

TOWARDS A ROBUST TRIUMVIRATE

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A senior citizen casts her vote on postal ballots in the presence of Election Commission officials (not pictured) at her house in Ahmedabad on November 28, 2022. | Photo Credit: AFP

A five-judge Constitution Bench of the Supreme Court is examining a bunch of petitions [recommending reforms in the process of appointment of members of the Election Commission](#). Their hearings have come not a moment too soon. It is hoped that the Bench will also examine electoral reforms suggested to governments by successive Election Commissions over the last two decades or so.

A list of over 20 reform proposals was compiled in 2004. More proposals were added to the list over time and are pending with government. These range from strengthening the Commission's inherent structure to handling the misuse of muscle and money power during elections, which violate the Model Code of Conduct.

This article deals with two issues. The first, under consideration, is whether Election Commissioners should be selected by the executive or by a collegium. The idea of a collegium is not new. The Dinesh Goswami Committee in 1990 suggested that the Chief Election Commissioner be appointed by the President (read: executive) in consultation with the Chief Justice of India and the Leader of the Opposition (and in case the Leader of the Opposition was not available, then consultation be held with the leader the largest opposition group in the Lok Sabha). It said this process should have statutory backing. Importantly, it applied the same criteria to the appointments of Election Commissioners, along with consultation with the Chief Election Commissioner.

The National Commission to Review the Working of the Constitution, under Justice M.N. Venkatachaliah, said that the Chief Election Commissioner and other Election Commissioners should be appointed on the recommendation of a body comprising the Prime Minister, the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha.

The 255th Report of the Law Commission, chaired by Justice A.P. Shah, said the appointment of all the Election Commissioners should be made by the President in consultation with a three-member collegium consisting of the Prime Minister, the Leader of the Opposition of the Lok

Sabha (or the leader of the largest opposition party in the Lok Sabha), and the Chief Justice of India. It also suggested measures to safeguard Election Commissioners from arbitrary removal, in a manner similar to what is accorded to the Chief Election Commissioner, who can only be removed by impeachment, which is by no means easy.

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None of these recommendations gained traction in the governments to whom they were submitted.

The second issue is to afford the same security from arbitrary removal to Election Commissioners that the Constitution affords to the Chief Election Commissioner. The Supreme Court lost an opportunity for reform in its judgment in the Seshan case. It conferred equal powers on the Election Commissioners as those enjoyed by the Chief Election Commissioner (referring to the Chief Election Commissioner as *primus inter pares*, or first among equals) and even offered majority power, whereby any two can overrule even the Chief Election Commissioner. Yet, it did not afford the Election Commissioners the same constitutional protection (of removal by impeachment) as is accorded to the Chief Election Commissioner. It is hoped that the present Bench will examine this.

I was in the Commission from 2005 to 2010 — as Election Commissioner for four years and as Chief Election Commissioner for 15 months — and oversaw the 2009 general election. It was only when I was appointed Chief Election Commissioner and enjoyed the full protection that the Constitution afforded to me that I addressed the Prime Minister of the time, recommending that the Election Commissioners be offered the same protection from arbitrary removal as enjoyed by the Chief from the day of appointment. Without this, they may hesitate to act independently, which they otherwise might if they were truly secure. In the absence of full constitutional security, an Election Commissioner could feel they must keep on the right side of the Chief Election Commissioner. They might also feel they should remain within the ambit favoured by the government. With such misgivings, an Election Commissioner can never be sure whether they will automatically be elevated to the top post because nowhere has elevation been statutorily decreed. I have known cases of Election Commissioners having to wait nervously till the last minute, uncertain of the announcement of their elevation to the top post. This is why the recommendations made by previous Commissions, if accepted, would go a long way in strengthening the independence of the Election Commission.

While the Chief Election Commissioner should be appointed by a collegium, this must apply equally to the Election Commissioners. The collegium should be wide based. Strengthened now by a broad-based selection by the top constitutional luminaries of the country, the Election Commission must now equally be protected from arbitrary removal by a constitutional amendment that would ensure a removal process that currently applies only to the Chief Election Commissioner. Without this, the Election Commission of India will not be a robust triumvirate.

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