

Bill No. XLI of 2023

THE ELECTION COMMISSION OF INDIA (REFORMS) BILL, 2023

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BILL

to provide for qualifications, method of appointment and other conditions of service of the Chief Election Commissioner, Election Commissioners and Regional Election Commissioners establishment of a permanent Secretariat and staff for the Election Commission of India and expenses of the Commission and for matters connected therewith and incidental thereto.

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

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the Election Commission of India (Reforms) Act, 2023. Short title and commencement.
(2) It shall come into force with immediate effect.
2. In this Act, unless the context otherwise requires,— Definitions.
- (a) "Chairperson" means the Chairperson of the Selection Committee;
- (b) "Chief Election Commissioner" means the Chief Election Commissioner
10 appointed under clause (2) of article 324 of the Constitution;

(c) "Commission" or "Election Commission" means the Election Commission of India established under clause (1) of article 324 of the Constitution;

(d) "Eastern Regional Zone" means the zone consisting of the States of West Bengal, Bihar, Odisha, Jharkhand, Assam, Sikkim, Arunachal Pradesh, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and the Union Territory of Andaman and Nicobar Islands;

(e) "Election Commissioner" means the Election Commissioner appointed under clause (2) of article 324 of the Constitution;

(f) "Notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(g) "Northern Regional Zone" means the zone consisting of the States of Uttar Pradesh, Uttarakhand, Rajasthan, Punjab, Haryana, Himachal Pradesh and the Union Territories of Jammu & Kashmir, Ladakh, Delhi and Chandigarh;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "Regional Election Commissioner" means a Regional Election Commissioner appointed under clause (4) of article 324 of the Constitution;

(j) "Selection Committee" means the Committee constituted under section 5 of this Act;

(k) "Southern Regional Zone" means the zone consisting of the States of Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Telangana and the Union Territories of Puducherry and Lakshadweep; and

(l) "Western Regional Zone" means the zone consisting of the States of Maharashtra, Madhya Pradesh, Chhattisgarh, Gujarat, Goa and the Union Territory of Dadra and Nagar Haveli and Daman and Diu.

CHAPTER II

APPOINTMENT OF CHIEF ELECTION COMMISSIONER, ELECTION COMMISSIONERS AND REGIONAL ELECTION COMMISSIONERS

Appointment of Chief Election Commissioner, Election Commissioners and Regional Election Commissioners.

3. (1) The Election Commission of India established under clause (1) of article 324 of the Constitution shall comprise of a Chief Election Commissioner and two or more Election Commissioner(s) in even number.

(2) There shall be appointed one or more Regional Election Commissioner(s) for each of the regional zones, namely, the Northern Regional Zone, Southern Regional Zone, Eastern Regional Zone and Western Regional Zone, under clause (4) of article 324 of the Constitution.

Qualifications and disqualifications for appointment as Chief Election Commissioner, Election Commissioners and Regional Election Commissioners.

4. (1) A person shall not be qualified for appointment as a Chief Election Commissioner, Election Commissioner or Regional Election Commissioner unless, he or she—

(a) is a citizen of India;

(b) has attained the age of thirty-five years;

(c) is, in the opinion of the Selection Committee, established under section 5 of this Act, a person of impeccable integrity; and

(d) has, in the opinion of the Selection Committee, outstanding ability in matters of election, law or public administration:

Provided that at least one of the Election Commissioners shall be a person who has practised law for not less than ten years before any High Court or the Supreme Court of India, or is in the opinion of the Selection Committee, an eminent jurist.

(2) A person shall not be eligible for appointment as Chief Election Commissioner, Election Commissioner or Regional Election Commissioner, if he or she—

(a) has attained the age of sixty-two years; or

5 (b) is or has been a Member of Parliament, Legislative Assembly or Legislative Council of a State or any local authority; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) is an undischarged insolvent or has applied to be adjudicated as an insolvent and such application is pending; or

10 (e) charges have been framed against him or her by a Court, for any offence involving a punishment of one year or more; or

(f) is facing any criminal investigation for election related offences; or

(g) has been in the employment of the Central or State Government or any Central or State owned undertaking or body or corporation or agency, or any local authority for the preceding five years; or

15 (h) has been a Judge of any court in the preceding five years; or

(i) is or was an office bearer of any registered political party.

