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Q7(c)

There is a debate on the procedure for appointment of the Chief Election Commissioner and Election Commissioners to the Election Commission of India. Analyse its various aspects

UPSC Civil Services Mains 2025 · PSIR GS 1 · 15 marks · Statutory Institutions/Commissions

Statutory Institutions/Commissions: Election Commission, CAG, Finance Commission, UPSC, NCSC, NCST, NCBC, National Human Rights Commission, National Commission for Women and National Commission for Minorities, NITI Aayog.

Core demand of the question

- Analyse the debate on appointing the CEC and **Election Commissioners**
- Include the constitutional text, the Anoop Baranwal judgment (2023), and the 2023 statute
- Discuss independence, the executive, and the opposition
- Do not only narrate; analyse aspects

Revision summary

Article 324 left CEC and EC appointments to the President subject to a law Parliament long failed to make, so the Union executive decided in practice.

Anoop Baranwal (2023) filled the gap with a committee of the Prime Minister, the Leader of the Opposition, and the Chief Justice of India.

The 2023 Act replaced the CJI with a Union Cabinet Minister, giving the executive two of three votes.

The debate is about referee independence, separation of powers, and whether opposition participation is equal or ornamental.

Procedure cannot guarantee a fair election, but a one-team selection committee makes impartiality harder to perform and to believe.

Introduction

The **Election Commission of India** is a constitutional referee of the democratic game. How its referees are chosen is therefore a constitutional question, not a staffing footnote. **Article 324** leaves appointment of the **Chief Election Commissioner** and other **Election Commissioners** to the President, subject to a parliamentary law that did not exist for decades. The 2023 judicial and legislative sequence filled that silence in two opposed ways.

Body

The constitutional gap and Anoop Baranwal

Article 324(2) says the CEC and ECs shall be appointed by the President, provided that their appointment shall be subject to the provisions of any law made by Parliament. Until 2023 there was no such law. In practice the Union executive decided. In **Anoop Baranwal v. Union of India** (March 2023) a five-judge Bench held that this vacuum risked executive dominance

over a body that must check the same executive at election time. Drawing on the **Vineet Narain** spirit of filling gaps to protect integrity, the Court put in place an interim collegium: the Prime Minister, the Leader of the Opposition in the Lok Sabha (or the leader of the largest opposition party), and the Chief Justice of India.

- **The analysis is institutional:** independence is who hires and fires. The judgment treated a free election's referee as too important to be the government's nominee alone.

The 2023 Act

The 2023 statute's selection committee is the Prime Minister, a Union Cabinet Minister, and the Leader of the Opposition. The CJI is out; the Union has two of three votes. Critics call this executive primacy with an opposition spectator. The government says the Constitution never placed the CJI in executive appointments, and that a law now exists as **Article 324** contemplated.

Aspects of the debate

The clash is independence versus electoral mandate, and bipartisanship versus a 2-1 majority. Procedure is not everything, but a referee chosen by one team spends the match proving impartiality. The Act closed the legal vacuum and reopened the legitimacy vacuum Baranwal had tried to fill.

Flow diagram

Article 324 silence -> Anoop Baranwal 2023
Anoop Baranwal 2023 -> PM + LoP + CJI
PM + LoP + CJI -> 2023 Act
2023 Act -> PM + Minister + LoP
PM + Minister + LoP -> Independence debate

Conclusion

- **The appointment debate has three layers:** a constitutional silence, a judicial interim of PM-LoP-CJI, and a statute that returns a Union majority on the panel. Independence of the ECI is the democratic good at stake. The aspect that matters most is whether the opposition's voice is real or ornamental when the referee of elections is named.

Facts & figures

Article 324(2)

Appointments by the President subject to any parliamentary law; the law arrived only in 2023 after judicial intervention.

Anoop Baranwal, 2023

The Supreme Court mandated an interim PM-LoP-CJI selection committee to protect the ECI from executive monopoly.

CEC/EC Act, 2023

Selection by the Prime Minister, a Union Cabinet Minister, and the Leader of the Opposition, after a Law Minister-led search committee.

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