

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1337 OF 2026
(IN THE MATTER OF PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS ...PETITIONER

VERSUS

UNION OF INDIA & ANR. ...RESPONDENTS

WITH

I.A. NO. 319629 OF 2026
APPLICATION FOR STAY

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: Ms. RANI MISHRA

FORMAT OF INDEX

SL. NO.	PARTICULARS OF DOCUMENTS	PAGE NO OF PART OF WHICH IT BELONGS		REMARKS
		PART I (CONTENTS OF PAPER BOOK)	PART II (CONTENTS OF FILE ALONE)	
I.	II.	III	IV	V
1.	COURT FEES (Rs. 730/-)			Rs.
2.	Listing Proforma	A1-A3	A1-A3	
3.	Cover Page of Paper Book		A-4	
4.	Index of Record of Proceedings		A-5	
5.	Writ Performa Section 1B			
6.	Defect List		A-7	
7.	Note Sheet		NS1 to	
8.	List of Dates	B – H		
9.	Writ Petition with affidavit	1 – 15		
10.	<u>ANNEXURE P-1</u> A true copy of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 dated nil	16 – 19		
11.	<u>ANNEXURE P-2</u> A true copy of the statement of Objects and Reasons for the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023 dated 04.08.2023	20		
12.	<u>ANNEXURE P-3</u> A true copy of the Rajya Sabha Errata issued on 09.08.2023	21		
13.	<u>ANNEXURE P-4</u> A true copy of the Bill No. LVII of 2023 as introduced, in the Rajya Sabha dated 10.08.2023	22 – 29		

14.	<u>ANNEXURE P-5</u> A true copy of the Corrigendum dated 11.12.2023	30		
15.	<u>ANNEXURE P-6</u> A true copy of the Notice of Amendments, List No. 6 dated 11.12.2023	31 – 33		
16.	<u>ANNEXURE P-7</u> A true copy of the Bill No. LVII-C of 2023 passed by Rajya Sabha on 12.12.2023	34 – 39		
17.	<u>ANNEXURE P-8</u> A true copy of extracts of the Rajya Sabha debate dated 12.12.2023	40 – 132		
18.	<u>ANNEXURE P-9</u> A true copy of the extracts from the Lok Sabha 14 th Session dated 21.12.2023	133 – 196		
19.	<u>ANNEXURE P-10</u> A true copy of the Bill as passed by both Houses of Parliament and assented to on 28.12.2023 (Bill No. LVII-F of 2023; Act No. 49 of 2023)	197 – 203		
20.	I.A. NO. _____ OF 2026 Application for Stay	204 – 207		
21.	FILING MEMO		208	
22.	VAKALATNAMA & MEMO OF APPEARANCE WITH AUTHORITY LETTER		209 – 210	
23.	<u>I.D.Proof:</u> Copy of the PAN Card of the Petitioner		211	

A

PROFORMA FOR FIRST LISTING

SECTION: PIL

The case pertains to (Please tick/check the correct box):

☐ Central Act:(Title)	THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE AND TERM OF OFFICE) ACT, 2023 (ACT NO. 49 OF 2023)
☐ Section	16
☐ Central Rule : (Title)	- NA -
☐ Rule No(s):	- NA -
☐ State Act: (Title)	- NA -
☐ Section :	- NA -
☐ State Rule : (Title)	- NA -
☐ Rule No(s):	- NA -
☐ Impugned Interim Order: (Date)	-NA-
☐ Impugned Final Order/Decree: (Date)	- NA -
☐ High Court : (Name)	-NA-
☐ Names of Judges:	-NA-
☐ Tribunal/Authority ; (Name)	- NA -
1. Nature of matter : ☒ Civil ☐ Criminal	
2. (a) Petitioner/appellant No.1 :	ASSOCIATION FOR DEMOCRATIC REFORMS
(b) e-mail ID:	- NA -
(c) Mobile Phone Number:	- NA -
3. (a) Respondent No.1:	UNION OF INDIA & ANR.
(b) e-mail ID:	- NA -
(c) Mobile Phone Number:	- NA -
4. (a) Main category classification:	48
(b) Sub classification:	4805
5. Not to be listed before:	- NA -

A-1

6. (a) Similar disposed of matter with citation, if any, and case details **NO SIMILAR MATTER DISPOSED OF**
- (b) Similar pending matter with case details **W.P.(C) NO. 1150 OF 2025 LOK PRAHARI V. UNION OF INDIA,**
- 7 Criminal Matters:
- (a) Whether accused/convict has surrendered: ☐ Yes ☐ No **-NA-**
- (b) FIR No. **NA** Date: **NA**
- (c) Police Station: **-NA-**
- (d) Sentence Awarded: **- NA -**
- (e) Sentence Undergone: **- NA -**
- (f) Whether any earlier case between the same parties is filed **- NA -**
- (g) Particulars of the FIR and Case **- NA -**
- (h) Whether any bail application was preferred earlier and decision thereupon **- NA -**
8. Land Acquisition Matters: **- NA -**
- (a) Date of Section 4 notification: **- NA -**
- (b) Date of Section 6 notification: **- NA -**
- (c) Date of Section 17 notification: **- NA -**
9. Tax Matters: State the tax effect: **- NA -**
10. Special Category (first Petitioner/ appellant only): **- NA -**
- ☐ Senior citizen > 65 years ☐ C/ST ☐ Woman/child Disabled ☐ Legal Aid case
- ☐ In custody ☐
11. Vehicle Number (in case of Motor Accident Claim matters): **- NA -**
12. Whether there was/is litigation on the same point of law, if yes, details thereof **W.P.(C) NO. 1150 OF 2025 LOK PRAHARI V. UNION OF INDIA**

FILED BY

Rani Mishra

Ms. RANI MISHRA

AOR for Petitioner(s)/Appellant(s)

Registration No.3510

Email: rani.mishra3@gmail.com

Date: 10.10.2026

B

SYNOPSIS AND LIST OF DATES

The present Writ Petition challenges the constitutional validity of Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 (“**Act**”);

*“16. Notwithstanding anything contained in any other law for the time being in force, **no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when,** or in the course of acting or purporting to act in the discharge of his official duty or function.” [Emphasis added]*

I. SECTION 16 OF THE ACT [S. 16] IS ULTRA VIRES THE CONSTITUTION OF INDIA AS:

- a. It provides blanket protection or immunity to the current as well as previous Chief Election Commissioner & Election Commissioners [CEC & ECs] for lifetime.
- b. No rational nexus with the purported purpose, i.e., protection of the independence of the CEC and ECs. The provision places the CEC & ECs beyond the reach of any Court of law.
- c. The inclusion of S. 16 in the Act is marred by impropriety, as it was initially not part of the original bill and was inserted and voted upon at a time when a substantial number of Members of Parliament from the Opposition were under suspension.

II. BLANKET PROTECTION UNDER S. 16 IS MANIFESTLY ARBITRARY AND UNREASONABLE:

- a. It is pertinent to note that the protection under S.16 covers current as well as past Chief Election

C

Commissioners (“**CEC**”) and Election Commissioners (“**EC**”) for lifetime without any saving clause [akin to Section 3 (2) of the Judges (Protection) Act, 1985]. No other provision in the Constitution of India or any statute grants immunity that is at once lifelong, unconditioned by good faith, free of any sanction mechanism, and without a saving clause.

- b. Notably, it is only CECs and ECs, being constitutional functionaries under Article 324 of the Constitution of India, that have been provided such drastic blanket protection under Section 16. No such protection is envisaged for any other constitutional functionaries such as the President, Governor of a state, after they have demitted office. Even for the Judges, Section 3 (1) of the Judges (Protection) Act, 1985, where Section 16 borrows its language from, to a limited extent only, is expressly qualified by Section 3 (2), which preserves civil, criminal and departmental action against present and former Judges. Therefore, such a blanket provision under S. 16 is without any intelligible differentia distinguishing it from other constitutional functionaries or statutory authorities.

III. NO RATIONAL NEXUS WITH THE PURPORTED OBJECT OF INSERTING S. 16:

- a. The objective of S. 16, as disclosed by the Government on the day Rajya Sabha passed the bill, was for the CEC and ECs to function independently.
- b. The provision is manifestly arbitrary as it violates Article 14 of the Constitution of India, as there exists no basis, founded on any rational principle, as to how

D

incorporation of S. 16 would guarantee independence to the CEC and ECs. From 1950 to 2023, a span of 73 years, the independence of the CEC and ECs was guaranteed by the Constitution of India, and there was no need for a provision akin to S. 16. Even in the earlier law i.e., the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, which was repealed by the Act under S. 21, there was never a provision akin to S.16

- c. S. 16 also denies citizens the right of access to justice guaranteed under Articles 14 and 21. It purports to oust judicial review and places the present and former CECs and ECs beyond accountability. It is to be noted that this Court in ***Subramanian Swamy v. CBI***, (2014) 8 SCC 682, has held that any classification based on status or position of an officer or a public servant for the purposes of inquiry/investigation is impermissible under Article 14. S. 16, in its present form, is creates a class of public servants i.e., past and present CEC and ECs who have protection lifelong while similarly placed constitutional functionaries/authorities, and even judges, working independently without any such protection.

IV. **THE INCLUSION OF S. 16 IN THE ACT IS MARRED WITH IMPROPRIETY:**

- a. Crucially, the parliamentary record shows that Section 16 of the Act did not form part of the original bill as introduced on 10.08.2023, and the Statement of Objects and Reasons dated 04.08.2023 does not refer to any immunity. The provision was proposed for the first time as new Clause 15A through an official amendment

E

circulated on 11.12.2023 and was disclosed to the Rajya Sabha on 12.12.2023. It received no debate in that House, and the only reason recorded for it was that it would enable the CEC and ECs to discharge their functions independently.

- b. On the same day, the motions to refer the Bill to a Select Committee were negatived, and the Bill was passed. On the other hand, in Lok Sabha, on 21.12.2023, the sole objection to the immunity went unanswered, and Members supporting the Bill described the protection as confined to the tenure of office. The Bill was passed without any amendment. More importantly, the bill accompanied by the amendment was passed by the Parliament when a substantial number of Members of Parliament from the Opposition were under suspension.

LIST OF DATES

1991 Parliament enacts the (now repealed) Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 (Act 11 of 1991).

The 1991 Act contains no provision granting immunity from civil or criminal proceedings to the CEC or ECs.

02.03.2023 A Constitution Bench of this Hon'ble Court in *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161, directs that appointments be made on the advice of a committee comprising the Prime Minister, the Leader of Opposition and the Chief Justice of India until Parliament makes a law.

F

04.08.2023 The Statement of Objects and Reasons for the proposed Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023 (the “**Bill**”) is signed by the Minister of Law and Justice.

Recital 3 lists what the Bill provides for.

For ease of reference, Recital 3 is reproduced hereunder:

“3. The proposed Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, inter alia, provides for:

- (a) defining various expressions used in the Bill;
- (b) appointment, qualifications, Search Committee, Selection Committee, term of office, salary, resignation and removal, leave, pension, etc., of the Chief Election Commissioner and other Election Commissioners; and
- (c) transaction of business and disposal of business of the Election Commission.”

Notably, the statement of objects and reasons does not mention or provide for any protection or immunity.

09.08.2023 Rajya Sabha issues Errata to the Bill correcting two typographical errors.

G

- 10.08.2023 Bill No. LVII of 2023 is introduced in the Rajya Sabha. The said Bill, as introduced in the Rajya Sabha, contains no clause granting protection or immunity to the CEC or ECs.
- 11.12.2023 Rajya Sabha issues a Corrigendum substituting the Financial Memorandum.
- 11.12.2023 A Notice of Amendments to the Bill (List No. 6) to be moved at the sitting is circulated, containing Amendment No. 39 proposing a new Clause 15A headed "Protection of Chief Election Commissioner and other Election Commissioners". No revised Statement of Objects and Reasons is issued.
- 12.12.2023 The Rajya Sabha takes up the Bill. The Hon'ble Minister of State of the Ministry of Law and Justice refers to new Clause 15A. A motion to pass the Bill in Rajya Sabha was adopted. Immediately (within 5 minutes without giving any chance to raise further objection by any member) after the introduction of the amendment providing life-long protection from civil and criminal proceedings, the entire Bill, including the amendment, was passed clause-by-clause by voice vote.
- 14.12.2023 to
21.12.2023 During this period, 100 MPs were suspended from Lok Sabha, and 46 from Rajya Sabha. This accounts for 19% of the strength of each House. This is the highest number of suspensions in any Lok Sabha term so far.

H

21.12.2023 The Bill was introduced in the Lok Sabha and passed on the same day, after a brief discussion of about 1.5 hours, by voice vote.

Note: At the time of its passage, 100 out of 543 Lok Sabha members were under suspension and, therefore, did not participate in the legislative process. This is significant, as nearly one-fifth of the House was absent during the passage of this constitutionally significant Bill.

28.12.2023 The Bill receives the assent of the President and is enacted as Act No. 49 of 2023. Clause 15A becomes Section 16.

02.01.2024 The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 is brought into force.

10.10.2026 HENCE, THIS PRESENT WRIT PETITION.

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2026

IN THE MATTER OF:

ASSOCIATION OF DEMOCRATIC REFORMS

Through its Trustee
Office at Plot No. E-5,
4th Floor, Lane-1,
Westend Marg, Saidulajab,
New Delhi – 110030

...PETITIONER

VERSUS

1. UNION OF INDIA
Through its Secretary
Ministry of Law and Justice
Legislative Department
Shastri Bhawan
New Delhi-110001

2. ELECTION COMMISSION OF INDIA
Through its Secretary
Nirvachan Sadan, Ashoka Road
New Delhi-110001

...RESPONDENT

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ORDER OR
DIRECTION DECLARING SECTION 16 OF THE CHIEF
ELECTION COMMISSIONER AND OTHER ELECTION
COMMISSIONERS (APPOINTMENT, CONDITIONS OF
SERVICE AND TERM OF OFFICE) ACT, 2023 TO BE
UNCONSTITUTIONAL, VOID AND INOPERATIVE AS
VIOLATIVE OF ARTICLES 14 AND 21 AND THE BASIC
STRUCTURE OF THE CONSTITUTION OF INDIA**

TO,
THE HON'BLE THE CHIEF JUSTICE AND HIS
OTHER COMPANION JUSTICES OF
THE HON'BLE SUPREME OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner, Association for Democratic Reforms, is a registered Society under the Societies Registration Act XXI of 1860. For the past 27 years, the Petitioner has been at the forefront of electoral reforms in the country and has undertaken a wide range of activities, including advocating for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties including their income-tax returns, etc. The Petitioner, through consistent and laborious efforts, has secured several landmark decisions in public interest that have strengthened electoral transparency and advocacy. A table of judgments rendered by this Hon'ble Court and other Courts, in Petitioner's previous public interest litigation is reproduced below:

SN.	Name & Citation of Judgment	Court's Observation
1.	<i>UoI v. Association for Democratic Reforms</i> , (2002) 5 SCC 294	This Hon'ble Court directed the ECI, under Article 324, to require every candidate for Parliament or State Legislature to disclose on affidavit their criminal background, assets, liabilities and educational qualifications.
2.	<i>Lily Thomas v. Union of India</i> , (2013) 7 SCC 653 (ADR intervened in the matter)	This Hon'ble Court struck down Section 8 (4) of the RPA, 1951, which had let convicted MPs/MLAs to keep their seats if they appealed within three months. A sitting legislator is now disqualified immediately upon conviction, and the seat falls vacant.
3.	<i>Association for Democratic Reforms v. Union of India</i> , 2014 SCC OnLine Del 1321	The Hon'ble Delhi High Court held that donations from Sterlite and Sesa prima facie came from "foreign sources" and violated the ban under the FCRA, 1976. It directed the respondents to re-examine party receipts, identify foreign contributions, and take action within six months.