5. (1) The Chief Election Commissioner, Election Commissioners and Regional Election Commissioners shall be appointed by the President in accordance with the recommendations of a Selection Committee consisting of—

20 (a) the Prime Minister—Chairperson;

(b) the Union Minister for Law and Justice—Member;

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

25 Provided that in case, there is no such Leader of Opposition, the leader of the party having the largest numerical strength amongst the opposition parties in the House of the People;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;

30 (e) one eminent person from the civil society, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President—Member.

35 **(2) The Selection Committee shall constitute a Search Committee consisting of at least seven persons of impeccable integrity and having special knowledge and expertise in matters relating to public administration, election, vigilance, finance, law, or in any other matter which, in the opinion of the Selection Committee, may be useful in selecting candidates for the posts of Chief Election Commissioner, Election Commissioner and Regional Election Commissioner.**

(3) The Search Committee constituted under sub-section (2) shall call for applications and draw up a panel of persons eligible for appointment to the posts of Chief Election Commissioner, Election Commissioner and Regional Election Commissioner.

40 (4) The Selection Committee shall, on the basis of a majority vote, select and recommend names out of the panel drawn up by the Search Committee to the President for appointment to the posts of Chief Election Commissioner, Election Commissioner and Regional Election Commissioner.

(5) The Selection Committee shall regulate its own procedure.

45 (6) The Selection Committee shall also recommend to the President the number of Election Commissioners or Regional Election Commissioners to be appointed, from time to time.

Selection committee to recommend appointment of Chief Election Commissioner, Election Commissioners and Regional Election Commissioners.

(7) The term of the Search Committee referred to in sub-section (2), the fees and allowances payable to its members shall be such as may be prescribed by the Selection Committee, by rules made under this Act.

Filling up of vacancies of Chief Election Commissioner, Election Commissioner and Regional Election Commissioner.

6. The President shall take or cause to be taken all necessary steps for the appointment of a Chief Election Commissioner, Election Commissioner(s) or Regional Election Commissioner(s) at least six months before the arising of a vacancy in accordance with the procedure laid down in this Act. 5

Term of office of Chief Election Commissioner, Election Commissioners and Regional Election Commissioners.

7. The Chief Election Commissioner, Election Commissioners and Regional Election Commissioners shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his or her hand and seal and hold office as such for a term of three years from the date on which he or she enters upon the office or until he or she attains the age of sixty-five years, whichever is earlier: 10

Provided that he or she may—

(a) by writing under his or her hand addressed to the President resign his or her office; or 15

(b) be removed from his or her office in the manner provided under clause (5) of article 324 of the Constitution.

Explanation.—For the Purpose of this section, the term of three years in respect of the Chief Election Commissioner or an Election Commissioner or a Regional Election Commissioner holding office before the commencement of this Act, shall be computed from the date on which he or she had assumed office. 20

Functions of the Election Commission of India.

8. (1) The functions of the Election Commission of India shall be vested with the Chief Election Commissioner and the Election Commissioners.

(2) The Election Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Chief Election Commissioner and other Election Commissioners. 25

(3) Save as provided in sub-section (2), all business of the Election Commission shall, as far as possible, be transacted unanimously:

Provided that if the Chief Election Commissioner and Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority. 30

(4) The Election Commission shall carry out its functions in accordance with the provisions of the Constitution, Representation of the People Act, 1950, the Representation of the People Act, 1951 and all applicable laws. 43 of 1950. 43 of 1951.

(5) A Regional Election Commissioner shall assist and aid the Election Commission in the discharge of its functions within his or her regional zone by performing such tasks as may be assigned to him or her from time to time by the Commission, implementing the orders of the Commission and submitting such reports as he or she deems fit pertaining to the conduct of elections within his or her regional zone. 35

(6) A Regional Election Commissioner shall be bound by the orders of the Election Commission. 40

(7) The Election Commission shall exercise complete superintendence and control over the Chief Electoral officers, District Election Officers, Returning Officers, Polling Officers and all officials appointed for the conduct of elections under the Representation of the People Act, 1951 for the purposes of and during the conduct of elections. 45 43 of 1951.

