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THE JOURNEY OF ELECTION COMMISSION, FROM 1950 TO 2023, WITH SPECIAL REFERENCE TO THE CASE OF TN SHESHAN.

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ABSTRACT

Elections are the key element in a democracy as the citizens have the ultimate right to choose their representative to the government. While drafting the Constitution of India the makers had a noble idea of having India a “democratic and a republican” nation. To ensure this idea of democracy in India, the Constitution under Article 324, Part XV provides for an independent Commission, known as the “Election Commission” who are entrusted with the duty to conduct and ensure free and fair elections throughout the nation. Initially this commission was a single member body and the Constitution provided the scope for a multi-member body. With India being a varied and diversified nation, with 28 states and 8 union territories and much smaller divided units within, elections are conducted on a larger level and this is a mammoth task. The main question which arises is whether such enormous task, especially in country like India where the population and literacy is on rise, can be accomplished by a single-member body? The conflict between the need and the importance of a multi-member commission over a single member commission and the problems that arose by such composition were decided in the landmark case of ‘T.N. Seshan Chief Election Commissioner of India v Union of India.’ This article will try to analysis this landmark case in the light of legal conceptual understanding as well as the practical application and nuances of the concept and also recent developments in this field of constitutional law.

Keywords: *Election Commission, Multi-Member body, Chief Election Commissioner, Democracy, Free and Fair elections.*

INTRODUCTION

The Preamble of Indian Constitution starts with “We, the people of India, having solemnly resolved to constitute India into sovereign socialist secular **democratic republic**”.¹ Thus, the people of India declared India to be a democratic state and democracy as defined by Abraham Lincoln, is a government “by the people, for the people, to the people”. Republic- “form of government in which the state is ruled by the representatives as chosen by the citizens of the country”.

“Free and fair elections” are the cornerstone of democracy and are essential for ensuring that the will of the people is reflected in the government. People elect their representatives through elections, the sovereign power lies in the hands of the people. The government is further answerable to the people for their actions. These elections are conducted once in every 5 years to elect the representatives at the Lok Sabha (general elections) and the Legislative Assembly (State Assembly elections). Thus, upholding the ideal of Democratic Republic as declared by the Preamble.

The implied understanding of having free and fair elections is that everyone should have equal political rights. So, having equal rights in terms of standing up to the elections, portraying their goals and objectives and then leaving it up to the citizens for selection. In India, we do have a multi-party system in which people have a right to choose their elected representative out of the members contesting elections. Therefore, anyone who is qualified as per the Constitution to contest elections should not be deprived of doing so (giving a chance of choice to people). And for the people, equal rights here mean given a fair chance to vote and to elect representative of their choice by whom they wish to be governed. Inequalities do exist in a society, but this political right shall be given to everyone despite the inequalities. This brought up the concept of Universal Adult Franchise- “one person, one vote”, for all the people above 18 years of age, hence adult.

To understand the democracy of India better, we can compare it to other countries like China which is a multi-party socialist state with Communist Party of China as its dominant head and Pakistan where even after 75 years of Independence, democracy feels a far-fledged idea. In China, the communist party is the only option that people have and the so-called choice they give to

¹ Constitution of India, 1950.

people in the form of candidates to elect out of is just for namesake as the whole monopoly is in the hands of the dominant leader in the end; for example- the current President “Xi Jinping”, currently in his 3rd term, has been in power since 2013 will hold power atleast till 2028 and maybe even further. On the other hand, Pakistan who even after so long has failed to understand the true meaning and essence of democracy. It took them 25 years to draft a constitution for themselves and government there always being dominated by the Army. In these 75 years, **NO** Prime Minister has completed their full term of 5 years successfully and also out of 75 years, for more than 31 years, they have been ruled by Army (1958-1971, 1977-1988, 1999-2008). Unlike Pakistan, India, in its 75 years of Independence has established a democracy, the Constitution makers of India very initially understood the importance of this democracy and therefore, our constitution ensures a government elected by people, conduct of free and fair elections, Universal Adult Franchise and an Independent body- free from executive pressure with a responsibility for conduct of elections throughout India in the form of “Election Commission”.