SN.	Name & Citation of Judgment	Court's Observation
4.	<i>Anoop Baranwal v. Union of India</i> , [Election Commission Appointments], (2023) 6 SCC 161 <i>ADR v. Union of India & Anr.</i> , WP(C) 569/2021	A five-judge Constitution Bench, on ADR's petition, directed that the CEC and ECs be appointed on the advice of a committee of the Prime Minister, the Chief Justice of India and the Leader of Opposition (or leader of the largest opposition party) in the Lok Sabha, noting a lacuna in the law on appointments.
5.	<i>Association for Democratic Reforms v. Union of India & Ors.</i> , (2024) 5 SCC 1	A five-judge Constitution Bench, on ADR's petition, struck down the Electoral Bond Scheme and related amendments. Non-disclosure of political funding violated voters' right to information under Article 19 (1)(a), and removing the cap on corporate donations was arbitrary under Article 14.
6.	<i>Association for Democratic Reforms v. Election Commission of India & Anr.</i> , (2025) 2 SCC 732	On 26 April 2024, a two-judge Bench of this Hon'ble Court, declined ADR's prayer for 100% VVPAT counting. It directed that Symbol Loading Units be sealed and stored with EVMs for 45 days after the results, and that candidates placing second or third may seek verification of 5% of EVMs' microcontrollers within seven days.
7.	<i>Association for Democratic Reforms & Ors. v. Election Commission of India</i> , (2026) 7 SCC 1	This Hon'ble Court upheld the Special Intensive Revision of Bihar's electoral rolls as traceable to Article 324 and Section 21(3) of the RPA, 1950, and found it proportionate and procedurally valid, including a limited enquiry into citizenship for electoral eligibility.

2. The present writ petition is being filed through the Petitioner's trustee, Dr. Vipul Mudgal, in the public interest under Article 32 of the Constitution of India, challenging the constitutional validity of Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 (**"the Act"**). Section 16 confers lifelong and

unconditional immunity from all civil and criminal proceedings on any person who “is or was” a Chief Election Commissioner (“**CEC**”) or an Election Commissioner (“**EC**”) for acts done or words spoken in the discharge of official duty. The provision did not form part of the Bill as introduced, finds no mention in its Statement of Objects and Reasons, and was inserted through an official amendment at the stage of consideration in the Rajya Sabha on 12.12.2023.

3. This Hon’ble Court has the jurisdiction to entertain the present petition, as it seeks to highlight the violation of Article 14 and Article 21 of the Indian Constitution in so far as S. 16 of the Act provides for blanket immunity to the present as well as the earlier CEC and ECs without any rational nexus to the purported objective S. 16 wishes to achieve, i.e., Independence of CEC and ECs.

4. **PARTICULARS OF THE PETITIONER ARE AS BELOW:**

a.	Full name:	Association of Democratic Reforms represented by its Trustee Vipul Mudgal
b.	Complete Postal Address:	Association for Democratic Reforms Plot No. E-5, 4th Floor, Lane-1, Westend Marg, Saidulajab (Behind Saket Metro Gate No. 2), New Delhi-110 030
c.	Phone Number:	+91-011-4165-4200
d.	Occupation:	Non-Governmental Organization (NGO)
e.	Annual Income:	Rs. 2,93,18,044 (FY 2025-26)
f.	PAN Number:	AAAAA2503P
g.	Email ID:	adr@adrindia.org

5. **Facts constituting cause of action:** Section 16 confers lifelong and unconditional immunity from all civil and criminal proceedings on any person who “is or was” a Chief Election

Commissioner (“**CEC**”) or an Election Commissioner (“**EC**”) for acts done or words spoken in the discharge of official duty. Further, the impropriety that mars the insertion of S. 16 is unconscionable, as the provision did not form part of the Bill as introduced. It did not find any mention in the Statement of Objects and Reasons, and was inserted through an official amendment at the stage of consideration in the Rajya Sabha on 12.12.2023. Hence, this petition.

6. Nature or injury caused or likely to be caused to the public:

Free and Fair elections, which have been held to be a part of the basic structure of the Constitution, also extend to the independence of the CEC and ECs. However, S. 16 of the Act conflates the objective of independence of the CEC and ECs by providing them blanket immunity, which would even protect any instance of uncanalised power exercised by the CEC and ECs by leaving the voter without any remedy.

7. Nature and extent of personal interest, if any, of the

Petitioner: The Petitioner have no personal interest in this Petition. The motivation behind filing this Petition stems solely from the Petitioner’s concern for the public interest.

8. Details of litigation: The Petitioner is not involved in any civil, criminal, or revenue litigation that has or could have a legal connection to the issues addressed in this Public Interest Litigation.

9. Whether concerned authority was moved for reliefs sought

for: The Petitioner has exhausted all remedies with regard to the matter and has not been able to achieve any effective resolution for the cause.

10. No personal gain, private motive, or oblique reasons in PIL:

The Petitioner is solely motivated by public interest. The Petitioner

has no personal gain, private motive, or hidden agenda for filing this PIL. This affirmation is also stated in the accompanying affidavit.

11. The Facts that give rise to the present petition are as follows:

11.1. In 1991, Parliament enacted the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 (Act No. 11 of 1991) (“**the 1991 Act**”) (now repealed) governing the conditions of service of the CEC and ECs and the transaction of business of the Commission. The 1991 Act did not contain any provision granting immunity from civil or criminal proceedings to the CEC or ECs. A true copy of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 dated nil is annexed herewith and marked as **ANNEXURE P-1 (Page Nos. 16 to 19).**

11.2. On 02.03.2023, a Constitution Bench of this Hon’ble Court in *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161, emphasised the need for the independence of the Election Commission and directed that, until Parliament makes a law, the CEC and ECs be appointed by the President on the advice of a committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and the Chief Justice of India.

11.3. On 04.08.2023, the Minister of Law and Justice signed the Statement of Objects and Reasons for the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023 (the “**Bill**”). Paragraph 3 of the Statement states that the Bill provides for (a) definitions; (b) appointment, qualifications, Search Committee, Selection Committee, term of office, salary,

resignation and removal, leave, pension, etc.; and (c) transaction and disposal of business of the Election Commission. It makes no reference to any protection or immunity from legal proceedings. The Financial Memorandum stated that the Bill did not involve any expenditure from the Consolidated Fund of India. A true copy of the statement of Objects and Reasons for the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023 dated 04.08.2023 is annexed herewith and marked as herewith and marked as **ANNEXURE P-2 (Page No. 20).**

11.4. On 09.08.2023, the Rajya Sabha issued Errata correcting two typographical errors. A true copy of the Rajya Sabha Errata issued on 09.08.2023 is annexed herewith and marked as **ANNEXURE P-3 (Page No. 21).**

11.5. On 10.08.2023, the Bill was introduced in the Rajya Sabha as Bill No. LVII of 2023. The Bill as introduced contained twenty clauses. Clause 6 provided for a Search Committee headed by the Cabinet Secretary. Clause 10 equated the salary, allowances and conditions of service of the CEC and ECs with those of the Cabinet Secretary. Clause 15 extended the other conditions of service of the Cabinet Secretary to them. Chapter III ended with Clause 15, and Chapter IV on transaction of business began at Clause 16. The Bill as introduced contained no clause granting protection or immunity from civil or criminal proceedings. A true copy of the Bill No. LVII of 2023 as introduced, in the Rajya Sabha dated 10.08.2023 is annexed herewith and marked as **ANNEXURE P-4 (Page Nos. 22 to 29).**

11.6. On 11.12.2023, the Rajya Sabha issued a Corrigendum substituting the Financial Memorandum to state that the salary and allowances under Clause 10 would be met from the budgetary allocation of the Election Commission of India. No revised or supplementary Statement of Objects and Reasons was issued to explain any new provision (Section 16). A true copy of the Corrigendum dated 11.12.2023 is annexed herewith and marked as **ANNEXURE P-5 (Page No. 30).**

11.7. On the same day, 11.12.2023, the Rajya Sabha circulated the Notice of Amendments (List No. 6), by which the Minister of Law and Justice proposed official amendments to the Bill. Amendment No. 39 proposed the insertion of a new Clause 15A headed “Protection of Chief Election Commissioner and other Election Commissioners”. A true copy of the Notice of Amendments, List No. 6 dated 11.12.2023 is annexed herewith and marked as **ANNEXURE P-6 (Page Nos. 31 to 33).**

11.8. On 12.12.2023, the Rajya Sabha took up the Bill for consideration and passing. The official amendments, including new Clause 15A, were adopted, and the Bill was passed by voice vote. Notably, the Bill as passed by the Rajya Sabha (Bill No. LVII-C of 2023) differs from the Bill as introduced in the following material respects with the insertion of the new clause, Section 16, which confers protection in favour of present or past CECs and ECs from civil and criminal proceedings. A true copy of the Bill No. LVII-C of 2023 passed by Rajya Sabha on 12.12.2023 is annexed herewith and marked as **ANNEXURE P-7 (Page Nos. 34 to 39).**

11.9. In his opening remarks, the Minister of State for Law and Justice listed the official amendments to Clauses 6, 10 and 15, and referred to new Clause 15A in a single sentence. He stated,

in Hindi, that if a CEC or EC carries out any proceeding while performing his duty, no action can be taken against him in any court in such matters. None of the speeches in the debate addresses Clause 15A. The motions for reference of the Bill to a Select Committee were negatived. A true copy of extracts of the Rajya Sabha debate dated 12.12.2023 is annexed herewith and marked as **ANNEXURE P-8 (Page Nos. 40 to 132).**

11.10. On 21.12.2023, the Lok Sabha took up the Bill, as passed by the Rajya Sabha, at 12.10 hrs. The Minister again described Clause 15A orally as a protection for acts done by the CEC and ECs while performing their duty. Shri Asaduddin Owaisi was the only Member to object to the immunity. He described it as a blanket immunity and asked why the higher judiciary should not be able to hold the CEC and ECs accountable even for a patently illegal act. The Minister did not respond to this objection yet asserted that all points raised had been answered. The Lok Sabha passed the Bill, without amendment, by voice vote. At the time of its passage, 100 out of 543 Lok Sabha members were under suspension and, therefore, did not participate in the legislative process. This is significant, as nearly one-fifth of the House was absent during the passage of this constitutionally significant Bill. A true copy of the extracts from the Lok Sabha 14th Session dated 21.12.2023 is annexed herewith and marked as **ANNEXURE P-9 (Page Nos. 133 to 196).**

11.11. On 28.12.2023, the Bill received the assent of the President and was enacted as Act No. 49 of 2023. Clause 15A is Section 16 of the Act and is placed in Chapter III, titled “Salary, Allowances and Other Conditions of Service”. Section 16 reads:

“16. Notwithstanding anything contained in any other law for the time being in force, no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official duty or function.”

A true copy of the Bill as passed by both Houses of Parliament and assented to on 28.12.2023 (Bill No. LVII-F of 2023; Act No. 49 of 2023 annexed herewith and marked as **ANNEXURE P-10 (Page Nos. 197 to 203).**

11.12. On 02.01.2024, the Act was brought into force and on 14.03.2024, two ECs were appointed under the new Act.

12. Hence, this writ petition is in the public interest on the following grounds:

GROUND

- A. Because Section 16 bars "*any Court*" from entertaining or continuing "*any civil or criminal proceedings*", it grants complete immunity, lifelong in duration and covering every act, thing or word of a present or former CEC or EC done or purportedly done in an official capacity. It is manifestly arbitrary and violates Article 14.
- B. Because the blanket protection or immunity is not tied to good faith, to the gravity of the act, or to any sanction or screening mechanism. It also has no saving clause. The words "*or purporting to act*" extend it beyond acts actually within official duty, so even acts that are ultra vires, mala fide or corrupt are protected, provided they are dressed up as official. The protection therefore shields the person, not the office.

- C. Because the impugned provision borrows its language from Section 3(1) of the Judges (Protection) Act, 1985 but omits Section 3(2), which preserves civil, criminal and departmental action against present and former Judges under any law for the time being in force. Section 16 borrows the shield and discards the safeguards that make it tolerable.
- D. Because Section 16 does not even qualify the acts done under 'good faith' to be protected but provides protection against acts irrespective of good faith. Section 16 removes even the sanction requirement and substitutes a total bar.
- E. Because CECs and ECs are the only constitutional functionaries who have been given immunity of this kind. There is no intelligible differentia between them and other constitutional functionaries, or between them and other public servants. The object of Section 16, as stated in the Rajya Sabha, was to enable them to discharge their functions independently. That object has no rational nexus with immunity that is lifelong and unconditional, and in particular with the extension to former CECs and ECs. A person who has demitted office is not exposed to any pressure that interferes with independent functioning. For that group, the classification has no purpose at all.
- F. Because in ***Subramanian Swamy v. CBI***, (Supra), this Hon'ble Court held that classification based on status or position in the hierarchy is impermissible for the purposes of inquiry and investigation under Article 14. Section 16 does the same thing, and more. It does not merely delay or screen a proceeding; it extinguishes the remedy and is contrary to the principle that no one is above the law.

- G. Because since independence, no such immunity has been given to the CEC or ECs. The repealed 1991 Act, which governed their conditions of service till the present Act came into force, had no provision similar to S. 16.
- H. Because independence of the CEC and ECs is secured by the constitutional guarantees provided under Article 324(5), namely security of tenure and removal on the same grounds as a Supreme Court Judge, together with non-executive interference in the appointment process as directed in ***Anoop Baranwal vs Union of India, (2023) 6 SCC 161***. It is not secured by placing the CEC and ECs beyond the reach of the courts. An authority that can never be held to account for a mala fide or corrupt act undermines the faith in elections that its independence is meant to protect.
- I. Because the bar extends to civil proceedings, a person who has suffered loss cannot even seek redressal. It also extends to criminal proceedings, so the State cannot prosecute offences, including corruption, even where there is prima facie material. The right of a victim, and the public interest in the investigation and prosecution of crime, are both wiped out.
- J. Because the Bill was passed in the Lok Sabha when 100 of 543 Members were under suspension (and 46 Members of the Rajya Sabha were suspended during the same period). It is manifest that a provision with serious constitutional consequences was passed without meaningful deliberation or opposition. This is a further indication that Parliament never applied its mind to the necessity, scope or proportionality of the immunity, and the Court should not validate such a provision and must strike it down.

- K. Because Section 16 insulates from accountability the very authority responsible for the integrity of the electoral process, which is the foundation of democracy. The interest of the voter and the confidence in the electoral process, and of the public in having an impartial and answerable Election Commission, are directly affected.
 - L. Because Section 16 violates Article 21 of the Constitution of India. A provision that bars "*any Court*" from entertaining or continuing "*any civil or criminal proceedings*", denies access to justice altogether to every person injured by an act of a present or former CEC or EC. This Hon'ble Court, in **Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509**, has recognized access to justice is a facet of the right to life and personal liberty granted under Article 21.
13. That petitioner has not filed any other petition in this Court or in any other Court praying similar relief.