43 of 1950.
43 of 1951.

(8) Subject to the provisions of the Representation of the People Act, 1950, the Representation of the People Act, 1951 and other applicable laws, the Election Commission shall, before every election to the House of the People Legislative Assembly of a State or Legislative Council of a State having such Council, publish a Model Code of Conduct for the candidates, political parties, Government servants, press and media and other persons, whose conduct in the opinion of the Commission, must be regulated.

(9) The Chief Election Commissioner, Election Commissioner and Regional Election Commissioner shall act in good faith in order to hold free and fair elections and shall exercise independent judgement.

10 **9. (1) There shall be paid to the Chief Election Commissioner and other Election Commissioners a salary which is equal to the salary of a Judge of the Supreme Court:**

Salaries and allowances.

15 **Provided that if a person who, before the date of assuming office as the Chief Election Commissioner or, as the case may be, an Election Commissioner, was in receipt of, or being eligible so to do, had election to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, subject to the provisions of clause (g) of sub-section (2) of section of this Act, his or her salary in respect of service as the Chief Election Commissioner or as the case may be, an Election Commissioner shall be reduced—**

20 **(a) by the amount of that pension; and**

(b) if he or she had, before assuming office, received, *in lieu* of a portion of the pension due to him or her in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

25 **(2) There shall be paid to the Regional Election Commissioner a salary which is equal to the salary of a Judge of the High Court:**

30 **Provided that if a person who, before the date of assuming office as the Regional Election Commissioner was in receipt of, or being eligible so to do, had election to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, subject to the provisions of clause (g) of sub-section (2) of section of this Act, his or her salary in respect of service as the Regional Election Commissioner shall be reduced—**

(a) by the amount of that pension; and

35 **(b) if he or she had, before assuming office, received, *in lieu* of a portion of the pension due to him or her in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.**

40 **10. (1) Any other person who is appointed as the Chief Election Commissioner or an Election Commissioner or a Regional Election Commissioner may be granted leave in accordance with such rules as are for the time being applicable to a member of the Indian Administrative Service.**

Leave.

(2) The power to grant or refuse leave to the Chief Election Commissioner or an Election Commissioner or a Regional Election Commissioner and to revoke or curtail leave granted to him or her, shall vest in the President.

45 **11. (1) Where the Chief Election Commissioner or an Election Commissioner demits office in any manner as specified under section 7 of this Act, he or she shall, on such demission be entitled to—**

Pension payable to Election Commissioners.

41 of 1958.

(a) a pension which is equal to the pension payable to a Judge of the Supreme Court in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958, as amended from time to time; and

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of the Supreme Court under the said Act and the rules made thereunder, as amended from time to time.

(2) Where the Regional Election Commissioner demits office, he or she shall, on such demission be entitled to— 5

(a) a pension which is equal to the pension payable to a Judge of the High Court in accordance with the provisions of Part III of the Schedule to the High Court Judges (Salaries and Conditions of Service) Act, 1954, as amended from time to time; and 28 of 1954.

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of the High Court under the said Act and the rules made thereunder, as amended from time to time. 10

(3) Except where the Chief Election Commissioner or an Election Commissioner or a Regional Election Commissioner demits office by resignation, he or she shall be deemed, for the purposes of this Act, to have demitted his or her office if, and only if,—

(a) he or she has completed the term of office specified in section 7, or 15

(b) he or she has attained the age of sixty-five years, or

(c) his or her demission of office is medically certified to be necessitated by ill-health.

Other conditions of service.

12. Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, provision of rent-free residence and exemption from payment of income-tax on the value of such rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and such other conditions of service for— 20

(i) The Chief Election Commissioner and Election Commissioners shall be as applicable to a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges (Conditions of Service) Act, 1958 and the rules made thereunder, as amended from time to time; and 25 41 of 1958.

(ii) for a Regional Election Commissioner shall be as applicable to a Judge of a High Court under Chapter IV of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and rules made thereunder, as amended from time to time. 28 of 1954.

Permanent Secretariat and staff of the Commission.