To ensure free and fair elections, the Constitution provides for this independent and impartial body that directs, superintends and controls the election. This Commission is known as the “Election Commission” as under Article 324 of the Constitution. It’s called the “Watchdog of free and fair elections”.

Over the years, there has been many questions regarding Election Commission, its constitutional position and its components.

NEED FOR A MULTI-MEMBER BODY

The supreme court, in a case where the constitutional validity of The CEC And Other Election Commissioners (Conditions of Service) Amendment (then Ordinance) Act, 1993 was challenged, along with the two appointments made by the central government in furtherance of this ordinance of the election commissioners.

The first question to be answered by the hon’ble Supreme court was whether the impugned act was mala-fide in nature. The then CEC i.e., T.N Seshan challenged the constitutional validity of a multi-member body and that the power of Ordinance given to President under Articles 123 and 324(2) was misused to bring an ordinance. The court rejected this contention of the petitioner

saying that there has been a need for multi-member bodies and the same has also been suggested by various reports of different Committees.

We think that the court has taken this matter in a light connotation and did not go deep into it, because the report that they have referred to i.e., “The Joint Committee of both Houses of Parliament report, 1972; Tarkunde Committee, 1974; Jaya Prakash Narayan Committee, 1974” favoured a multi-member Election Commission. Also, the “committee on electoral reforms appointed by Janata Dal Party, in its 1990 report”, mentioned the importance of multi-member election commission. But no step was taken to implement or consider it. These reports existed even during the framing of the new act in 1991. But suddenly, the importance was recognised in 1993. There might have been a possibility of existence of mala fide intention of government which was completely ignored by the Bench. The Bench also ignored the allegation raised that one of the Election Commissioner appointed was a ‘close friend of the Prime Minister’. The author through this argument by no means is against the multi member body as will be analysed in the further part, but court could have looked deep into the point that if there was any mala-fide in the appointment of **those two persons** as EC and also if they were making the work of the CEC completely unworkable; that would have curbed this argument without a lacuna.

Now the second and the most important question before the court was ‘*whether election commission should be a multi member body or not.*’ The petitioner, the then CEC i.e., T.N Seshan, contended that Election Commission should not be a multi member body as it is against the scheme of article 324 (2). It was challenged that Election Commission must be a single member body headed by the CEC (CEC). The petitioner also alleged that multi member body for Election Commission will be unworkable. This argument of the petitioner was outrightly rejected by the court, and rightly so, because even a plain reading of “Article 324 (2) of the Constitution of India” permits the Election Commission to be a multi-member body.

In the case of *S.S. Dhanoa v Union of India*², the President first created two posts of Election Commissioner through a notification, but later abolished it, and when challenged, the court upheld the abolition. But the Supreme Court ‘did not oppose a multi-member Commission, by abolishing the posts of the ECs, but instead intended to ensure the smooth functioning of this

² *S.S. Dhanoa v Union of India*, [1991], Supreme Court of India, 1991 AIR 1745, 1991 SCR (3) 159.

body because of which it decided to abolish their posts. The smooth functioning here was absent due to the absence of any procedural rules in relation to the manner of functioning of a multi-member Commission, their appointment was found to have rendered the functioning of the Commission unworkable³.

Before S.S. Dhanoa case there was 61st constitutional amendment, 1989⁴ which reduced the age of voting from 21 years of age to 18 years, so, the President felt the need of additional EC's so as to conduct the elections smoothly as it would lead to increase in the number of people voting thus increasing the work of Election Commission. But, as the court in that case rightly observed to curb the extra work, there was a need of additional number of employees. For Election Commissioners, as mentioned above, there was a want of procedural requirements in relation to working of multi-member commission.