PRAYERS

In the aforesaid premises and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

- a) Issue a writ of declaration or any other appropriate writ, order or direction declaring Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 to be unconstitutional, void and inoperative as violative of Articles 14 and 21 and the basic structure of the Constitution of India.
- b) Issue a writ of mandamus or any other writ, order or direction, reviving any proceedings against the present as well as the

previous Chief Election Commissioner and Election Commissioners that were brought to an end on coming into effect of Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

- c) Pass such other order(s), direction(s) or writ(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

**AND FOR ACT OF KINDNESS AND JUSTICE, THE PETITIONER
SHALL EVER PRAY AS IN DUTY BOUND**

FILED BY:



Ms. RANI MISHRA

ADVOCATE FOR THE PETITIONER

Drawn By;
Tushar Srivastava &
Akshaya Ganpath, Advocates

Settled By:
Mr. Gopal Sankaranarayanan,
Sr. Advocate

DRAWN ON: 09.10.2026

FILED ON: 10.10.2026

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ OF 2026

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC
REFORMS

...PETITIONER

VERSUS

UNION OF INDIA & ANR.

... RESPONDENTS

AFFIDAVIT

I, VIPUL MUDGAL S/o Shri Jai Kumar Mudgal aged about 66 years, Trustee of the Petitioner Organization, O/O Plot No. E-5, 4th Floor, Lane-1, Westend Marg, Saidulajab, New Delhi – 110030, do hereby solemnly affirm and declare as under:

1. That I am the Petitioner in the Writ Petition and well conversant with the facts and records of the case and therefore competent to swear this affidavit.
2. That I have read and understood the contents of the Synopsis and List of Dates (Pages B to H), Writ Petition (Pages 1 to 14), (Para 1 - 13) and I.A's and the contents of the same are true and correct to my knowledge and based on the records of the case. That there is no personal gain, private motive or oblique reason in filing the present Writ Petition in nature of PIL.
3. I further state that all the Annexures to this Writ Petition are true copies of their respective originals.

DEPONENT

VERIFICATION:

Verified at New Delhi on this 10th day of October, 2026, that the contents of paras 1 to 3 of the above affidavit are true to my knowledge as derived from the records of the case. Nothing material has been concealed therein.

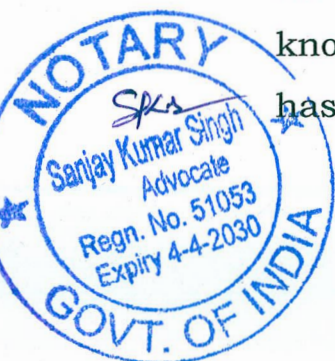
CERTIFIED THAT THE DEPONENT

S/o, W/o, P/o, Jai Kumar Mudgal
Plot No. E-5, 4th Floor, Westend Marg, Saidulajab, New Delhi - 110030
Identified by Shri/Smt. Self Rami Mishra
has solemnly affirmed before me
On 16.9.2026 at Plot No. 1694
that the contents of the affidavit are true & correct to his/her knowledge.

DEPONENT

10 OCT 2026

Rami Mishra
Self
I Identify the Executant/Deponent
who has Signed in my Presence



THE ELECTION COMMISSION (CONDITIONS OF SERVICE OF ELECTION
COMMISSIONERS AND TRANSACTION OF BUSINESS) ACT, 1991

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title.
2. Definitions.

CHAPTER II

SALARY AND OTHER CONDITIONS OF SERVICE OF THE CHIEF ELECTION
COMMISSIONER AND ELECTION COMMISSIONERS

3. Salary.
4. Term of office.
5. Leave.
6. Pension payable to Election Commissioners.
7. Right to subscribe to General Provident Fund.
8. Other conditions of service.

CHAPTER III

TRANSACTION OF BUSINESS OF ELECTION COMMISSION

9. Transaction of business of Election Commission.
10. Disposal of business by Election Commission.

²[THE ELECTION COMMISSION (CONDITIONS OF SERVICE OF ELECTION COMMISSIONERS AND TRANSACTION OF BUSINESS)] ACT, 1991

ACT NO. 11 OF 1991

[25th January, 1991.]

An Act to determine the conditions of service of the Chief Election Commissioner and other Election Commissioners ¹[and to provide for the procedure for transaction of business by the Election Commission and for matters] connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title.—This Act may be called ²[the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business)] Act, 1991.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “Chief Election Commissioner” means the Chief Election Commissioner appointed under articles 324 of the Constitution;

³[(b) “Election Commission” means the Election Commission referred to in article 324 of the Constitution;]

⁴[(c) “Election Commissioner” means any other Election Commissioner appointed under article 324 of the Constitution.

CHAPTER II

SALARY AND OTHER CONDITIONS OF SERVICE OF THE CHIEF ELECTION COMMISSIONER AND ELECTION COMMISSIONERS

3. Salary.—⁵***There shall be paid to the Chief Election Commissioner ⁶[and other Election Commissioners] a salary which is equal to the salary of a Judge of the Supreme Court:

⁷* * * * *

Provided that if a person who, immediately before the date of assuming office as the Chief Election Commissioner or, as the case maybe, an Election Commissioner, was in receipt of, or, being eligible so to do, had election to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, his salary in respect of service as the Chief Election Commissioner or, as the case may be, an Election Commissioner shall be reduced—

(a) by the amount of that pension; and

(b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

1. Subs by Act 4 of 1994, s. 2, for “and for matters” (w.e.f. 1-10-1993).

2. Subs by s. 3, *ibid.*, for “the Chief Election Commissioner and other Election Commissioners (Conditions of Service)” (w.e.f. 1-10-1993)

3. Ins. by s. 4, *ibid.* (w.e.f. 1-10-1993).

4. Clause (b) shall be re-lettered as clause (c) by s. 4, *ibid.* (w.e.f. 1-10-1993).

5. The brackets and figure “(1)” omitted by s. 5, *ibid.* (w.e.f. 1-10-1993).

6. Ins. by s. 5, *ibid.* (w.e.f. 1-10-1993).

7. Certain brackets, figure and words omitted by s. 5, *ibid.* (w.e.f. 1-10-1993).

4. Term of office.—The Chief Election Commissioner or an Election Commissioner shall hold office for a term of six years from the date on which he assumes his office:

¹[Provided that where the Chief Election Commissioner or an Election Commissioner attains the age of sixty-five years before the expiry of the said term of six years, he shall vacate his office on the date on which he attains the said age:]

Provided further that the Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office.

Explanation.—For the purpose of this section, the term of six years in respect of the Chief Election Commissioner or an Election Commissioner holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office.

5. Leave.—(1) A person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner, was in service of Government may be granted during his tenure of office but not thereafter, leave in accordance with the rules for the time being applicable to the Service to which he belonged before such date and he shall be entitled to carry forward the amount of leave standing at his credit on such date, notwithstanding any thing contained in section 6.

(2) Any other person who is appointed as the Chief Election Commissioner or an Election Commissioner may be granted leave in accordance with such rules as are for the time being applicable to a member of the Indian Administrative Service.

(3) The power to grant or refuse leave to the Chief Election Commissioner or an Election Commissioner and to revoke or curtail leave granted to him, shall vest in the President.

6. Pension payable to Election Commissioners.—(1) A person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner was in service of Government, shall be deemed to have retired from service on the date on which he enters upon office as the Chief Election Commissioner or an Election Commissioner but his subsequent service as the Chief Election Commissioner or an Election Commissioner shall be reckoned as continuing approved service counting for pension in Service to which he belonged.

(2) Where the Chief Election Commissioner ²[or an Election Commissioner] demits office [whether in any manner specified in ³[sub-section (3)] or by resignation], he shall, on such demission be entitled to—

(a) a pension which is equal to the pension payable to a Judge of the Supreme Court in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958), as amended from time to time; and

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of the Supreme Court under the said Act and the rules made thereunder, as amended from time to time.

⁴* * * * *

⁵[(3)]Except where the Chief Election Commissioner or an Election Commissioner demits office by resignation, he shall be deemed, for the purpose of this Act, to have demitted his office if, and only if,—

(a) he has completed the term of office specified in section 4, or

(b) he has attained the age of sixty-five years, ⁶*** or

(c) his demission of office is medically certified to be necessitated by ill-health.

1. Subs by Act 4 of 1994, s. 6, for the first proviso (w.e.f. 1-10-1993).

2. Ins. by s. 7, *ibid.* (w.e.f. 1-10-1993).

3. Subs by s. 7, *ibid.*, for “sub-section (4)” (w.e.f. 1-10-1993).

4. Sub-section (3) omitted by s. 7, *ibid.* (w.e.f. 1-10-1993).

5. Sub-section (4) shall be re-numbered as sub-section (3) by s. 7, *ibid.* (w.e.f. 1-10-1993).

6. The words “or as the case may be, sixty-two years,” omitted by s. 7, *ibid.* (w.e.f. 1-10-1993).

7. Right to subscribe to General Provident Fund.—Every person holding office as the Chief Election Commissioner or an Election Commissioner shall be entitled to subscribe to the General Provident Fund (Central Services).

8. Other conditions of service.—Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, provision of rent-free residence and exemption from payment of income-tax on the value of such rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and such other conditions of service as are, ¹[for the time being, applicable to a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958) and the rules made thereunder, shall, so far as may be, apply to the Chief Election Commissioner and other Election Commissioners].

²[CHAPTER III

TRANSACTION OF BUSINESS OF ELECTION COMMISSION

9. Transaction of business of Election Commission.—The business of the Election Commission shall be transacted in accordance with the provisions of this Act.

10. Disposal of business by Election Commission.—(1) The Election Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Chief Election Commissioner and other Election Commissioners.

(2) Save as provided in sub-section (1), all business of the Election Commission shall, as far as possible, be transacted unanimously.

(3) Subject to the provisions of sub-section (2), if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.]

1. Subs. by Act 4 of 1994, s. 8, for certain words (w.e.f. 1-10-1993).

2. Ins. by s. 9, *ibid.* (w.e.f. 1-10-1993).

STATEMENT OF OBJECTS AND REASONS

The matters regarding conditions of service of Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business of the Election Commission, etc., are presently governed by the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. The said Act do not contain provisions regarding the qualifications, search committee for preparing panel of persons for consideration and recommendation by the Selection Committee for appointment as Chief Election Commissioner (CEC) and other Election Commissioners (ECs) and other incidental provisions.

2. The Hon'ble Supreme Court in Writ Petition (Civil) No. 104 of 2015 (Anoop Baranwal Vs Union of India) declared that the appointment of CEC and ECs shall be made by the President on the basis of advice tendered by a Committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and in case, there is no such leader, the leader of the largest party in the opposition in Lok Sabha having the largest numerical strength; and the Chief Justice of India. It has been clarified in the aforesaid judgment that the said norm provided by the Supreme Court will continue to hold good till a law is made by the Parliament.

3. The proposed Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, *inter alia*, provides for—

(a) defining various expressions used in the Bill;

(b) appointment, qualifications, Search Committee, Selection Committee, term of office, salary, resignation and removal, leave, pension, etc., of the Chief Election Commissioner and other Election Commissioners; and

(c) transaction of business and disposal of business of the Election Commission.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 4th August, 2023.

ARJUN RAM MEGHWAL.

Rani Mishra
//TRUE COPY//

21
RAJYA SABHA

ANNEXURE P-3

E R R A T A

T O

**THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS
(APPOINTMENT, CONDITIONS OF SERVICE AND TERM OF OFFICE) BILL, 2023**

(To be/As introduced in the Rajya Sabha)

Sl. No.	Page No.	Line(s) No(s).	For	Read
1	4	11	“Election Commissioner”	“Election Commissioner,”
2	4	37	“business as also”	“business and also”

AUGUST 9, 2023
NEW DELHI.

Rani Mishra
//TRUE COPY//

AS INTRODUCED IN THE RAJYA SABHA
ON THE 10TH AUGUST, 2023

BILL No. LVII of 2023

**THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION
COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE
AND TERM OF OFFICE) BILL, 2023**

A

BILL

*to regulate the appointment, conditions of service and term of office of the Chief
Election Commissioner and other Election Commissioners, the procedure for
transaction of business by the Election Commission and for matters
connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as
follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the Chief Election Commissioner and other Election
Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023. Short title and
commencement.
- (2) It shall come into force on such date as the Central Government may, by notification
in the Official Gazette, appoint.
- 10 **2.** In this Act, unless the context otherwise requires,— Definitions.
- (a) "Chief Election Commissioner" means the Chief Election Commissioner
appointed under clause (2) of article 324 of the Constitution and in accordance with
this Act;

(b) "Election Commission" means the Election Commission referred to in clause (1) of article 324 of the Constitution;

(c) "Election Commissioner" means any other Election Commissioner appointed under clause (2) of article 324 of the Constitution and in accordance with this Act;

(d) "Search Committee" means the Search Committee for preparation of panel of persons for consideration for appointment as Chief Election Commissioner and other Election Commissioners; and 5

(e) "Selection Committee" means the Selection Committee that recommends appointment of Chief Election Commissioner and other Election Commissioners.

CHAPTER II

10

APPOINTMENT AND TERM OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

Election
Commission.

3. The Election Commission shall consist of—

(a) Chief Election Commissioner; and

(b) such number of other Election Commissioners as the President may fix from time to time. 15

Appointment
of Chief
Election
Commissioner
and other
Election
Commissioners.

4. The Chief Election Commissioner and other Election Commissioners shall be appointed by the President by warrant under his hand and seal.

Qualifications
of Chief
Election
Commissioner
and other
Election
Commissioners.

5. The Chief Election Commissioner and other Election Commissioners shall be appointed from amongst persons who are holding or have held a post equivalent to the rank of Secretary to the Government of India and shall be persons of integrity, who have knowledge of and experience in management and conduct of elections. 20

Search
Committee.

6. A Search Committee headed by the Cabinet Secretary and comprising of two other members not below the rank of Secretary to the Government of India, having knowledge and experience in matters relating to elections, shall prepare a panel of five persons for consideration of the Selection Committee, for appointment as the Chief Election Commissioner and other Election Commissioners. 25

Selection
Committee.

7. (1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of— 30

(a) the Prime Minister—Chairperson;

(b) the Leader of Opposition in the House of the People—Member;

(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition. 35

(2) The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of, the Selection Committee. 40

8. (1) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chief Election Commissioner or other Election Commissioners.

Power of Selection Committee to regulate its own procedure.

(2) The Selection Committee may also consider any other person than those included in the panel by the Search Committee.

5 9. (1) The Chief Election Commissioner and other Election Commissioners shall hold office for a term of six years from the date on which he assumes his office or till he attains the age of sixty-five years, whichever is earlier.

Term of office.

(2) The Chief Election Commissioner and other Election Commissioners shall not be eligible for re-appointment.

10 (3) Where an Election Commissioner is appointed as Chief Election Commissioner, his term of office shall not be more than six years in aggregate as the Election Commissioner and the Chief Election Commissioner.

CHAPTER III

SALARY, ALLOWANCES AND OTHER CONDITIONS OF SERVICE OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

15

10. (1) The salary, allowances and other conditions of service of the Chief Election Commissioner and other Election Commissioners shall be the same as those of the Cabinet Secretary:

Salary, etc.

20 Provided that the Salary, allowances and other conditions of service of the Chief Election Commissioner and other Election Commissioners, holding office immediately before the date of commencement of this Act shall not be varied to their disadvantage.

25 (2) If a person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner, was in receipt of, or being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Central Government or a State Government, his salary in respect of service as the Chief Election Commissioner or an Election Commissioner shall be reduced—

(a) by the amount of that pension; and

30 (b) if he had, before assuming office, received, *in lieu* of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

(3) The Chief Election Commissioner and other Election Commissioners shall be entitled to dearness allowance as may be admissible to Cabinet Secretary.

35 (4) The Chief Election Commissioner and other Election Commissioners shall be entitled to encashment of fifty per cent. of earned leave to his credit at the time of completion of tenure.