13. (1) The Election Commission shall have a permanent Secretariat comprising of such number and categories of officers and other employees as may be determined by the Commission in consultation with the Central Government to assist the Commission in the discharge of its functions by rules made under this Act. 30

(2) The recruitment of the officers and other employees of the Commission shall be made by the Commission in accordance with rules that may be prescribed by the Commission under this Act in consultation with the Central Government. 35

(3) The officers and other employees of the Commission shall discharge their functions under the general superintendence, control and direction of the Commission.

(4) The salaries and allowances and other conditions of service of the officers and other employees of the Commission shall be prescribed by rules framed by the Commission in consultation with the Central Government. 40

(5) Subject to sub-section (3), the Chief Election Commissioner shall exercise administrative control over the officers and other employees of the Commission.

Expenses of the Election Commission.

14. (1) The expenses of the Election Commission of India including the salaries, allowances and pensions payable to the Chief Election Commissioner, Election Commissioners, Regional Election Commissioners and the officers and other employees of the Commission shall be charged on the Consolidated Fund of India. 45

(2) The Election Commission shall maintain proper accounts and other relevant records and prepare an Annual Statement of Accounts in such form as may be prescribed and shall submit it to the President, who shall cause it to be laid before each House of Parliament within such time frame as may be prescribed.

5 **15.** No suit, prosecution or other legal proceedings shall lie against the Chief Election Commissioner, Election Commissioner, Regional Election Commissioner or any officer or employee of the Election Commission in respect of anything which is in good faith or intended to be done under this Act or any rule or order made thereunder. Protection of action taken in good faith.

10 **16.** The Chief Election Commissioner, Election Commissioner, Regional Election Commissioner, officers and other employees of the Election Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. Members and staff of Election Commission to be public servants.

45 of 1860.

15 **17.** With effect from the date of this Act coming into force, no civil court shall have jurisdiction to entertain any suit, petition or appeal in respect of any order or decision of the Election Commission. Bar of jurisdiction.

18. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force other than this Act or in any instrument having effect by virtue of any such law other than this Act. Act to have overriding effect.

11 of 1991. 20 **19.** (1) The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 is hereby repealed. Repeal and savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act.

25 **20.** (1) The Election Commission may, in consultation with the Central Government, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make rules.

30 (2) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The words 'democratic republic' are the cornerstones of the Constitution of India. A democracy requires that there should be periodic, free and fair elections, so that people are in a position to elect representatives of their choice, as an effective instrument of ascertaining popular will. The concept of a 'republic' envisages a State in which the people are supreme, there is no privileged class and all public offices are open to every citizen without discrimination.

2. Free and fair elections are the most important facets of democracy. They are meant to ascertain true popular will and are not mere rituals to generate an illusion of choice. Article 324 of the Constitution entrusts the power to conduct elections, to an independent body, viz., the Election Commission of India (ECI). Dr. B.R. Ambedkar, in one of his debates, articulated that the election machinery be outside the control of the Executive Government. The Constituent Assembly, from the very beginning, was keen to entrust the job of conducting elections to an independent body and therefore, expected a Parliamentary Law under clause (2) of article 324 relating to appointments of the Chief Election Commissioner (CEC) and the other Election Commissioners (ECs). Thus, the Constitution-makers wanted to keep the posts of the Chief Election Commissioner and the Election Commissioners outside the sole control of the Executive Government. However, the Hon'ble President of India continues to appoint the CEC and the ECs solely on the basis of aid and advice of the Council of Ministers, thus defeating the objective envisaged by the Constitution makers.

3. Institutions shall remain strong only so long as the public have faith in them. Considering the sensitive nature of the Election Commission's task, if the public perceive the institution as corrupt, partisan or biased, it loses its vitality. Therefore, it is imperative that the ECI is manned by officers who are impartial, independent, and possess impeccable integrity. In order to avoid appointing career bureaucrats, and to facilitate appointment of independent members of civil society as heads of the ECI so as to protect the institutional integrity of the ECI, the mode of appointment qualifications and disqualifications, term of office and other conditions of service of the CEC and ECs are set out in the Bill.