While analysing the need of multi-member Election Commission, the court has taken reference of various committee reports. These are:

- ***Tarkunde Committee Report of 1975***⁵ - Jayprakash Narayan appointed this committee on behalf of the Citizens for Democracy. The key recommendations of the committee:
 - Evaluate and recommend changes to the voting process in India.
 - Address issues with the electoral process
 - Suggest ways to make it more transparent, fair and efficient.

Some of the important recommendations by them:

- “Lower the voting age” from 21 to 18 years (which was eventually done in 61st Constitutional Amendment).
- Create a **“three- member election commission”**
- ECs be appointed on the advice of a committee comprising the **“Prime Minister, Lok Sabha Opposition Leader and the Chief Justice.”**

³ Mr. Ashwini Chawla, A Critical Study of the Position of the CEC in the Light of Cases Such as SS Dhanoa V. Union Of India and TN Seshan V. Union Of India, Sept 6, 2004, [A Critical Study of the Position of the CEC in the Light of Cases Such as SS Dhanoa V. Union Of India and TN Seshan V. Union Of India \(manupatra.com\)](#) accessed 1st November 2023.

⁴ The Constitution (Sixty-First Amendment) Act, 1989.

⁵ Report of the Committee on Electoral Reforms (Tarkunde Committee), Citizens for Democracy, (1975)

- **Dinesh Goswami Committee Report of 1990**⁶ The following suggestions were made:
 - “Multi-member body with 3 members.”
 - CEC Appointment: Appointed by the “President in Consultation with the Chief Justice of India and the Leader of the Opposition” (In case no Leader of the Opposition is available, consult with the Leader of the largest opposition group in the Lok Sabha.)
 - Appointment of Other Two Election Commissioners: Consultation with Chief Justice of India, CEC and with the Leader of the Opposition (In case no Leader of the Opposition is available, consult with the Leader of the largest opposition group in the Lok Sabha.)
 - The consultation process should have statutory backing.
 - Regional Commissioners: Not favoured for appointment. Appointments should be made only as necessary. Should not be on a permanent footing.
 - Repoll or countermanding decisions should not solely rely on the returning officer's report. ‘The Election Commission should have the power to appoint investigating and prosecuting agencies’ for any wrong they find.
 - Assign the Election Commission the task of monitoring expenses.

The court also emphasized on the need of multi-member commission, as the work of the election commission is tremendous. As mentioned earlier that the 2 election commissioners appointed in 1989 in the case of S.S Dhanoa was in view of 61st constitutional amendment as lowering down the age of eligible voting from 21 to 18 would have increased the voting pool. Similarly in 1992-93 with 73rd⁷ and 74th⁸ constitutional amendment the government introduced third tier of government in Indian federalism and provided a basic framework of decentralization of powers and authorities to the Municipal bodies at different levels. So 61st, 73rd and 74th amendment read together can be a good example to show how the work of Election commission has increased over the years and is not same as it was at the time of framing of our constitution in 1950, and at that point of time single member body would have suffice the work, but with time, increase in work demands dilution of powers that can be done by introducing ECs as permanent members.

⁶ Ministry of Law and Justice, Committee on Electoral Reforms, Report of the Committee on Electoral Reforms, May 1990.

⁷ The Constitution (Seventy-Third Amendment) Act, 1992.

⁸ The Constitution (Seventy- Fourth Amendment) Act, 1992.

Shri K.M Munshi's in constitutional assembly remarked: "We cannot have an election Commission sitting all the time during those five years doing nothing. The CEC will continue to be a whole- time officer performing the duties of his office and looking after the work from day to day but when major elections take place in the country, either Provincial or Central, the Commission must be enlarged to cope with the work. More members therefore have to be added to the Commission. They are no doubt to be appointed by the President. Therefore, to that extent their independence is ensured. So, there is no reason to believe that these temporary Election Commissioners will not have the necessary measure of independence."⁹