40 (5) Where the Chief Election Commissioner or an Election Commissioner had retired from the service of the Central Government or a State Government prior to appointment as such, the aggregate period for which the encashment of unutilised earned leave he shall be entitled, shall be subject to a maximum period as admissible to the Cabinet Secretary.

11. (1) The Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office.

Resignation and removal.

45 (2) The Chief Election Commissioner and other Election Commissioners shall not be removed except in accordance with the provisions contained in the first and second provisos respectively of clause (5) of article 324 of the Constitution.

Leave.	12. (1) The Chief Election Commissioner or an Election Commissioner may be granted leave in accordance with the rules for the time being applicable to the service to which he belonged before the date of his appointment and he shall be entitled to carry forward the leave standing at his credit on such date, irrespective of the provisions contained in section 13. 5 (2) The power to grant or refuse leave to the Chief Election Commissioner or an Election Commissioner and to revoke or curtail leave granted to him, shall vest in the President.
Pension.	13. (1) Where the Chief Election Commissioner or an Election Commissioner was in service of Government, he shall be deemed to have retired from the service on the date on which he enters upon office as the Chief Election Commissioner or an Election Commissioner, as the case may be. 10 (2) The Chief Election Commissioner or other Election Commissioners who at the time of his appointment as such, was in service of the Central Government or a State Government, shall at his option to be exercised within a period of six months from the date of such appointment, be entitled to draw his pension and other retirement benefits under the rules applicable to the service to which he belonged, with effect from the date of his appointment as the Chief Election Commissioner or other Election Commissioner. 15 (3) Except where the Chief Election Commissioner or an Election Commissioner demits office by resignation, he shall be deemed, for the purposes of this Act, to have demitted his office only if,— 20 (a) he has completed the term of office specified in section 9; or (b) he has attained the age of sixty-five years; or (c) his demission of office is medically certified to be necessitated by ill-health.
Right to subscribe to General Provident Fund.	14. Every person holding office as the Chief Election Commissioner or an Election Commissioner shall be entitled to subscribe to the General Provident Fund under the General Provident Fund (Central Services) Rules, 1960. 25
Other conditions of service.	15. Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, medical facilities, leave travel concession, conveyance facilities, and such other conditions of service as are, for the time being, applicable to the Cabinet Secretary, shall be applicable to the Chief Election Commissioner and other Election Commissioners. 30

CHAPTER IV

TRANSACTION OF BUSINESS OF ELECTION COMMISSION

Transaction of business.	16. The business of the Election Commission shall be transacted in accordance with the provisions of this Act. 35
Disposal of business.	17. (1) The Election Commission may, by unanimous decision, regulate the procedure for transaction of its business and also allocation of its business amongst the Chief Election Commissioner and other Election Commissioners. (2) All business of the Election Commission shall, as far as possible, be transacted unanimously, and if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority. 40

CHAPTER V

MISCELLANEOUS

18. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, within a period of five years from the date of commencement of this Act, by order not inconsistent with the provisions of this Act, remove the difficulty.

Power to
remove
difficulties.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

19. Every order made under section 18 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order, or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

Laying.

20. (1) The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 is hereby repealed.

Repeal and
saving.

(2) Anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

The matters regarding conditions of service of Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business of the Election Commission, etc., are presently governed by the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. The said Act do not contain provisions regarding the qualifications, search committee for preparing panel of persons for consideration and recommendation by the Selection Committee for appointment as Chief Election Commissioner (CEC) and other Election Commissioners (ECs) and other incidental provisions.

2. The Hon'ble Supreme Court in Writ Petition (Civil) No. 104 of 2015 (Anoop Baranwal Vs Union of India) declared that the appointment of CEC and ECs shall be made by the President on the basis of advice tendered by a Committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and in case, there is no such leader, the leader of the largest party in the opposition in Lok Sabha having the largest numerical strength; and the Chief Justice of India. It has been clarified in the aforesaid judgment that the said norm provided by the Supreme Court will continue to hold good till a law is made by the Parliament.

3. The proposed Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, *inter alia*, provides for—

(a) defining various expressions used in the Bill;

(b) appointment, qualifications, Search Committee, Selection Committee, term of office, salary, resignation and removal, leave, pension, etc., of the Chief Election Commissioner and other Election Commissioners; and

(c) transaction of business and disposal of business of the Election Commission.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 4th August, 2023.

ARJUN RAM MEGHWAL.

FINANCIAL MEMORANDUM

The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, if enacted, is not likely to involve any expenditure either recurring or non-recurring, from and out of the Consolidated Fund of India.

RAJYASABHA

A

BILL

to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto.

(Shri Arjun Ram Meghwal, Minister of State (I/C) for Law & Justice and Minister of State of Parliamentary Affairs and Culture)

MGIPMRND—256RS—8.8.2023

Rani Mishra
//TRUE COPY//

RAJYA SABHA
C O R R I G E N D U M

T O

**THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION
COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE AND TERM OF
OFFICE) BILL, 2023**

(As introduced in the Rajya Sabha)

At page 7, **for** the Financial Memorandum, the following shall be **substituted**, namely:

“FINANCIAL MEMORANDUM

Clause 10 of the Bill provides for salary, allowances and other condition of service of the Chief Election Commissioner and other Election Commissioners and the same shall be met from the Budgetary allocation of the Election Commission of India.

2. The Bill if enacted and brought into operation would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

NEW DELHI
December 11th, 2023


//TRUE COPY//

LIST NO. 6

RAJYA SABHA
NOTICE OF AMENDMENTS
THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION
COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE AND
TERM OF OFFICE) BILL, 2023
(As introduced in the Rajya Sabha)
[To be moved at a sitting of the Rajya Sabha]

CLAUSE 6

BY SHRI ARJUN RAM MEGHWAL:

33. That at page 2, for lines 23 to 25, the following be substituted, namely:-

“6. A Search Committee headed by the Minister of Law and Justice and comprising of two other members not below the rank of Secretary to the Government of India, shall prepare a panel of five persons for”.

CLAUSE 10

BY SHRI ARJUN RAM MEGHWAL:

34. That at page 3, for lines 16 to 18, the following be substituted, namely:-

“10. (1) The Chief Election Commissioner and other Election Commissioners shall be paid a salary which is equal to the salary of a Judge of the Supreme Court.”.

35. That at page 3, line 33, for the words “Cabinet Secretary”, the words “Judge of the Supreme Court” be substituted.

36. That at page 3, line 40, for the words “to the Cabinet Secretary”, the words “in accordance with the rules for the time being applicable to the service to which he belonged before his appointment as Chief Election Commissioner or an Election Commissioner” be substituted.

CLAUSE 11**BY SHRI ARJUN RAM MEGHWAL:**

37. That at page 2, **for** lines 43 to 45, the following be **substituted**, namely:-

“(2) The 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.

(3) The other Election Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.”.

CLAUSE 15**BY SHRI ARJUN RAM MEGHWAL:**

38. That at page 4, **for** lines 28 to 31, the following be **substituted**, namely:-

“15. Save as otherwise provided in this Act, the President may by rules determine the conditions of service relating to travelling allowance, medical facilities, leave travel concession, conveyance facilities, and such other conditions of service relating to the Chief Election Commissioner and other Election Commissioners.”.

Other conditions
of service.

NEW CLAUSE 15A**BY SHRI ARJUN RAM MEGHWAL:**

39. That at page 4, **after** line 31, the following be **inserted**, namely:-

“15A. Notwithstanding anything contained in any other law for the time being in force, no court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official duty or function.”.

Protection of
Chief Election
Commissioner
and other
Election
Commissioners.

CLAUSE 19**BY SHRI ARJUN RAM MEGHWAL:**

40. That at page 5, line 8, **for** the words “order made under section 18”, the words “rule and order made under this Act” be **substituted**.
41. That at page 5, line 12, **for** the word “order”, the words “rule or order” be **substituted**.
42. That at page 5, line 13, **for** the word “order”, wherever it occurs, the words “rule or order” be **substituted**.
43. That at page 5, line 16, **for** the word “order”, the words “rule or order” be **substituted**.

New Delhi;
11th December, 2023.

P.C.Mody,
Secretary-General


//TRUE COPY//

AS PASSED BY THE RAJYA SABHA
ON 12TH DECEMBER 2023

Bill No. LVII-C of 2023

THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION
COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE
AND TERM OF OFFICE) BILL, 2023

(AS PASSED BY THE RAJYA SABHA)

A

BILL

*to regulate the appointment, conditions of service and term of office of the Chief
Election Commissioner and other Election Commissioners, the procedure for
transaction of business by the Election Commission and for matters connected
therewith or incidental thereto.*

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as
follows:—

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Chief Election Commissioner and other Election
Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by
notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Chief Election Commissioner" means the Chief Election Commissioner appointed under clause (2) of article 324 of the Constitution and in accordance with this Act;

(b) "Election Commission" means the Election Commission referred to in clause (1) of article 324 of the Constitution; 5

(c) "Election Commissioner" means any other Election Commissioner appointed under clause (2) of article 324 of the Constitution and in accordance with this Act;

(d) "Search Committee" means the Search Committee for preparation of panel of persons for consideration for appointment as Chief Election Commissioner and other Election Commissioners; and 10

(e) "Selection Committee" means the Selection Committee that recommends appointment of Chief Election Commissioner and other Election Commissioners.

CHAPTER II

15

APPOINTMENT AND TERM OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

Election
Commission.

3. The Election Commission shall consist of—

(a) Chief Election Commissioner; and

(b) such number of other Election Commissioners as the President may fix from time to time. 20

Appointment
of Chief
Election
Commissioner
and other
Election
Commissioners.

4. The Chief Election Commissioner and other Election Commissioners shall be appointed by the President by warrant under his hand and seal.

Qualifications
of Chief
Election
Commissioner
and other
Election
Commissioners.

5. The Chief Election Commissioner and other Election Commissioners shall be appointed from amongst persons who are holding or have held a post equivalent to the rank of Secretary to the Government of India and shall be persons of integrity, who have knowledge of and experience in management and conduct of elections. 25

Search
Committee.

6. A Search Committee headed by the Minister of Law and Justice and comprising two other members not below the rank of Secretary to the Government of India, shall prepare a panel of five persons for consideration of the Selection Committee, for appointment as the Chief Election Commissioner and other Election Commissioners. 30

Selection
Committee.

7. (1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of— 35

(a) the Prime Minister—Chairperson;

(b) the Leader of Opposition in the House of the People—Member;

(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the 40

Government in the House of the People shall be deemed to be the Leader of Opposition.

(2) The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of, the Selection Committee.

8. (1) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chief Election Commissioner or other Election Commissioners.

Power of
Selection
Committee to
regulate its
own
procedure.

(2) The Selection Committee may also consider any other person than those included in the panel by the Search Committee.

9. (1) The Chief Election Commissioner and other Election Commissioners shall hold office for a term of six years from the date on which he assumes his office or till he attains the age of sixty-five years, whichever is earlier.

Term of office.

(2) The Chief Election Commissioner and other Election Commissioners shall not be eligible for re-appointment.

(3) Where an Election Commissioner is appointed as Chief Election Commissioner, his term of office shall not be more than six years in aggregate as the Election Commissioner and the Chief Election Commissioner.

CHAPTER III

SALARY, ALLOWANCES AND OTHER CONDITIONS OF SERVICE OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

10. (1) **The Chief Election Commissioner and other Election Commissioners shall be paid a salary which is equal to the salary of a Judge of the Supreme Court:**

Salary, etc.

Provided that the Salary, allowances and other conditions of service of the Chief Election Commissioner and other Election Commissioners, holding office immediately before the date of commencement of this Act shall not be varied to their disadvantage.

(2) If a person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner, was in receipt of, or being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Central Government or a State Government, his salary in respect of service as the Chief Election Commissioner or an Election Commissioner shall be reduced—

(a) by the amount of that pension; and

(b) if he had, before assuming office, received, *in lieu* of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

(3) The Chief Election Commissioner and other Election Commissioners shall be entitled to dearness allowance as may be admissible to Judge of the Supreme Court.

(4) The Chief Election Commissioner and other Election Commissioners shall be entitled to encashment of fifty per cent. of earned leave to his credit at the time of completion of tenure.

(5) Where the Chief Election Commissioner or an Election Commissioner had retired from the service of the Central Government or a State Government prior to appointment as such, the aggregate period for which the encashment of

unutilised earned leave he shall be entitled, shall be subject to a maximum period as admissible in accordance with the rules for the time being applicable to the service to which he belonged before his appointment as Chief Election Commissioner or an Election Commissioner.

Resignation
and removal.

11. (1) The Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office. 5

(2) The 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.

(3) The other Election Commissioners shall not be removed from office except on the recommendation of the Chief Election Commissioner. 10

Leave.

12. (1) The Chief Election Commissioner or an Election Commissioner may be granted leave in accordance with the rules for the time being applicable to the service to which he belonged before the date of his appointment and he shall be entitled to carry forward the leave standing at his credit on such date, irrespective of the provisions contained in section 13. 15

(2) The power to grant or refuse leave to the Chief Election Commissioner or an Election Commissioner and to revoke or curtail leave granted to him, shall vest in the President.

Pension.

13. (1) Where the Chief Election Commissioner or an Election Commissioner was in service of Government, he shall be deemed to have retired from the service on the date on which he enters upon office as the Chief Election Commissioner or an Election Commissioner, as the case may be. 20

(2) The Chief Election Commissioner or other Election Commissioners who at the time of his appointment as such, was in service of the Central Government or a State Government, shall at his option to be exercised within a period of six months from the date of such appointment, be entitled to draw his pension and other retirement benefits under the rules applicable to the service to which he belonged, with effect from the date of his appointment as the Chief Election Commissioner or other Election Commissioners. 25

(3) Except where the Chief Election Commissioner or an Election Commissioner demits office by resignation, he shall be deemed, for the purposes of this Act, to have demitted his office only if,— 30

(a) he has completed the term of office specified in section 9; or

(b) he has attained the age of sixty-five years; or

(c) his demission of office is medically certified to be necessitated by ill-health. 35

Right to
subscribe to
General
Provident
Fund.

14. Every person holding office as the Chief Election Commissioner or an Election Commissioner shall be entitled to subscribe to the General Provident Fund under the General Provident Fund (Central Services) Rules, 1960.

Other
conditions of
service.

15. Save as otherwise provided in this Act, the President may by rules determine the conditions of service relating to travelling allowance, medical facilities, leave travel concession, conveyance facilities, and such other conditions of service relating to the Chief Election Commissioner and other Election Commissioners. 40

16. Notwithstanding anything contained in any other law for the time being in force, no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official duty or function.

Protection of
Chief Election
Commissioner
and other
Election
Commissioners.

CHAPTER IV TRANSACTION OF BUSINESS OF ELECTION COMMISSION

17. The business of the Election Commission shall be transacted in accordance with the provisions of this Act.

Transaction
of business.

18. (1) The Election Commission may, by unanimous decision, regulate the procedure for transaction of its business and also allocation of its business amongst the Chief Election Commissioner and other Election Commissioners.

Disposal of
business.

(2) All business of the Election Commission shall, as far as possible, be transacted unanimously, and if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

CHAPTER V MISCELLANEOUS

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, within a period of five years from the date of commencement of this Act, by order not inconsistent with the provisions of this Act, remove the difficulty.

Power to
remove
difficulties.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

20. Every rule and order made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or order, or both Houses agree that the rule or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.

Laying.

21. (1) The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 is hereby repealed.

Repeal and
saving.

(2) Anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

10 of 1897.

RAJYA SABHA

A
BILL

to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto.