4. There is also a dire need to appoint Regional Election Commissioners who are conversant with the affairs of the States. India is the 7th largest country in the world in terms of area and the largest democracy in the world. Our country is the most linguistically diverse country in the world, having a total of 456 languages. For such a large democracy, it is a herculean task for the three Election Commissioners sitting in Delhi to handle elections across the length and breadth of the country and decide on all the election related issues that crop up from time to time. In order to make the functioning of the ECI more inclusive and broad based, it is high time that Regional Election Commissioners are appointed so that they bring more perspective into the functioning of the ECI. Appointment of Regional Election Commissioners would ensure that the ECI takes into consideration the needs of the population at the grass root level.

5. The appointments of the Chief Election Commissioner and Election Commissioners have to be insulated from political whims and fancies and therefore, must be on the basis of the recommendations of a high powered Selection Committee similar to the Selection Committee constituted for the appointment of the CBI Director, Lokpal and Lokayuktas. Only by ensuring that the appointment of the CEC and the ECs is transparent, objective and non-partisan, can we expect the ECI to be a neutral body.

6. Under clause (2) of article 324, the drafters of the Constitution bestowed upon Parliament, the power to enact a law pertaining to the appointment of the Chief Election Commissioner and other Election Commissioners. However, no such law has been enacted.

7. Another aspect is that the ECI cannot be truly impartial unless it has a permanent Secretariat, staff and its expenditure is charged from the Consolidated Fund of India. Only this will truly liberate the ECI and ensure its independence. Since, there has to be some mechanism to check its expenditure and excesses, the ECI can be made responsible to both Houses of Parliament in so far as its expenditure is concerned.

8. Recently, in a judgment, the Supreme Court of India has held that till such time, Parliament makes a law in this regard, appointments to the posts of Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the party having the largest numerical strength amongst the parties in opposition in the Lok Sabha and the Chief Justice of India. The Court has also requested the Union Government to consider bringing in laws to ensure that the ECI gets a permanent Secretariat and staff and is not dependent on the Union Government for its funding.

9. That apart, one of the fundamental flaws of the ECI is that it does not have a legal member, though it adjudicates disputes having civil consequences. It is well settled that any Tribunal or Commission that performs adjudicatory functions must have a legal member. In the absence of such a legal mind, often, binding judgments of the Constitutional Courts are ignored by the Commission in passing orders leading to further litigation.

10. It is, therefore, proposed to introduced a Bill to provide for a comprehensive law for establishing the procedure for appointing the Chief Election Commissioner, Election Commissioners and the Regional Election Commissioners in four Regional Zones, namely, Northern, Southern, Eastern and Western.

The Bill seeks to achieve these objectives.

P. WILSON.

FINANCIAL MEMORANDUM

Sub-clause (2) of Clause 5 of the Bill provides for the constitution of a Search Committee for calling applications and drawing up a panel of persons eligible for appointment as Chief Election Commissioner, Election Commissioners and Regional Election Commissioners and sub-clause (7) of Clause 5 of the Bill provides for the fees and allowances of members of the Search Committee. Clause 9 of the Bill provides for the salaries and allowances of the Chief Election Commissioner, Election Commissioners and Regional Election Commissioners and Clause 11 for their pensions. Clause 13 of the Bill provides for the establishment of a permanent Secretariat for the Election Commission with such number and category of officers and other employees to assist the Commission in the discharge of its functions and Clause 12 of the Bill provides for other conditions of service of the Chief Election Commissioner, Election Commissioners, Regional Election Commissioners, officers and other employees of the Commission. Clause 14 of the Bill provides that the all expenses of the Election Commission of India shall be charged on the Consolidated Fund of India.

Therefore, the Bill if enacted, is likely to involve an expenditure, both of recurring and non-recurring nature, of about One thousand Crore rupees annually from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Election Commission of India, in consultation with the Central Government, to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative powers is of normal character.

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to provide for qualifications, method of appointment and other conditions of service of the Chief Election Commissioner, Election Commissioners and Regional Election Commissioners establishment of a permanent Secretariat and staff for the Election Commission of India and expenses of the Commission and for matters connected therewith and incidental thereto.

(Shri P. Wilson, M.P.)