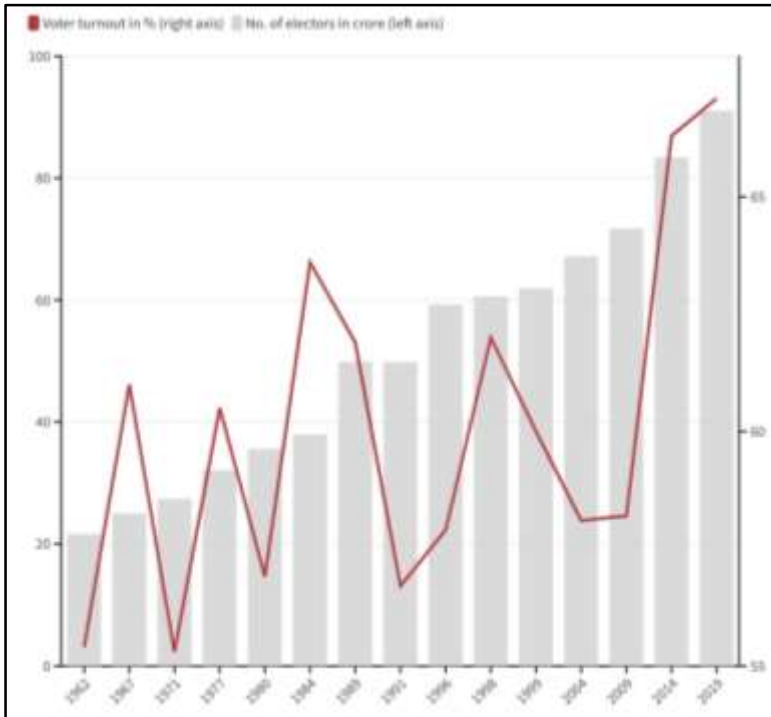
Over the years the number of people eligible to vote and turnout in voting has also increased. "Since 1962 the number of electors has increased 4 times", from 21.64 Crores in 1962 to 91.05 Crores in 2019. It is predicted by the election commission that in general election 2024 eligible voters will be more than 95 crores and that election commission has set up a target to have at least 75% of voters turn out in 2024 elections (Chart 1). Also, the number of people voting in India is largest in the world. "India's number of registered voters is almost four times that of the U.S", the second country on the list (Chart 2).¹⁰ These numbers should be sufficient to understand the tremendous and significant task that is vested in the hands of election commission and that the situation today cannot be compared with what has been there some decades ago.

The petitioner i.e., CEC challenged the act of government to bring in the post of ECs as arbitrary, but it would be wrong to think in that manner. As already established that the work and the responsibility upon the commission is to protect the democracy and carrying out such a big task by one member in neither possible nor desirable. Vesting so much of power in one hand would be giving unfettered and arbitrary powers to the CEC and can lead to misuse of such powers, so the act of the government cannot be said to be arbitrary but is to prevent arbitrary powers.

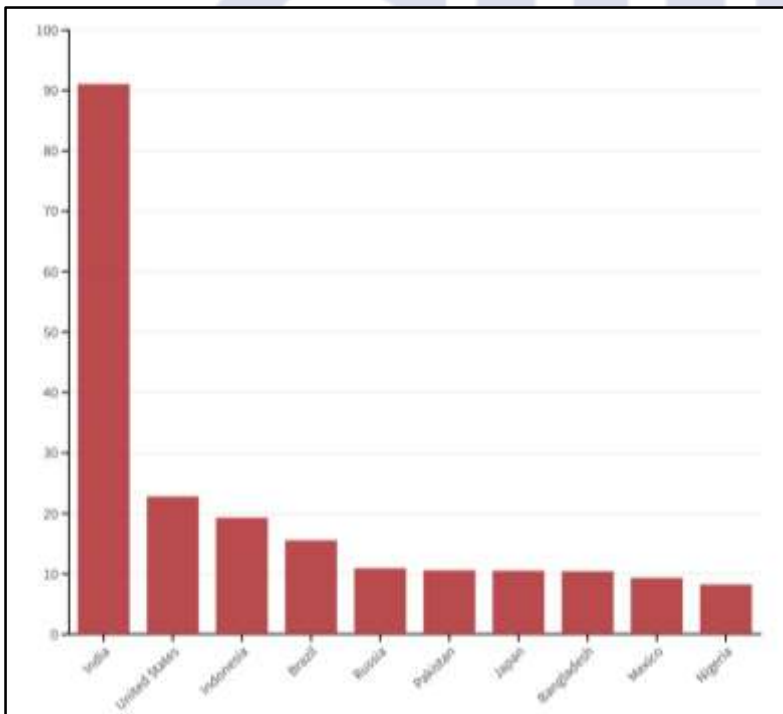
⁹ Constitutional Assembly Debates Vol. VIII (1949).