(As passed by the Rajya Sabha)

Rani Mishra
//TRUE COPY//

RECOMMENDATIONS OF THE BUSINESS ADVISORY COMMITTEE

MR. CHAIRMAN: I have to inform the hon. Members that the Business Advisory Committee, in its meeting held today, that is, on 12th December, 2023, has allotted time for Government Legislative Business as follows:

Consideration and passing of the following Bills, after these are introduced, considered and passed by Lok Sabha:

(i) The Bhartiya Nyaya (Second) Sanhita, 2023	15 hours
(ii) The Bhartiya Nagarik Suraksha (Second) Sanhita, 2023	(To be discussed together)
(iii) The Bhartiya Sakshya (Second) Bill, 2023	
(iv) The Jammu & Kashmir Reorganisation (Second Amendment) Bill, 2023.	2 hours
(v) The Government of Union Territories (Amendment) Bill, 2023	2 hours
(vi) The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Bill, 2023	3 hours

GOVERNMENT BILL

The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023

&

Amendments for reference of the Bill to a Select Committee of the Rajya Sabha

MR. CHAIRMAN: Shri Arjun Ram Meghwal to move a motion for consideration of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023.

THE MINISTER OF STATE OF THE MINISTRY OF LAW AND JUSTICE; THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS; AND THE MINISTER OF STATE IN THE MINISTRY OF CULTURE (SHRI ARJUN RAM MEGHWAL): Sir, I move:

That the Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental hereto, be taken into consideration.

MR. CHAIRMAN: There are two amendments by Dr. John Brittas and Dr. V. Sivadasan for reference of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023 to a Select Committee of Rajya Sabha. The Members may move the Amendments at this stage without speech.

DR. JOHN BRITTAS (Kerala): Sir, I move:

"That the Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commissioner and for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following Members:

1. Shri Bikash Ranjan Bhattacharyya
2. Dr. John Brittas
3. Prof. Manoj Kumar Jha
4. Shri Elamaram Kareem
5. Shri Jose K. Mani
6. Shri A. A. Rahim
7. Shri Tiruchi Siva
8. Dr. V. Sivadasan

with instructions to report by the last day of the first week of the next (263rd) Session of the Rajya Sabha".

DR. V. SIVADASAN (Kerala): Sir, I move:

"That the Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commissioner and for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following Members:

1. Shri Elamaram Kareem
2. Shri A. A. Rahim
3. Shri Sandosh Kumar P
4. Shri Binoy Viswam
5. Dr. John Brittas
6. Dr. V. Sivadasan

with instructions to report by the last day of the first week of the next (263rd) Session of the Rajya Sabha".

MR. CHAIRMAN: Motion for consideration of the Bill and the Amendments moved thereto are now open for discussion. I now call upon the Members whose names have been received for participation in the discussion. Shri Randeep Singh Surjewala; you have twenty one minutes.

The questions were proposed.

SHRI ARJUN RAM MEGHWAL: Sir, I want to say something, if you permit. ...*(Interruptions)*...

MR. CHAIRMAN: Do you want to make initial comments?

ONE HONORABLE MEMBER: Please speak in Hindi. ...*(Interruptions)*...

SHRI ARJUN RAM MEGHWA: Yes, I will speak in Hindi. ...*(Interruptions)*...

MR. CHAIRMAN: As Chairman, I tell everyone you have the freedom to speak in a language of your choice. One Member has no jurisdiction to direct another Member to speak in a particular language. Our commitment to a particular language may be too deep-rooted. So, Randeepji, let the hon. Minister make some observations.

SHRI ARJUN RAM MEGHWAL: Chairman Sir, this Bill was introduced in this House on 10 August 2023 by replacing the 1991 Act. Everything else in the 1991 Act was fine, but there was no provision for appointment, there was no clause for appointment. As you know, on 2 March 2023, while hearing the PIL, the Supreme Court gave a verdict, '...until the Parliament makes a law in consonance with Article 324(2) of the Constitution,' so in pursuance of that verdict, the Government has brought this Bill.

MR. CHAIRMAN: What did the Supreme Court direct?

SHRI ARJUN RAM MEGHWAL: The Supreme Court has said, 'until the Parliament makes a law..' Once the discussion is over, I will come to other things. ...*(Interruptions)*... The crux of this is that '...until the Parliament makes a law in consonance with Article 324(2).' Article 324(2) of our Constitution says that Parliament should make an Act regarding appointments, whereas we did not have an Act earlier. Although an Act was made in 1991, appointments were missing in it. There were three-four observations of the Supreme Court and we have brought this Bill under Article 324(2). There is also an official amendment in it. Till now the process was that the Government would decide the names and appointments were made, but now its search committee has also been constituted, selection committee has also been constituted, the issue of salary has also come up in it, there is also protection in it. In the official amendment that we are bringing now, three or four things are very important. The Bill which was introduced on August 10 also has an official amendment in Clause 6 of the search committee, which I will move later. There is also an amendment regarding salary in its Clause 10. There is also an amendment regarding the condition of service in its Clause 15. Then, we have also inserted a clause 15(A) which is related to protection. If a Chief Election Commissioner and Election Commissioner carry out any proceedings while performing their duty, then action cannot be taken against them in any court in such cases. It is related to this protection.

Sir, there are such provisions, so I want the House to discuss it. After that, I will try to respond to the suggestions that will come after that, as you allow me, thank you.

SHRI RANDEEP SINGH SURJEWALA (Rajasthan): Chairman Sir, Hon'ble Minister said that the Supreme Court has given many observations, which he will discuss later, okay. The base of the Election Commission is the purity of democracy, the impartiality of democracy. The constitution and democracy is the basis of fair elections and the agency to conduct fair elections is the Election Commission. Whenever you talk about the Election Commission, these four words - impartiality, fearlessness, autonomy and purity will definitely come to your mind. Sir, you are the Chairman of this House and a jurist too, a capable lawyer of the Supreme Court. These four words will also come to the mind of any person in this country of 140 crore people. This law, which the Hon'ble Minister and the Government have brought today, is a law that crushes these four words under a bulldozer, this is my humble request.

Chairman Sir, before I discuss the provisions of this Bill, which is also called Independence of Election and avoidance of interference of Executive in English. Our election machinery will be inspired by these two things which were said by the makers of our constitution. I wish, if the Hon'ble Law Minister had taken a look not at my, your and the people of this country's fears but at what Baba Saheb Ambedkar had said and the discussion that took place in the Constituent Assembly, then perhaps he would have withdrawn this law right now or would not have made it at all or would not have brought it at all.

Chairman Sir, with your permission I would like to read out a few words of what Baba Saheb had said about the electoral machinery. On 15 June 1949, a discussion was held in the Constituent Assembly on the Election Commission and electoral machinery, the Election Commission, the purity and autonomy of democracy. Two other members said very important things, I will draw your attention to them, but I would like to read out what Baba Saheb said. And, I quote, 'In a very early stage in the proceedings of the Constituent Assembly, a committee was appointed to deal with what are called Fundamental Rights...' — this is what Baba saheb was saying — ...'That Committee made a Report that it should be recognized that the independence of elections and avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the Chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that, while there was no objection to regard this matter as a fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But, the House affirmed, without any kind of dissent, that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day.' This is what Babasaheb said. And, I quote Babasaheb Ambedkar further. He said, 'Therefore, so far as the fundamental question is concerned, the election machinery should be outside the control of the executive Government. There has been no dispute. What Article 289...' — today it is commensurate to Article 324 — '...does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of elections to Parliament and the Legislatures of the States to a body outside the executive to be called the Election Commission.' That is what Babasaheb said.

And, Sir, not only Babasaheb Ambedkar, he was reacting to what two other Members were saying and I would like to quote two lines from what was said by two Members of the Constituent Assembly. One was Prof. Shibban Lal Saxena and I

quote him, Sir. He said, 'It is quite possible that some party in power who wants to win next elections may appoint a staunch party man as Chief Commissioner.' I also quote Pandit Hridaynath Kunzru. I quote, 'We are going in for democracy based on adult franchise. It is necessary, therefore, that every possible step should be taken to ensure the fair working of the electoral machinery. If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be dependent upon, democracy will be poison at the source, nay people. Instead of learning from elections how they should exercise their vote, how by judicious use of their vote, they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want.' In this context, Babasaheb Said and I quote, 'That electoral machinery has to be necessarily independent and it has to be necessarily outside the interference of the executive.' These were the two fundamentals on which the Constituent Assembly was unanimous. The Constituent Assembly was also unanimous that a fair and free election, bereft of the interference of the ruling Executive, is a fundamental right. Though not included, yet the entire spirit of the Constituent Assembly was this. I ask myself. Sir, I ask myself, this House and every person who is listening to this and when I ask myself this question whether the law brought by the Minister fulfils the criteria of what Baba Saheb, the Constituent Assembly and the Constituent Assembly had said with one voice, one vote, without any pretense, without any political malice, does it meet that criterion? I have to say that it falls flat on its face. Let me now bring your kind attention to the provisions of the Bill. As also the fact that hon. Minister says that there are just some observations of the Supreme Court, If you look at this law, look at this Bill, which the Minister has brought, then I would like to draw attention to it. One of my Hon'ble colleagues has also given an amendment on Clause 7. Now who will appoint the Chief Election Commissioner and Election Commissioners? Hon'ble Minister, according to the draft of the law that has been brought, the Hon'ble Prime Minister will be the Chairperson of that committee, the Leader of Opposition will be a member. A Union Cabinet Minister, whoever the Prime Minister will identify, will be a member. Which means the Prime Minister and one of his Ministers, who will be identified as per his wish, there will be a majority of those two people. What did the Supreme Court say about it? I will draw the attention of the Hon'ble Minister through you. I would like to read out eight lines of what the Supreme Court said in about 230 pages in the decision of Anoop Barnwal on March 2, 2023 in this House. He said in paragraph 9, I quote, "The Executive alone being involved in the appointment ensures that the Commission becomes and remains, a partisan body and a branch of the Executive. The

independence of the Commission is intimately interlinked with the process of appointment". Now, I quote paragraph 165, "The Election Commissioners, including the Chief Election Commissioners, blessed with nearly infinite powers, and who are to abide by the fundamental rights, must be chosen not by the Executive exclusively and particularly without any objective yardstick." Sir, two things were said. First, the executive cannot exclusively appoint the Chief Election Commissioner and the Election Commissioner. Second, it cannot be done without an objective yardstick. The court also questioned in the same paragraph. I quote, "An Election Commission, which does not ensure free and fair polls as per the rules of the game, guarantees the breakdown of the foundations of the rule of law". Means, it will end the rule of law. An Election Commission which is not impartial, which is being appointed by the Executive or it is not free from the interference of the Executive. I further quote, "Equally the sterling qualities which we have described, which must be possessed by an Election Commission, are indispensable for an unquestionable adherence to the guarantee of equality in Article 14". Two things are clear in the judgment of 230 pages. Number one, the CEC and the EC must be at arms' length from the Government. Number two, the process has to be beyond influence or under the dictate of the Executive of the day. Exactly what *Baba Saheb* had said, exactly what the Constituent Assembly had said was reiterated, was reaffirmed by none less than the Supreme Court Judgement to which the learned Minister is referring to. May I say, Sir, that Clause 7

* ... I am deliberately using that word; I hope it is not unparliamentary, Sir. I am subject to correction.

MR. CHAIRMAN: But, surely, there could be another word.

SHRI RANDEEP SINGH SUJEWALA: Yes. It violates and negates the rigours and the affirmation by the Constituent Assembly, by Babasaheb Ambedkar, by other individuals and hon. Members of the Constituent Assembly; it goes against the very spirit of the Constitution that is enshrined in Article 14; it completely negates and subjugates the Election Commission to the authority of the Executive; and it does away with, may I respectfully say, willingly, -- if I may say 'maliciously' -- the judgement of the Supreme Court *in toto*. That is why this law is *per se* like a still-born child.

Thirdly, I also want to point out, Sir, As the Hon'ble Supreme Court has said, Article 14, which is part of our Fundamental Right, which is the biggest way to curb

* Withdrawn by the hon. Member

the unbridled activities of those in power, this entire law is against the letter and spirit of Article 14 and, therefore, is a violation of the Fundamental Rights. Chairman Sir, the Appointments Committee is now an empty formality, if I may use that word. What is an Appointment Committee? There is the Hon'ble Prime Minister and there is one more Minister nominated by the Hon'ble Prime Minister. Since I am from a village background and so are you, there is a proverb in villages,

"Andha baante revri, mud mud apne ko de."

If Prime Minister and his Minister are going to be the majority in the committee, then, why have the committee? Let the Prime Minister appoint everybody. Why even have this law? It is an empty formality.

Then, Sir, the Supreme Court said, the Constituent Assembly said, the first Law Minister of the country, Babasaheb Ambedkar, said that the ruling regime's two nominees make the entire process ineffective, negatory and redundant. This is what the Supreme Court also said. I want to quote those four lines from para 8 of that judgement. In fact, he went a step ahead and said there is no difference between the Election Commission and the Judiciary. I quote, Sir: "Like the Judiciary, the Election Commission must display fearless independence. In the absence of norms regarding the appointments, a central norm, that is, institutional integrity, is adversely affected. An independent appointment mechanism would guarantee eschewing of even the prospect of bias." Sir, this is what the Supreme Court said, this is what the framers of the Constitution said and this is what this Government is afraid of. I am saying it with a sense of responsibility, for they do not want an independent Election Commission, CEC and EC, they want a pocket borough. They want a pocket Election Commission. This law will form a pocket Election Commission, you will take the Election Commission out of your pocket and it will do whatever you want to do with democracy. This is the final meaning of this law. It will be a pick or choose formula. Sir, may I respectfully also say that it does not pass any kind of constitutional muster. We have to be aware. This is an august House. After all, we have to be aware as to what we are doing or saying and what we are passing. This is manifestly arbitrary. These are ill-conceived attempts. This law is an ill-conceived attempt at consolidating undue total executive control over the electoral body, that is, the Election Commission. The process is arbitrary, the intent is malicious and the result is disastrous, if I may say. That is what is going to happen, Sir, and I again want to take the liberty of last time quoting the Supreme Court where they said in Para 119 ...

MR. CHAIRMAN: Before that, let me remind the hon. Member, with highest respect to everyone, the Parliament is the sole repository of law-making, and this is wisdom of the Parliament. Neither the Executive nor the Judiciary nor any other body ...

SHRI RANDEEP SINGH SURJEWALA: Sir, my time may be stopped.

MR. CHAIRMAN: No; I am aware of that. Since majorly you have focussed on Supreme Court judgement as if the reflections therein have to bind us, I would expect the debate to rise to a very high level because this House, this Parliament, to the exclusion of any other entity, be it Executive or Judiciary, is supreme when it comes to law-making, and you are a part of it. Extra thirty seconds. Go ahead. ...*(Interruptions)*...

SHRI JAIRAM RAMESH (Karnataka): Sir, yesterday you were saying something else. ...*(Interruptions)*...

SHRI SYED NASIR HUSSAIN (Karnataka): Sir, yesterday you were talking about something else regarding the judgement of Hon'ble Supreme Court. ...*(Interruptions)*...

MR. CHAIRMAN: I am really surprised. ...*(Interruptions)*... I am really surprised, both of you. It is time we rise to some level, at least. ...*(Interruptions)*... You represent a party that has a great history.

SHRI SYED NASIR HUSSAIN: Sir, yesterday you yourself said this. ...*(Interruptions)*...

MR. CHAIRMAN: What was that? Let the hon. Member rise and indicate what I spoke. Please rise. ...*(Interruptions)*... Take your seat. Indicate what I spoke. What did I say?

