

SPACE, NOT TIME: THE HINDU EDITORIAL ON ELECTION COMMISSIONER TENURES

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November 24, 2022 12:20 am | Updated 02:27 am IST

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The ongoing hearing before a Constitution Bench of the Supreme Court of India [on the need to have a neutral mechanism for appointment of Election Commissioners](#) raises important questions on the [election body's functional independence](#). The Election Commission of India (ECI) has generally enjoyed a high reputation for holding free and fair polls since the dawn of the Republic, although not immune to charges of favouring the ruling party. However, given [the Court's vocal concern](#) about the ECI's independence, the relevant question now is whether the Commissioners should be appointed on the recommendation of an independent body. [Article 324\(2\)](#) envisages a parliamentary law for the purpose, but no law has been enacted so far. The Government is pushing back strongly against the Court's apparent inclination to devise an independent mechanism, possibly a selection committee that includes the Chief Justice of India. The perceived legislative vacuum could provide an occasion for the Court to frame a process on its own — something the Government, quite rightly, wants to avoid. There is no doubt an independent body doing the selection will enhance the ECI's independence, but the Court will have to decide if it wants to spell out its composition or leave it to Parliament.

Justice K.M. Joseph, heading the Bench, has noted that Chief Election Commissioners (CEC) in the past had fairly long tenures, unlike in recent times. However, it should be remembered that since 1993, the ECI has become a multi-member body, comprising a CEC (chairman) and two Election Commissioners (EC). The current convention is to appoint ECs, and elevate them as CEC on the basis of seniority. In effect, it is the appointment process for ECs that requires scrutiny as it is here that there is scope for personal whimsy to play a role. The CEC has a six-year tenure, but should demit office on attaining 65. The Court has questioned the practice of appointing CECs close to that age so that they have only a brief tenure. However, it may be argued that even Chief Justices have brief tenures, but that does not undermine their independence. The Government has contended that a member's whole tenure in the ECI should be considered, and not merely the duration as CEC. The real difference is security of tenure that could come from operational freedom and space. While Supreme Court judges have security of tenure — they can be removed only by impeachment by Parliament — only the CEC enjoys the same status. The ECs can be removed on the CEC's recommendation. There is a good case for extending the same tenure security to the ECs too, regardless of what kind of appointment process is in place.

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