¹⁰The Hindu, DATA-30 crore missing voters in India: Mostly young, urban or migrants, February 11, 2023, <https://www.thehindu.com/data/data-30-crore-missing-voters-in-india-mostly-young-urban-or-migrants/article66485421.ece>, accessed 31st October 2023.

CHARTS: -



“Chart 1- shows the number of electors and the voter turnout in the past 15 Lok Sabha elections. From 21.63 crore electors in 1962, the count increased to 91.05 crore in 2019. The total number of voters on January 1 this year was 94,50,25,694 (94.5 crore). The voter turnout has increased significantly in recent years and crossed the 65% mark in the last two general elections. But 35% still remain absent from the process.”



“Chart 2- shows the number of electors registered for the most recent parliamentary/presidential elections in select countries. Only the top 10 countries are depicted. The ECI has a big task on hand given that India’s number of registered voters is almost four times that of the U.S., the second country on the list. India’s voter base exceeds the combined numbers of the U.S., Indonesia, Brazil, Russia, Pakistan and Japan.”

Source- The Hindu¹¹

¹¹ DATA-30 crore missing voters in India: Mostly young, urban or migrants, February 11, 2023, <https://www.thehindu.com/data/data-30-crore-missing-voters-in-india-mostly-young-urban-or-migrants/article66485421.ece>, accessed 31st October 2023.

The third, and the final question that was posed before the court was with respect to the “*difference in rank of the CEC and the Election Commissioners. the petitioner*”, the then CEC i.e., T.N Seshan, contended that the position of the CEC is at a superior position than that of Election Commissioner for a number of reasons. They are:

- The Constitution under ‘Article 324(2) provides CEC as a permanent member’ whereas ‘Election Commissioners were **not** regarded as the permanent members.’
- The Constitution under Article 324(3) appoints CEC as the Chairman of the Election Commission in-case any other EC is appointed.
- The Constitution under Article 324(5) provides *that removal of “CEC shall be done in the same manner as that of a Supreme Court Judge”, i.e., removal by bringing in a special resolution in the Parliament, as under Article 124(4) of the Constitution; but ‘Election Commissioner can be removed by the President on the advice of the CEC, provided that there are sufficient reasons to do the same.’*
- According to sections 3(1) and 3(2) and section 8 of the Act of 1991 (before amendment of 1993), the CEC is entitled to salary and allowances equal to that of a Supreme Court Judge, and the Election Commissioners are entitled to salary and allowances equal to that of a High Court Judge, respectively.
- As per section 4 of the Act of 1991 (before amendment of 1993), the retirement age of the CEC would be 65 years of age and the same for the Election Commissioners would be 62 years of age.

But certain changes were made by Amending Act of 1993 in the abovementioned service conditions of CECs and Election Commissioners. They were as follows:

- The petitioner contended that the Amendment Act 1994 made Election Commissioners as permanent members which is against the scheme of Article 324, but this was rightly rejected by the court as 324 cannot be interpreted in that narrow term, and Election Commissioners are ought to be permanent members for the reasons previously discussed.
- The Amendment Act of 1994 changed the salary of Election Commissioners from that of High Court Judges and equated to that of CECs, i.e., salary equal to Supreme Court Judge.
- The Amendment Act of 1994 increased the retirement age of Election Commissioners equal to that of the CECs, i.e., 65 years of age.