SHRI SYED NASIR HUSSAIN: Sir, yesterday, you said about the judgement of Hon'ble Supreme Court that when someone is quoting, then ...*(Interruptions)*...

MR. CHAIRMAN: Would you be good enough to quote me? ...*(Interruptions)*... Do it during the course of the day.

SHRI SYED NASIR HUSSAIN: Sir, I am doing it. You allow me. You are not allowing me.

MR. CHAIRMAN: Mr. Narsir Hussain, during the course of the day, go through the yesterday's proceedings of the House and put it on the Table that you rely on that. It is not a good habit. I am only making a plea to the Members that we are Parliament of one-sixth of humanity. We are supreme when it comes to law-making. We cannot suffer intervention from any other organ, be it Executive or Judiciary. That is what I am saying. Hon. Member may continue. ...*(Interruptions)*... Please take your seat. ...*(Interruptions)*... When your time comes ... *(Interruptions)*... Take your seat. Yes!

SHRI RANDEEP SINGH SURJEWALA: Mr. Chairman, Sir, let me begin by thanking you for your words of wisdom. You are much seasoned both in age and experience, both in law, as also, perhaps, in parliamentary practices. You have held many offices. But with all humility that I have, may I say, Sir? You are hundred per cent right that Parliament is the august body and is the over-arching body. It is the fountainhead of democracy. But even the fountainhead of democracy will have its sanctity when it does not commit arbitrary acts and passes arbitrary laws. The fountainhead of democracy must adhere to the very tenets of democracy out of which it is born. There is a power higher than us and that is democracy itself and the Constitution itself. We may not be the interpreters of Constitution, we are framers of law. It is the Constituent Assembly and the Parliament which continues to amend that Constitution which is enacted by the Constituent Assembly. But there is something called a higher spirit of democracy and an accountability to the constitutional norms. So, as I stand today here, and as I say what I say to my esteemed Minister who is very experienced and I place before you with all your wisdom and experience, I must say, I am conscious, I am duty-bound and I am answerable to that highest spirit of democracy and the Constitution which was enacted by this very Parliament, and that spirit of the Constitution and that spirit of democracy today tells me that a law is being brought which will tarnish, bulldoze and sabotage that very democracy and undermine the very constitutional practice that you and me and each one of us swear by.

That is my anguish today which I seek to place, through you, Sir, before this august House and the hon. Minister. The Supreme Court only interprets the Constitution. It is also the defender and protector of the Constitution. We have said that many times. May I remind you, Sir, that I did not quote the Supreme Court in the beginning. I am only responding to what the hon. Chair said to me. I began with the

words and wisdom of Babasaheb Ambedkar. I began with the wisdom of the Constituent Assembly, and this was the only issue -- independence of Election Commission, lack of interference from the political executive and an electoral machinery, which is answerable only and only to the tenets of democracy and fairness and equity. That is all that the Constituent Assembly was saying. We have seen and we have read through -- Sir, you have read through and I have read through -- many times the debates of the Constituent Assembly on many, many facets. I found -- please correct me because perhaps you have read the Constituent Assembly debates far more times than I have, but I have also done so -- that not even a single member of the Constituent Assembly disagreed that the fountainhead of democracy is fairness of the electoral process and independence of the election machinery. This was the only issue where the entire Constituent Assembly, irrespective of caste, colour, creed, religion, political differences, ideological differentiations, agreed. They were unanimous. That is all that I pointed out to the hon. Minister. That is why, Sir, I did not begin with the judgement of the Supreme Court. I said, the Supreme Court has only affirmed what was said by the Constituent Assembly. ...(*Time-bell rings.*)...

MR. CHAIRMAN: Please conclude.

SHRI RANDEEP SINGH SURJEWALA: Yes, Sir.

Sir, I also want to point out that the law and what the hon. Minister has brought, negates and ignores not one, not two, but the three committees on the subject, two of which were appointed by their Government. May I just quote from the Dinesh Goswami Committee on Electoral Reforms. Perhaps the Chair was also a Minister at that time in that Government. You were a Minister, and that Government was supported by the Bharatiya Janta Party then. I would like to quote from that Report.

MR. CHAIRMAN: It was supported by nearly the entire House except your Party.

SHRI RANDEEP SINGH SURJEWALA: Yes, Sir. What did that Report say? I am only saying that at least accept what you have said. I am saying this with folded hands. Please do not accept my words. Para 1.2 on page 9 of the Report says, "For CEC - appointed by the President in consultation with the Chief Justice, the Leader of the Opposition in Lok Sabha, and of course, the Leader of the largest Opposition group; for EC -- Chief Justice, the Leader of the Opposition and the CEC." This was the recommendation made. That has been ignored by the hon. Minister. Again, their own

Law Commission Report No. 255 on Electoral Reforms, 2015, headed by Justice A.P. Shah, may I remind the Minister, said... ...(*Time-bell rings.*)...

Sir, I will just take three minutes by the watch.

MR. CHAIRMAN: You are eating into the time of your Party only. Go ahead.

SHRI RANDEEP SINGH SURJEWALA: Sir, I don't think my Party has an objection. I am sure, the Chair has none either.

MR. CHAIRMAN: The total time allocation to your Party is 41 minutes. You have taken 24 minutes. Then, continue up to 41 minutes if they agree.

SHRI RANDEEP SINGH SURJEWALA: Okay, Sir.

Sir, I want to remind the Minister and quote para 6.12.5 of the Law Commission Report No. 255 of 2015, headed by Justice A.P. Shah. It says, "The appointment of all the Election Commissioners including the CEC should be made by the President in consultation with a three-member collegium or selection committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha or the Leader of the largest Opposition party in Lok Sabha and the Chief Justice of India". Minister Sir, when it came to accept the report of Law Commission, you should consider both these things^{*} which is the report of your Law Commission and your ...

MR. CHAIRMAN: Use some other word. * don't say this word.

SHRI RANDEEP SINGH SURJEWALA: I stand corrected.

MR. CHAIRMAN: He has unimpeachable credentials.

SHRI RANDEEP SINGH SURJEWALA: Very well, Sir. I concede it. My next short point is if you look at Clause 5 of the Bill carefully, there is a very unique thing in it. For the first time it has been decided that the Chief Election Commissioner and Election Commissioner cannot be any citizen of India, except one category. There is complete reservation now on who can be CEC and EC. He can either be a serving Secretary of the Government of India or a retired Secretary of the Government of India. That means you have done complete 100 per cent reservation forever. I just want to ask the

* Withdrawn by the hon. Member

Hon'ble Minister, Sir, if you were not the Chairman, could you not, as a jurist, be a CEC or EC? I believe such a person, and I am not talking about the competence of bureaucracy, but bureaucrats never contested the election of Sarpanch, nor contested the election of Panchayat Samiti, nor contested the election of Zila Parishad, nor contested the election of MLA, nor contested the election of MP nor contested the election of any cooperative society, so the election list and management of the election will be done by those who have never contested any election in their life. You have reserved it 100 per cent for them. One short point was that will you reconsider this?

Sir, I want to speak about one more short point. There is a search committee, regarding which the Hon'ble Minister has now brought an amendment in clause 6. This search committee is very unique and is completely different from all other such laws in India. If you look into it, earlier the Cabinet Secretary was its head, now the Hon'ble Minister himself has become its head. So, it is now headed by the Law Minister. We have no problem. But the Search Committee is now actually a steering committee. This steering committee will now eliminate candidates. Say, I also apply as former Secretary -- I am saying it hypothetically -- or a serving Secretary. They can eliminate any number of inconvenient people that they want. They will only select five people. For CVC or CBI Director, it is not so. The Search Committee puts up all the names. But here it is the steering committee. There is a village proverb that "*Ghar ki bahi kaka likhnia*". It is said in Rajasthan and Haryana, the search committee is the Law Minister and the Election Committee is the Prime Minister and its nominee is their Minister, then "*Ghar ki bahi kaka likhnia*", do whatever you want to do. पर It cannot be a steering committee that they have to restrict it to five people only. Why? Why not place everybody? I don't know why they want to do so. Clause 17 of this Bill runs contrary to Article 324(3). If you see Article 324(3), it says that the Chief Election Commissioner is the Chairperson of the Commission. The framers of the Constitution categorically recognise so. May I read just two lines?

MR. CHAIRMAN: Go ahead.

SHRI RANDEEP SINGH SURJEWALA: Article 324(3) says, "When any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission." Sir, whether he is the Chief Justice, he is the Prime Minister, he is the Chief Election Commissioner, they have to regulate the Election Commission, but now you have said that any decision, quasi judicial function, administrative function, daily functions, they will be decided by the majority,

that means Chairman Sir, tomorrow if hypothetically *Mantriji* is the CEC and I have to negate him, then I will appoint three more members and then I will say that you cannot sit on your chair in the office or you cannot sign any file or you cannot become a member of any quasi judicial authority, when the decision on the symbol will come to me. I find this strange. The procedure and conduct is always done. If I were to say, I am going to regulate the procedure of this House, you will say 'No, even Deputy Chairperson cannot do it; I am the Chairperson.'" So, the Chairperson, inherently, has the powers to regulate. But this Bill does not say so. In the end, I only want to say to the hon. Minister, through your good offices, one thing. There is an old saying of law and I want to reiterate it today. *Mantriji*, however high you may be; however powerful your Government may be; whatever may be the brute majority you may enjoy, the democracy and the Constitution is above you, and you cannot subjugate, bulldoze and trample over it. I also want to say that we, whatever may be our numbers as joint opposition of the INDIA Alliance, are the defenders of the Constitution of India. We are the defenders of the people of India. We are the champions of the voice of the voiceless and we will continue to do so. Sir, there was a time when this word 'E.C.' meant 'electoral credibility', but unfortunately now you have decided to make it 'E.C.' - 'elections compromised'. Don't do that. Pocket Election Commission will not work in this country. If you create a pocket Election Commission through this law, you will violate the purity, fearlessness, impartiality and autonomy of the Parliament, democracy and the constitution. Thank you, Sir.

SHRI JAIRAM RAMESH: Sir, just give me one minute. In the course of my colleague's speech, he referred to the Government that prevailed in 1990. You, in good spirit, good wit and good humour, said that that was a Government supported by all parties except your party.

MR. CHAIRMAN: I correct myself. Your party did not support us.

SHRI JAIRAM RAMESH: Yes, Sir. I want to remind you that also became your party three years later.

MR. CHAIRMAN: No; I told this House that I have been a Member of this party. I have good connections there. They need to reciprocate. I had been on this side also and I had been in NCP also, but Shri Jairam Ramesh will not change himself. He knows I made this statement earlier. All I need to indicate to the House is that when Shri Surjewala said, "We will defend", I would like to say that in togetherness, this

Parliament is the ultimate defender of the Constitution, ultimate architect of the Constitution and if anyone seeks to change the architecture of this Constitution, Parliament is the custodian of it. No incursion whatsoever can emanate from any other source except this Parliament and that is why we are debating it. What shape the law takes will be determined by Parliament. The Executive has come up with a Bill. That is the ultimate authority. Shri Ghanshyam Tiwari, you have 15 minutes.

SHRI GHANSHYAM TIWARI (Rajasthan): Sir, please make it 21-21.

MR. CHAIRMAN: You should tell this to your party.

SHRI GHANSHYAM TIWARI: Hon'ble Chairman Sir, before I begin, I would like to say that I have come across a problem. As he mentioned two village proverbs, there is a proverb in our village that "*Bina padha hua jajman padha barabar aur padha hua jajman khuda barabar*".

MR. CHAIRMAN: Wait a second. Ghanshyam Tiwari *ji* is not telling the right proverb. He is taking care of Randeep Singh Surjewala and me. The proverb is - "*Anpadh jaat padhe barabar aur padha-likha jaat khuda barabar*". Tiwari *ji*, this was hundreds of years ago, now the circumstances have changed!

SHRI SHAKTISINH GOHIL (Gujarat): Sir, it is still in force.

MR. CHAIRMAN: Professor, this is known as expression of pent-up feeling. Tiwari *ji*, but you should keep in mind that this proverb is very old, a lot of water has flown away, now there is not much difference between you and us.

SHRI GHANSHYAM TIWARI: Chairman Sir, when Hon'ble Surjewala *ji* was speaking, I was listening to him talking about democracy and appointment of Election Commissioner, and I was very interested. I remember very well that once Naveen Chawla, who was the secretary of Mrs. Indira Gandhi *ji*, was made the Election Commissioner and today he is saying that the Government is going to appoint them! He has said such a thing. Then the party which imposed emergency and did all the other things talks about democracy! So I will not talk about democracy, I will not go into those things. I am going to this Bill.

Honorable Chairman Sir, I stand up to support this Bill. He discussed two things. He discussed the Constituent Assembly and the decision of the Supreme

Court. First of all, I would like to tell you about the Constituent Assembly that the Constituent Assembly had agreed to leave the appointment system of ECI to the discretion of the Parliament. It had said that the entire system of this election should not be in the hands of the executive, but the Parliament should make a law for it and it is on the discretion of the Parliament. Therefore, I support your point and want to thank you for what you said that the Parliament is supreme, neither any court nor any other institution. Therefore, our Arjun Ram Meghwal *ji* has brought this law to the Parliament.

Sir, he mentioned Baba Saheb Ambedkar. He is our revered and founder member. After him, if any Scheduled Caste person has become the Law Minister, then it is Arjun Ram Meghwal *ji*. So when you discuss him, then also discuss Arjun Ram Meghwal *ji*. Therefore, I would like to request that what is the reason for bringing the current Bill. The opposition has got into the habit of going to the Supreme Court on every issue. Due to this, the Supreme Court whose decision they were repeatedly referring to, yesterday the same Supreme Court said in its judgment that challenging every statement of the government in the Supreme Court will create a situation of anarchy. They were trying to create a situation of anarchy.

Sir, I would like to tell you why there was a need to bring this Bill. When Ajit's case went to the Supreme Court, the Supreme Court formed a three-member committee - the Prime Minister of India, the Leader of the Opposition and the Chief Justice of the Supreme Court - all of them will decide this together until the law is made. So in that perspective, our Law Minister has come here today with this Bill to make a law, so I welcome the step of Law Minister.

Chairman Sir, the second thing I want to make is what is there in this law. The law provides the composition of the selection committee. In this law, the composition of the selection committee has been arranged. Who will be included in the selection committee has been explained in this. In this, the Prime Minister will be the Chairman, the Leader of the Opposition in the Lok Sabha will be the member. Even more concession has been given to them in this. It has further been said that on the basis of the strength of the Leader of the Opposition, if he is not the leader of the recognized party of the Opposition, then the leader of the largest party with even less number will also be included in it, so much concession has been given, because we know that permanently they will never be in a position to get the position of recognized opposition. Therefore, the Government has kindly made this provision that even if that number is not there, their representative will still be in the selection committee. Along with this, it will also include a Cabinet Minister nominated as a member by the Prime Minister.

Hon'ble Chairman Sir, I do not understand if a person who never talked about the selection committee in this matter for 70 years and kept making it as per his wish, talks like this today. Sir, what is this Election Commission, when did it come to the notice of the people? I want to remind that when first T.N. Seshan became the Chief Election Commissioner of India, then people came to know what Election Commission is. ...*(Interruptions)*... Otherwise, it was the State Election Commission earlier. Just now there was a discussion that the members who will be appointed, ...*(Interruptions)*... This will be their cadre. ...*(Interruptions)*... This will be their cadre. ...*(Interruptions)*...

