

**GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
LEGISLATIVE DEPARTMENT**

**RAJYA SABHA
STARRED QUESTION NO.*247
ANSWERED ON 23/03/2023**

Law to appoint ECs and CEC

***247 SHRI MUKUL BALKRISHNA WASNIK:**

Will the Minister of **LAW AND JUSTICE** be pleased to state:

- (a) whether Government has any plans to enact a law for the appointment of Election Commissioners (ECs) and the Chief Election Commissioner (CEC) that will ensure the integrity of the Election Commission of India for the conduct of free and fair elections; and
- (b) if so, the details thereof and if not, the reasons therefor?

ANSWER

MINISTER OF LAW AND JUSTICE

(SHRI KIREN RIJJU)

(a) and (b): A Statement is laid on the Table of the House.

STATEMENT REFERRED TO IN RESPECT OF RAJYA SABHA
STARRED QUESTION NO. *247 FOR ANSWER ON 23 MARCH 2023

(a) and (b): Election Commission of India is a permanent constitutional body established in accordance with Article 324(1) of the Constitution of India. As per Article 324(2) of the Constitution of India, the Election Commission shall consist of the Chief Election Commissioner and such number of Election Commissioners, if any, as the President may from time to time fix and that 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. Originally, the Commission was headed by the lone Chief Election Commissioner. In order to ensure transparency in the working of the Commission and for conduct of free and fair elections in the country, the government of the day appointed two additional Commissioners in October 1989, who continued only till January 1990. Later, on 1st October 1993, two Election Commissioners were appointed and the concept of present-day multi-member Commission is in vogue since then.

No specific law has been made by the Parliament as envisaged under Article 324 (2) of the Constitution of India for appointment of Chief Election Commissioner and the Election Commissioners. According to Rule 8 of the Government of India (Transaction of Business) Rules, 1961 read with Sl. No. 22 of the Third Schedule to the said Rules, appointment of the Chief Election Commissioner and other Election Commissioners requires the approval of the Prime Minister and the President. So far the senior members of Civil Service and / or other serving or retired officers of the rank of Secretary to the Government of India/ Chief Secretary of the State Governments are appointed as Election Commissioners and the senior-most among the three Election Commissioners, as Chief Election Commissioner. The appointments to the posts

of Chief Election Commissioner and the Election Commissioners are in consonance with the constitutional values that uphold the integrity and credibility of the Commission.

Recently, in Writ Petition (Civil) No.104 of 2015, *Anoop Baranwal v. Union of India*, with Writ Petition (Civil) No.1043 of 2017, 569 of 2021 and 998 of 2022, the Supreme Court of India has *inter alia* held in its judgment dated the 02 March, 2023 that until the Parliament makes a law in consonance with Article 342(2) of the Constitution the appointment of the Chief Election Commissioner and the Election Commissioners shall be made on the recommendations made by a three-member Committee comprising the Prime Minister, Leader of the Opposition of the Lok Sabha and in case no Leader of Opposition is available, the Leader of the largest opposition party in the Lok Sabha in terms of numerical strength and the Chief Justice of India.

The judgement of Supreme Court is being examined by the Government and appropriate action will be taken.
