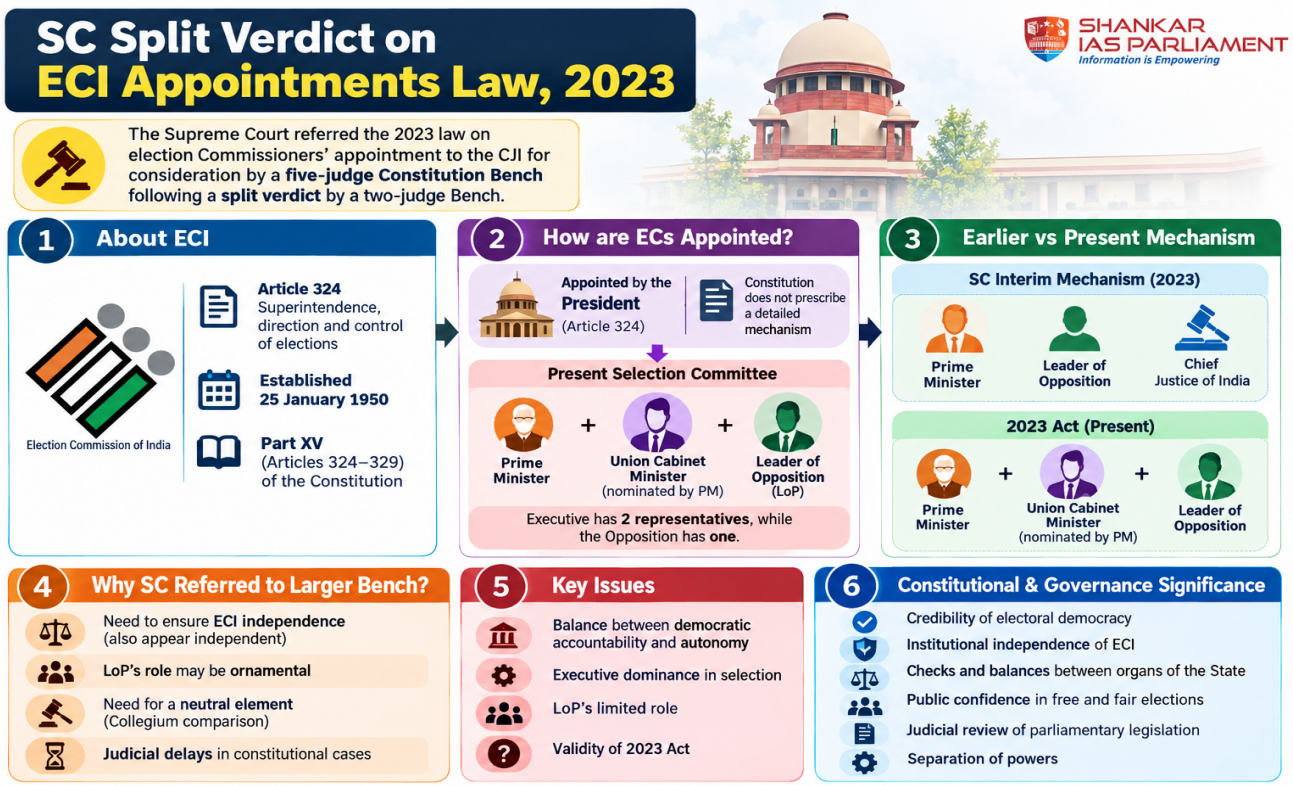
- **Election commissioner's appointment** – *Constitution does not prescribe a detailed mechanism for appointment of the CEC and ECs*.
  - Constitution provides that they shall be appointed by the President, subject to any law made by Parliament.
- **Interim mechanism prescribed by SC**

  *In **Anoop Baranwal v. Union of India (2023),** the Supreme Court noted the absence of a parliamentary law governing appointments and prescribed an interim mechanism.*

- Until Parliament enacted a law, appointments were to be recommended by a 3-member committee comprising:
  - Prime Minister
  - Leader of Opposition in Lok Sabha
  - Chief Justice of India
- **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023** – Replaces the CJI with a Union Cabinet Minister nominated by the Prime Minister.
- **Present Selection Committee** – Prime Minister + Union Cabinet Minister nominated by PM + Leader of Opposition

    - Thus, the executive has 2 representatives in a 3-member committee, while the Opposition has one.
- **Issue** – The selection process questions raised over the balance between democratic accountability and functional autonomy.
- **Split Verdict** – The 2 judges agreed on the need to refer the matter to the CJI but differed on why a larger Bench was necessary.

To know more in detail, click **here**




## Why the Supreme Court did Refer it to Larger bench with CJI?

- **ECI Independence –** The ECI must not only be independent but also **appear independent** to maintain public trust.
- **Leader of opposition's Role –** With the PM and his nominated Minister forming two of three members, the **LoP's role may become largely ornamental**.
- **Collegium Comparison –** It questioned the government's comparison with the judicial collegium and stressed the need for a **neutral element** in EC appointments.
- **Judicial Delays –** Both opinions flagged delays in constitutional cases and suggested **faster Constitution Bench hearings**.

## What is its Constitutional and Governance Significance?

- **Electoral democracy** – The ECI is responsible for administering elections, making its institutional credibility fundamental to representative democracy.
- **Constitutional independence** – It may clarify Parliament's power to prescribe an appointment mechanism is subject to constitutional requirements of institutional independence.
- **Checks and balances** – The dispute highlights the importance of preventing

excessive concentration of appointment power within one organ of the State.

- **Public confidence** – Free and fair elections require not only actual impartiality but also public confidence that electoral institutions are impartial.
- **Judicial review of parliamentary legislation** – The Constitution Bench ruling could clarify the extent to which the judiciary can examine Parliament's design of appointments.
- **Separation of powers –** The case raises the broader question of how the legislature, executive and judiciary should participate in appointments to institutions that are expected to function independently of all three.

## What could be done?

- A robust appointment mechanism for Election Commissioners should seek to ensure:
  - **Institutional independence** of the ECI.
  - Broad-based participation in the selection process.
  - A meaningful role for both government and Opposition.
  - Transparency and clearly **defined eligibility criteria**.
  - Greater public confidence in the appointment process.
  - Timely adjudication of major constitutional questions.
  - A balance between democratic accountability and functional autonomy.

## What lies ahead?

- The Constitution Bench will examine the balance between Parliament’s power, executive role and ECI independence.
- The focus will be on ensuring electoral credibility, institutional autonomy and public confidence.
- The verdict may shape the future appointment process of Election Commissioners.

## Reference


1. The Indian Express| EC appointment law
2. The Indian Express| Why 2023 Election Commissioner appointment law controversial?



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