MR. CHAIRMAN: One second. Shaktisinh ji, ...*(Interruptions)*... listen to me. ...*(Interruptions)*... I am giving you an advice. ...*(Interruptions)*... I am giving you an advice. ...*(Interruptions)*... I was against Hon'ble Ghanshyam Tiwari ji in the Vidhan Sabha. I was in the opposition, Hon'ble Ghanshyam Tiwari ji was also a Minister. The more you interrupt him, the more energy he will get. Don't do this, this is my advice to you.

SHRI NEERAJ DANGI (Rajasthan): Sir, earlier he was in the Congress. ...*(Interruptions)*...

MR. CHAIRMAN: Neeraj Dangi's father was also with us. I am giving you my advice. Ghanshyam ji, now you will not be interrupted, so you will be able to say your point on time. ...*(Interruptions)*...

SHRI GHANSHYAM TIWARI: Sir, Dangi sahab lives in my neighbourhood in Jaipur. I was requesting that they were discussing that among the people whose cadre has been formed, who will become Election Commissioners or Chief Election Commissioners, none of them will ever be a contestant of the Panchayat elections. This was said by Hon'ble Surjewala ji. Hon'ble Surjewala ji, the District Election Officer is the District Collector, Magistrate, when has he contested an election? The officer for the Legislative Assembly elections is the SDM, when has he contested an election? Not even a single person has contested an election and if a person who had contested an election was made, then there would be no Election Commission. Therefore, the best arrangement has been made. You do say this, but whatever should have been said at that time, you did not say it. The main point you had to make is, what is the problem in Indian democracy and in this? The biggest problem at this time is - democratic family feudalism. He talked about the recommendations of

the Goswami Committee. He was speaking on that, but the biggest problem Indian democracy is facing today is - family democratic feudalism. He was saying that 'INDIA' will stand against it. This 'INDIA' represents family democratic feudal tendencies. I want to tell this here today. Seven people are Members and Ministers from one family. That is a threat to democracy. He does not talk about that democracy.

Chairman Sir, the Election Commission has been constituted for impartiality, it has not been made only on the basis of the decision of the Supreme Court. There is a direction of the Supreme Court, but a provision had to be made as there was no such provision in the 1991 law. This arrangement was made under Article 324 and because there was no such provision in the 1991 law. This arrangement is better than those arrangements. How are the appointments made in the Union Public Service Commission? Better arrangements have been made in it. It has a better arrangement than the Scheduled Castes Commission, a better arrangement has been made than the National Commission for Backward Classes and a better arrangement has been made than the National Commission for Scheduled Tribes. It has a better and wider arrangement than the appointments made in other bodies, because there is no Leader of the Opposition in them. When they are all functioning constitutionally properly, then why will these appointments and commissions not function properly?

(MR. DEPUTY CHAIRMAN *in the Chair.*)

Hon'ble Deputy Chairman Sir, I would like to submit that people from all over the world come to study two things about India. The first of them is the Indian elections. No other country in the world has elections like India. The Chief Secretaries and Secretaries who were with the Chief Minister and Ministers before the model code of conduct was imposed, the day the model code of conduct is imposed, they came under the Election Commission and work impartially under the Election Commission. ...(*Interruptions*)... We said that they conduct elections and also make us take an oath.

MR. DEPUTY CHAIRMAN: Hon'ble Tiwari ji, please look here and speak.

SHRI GHANSHYAM TIWARI: Sir, I am saying this looking at you.

MR. DEPUTY CHAIRMAN: Please do not talk to each other.

SHRI GHANSHYAM TIWARI: Sir, I was saying this thing. Secondly, when I said that people like T.N. Seshan should come - I am a victim, I have been associated with these elections since 1972, I have been contesting elections, making others contest and now I have reached here. I have seen that when elections were held, then the Government had the power, till the first day of elections, Congress leaders would come with transfer letters, they would say give us vote and take these transfer letters, till then they used to work. Sir, we came to know the Code of Conduct when T.N. Seshan did so much of work. They saw that this is a very nasty job, so they increased the number, they made it two, now it has become three, so the decision will be based on the judgment. We are doing this type of work to improve the process of the Election Commission. Sir, there is a great need for election reforms. Recently, the recommendations of the Goswami Committee were discussed, the recommendations of the Prakash Committee also came. Nothing has been done about those election reforms. If anything has been done, it has been done by the Hon'ble Prime Minister Shri Narendra Modi ji. They made a law in the year 1991 and used to make appointments themselves. At that time, there was no committee, no search and no research. They used to make it on their own and do it, but when these committees started being formed, when they sat in the opposition and when it started getting a little test, then they got this kind of problem in their minds, that is why they do this kind of work again and again. If you have to bring electoral reforms, you should reduce the use of money in elections.

PROF. MANOJ KUMAR JHA (Bihar): You are absolutely right.

MR. DEPUTY CHAIRMAN: Manoj Jha ji, you will also get a chance.

PROF. MANOJ KUMAR JHA: Sir, I am not available today.

SHRI GHANSHYAM TIWARI: From where will the money for reform come from? Black money comes in elections. When black money is caught, the problem arises. In Bengal, at one place, Rs. 58 crore is caught while on other Rs. 350 crore is caught. All this money is collected for the Lok Sabha elections, but this time the Election Commission made such arrangement in the election of these 5 states that the amount of money that has not been caught till date, crores of rupees were caught during the period of the Code of Conduct of this election. So much purity was established in this election.

Deputy Chairman Sir, unless there is internal democracy within the parties, there will be no reform. From Atal ji, Advani ji, Murli Manohar Joshi ji, Venkaiah ji to Amit Shah ji and Rajnath Singh ji, people have come from all the states of the country and an ordinary worker has also reached the post of President of the Bharatiya Janata Party, but on the other hand, the condition of the family-based, democratic feudal parties is such that even if someone else comes into power, it works as per their instructions only. I believe that as long as this system of ticket distribution remains in the hands of the family members, this system cannot be corrected, so there is a need to improve the internal democracy of the parties to further improve the system of elections. I completely agree with the opinion of the Hon'ble Chairman Sir that the right to make laws is completely with the Parliament. The Supreme Court cannot order the law, it can give directions. It is not necessary that whatever the Supreme Court has written should come into law. The Parliament has to do the work of making the law in accordance with the spirit of democracy and for the people. We are also doing that work. Therefore, Deputy Chairman Sir, I would like to make a request to you that there are four main things in this law.

MR. DEPUTY CHAIRMAN: The time given by your party is over. Will you take your party's time?

SHRI GHANSHYAM TIWARI: I am just concluding. All I am submitting is that those parties which strangled democracy, those parties which imposed Emergency...

3.00 P.M.

All these things do not suit those who appointed their Secretary as the Chief Election Commissioner. The Bharatiya Janata Party is a party of internal democracy and it has brought this Bill to keep the democracy of the country pure, so I support this Bill.

MR. DEPUTY CHAIRMAN: Now, Shri Jawhar Sircar; you have 18 minutes.

SHRI JAWHAR SIRCAR (West Bengal): Sir, I thank you for this opportunity. I thank my fellow Members for giving me this opportunity. I thank my Party, the Chairperson of my Party, the National General Secretary, for giving me this opportunity. This opportunity is not the discussion of one more Bill. Please try to understand that today we are dealing rather innocuously with the amendment of a Bill which actually seeks to touch, to shake the very foundations of our democracy. Our democracy rests on

free and fair election, and today, we are discussing the key component, the structure and the mechanics of that election under the guise of a simple law. Why do we need to bother about Indian election? Why do we need to? I will give just a few examples and statistics. We claim to be the mother of democracy. Maybe, we can expand on this some other time. But we have the largest electorate in the world -- 92 crore at the last count. We have the largest functioning democracy. We have four million EVMs. The management of four million EVMs crisscrossing the country calls for supreme efforts. Sir, I have had the honour of conducting the 1998 and 1999 parliamentary elections as Chief Electoral Officer. I know the extreme difficulties under which officers function. The same officers, the same personnel, who may be slovenly in their daily work, rise to new heights because the surge of national duty overtakes them. It is time to salute their efforts. It is not a question of whether they went through an election process or not.

Sir, for national election, we have 20 lakh policemen drafted from here and there and posted outside of their polling stations. We have three lakh paramilitary personnel. I am just mentioning the statistics. I had 78,000 polling stations and I know what it was. We must salute the machinery that was created by the first founder, Mr. Sukumar Sen, who was drafted from Chief Secretary of West Bengal, to become the first Election Commissioner. He laid down the path so that India's democracy may continue uninterrupted. Now, having said that, I would recommend to friends on both the sides that they read some of the information with pride the amount of elections and the amount of troubles we have gone through. I remember in 1999 elections during the period of Atal Bihariji, there were floods in West Bengal. My Chief Election Commissioner asked me, "Will you be able to do it?" I said, these floods keep happening in Bengal. We held elections on boats. That is where people went and voted. We have to go through this.

Now, I come to the new Bill and why do we stand to oppose? First thing we need to note in the new Bill is that the status of CEC and ECs is being deliberately lowered from that of a Judge to that of a Cabinet Secretary. Sir, I want to tell you what is there in this. It is level 17. Under the Order of Reference, a Supreme Court Judge is at number 9 in the Warrant of Precedence; and Election Commissioner was also there. Now, it has been relegated to 9A. These seem like small things, but, Sir, on it depends the parity; on it depends the level at which one can call the other. If the Cabinet Secretary is equal to the Election Commissioner, tomorrow the Cabinet Secretary will not listen to the Election Commissioner and may say, we are equal. You see, don't put danger through innocuous English words into the Act. Who can summon whom? So, there is a deliberate demeaning of the position of the Chief

Election Commissioner and the Election Commissioners; it is being done deliberately under the guise of a few words.

Secondly, the appointment really boils down to that of PM and his Minister. What is the use of playing 3:2:1, 2:2:1. You should sit on the file and give it. Why are we going through a charade? I would submit that after 71 years of conducting elections, God and Parliament have given us an opportunity to rethink. This is not the time to say that Mr. Navin Chawla was this and 'B' was this or Mr. Sunil Arora was that. This is not the time to discuss these. We have had good and bad on both the sides. Mr. Quraishi's book is of immense importance. Now, why I find this Bill so dangerous, let me explain. In Clause 6, it is given that a Search Committee will be headed by the Cabinet Secretary. Fair enough! A Search Committee, ok, in all good spirit. Then, in Clause 7, they say that after the Search Committee has given names, it would be decided by a Selection Committee consisting of the Prime Minister, his own Minister and the Leader of the Opposition. The results are known. Why go through this?

The Supreme Court's Order gave a strong hint that the Chief Justice of India is, perhaps, willing to join a body and bring in a certain degree of legitimacy, sacrosanctity and fairness. That order, that innuendo, has been refused. Now, it doesn't matter who the Leader of the Opposition is at that point of time. I would submit that we have two leaders of the Opposition. Give it to both. At least, there would be some amount of intelligent discourse before he can have a run-through. The more dangerous Clause is Clause 8. After all this election, and the Search Committee and all that, Clause 8 says that any person can be appointed as Chief Election Commissioner and Election Commissioner. Now, what a dangerous precedent you are opening! This is a job where I have mentioned about some of the dimensions, where I have said that we have ten lakh polling stations. It is an administrative job and we know what administration is in this. I have also mentioned the degree of fairness that overcomes. Even Tiwari ji also mentioned about it that when duties come, then things become different. We are not clerks and officers at that point of time. Having said that, we would insist that you choose the best. There is a sub-Clause here saying who can be shortlisted - Secretary to the Government of India, somebody who has held the post. I would submit that the Secretary to the Government of India is determined by the pay scale. Straight talk! And tomorrow Chairman of a co-operative society, who has been given that scale and has conducted elections, would fit into the Bill. Do you think that with a huge machinery in every village, in every tehsil, in every block, in every sub division, in every taluk, in every district of India, he would be able to run the elections? You are leaving gaping holes and I would submit that it is

being done deliberately. Again, I repeat, in Clause 10, the downgrading of the rank takes place. This downgrading is not a question of what shoulder ranks we have. That's what is in Armed Forces. This downgrading is on the power to instruct during the election that you have to do it. That power is getting diluted by diluting the rank and this is extremely dangerous. I would submit that Clause 8 is very, very dangerous. I will read out to you. The Selection Committee of the Prime Minister may also consider any other person.*(Interruptions)*...

SHRI SUSHIL KUMAR MODI (Bihar): Sir, I have a point of order. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Please let him.....*(Interruptions)*... He is not yielding. ...*(Interruptions)*...

SHRI JAWHAR SIRCAR: Modiji, later. ...*(Interruptions)*... You are eating into my time. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Yes, please.

SHRI JAWHAR SIRCAR: Okay. So, if you have brought in an Amendment, we shall take a due look at it. Now, taking it in Clause 10, I have mentioned Clause 10 and I shall wait for the Amendment to see what comes up. Now, coming to the Constitution, this is a thing that reflects on Article 324 of the Constitution which gives, after all the debate that has been held, the power of conducting the elections upon this Election Commission.

And, it also makes a subtle difference. It is where I plead to my fellow legislators to have a look at this. It makes a difference between the CEC and the EC where the removal is concerned. In other words, an Election Commissioner can be removed, practically, at will, without protection. Now, you may say why are you talking about this theoretically? I am telling you why I am talking about this theoretically. You may say this is practical. Do you remember the episode of Shri Ashok Lavasa when Shri Sunil Arora was the Chief Election Commissioner and was issuing orders that Shri Ashok Lavasa as member refused or had doubts. Shri Ashok Lavasa was going in for conscientious objection. We all know about it. The goings on within the Election Commission is secret and that is what it should be. But, we know from certain acts that Shri Ashok Lavasa was not on the same page with the CEC at that time; when the CEC, at that time, had set new low standards that Shri Naveen

Chawla never did, could have never said. That is CEC. We have enough material to talk about it.

Now, what happened is that the removal here is equated to Supreme Court Judge, that is impeachment, which is very difficult. But, the ECs remain unprotected and I thought that this Government would have the largeness of heart and the depth of vision to include this protection to them because an Election Commission means three persons and not only one who is in the better books of the Government. When Shri Ashok Lavasa raised these conscientious questions, he was "promoted". If I may use the words, he was kicked upstairs. He was just removed. His family was raided; his son was raided and his wife was called in for questions. My humble submission is that if this gentleman had certain, you know what I mean, then why did you make him or did you make him, after knowing all these and keeping this information in a pocket so that it can be used later, in case it ever goes wrong in the future? Now, this is not playing fair. I now come to the judgement that has also been mentioned in great detail but this judgement is very, very pointed. It points out to whatever I mentioned about the Election Commissioner being at the mercy of the CEC. It refers to various steps taken to amend the present electoral law and then, uses a word, the Supreme Court, "It becomes imperative to shield the Election Commissioners and to insulate them from Executive interference." A word like this being mentioned by the Supreme Court is indication enough that we should be more judicious with the post. Now, coming to the 1991 Act, that it seeks to replace, the 1991 Act, actually, gives them that status that this Act is taking away. So, in a way, the 1991 Act was good enough. The 1991 Act was concentrated mainly on salaries. This one does on the demeaning of status. My humble submission to all the Members.... *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Let him complete. *...(Interruptions)...* I will give.... *...(Interruptions)...*

SHRI JAWHAR SIRCAR: Sir, I need those extra seconds. My only.... *...(Interruptions)...* Please pause it. *...(Interruptions)...* Sir, let me carry on. *...(Interruptions)...*

SHRI SUSHIL KUMAR MODI: Sir, I have a point of order. *...(Interruptions)...*

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS; AND THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI V.

