

**Bill No. 258 of 2024**

THE CHIEF ELECTION COMMISSIONER AND OTHER  
ELECTION COMMISSIONERS (APPOINTMENT,  
CONDITIONS OF SERVICE AND TERM  
OF OFFICE) AMENDMENT BILL, 2024

By

SHRI VISHALDADA PRAKASHBAPU PATIL, M.P.

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*to amend the Chief Election Commissioner and other Election Commissioners  
(Appointment, conditions of service and term of office) Act, 2023.*

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows:—

5      **1.** (1) This Act may be called the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Amendment Act, 2024.

Short title and  
commencement.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

49 of 2023    10      **2.** Section 5 of the Chief Election Commissioner and other Election Commissioners Appointment, conditions of service and term of office Act, 2023, hereinafter referred to as the principal Act, shall be omitted.

Omission of  
section 5.

Substitution of  
new section for  
section 6.

**3. For section 6 of the principal Act, the following section shall be substituted, namely:—**

Search  
Committee.

**“(1) The Selection Committee shall for the purposes of selecting the Chief Election Commissioner or Election Commissioners and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least five persons of standing and having special knowledge and expertise in the matters relating to public administration, vigilance, policy making, law and election management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chief Election Commissioner and the Election Commissioners: 5 10**

**Provided that not less than two members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or Minorities or Women.**

**(2) The term of the Search Committee referred to in sub-section (1), the payment and allowances payable to its members and the manner of selection of the panel of names shall be such as may be prescribed by the Selection Committee.”. 15**

Amendment of  
section 7.

**4. In section 7 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely: —**

**“(1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of— 20**

**(a) the Prime Minister—Chairperson;**

**(b) the Leader of Opposition in the House of the People—Member;**

**(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member;**

**(d) the Leader of Opposition in the Council of States—Member; 25**

**(e) the Chief Justice of India or any Judge of the Supreme Court of India to be nominated by him —Member”**

***Explanation.*—For the purposes of removal of doubts, “the Leader of the Opposition in the House of the People” or “the Leader of the Opposition in the Council of States” shall, when no such leader has been so recognized, mean the Leader of the single largest opposition party in the House of the People or the Council of States, as the case may be.”. 30**

## STATEMENT OF OBJECTS AND REASONS

Article 324 of our constitution envisages the Election Commission of India (ECI) to be an independent constitutional body, vested with the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President of India in the Election Commission. The Supreme Court of India has in various landmark cases underlined that free and fair elections to be part of the basic structure of our constitution. In the Constituent Assembly debates, Dr. B.R. Ambedkar pointed out that the election machinery should be out of the control of the Government. Members of the Constituent Assembly agreed to leave the appointment mechanism of the ECI to the discretion of Parliament. With the unfolding of democratic processes in Independent India, several reforms were perceived to improve the working of the Election Commission of India. To this extent, the Goswami Committee, the National Commission on the Review of the Working of the Constitution, the Law Commission as well as reforms from the Election Commission have been proposed. In 1991, Parliament passed the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act. The Act set the salary of the Chief Election Commissioner (CEC) and Election Commissioners (ECs) at the same level as a Supreme Court judge. It did not provide for their appointment process, which continued to be decided by the President. In *Anoop Baranwal vs. Union of India* case during March 2023, the Supreme Court declared that CEC and ECs' appointment should be independent of Executive control and not done solely by the Executive. It mandated a selection process, which would hold until Parliament makes a law. The Court directed that the appointment should be done by the President on the recommendation of a Selection Committee. The Selection Committee will consist of: (i) the Prime Minister, (ii) the Leader of Opposition in Lok Sabha, and (iii) the Chief Justice of India. The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, was introduced in Rajya Sabha on August 10, 2023 and assented on December 28, 2023. It repeals the 1991 Act and provides for the appointment process and conditions of services for the CEC and ECs.

The Act however has many issues and the Bill therefore, seeks to amend the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 with a view to introduce following changes—

i. To ensure that suitable candidates apart from senior bureaucrats also have an opportunity to be a part of the ECI, given that CECs and ECs also perform *quasijudicial* functions. It is also to be noted that often qualifications of members of constitutional bodies and statutory bodies are not mentioned, allowing career experts an opportunity to introduce systemic reforms. For example, many Reserve Bank of India governors who were career economists introduced institutional changes. Section 5 of the principal Act has been proposed to be repealed with a view to expand the consideration of eligibility of candidates to lead the ECI, in order to maintain best practices for free and fair elections.

ii. In consonance of the proposed repeal of Section 5, the proposed amendments of section 6 broadens the ambit of the Search Committee. The membership of the Search Committee has also been made inclusive to reflect the considerations of all communities.

iii. Amendments to Section 7 is to fulfill the aspirations of the constitution drafters. Upon careful perusal of the Constituent Assembly debates, the eloquent speeches of Pandit Hriday Nath Kunzru and Prof. Shibban Lal Saxena, underlined the need to appoint a person as the Chief Election Commissioner or the Election Commissioner who should be able to command confidence of a majority of both the Houses of Parliament. In principle, one could say that the CEC and ECs appointed should be such as to be acceptable across the political spectrum. As mentioned above, the *Anoop Barnwal* case had instituted the judiciary to be a part of the selection process. A precedent can also be observed in South Africa with the President of its Constitutional Court as the Chairperson of the Selection Committee of the South African Election Commission. Such precedents are important given the fact that our

constitutional drafters had adopted key constitutional aspects from South Africa, namely the election process of Rajya Sabha and process of constitutional amendment.

It is, therefore, proposed to introduce a Bill to provide for establishing a comprehensive, transparent, objective and a non-partisan procedure for appointing the Chief Election Commissioner and Election Commissioners, fulfilling the binding judgments from the Supreme Court as well as the vacuum outlined by the Goswami Committee, NCRCW and the Law Commission and importantly, the Election Commission of India.

Hence this Bill.

NEW DELHI;  
*November 11, 2024.*

VISHALDADA PRAKASHBAPU PATIL

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of a Search Committee to shortlist prospective candidates for appointment as Chief Election Commissioner or Election Commissioners. It also provides for the fees and allowances payable to members of the Search Committee. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees forty lakh per annum will be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees fifty lakh is also likely to be involved.

*ANNEXURE*

[EXTRACTS FROM THE CHIEF ELECTION COMMISSIONER AND OTHER  
ELECTION COMMISSIONERS (APPOINTMENT, CONDITIONS  
OF SERVICE AND TERM OF OFFICE) ACT, 2023]

(Act No. 49 of 2023)

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Qualifications of Chief Election Commissioner and other Election Commissioners.	<p><b>5.</b> The Chief Election Commissioner and other Election Commissioners shall be appointed from amongst persons who are holding or have held a post equivalent to the rank of Secretary to the Government of India and shall be persons of integrity, who have knowledge of and experience in management and conduct of elections.</p>				
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Search Committee.	<p><b>6.</b> A Search Committee headed by the Minister of Law and Justice and comprising two other members not below the rank of Secretary to the Government of India, shall prepare a panel of five persons for consideration of the Selection Committee, for appointment as the Chief Election Commissioner and other Election Commissioners.</p>				
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Selection Committee.	<p><b>7. (1)</b> The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of—</p> <p style="margin-left: 40px;">(a) the Prime Minister—Chairperson;</p> <p style="margin-left: 40px;">(b) the Leader of Opposition in the House of the People—Member;</p> <p style="margin-left: 40px;">(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.</p> <p><i>Explanation.</i>—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.</p> <p><b>(2)</b> The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of the Selection Committee.</p>				
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*(Shri Vishaldada Prakashbapu Patil, M.P.)*