

AS INTRODUCED IN THE RAJYA SABHA
ON 9TH DECEMBER, 2022

Bill No. LXIX of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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further to amend the Constitution of India.

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

1. This Act may be called the Constitution (Amendment) Act, 2022. Short title and commencement.
2. It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.
3. In article 324 of the Constitution,— Amendment of article 324.
 - (a) for clause (2), the following clause shall be substituted, namely:—

"(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made regarding the conditions of their service by Parliament, be made by the President by warrant under his hand and seal as per the recommendations of a Committee consisting of: 5

(i) Chief Justice of India — Chairperson:

(ii) Speaker of Lok Sabha — Co-Chairperson; and

(iii) The leader of the largest Opposition Party in the House of the People-Member: 10

Provided that upon demitting office by the incumbent Chief Election Commissioner, the senior-most Election Commissioner, if any, shall be appointed as the Chief Election Commissioner, unless the Committee for reasons to be recorded in writing, finds such Election Commissioner to be unfit."

(b) in clause (5),— 15

(i) the words "the Election Commissioners and", shall be omitted.

(ii) for the first proviso, the following proviso shall be substituted, namely:—

"Provided that the Chief Election Commissioner or the Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner or the Election Commissioner shall not be varied to his disadvantage after his appointment." 20

(iii) in the second proviso, the words "any other Election Commissioner or", shall be omitted.

(c) for clause (6), the following Clause shall be substituted, namely:— 25

"(6) (1) The Election Commission shall have a separate independent and permanent secretarial staff.

(2) The Election Commission may, by rules prescribed by it, regulate the recruitment, and the conditions of service of persons appointed, to its permanent secretarial staff.

Provided that, without prejudice to the above, the President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission under clause (1)." 30

STATEMENT OF OBJECTS AND REASONS

The Election Commission of India (hereinafter referred to as 'ECI') is an independent constitutional body, which has been vested with the powers of 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 by virtue of article 324(1) of the Constitution. On 1st October 1993, the President of India, in exercise of powers conferred by clause 2 of article 324 of the Constitution, fixed, until further orders, the number of Election Commissioners (other than the Chief Election Commissioner) at two.

2. The power to appoint the Chief Election Commissioner (CEC) and the Election Commissioners lies with the President as Per article 324(2) of the Constitution. Consequently, owing to the absence of any Parliamentary law governing the method of appointment, the Election Commissioners are appointed by the Government of the day, without pursuing any consultation process. Given the importance of maintaining the neutrality of the Election Commission and to shield the CEC and other Election Commissioners from executive or political interference, it is imperative that the appointment of Election Commissioners shall be through a consultative process.

3. Although the issue of appointments was discussed in the Constituent Assembly and suggestion was floated to make the appointments to Election Commission subject to confirmation by a two-thirds majority in a joint session of both Houses of the Parliament, it was rejected. However, the Constituent Assembly took note that maintaining the neutrality and independence of Election Commission is *sine qua non* as can be discerned from Dr. B. R. Ambedkar's speech in the meeting of the Constituent Assembly of India held on 15.06.1949, wherein he expressed the opinion, "Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute."

4. The Dinesh Goswami Committee Report on Electoral Reforms in 1990 recommended a change to the extant appointment process, suggesting that the CEC should be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition in the Lok Sabha and that the CEC should be additionally consulted on the question of appointment of the other Election Commissioners and that the entire consultation process should have statutory backing. This was followed by the introduction of the Constitution (Seventieth Amendment) Bill 1990 in the Rajya Sabha on 30th May 1990 providing that the CEC would be appointed by the President after consultation with the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, and the Leader of the Opposition (or the leader of the largest party) in the Lok Sabha. The CEC was also proposed as party to the consultative process in the appointment of other Election Commissioners. However, on 13th June 1994, the Government withdrew the said Bill.