- The name of the act was changed from “The Chief Election Commissioner and other Election Commissioners (Conditions of Service), 1991” to “The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991”.
- For decision making process, the decisions as far as possible, must be unanimous and if there is any conflict of opinions, the majority view will be accepted as the final decision.

The petitioner challenged the amendment on the ground that all the abovementioned provisions before the 1994 Act used to give CEC a superior position to that of Election Commissioner, but the Amendment Act as was brought with a mala-fide intention equated the position and powers of Election Commissioner with that of CEC. He challenged the provision equating salaries and allowances of Election Commissioners with that of Supreme Court Judge, putting CEC and ECs on an equal footing. Also, the provision providing for majority view in case of conflict of opinions was also challenged as it lowers down the importance CEC has under Constitution, i.e., as that of a Chairman of the Election Commission while it's a multi-member body.

All these contentions were rejected by the hon'ble Supreme Court as it holds no sufficient ground. For the contention that majority view is to be taken is violative of Article 324, the court referred to the meaning of the word “Chairman” under various dictionary meaning and general use of the term and concluded that the work of the Chairman was to preside over the meeting, ensure correct decisions were taken in a fair manner, and all those steps are taken which are required for the smooth functioning of the Commission. Also, the court observed “to project the individual mightier than the institution would be a grave mistake. Therefore, even if the Election Commission is a single-member body, the CEC is merely a functionary of that body; to put it differently, the alter ego of the Commission and no more. And if it is a multi-member body, CEC is obliged to act as its chairman.”

This can be better understood by comparing the situation and powers of CEC with that of Chief Justice of India. Like CJI is known as the “master of the roster”, he decides the bench for a case, he overlooks the working of the court, he overlooks the legislative functions of the court (for administrative purposes) etc. but while decision making inside the court, he does not have any special powers, decision of a case if not unanimous is taken by the majority view and even if the CJI is in descending opinion it does not make any difference to the final outcome of the

judgement. For example, in the recent case of Janhit Abhiyan vs UOI¹² where the 103rd Constitutional Amendment¹³ was challenged the then CJI J. UU Lalit gave descending opinion but majority view (3:2) upheld the constitutional validity of the amendment and the decision was taken accordingly.

To ensure the independence of the Election Commissioner and to keep it free from external pressure which would have compromised the decision making of the CEC, Constitution under Art 324 provides “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.” But for the removal of Election Commissioner, if appointed, it provides that he/she can be removed by the President on the recommendation of CEC. The petitioner challenged that in the present case that the alterations made to the conditions of service of EC is violative of this differentiation created and this process of removal in itself shows the intent of the constitutional makers to keep EC as a temporary member of the commission and that at the peril of CEC. This contention was also rejected by the court and the court explained that EC is a very important and crucial member of the commission and rightly so for the various reasons abovementioned. Court also explained that just because ECs can be removed from the office on the recommendation of the CEC, that does not mean CEC can misuse this power vested in his/her hand. It should be used wisely and the recommendation made must be intelligible, reasonable and must provide adequate reasons for removal. The court held, “of course, the recommendation for removal must be based on *intelligible, and cogent considerations* which would have relation to efficient functioning of the Election Commission. That is so because this privilege has been conferred on the CEC to ensure that the ECs as well as the RCs are *not at the mercy of political or executive bosses of the day.*”

CONCLUSION

There is no doubt that democracy is an essential feature and ideal of the Constitution of India and free and fair elections are a pathway to achieve the same. When the representatives that are elected

¹² Janhit Abhiyan v Union of India, [2022], Supreme Court of India, (2023) 5 SCC 1; 2022 SCC Online SC 1540, (India).

¹³ The Constitution (One Hundred and Third Amendment) Act, 2019.

by the people are held accountable for their actions, the real purpose of this democratic system reflects, highlighting the importance of it. In such a diverse country like India and with such a high number of and diverse population conducting elections is indeed a mammoth task and it was duly understood by the constitution makers and thus an independent and self-reliant constitutional body was constituted under the constitution i.e., The Election Commission of India.