5. Though, the Parliament enacted the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act in 1991 in exercise of the powers conferred by clause 2 of article 324 of the Constitution, the same doesn't prescribe for the appointment procedure of CEC or Election Commissioners, thereby warranting the amendment of article 324(2) itself so as to provide an ironclad procedure for recruitment to the Election Commission. The Socio-political scenario prevailing in the country has undergone a sea change over the last three decades. It is imperative that the appointment of all Election Commissioners, including CEC, should be made by the President as per the recommendations of a three-member Selection Committee, consisting of the Chief Justice of India, Speaker of the Lok Sabha and the Leader of the largest Opposition Party in the House of the People. Furthermore, the senior-most Election Commissioner shall be appointed as the CEC upon

demitting office by the incumbent CEC, unless the three member committee, for reasons to be recorded in writing, finds such Commissioner unfit.

6. Likewise, article 324(5) of the Constitution is intended to ensure the independence of the ECI and free it from external, political interference and thus expressly provides that the removal of the CEC from office shall be on like manner and on the like grounds as a Judge of the Supreme Court. But a similar impeachment procedure is not prescribed for other Election Commissioners under Article 324(5), and they are treated on par with the Regional Commissioners and can be removed from office on CEC's recommendation.

7. The ECI in its 2004 Report categorically opined that the current wording of article 324(5) was "inadequate" and required an amendment to bring the removal procedures of Election Commissioners on par with the CEC, so as to provide them with the same protection and safeguards as the CEC. Equating the removal procedures of the two Election Commissioners with that of the CEC is also in line with the legislative intent of the Parliament. In the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, the retirement age of the CEC was fixed at 65 years, with a salary and other perquisites equal to that of a Supreme Court judge; whereas that of other Election Commissioners were initially fixed at 62 years with benefits equivalent to a High Court judge. However, in 1993, the above Act was amended and the CEC and other Election Commissioners were placed on par on matters of retirement age, salaries and other benefits. Section 10 of the Act also provided for all three members to have an equal say in the decision making process, with any difference in opinion being resolved "according to the opinion of the majority". Besides, the Supreme Court, in T.N. Seshan, Chief Election Commissioner vs Union of India & Ors, held that the CEC was not superior to the Election Commissioners. CEC functions as a first amongst equals. As such it is necessary to extend the protection of service available to CEC, in the matter of removability from office, to other Election Commissioners as well.

8. Furthermore, the ECI at present has a separate secretariat of its own, with the service conditions of its officers and staff being regulated by the rules made by the President under article 309 of the Constitution. Officers at the higher level, such as the level of deputy election commissioner are normally appointed on a tenure basis on deputation from the national civil services. Lower level officers are permanent officers in the ECI's secretariat, from its own ranks. To strengthen the independence of the secretariat, consonant with the intention of the framers of the Constitution, the Goswami Committee recommended that the ECI should have an independent secretariat, along the lines of article 98(2) of the Constitution relating to Rajya Sabha Secretariat and Lok Sabha Secretariat. This recommendation was also duly considered in the ill-fated Constitution (Seventieth Amendment) Bill, 1990 which was subsequently withdrawn (supra). If the Secretariat of ECI is insulated from Executive interference on the issues of appointments, promotions etc., along the lines of the Secretariats of the Lok Sabha, Rajya Sabha, Registries of the Supreme Court and High Courts, etc., it will further strengthen the independence of ECI. It is of paramount importance to ensure that the ECI, entrusted with the task of conducting elections throughout the country, be fully insulated from political pressure or Executive interference to maintain the purity of elections. In these circumstances, it is vital to amend article 324 to have a permanent independent secretariat for the ECI.

9. Likewise, the Law Commission of India, in one of its Reports on Electoral Reforms recommended modifications of the extant Election Commission system in line with the above mentioned aspects, though not in its entirety.

10. In the light of the above, it can be found that there is a pressing priority to amend article 324 of the Constitution of India to achieve the aforementioned goals.

The Bill seeks to achieve the said objectives.

DR. JOHN BRITTAS.

FINANCIAL MEMORANDUM

Clause 3 of the Bill *inter alia* provides that the Election Commission shall have a separate independent and permanent secretarial staff. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. However, it is not possible at this stage to quantify the expenditure that may be involved.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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PART XV

ELECTIONS

Superintendence, direction and control of election to be vested in an Election Commission.

324. (1) The superintendence, direction and control of the preparation of the 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 held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each binnial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and Regional Commissioners shall be such as the President may rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commission.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

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RAJYA SABHA

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further to amend the Constitution of India.

(Dr. John Brittas, M.P.)