The legislators in 1993 made a change in the structure of Election Commission by adding new limbs for its better and effective working, i.e., the post of Election Commissioner and making it a multi-member body. This was done by considering increasing task of Election Commission with increasing population and awareness amongst people. Various committees over the years have recommended this electoral reform which was recognised by the Parliament.

The importance of having Election Commissioners as an aid to the CEC as was recognised by the judges in this case, was indeed a good step and it can be felt even today, as the number of electors has only been increasing and with every new general election, numbers make new records.

Even after this case, there has been various other electoral reforms suggested by various committees to ensure accountability and effective working of Election Commission. In 1999 and 2015, 170th Law Commission Report and 255th Law Commission Report, respectively, suggested that there must be a body comprising of Chief Justice of India and the Leader of the Opposition for recommending the names of CEC and ECs to President for appointments; to ensure the independence of Election Commission as now the appointment is made by the President on the advice of Council of Ministers. This year, in case of *Anoop Baranwal v Union of India*¹⁴, held that till the time Parliament comes up with a law on this point, i.e., Independent Committee for appointment of CEC and ECs, the recommendations will be made by a committee comprising of Chief Justice of India, Prime Minister and Leader of Opposition. In case there is no Leader of Opposition, consult with the Leader of the largest opposition group in the Lok Sabha. In furtherance of this decision, Parliament has brought The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, that will be placed before the Parliament in the special session starting from 18th September 2023. The Bill seeks to amend The Election Commission (Conditions Of Service Of Election

¹⁴ *Anoop Baranwal v Union of India*, [2023], Supreme Court of India, (2023) 6 SCC 161, (India).

Commissioners And Transaction Of Business) Act, 1991 and form a “**selection committee**” comprising of “the Prime Minister as Chairperson, (ii) the Leader of the Opposition in Lok Sabha as member, and (iii) a Union Cabinet Minister nominated by the Prime Minister as member. If the Leader of Opposition in Lok Sabha has not been recognised, the leader of the single largest opposition party in Lok Sabha will assume the role.”; and this committee will be working on the advice of a “**search committee**” which ‘will prepare a panel of five persons for the consideration of the Selection Committee. The Search Committee will be headed by the Cabinet Secretary. It will have two other members, not below the rank of Secretary to the central government, having knowledge and experience in matters related to elections. The Selection Committee may also consider candidates who have not been included in the panel prepared by the Search Committee.’ This Bill has raised many eyebrows for the point that it equates the salaries and allowances of CEC and ECs to that of a Cabinet Secretary. It is a major concern that Parliament is trying to degrade the rank of CEC and ECs from that of Supreme Court Judge to Cabinet Secretary. The opinion and reason behind it will get more clearer once the Bill will be taken up by Parliament, and that through the discussions that will take place there. The court in the present case has stated that equating salaries and allowances of CEC with that of Supreme Court Judge does not give him powers similar to that of a SC Judge and it must be confined only for the matters stated in the law i.e., salaries, allowances etc. And, as of 2023, the salary of a SC Judge is same as that of Cabinet Secretary (i.e., 2,50,000/- per month) but there are certain differences in allowances. So, will it be such a big issue? Time has a better answer.

Politics and elections have never ceased to amaze and take turning points- many more is yet to come. With general elections for India scheduled in 2024, election commission has a tedious task ahead as the number of voters are on a rise and also with the talks of implementation of “One Nation- One Election” around the corner the role of election commission becomes crucial and that the importance of multi-member body for its free functioning.

In the end, above all this game of power and politics we all shall remember what hon’ble ex-Prime Minister Atal Bihari Vajpayee has very rightly said “*Governments will come and go, parties will be formed and will deteriorate, but this country should remain.*”¹⁵

¹⁵ Prime Minister Atal Bihari Vajpayee: Motion of Confidence 28th May 1996, Parliament of India, Digital Library, https://eparlib.nic.in/handle/123456789/809245?view_type=browse, accessed 1st November 2023.