MURALEEDHARAN): Sir,... *...(Interruptions)...* And, if it is relevant or not, you can... *...(Interruptions)...*

SHRI JAWHAR SIRCAR: If you have something, you should have told me earlier, not when I am debating. *...(Interruptions)...* Do not destroy all institutions.... *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Please. *...(Interruptions)...* Shri Jawhar Sircar, please point of order. *...(Interruptions)...* Point of order. *...(Interruptions)...*

SHRI JAWHAR SIRCAR: Sir, pause it.

MR. DEPUTY CHAIRMAN: Under which rule?

SHRI SUSHIL KUMAR MODI: Sir, it is under Rule 240. Deputy Chairman Sir, the amendment that the Government has moved, I think, he has not gone through the amended part of the Bill. *...(Interruptions)...*

SHRI JAWHAR SIRCAR: I am reading it from that. *...(Interruptions)...* I am reading from that. I am reading it from that. *...(Interruptions)...*

SHRI SUSHIL KUMAR MODI: Otherwise, you are saying the old things. *...(Interruptions)...* He is repeating the same old thing and has not even read the amendment that has been moved. *...(Interruptions)...* If he had read it, there would have been no need to speak. *...(Interruptions)...* Deputy Chairman Sir, I am saying that he has not even read the amendment moved by the Government and he is speaking the same old thing. *...(Interruptions)...*

SHRI JAWHAR SIRCAR: Sir, let me continue. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Please. *...(Interruptions)...* Now, Shri Sukhendu Sekhar Ray.

SHRI SUKHENDU SEKHAR RAY (West Bengal): Sir, the hon. Member has referred to Rule 240 while seeking the point of order. What does it say? *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Rule 240.

SHRI SUKHENDU SEKHAR RAY: Yes, he mentioned about Rule 240. What does it say? I quote, it says, "The Chairman, after having called the attention of the Council to the conduct of a Member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other Members in debate, may direct him to discontinue his speech." How come this rule has a point of order to stop my Member from delivering his speech?...(Interruptions)...

MR. DEPUTY CHAIRMAN: Please. ...(Interruptions)...

DR. JOHN BRITTAS (Kerala): And the Parliamentary Affairs Minister was supporting ...(Interruptions)...

MR. DEPUTY CHAIRMAN: Hon. Members, I had to listen what he has to say—the Government has already brought an amendment. ...(Interruptions)... Please. ...(Interruptions)... sit.

SHRI JAWHAR SIRCAR: Sir, may I continue? ...(Interruptions)... Look for some time as well.

MR. DEPUTY CHAIRMAN: Yes, please continue. ...(Interruptions)...

SHRI JAWHAR SIRCAR: My submission was, the hon. Member had mentioned, Mr. Tiwari had mentioned about Mr. Navin Chawla, the Secretary of a very powerful person being made the CEC. I referred to the Secretary of the current Prime Minister being made to hold the most neutral post in the Constitution of India after the Election Commission and that is the CAG. Do not destroy every institution. The man who was his right hand is today the CAG and we don't get any reports. A few or so reports also came, but have now been closed.

MR. DEPUTY CHAIRMAN: Please come to the subject. ...(Interruptions)...

SHRI JAWHAR SIRCAR: Not only this, when I talk of the destruction of institutions, I go before him when we had a hero CAG, none of whose presumptive losses could be proved. We have had a hero who got two to three crores from the BCCI because of whatever. He was followed ...(Interruptions)...

MR. DEPUTY CHAIRMAN: Please speak on the subject. ...(Interruptions)...

SHRI JAWHAR SIRCAR: Sir, I am talking of the destruction of an institution. He was followed by a CAG who was charge-sheeted, who was brought into a CBI chargesheet. ...*(Interruptions)*... A CAG being brought ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Jawhar Sircarji, we are not discussing CAG. ...*(Interruptions)*... Please. ...*(Interruptions)*...

SHRI JAWHAR SIRCAR: The destruction of institution, look at the way they are destroying institution ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: We are not discussing CAG. ...*(Interruptions)*... Please. ...*(Interruptions)*... You are a senior Member. Please ...*(Interruptions)*...

SHRI JAWHAR SIRCAR: I look upon the UPSC. ...*(Interruptions)*... Sir, Let me speak. I talk about the destruction or the demeaning of the UPSC where you have got a ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Please come to the subject. ...*(Interruptions)*...

SHRI JAWHAR SIRCAR: Sir, it is on the subject, the wider scope. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: It is on the Election Commission. ...*(Interruptions)*... Please confine yourself to Election Commission. ...*(Interruptions)*...

SHRI JAWHAR SIRCAR: The misuse of ED and the CBI for absolutely...

MR. DEPUTY CHAIRMAN: Please. ...*(Interruptions)*...

SHRI JAWHAR SIRCAR: Okay, Sir. I will now come to the last point in this regard where I would say that the Act had spoken about a fixed tenure. This one also speaks about a fixed tenure; it brings it back at 65. Sir, when I mentioned about the destruction of institutions, all I meant is that among the three constitutional institutions--the UPSC, the CAG and the Election Commission--they are suffering through the same fate. I just wanted to draw the attention of the Ministry and provide empirical proof to prove that they are being hollowed out. Do not touch the Election

Commission. CAG on a State, we can tolerate, but the Election Commission will determine the fate of democracy that is coming up. We are all going to be a part of its thinking process. There is a leadership that is called for, a huge number of members from the officers and staff of the Government and Para Government offices come up and, when they see somebody they cannot respect; I have been there again and again, if you cannot give respect, then nothing will be achieved. You can appoint whoever you want.

Sir, this may lead to what we call legalization of rigging. We have already found the corrosion, the erosion of the office where EVM is a suspect, VVPATs are not stamped, VVPATs are shown to you for a few *jhanki darshan* and then it goes into the pot, it does not validate my vote, where you see electoral bonds take over. There have been many, many things in the functioning of the Election Commission that would warrant a fuller discussion. But today, we concentrate only on the appointment and the consequential disappointment, that this side of the House has, to the process by which the entire foundation of fairness is sought to be shaken.

Sir, I would still submit that with all these operational faults, the Election Commission is still managing. I would submit that please let it function, please let the army of election personnel function, let them not feel that they are led by an obviously political boss for obvious reasons. Do not destroy this provision. ...(*Time-bell rings.*)...

MR. DEPUTY CHAIRMAN: Thank you.

SHRI JAWHAR SIRCAR: And withdraw those Sections that militate against fairness that actually embed unfairness into the system.

MR. DEPUTY CHAIRMAN: Thank you Jawhar Sircarji, your time is over.

SHRI JAWHAR SIRCAR: Do not legalize rigging. Thank you.

MR. DEPUTY CHAIRMAN: Hon. Member, Tiruchi Sivaji, you have seven minutes to speak.

SHRI TIRUCHI SIVA (Tamil Nadu): Sir, I stand to oppose this Bill for it is undemocratic, unethical, unjustifiable, unacceptable, for it undermines the very purpose. ...(*Interruptions*)...

MR. DEPUTY CHAIRMAN: You please speak. You are losing your time.

SHRI TIRUCHI SIVA: Sir, any nation will have a head, even it may be ruled by a dictator. But, only in a democracy, the people decide who will be the ruler to administer the country. And the unique and supreme indicator or identity of a democratic country is fair and free elections. And the undercurrent of it is the ballot. Sir, ballot is not a fickle choice. It is the soul of the country. It brings poor and rich equal, the educated and uneducated equal. Everyone is equal when they stand in the polling booth. Moreover, we, the Indians gained it after two hundred years of subjugation. It keeps the hope alive in the hearts of 140 crore of people. It is a sad decision. It is a lifeline. And, of course, it is the responsibility of the people. Sir, why I am telling much about the ballot paper! It is a hope for a better future, better life and better India. And the Election Commission is the entity which takes care of the elections, which gives power to the people of this country. And this Bill, the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office), jeopardises this sacred principle of the ballot and values that are part of the constitutional basic structure, such as the rule of law, the right to equality and fair election. It is yet another nail in the coffin of EC's autonomy by paving the path for appointment of a yes man as the as a Chief Election Commissioner to decide the fate of electoral democracy. Sir, the Objects and Reasons very clearly say; the hon. Supreme Court in the W.P. No. 104 of 2015, Anoop Baranwal Vs. Union of India, declared that the appointment of CEC and ECs shall be made by the President on the basis of an advice tendered by a Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and in case, there is no such leader, the leader of the largest party in the Opposition in Lok Sabha, having the largest numerical strength and the Chief Justice of India. This is very important, Sir.

[THE VICE-CHAIRPERSON (SHRIMATI JAYA BACHCHAN) *in the Chair.*]

It has been clarified in the aforesaid judgment that the said norm provided by the Supreme Court will continue to hold till a law is made by the Parliament. Now, an attempt is made here. We have brought a Bill to enact a law. But, the Bill does not serve the purpose what the Supreme Court has directed. Hon. Supreme Court has said that there must be a committee comprising of the Prime Minister, the Leader of the Opposition in Lok Sabha and the Chief Justice of India, whereas this Bill provides for a Search committee and a Selection Committee. The Search Committee consists

of only bureaucrats; the Secretary in the Government who may be in the office. They will comprise the Search Committee and they will give a panel of members, and the Bill provides that the Selection Committee shall comprise of the Prime Minister, the Leader of the Opposition or the Leader of the major party in the Opposition side, if at all, there is no Leader of Opposition and a Union Minister appointed by the Prime Minister. Then, everything is over. Further, it says that to select an Election Commissioner or a CEC, there need not be a unanimous decision, the majority will be enough. Then, the intention is very clear. Why have you brought this Bill? You can very well jolly well say that whatever the Government wishes can be done.

Madam, I would like to say one thing that this Government has brought all the Bills, legislated the laws which I have repeatedly said that do not forget that one day or the other you will be in the Opposition and you will face the wrath of all the legislations you have brought. They think that they will forever be in the Ruling Party and sit in the Treasury Benches. Sir, the Prime Minister and the Union Minister appointed by him along with the Leader of the Opposition, what the decision will be! Only what the Prime Minister and the Union Minister will decide; so, that choice will be there. There is one more thing, other than the members suggested by the Search Committee, the Selection Committee can appoint anyone else, then, what is the use of the Search Committee? But, there is a Search Committee consisting of bureaucrats only and the Selection Committee has the majority of the Government that is the Prime Minister and the Union Minister and moreover the Search Committee's recommendations will be thrown off and they will appoint any other person whom they wish. This all is really a farce. So, what is the purpose of a Bill which is going to become a law? The Chief Justice of India, why he is not a member, is a very big question and why you are bypassing him, only you have to say about it. What is wrong or what prevents you or objects you in having the Chief Justice of India as a member of the Selection Committee.

Madam, I would like to quote Dr. Ambedkar, it is very, very pertinent, everyone has to repeat it, no wonder because he is the architect of our Constitution. The episode reminds us on June 16, 1949, during the debates in the Constituent Assembly on a draft Article 289, now, Article 324 of the Constitution, dealing with the Election Commission, he precisely said, "There is no provision in the Constitution to prevent the appointing of either a fool, or a knave or a person who is likely to be under the thumb of the Executive". It was said by none other than Dr. Ambedkar. A day earlier, on June 15th 1949, while moving the draft Article 289 in the Constituent Assembly for setting up an Election Commission, Dr. Ambedkar had observed, "Without any kind of dissent that in the interest of purity and freedom of elections to the legislative

bodies, it was of the utmost importance that they should be freed from any kind of interference from the Executive of the day". But, now, the Executive is having the entire control. The Selection Committee can ignore the recommendations of the Search Committee. In winters, we cannot wear a shawl because of the mike. This has to be taken note of by the officials of the Parliament.

Madam, Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to Parliament, State Legislatures, the office of the President of India and the office of Vice President of India shall be vested in the Election Commission. So, Election Commission is not just another entity in the country, this is the foremost. That is why it has chosen to be autonomous, without the intrusion of the Government or any other forces from outside. So, we expect a lot.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Mr. Siva, you have been given seven minutes.

SHRI TIRUCHI SIVA: I know that. ..(*Interruptions*).. I have been given the remaining time only.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): If I can, I can give you all the time.

SHRI TIRUCHI SIVA: The contravention of the Supreme Court judgment in this Bill, 'in the absence of a parliamentary legislation guiding the selection of the ECI members..', the five Judge Bench, I told earlier, the Supreme Court laid down the interim guidelines, the case challenges the Constitutional validity. Now, the recommendations have totally been overlooked by this Government through this Bill. In 1990, the Dinesh Goswami Committee had made suggestions to ensure independence of the ECI. Number one, removal process of CEC; and the administrative independence of the ECI; so also it has been repeatedly even in the Supreme Court in 1995, ECs are considered to be at par with the CEC in hierarchy. But now what is happening is that the CEC can remove the EC whereas CEC can be removed only by an impeachment. Along with all other things, the CEC who was earlier on par with the Supreme Court Judge, by way of this Bill, he has been reduced to on par with Cabinet Secretary. ...(*Interruptions*)... Okay... The Election Commission is a *quasi judicial* body. It has a very big authority. So, that is a very big question. An Amendment has been moved. I think, if it is taken up, it will be very well

appreciated. So also the global practices can be adhered to. The UK has a panel of Members of Parliament headed by the Speaker, not from one party only, invariably from all the other parties. So also, South Africa has got another one. So, we can follow those things. Even it is in America where it has been done. I would like to conclude only with one word, Madam. According to the Mr. S. Y. Qureshi, the former CEC, 'To tackle the major downside of the proposed Bill, which is a lopsided Selection Committee, was to make all its decisions unanimous.' That will resolve. But now it says that the majority of the Select Committee means, it is very, very clear that only the Prime Minister and the Union Minister, who is there, will be taking the decision. So, forming the Select Committee becomes meaningless and the Search Committee's recommendations, if they are ignored, that becomes redundant. So, this Bill when becomes a law paves way for constituting a Search Committee and the Select Committee. The Search Committee's recommendations become nothing and the Select Committee's decision will be unilateral. So, the purpose is not solved. So, I would suggest to the Government, I would urge the Government that what this Bill you have brought does not serve the purpose. Better to send it to a Select Committee for a better scrutiny; stakeholders will come and bring it back with suitable amendments and make it democratic, make it ethical, make it justifiable and that the Selection of the CEC and the Election Commissioners is transparent and appreciable. Thank you very much.

SHRI RAGHAV CHADHA (Punjab): Madam, whether the BJP wants to end fair elections in India, whether the BJP Government does not understand the importance of democracy, whether the constitutional institutions have no importance for the BJP Government, whether the BJP Government wants to make every constitutional institution its own*, whether the BJP Government does not respect the decision of the Supreme Court, whether it does not understand its importance - these are some of the questions that came to my mind after reading the Bill. They came because through this Bill, this Government wants complete control over the Election Commission.

Madam, the Election Commission has three members - one Chief Election Commissioner and two additional Election Commissioners. Through this Bill, their selection and appointment will completely come in the hands of the Government and it can appoint anyone it wants - be it a party person, a yes man or a party man - as the Election Commissioner.

* Expunged as ordered by the Chair.

The Election Commission plays a very important role in the elections of our country. Whose vote will be cast and whose vote will be rejected - this is decided by the Election Commission. On which date the elections will be held, in how many phases the elections will be held - this is decided by the Election Commission. Where the EVM machines will be sent, their control, their management, their use, their usage - all these things are decided by the Election Commission. That is why the Election Commission is a very important institution for free and fair elections in this country. I will mince no words. This Bill is going to destroy one of the few remaining independent institutions in India i.e., Election Commission and, thereby, dislodge free and fair elections from India. This Bill is an insult to three institutions/persons. First, it is an insult to the Supreme Court. Why? Because on March 2, 2023, a five-judge Constitutional Bench of the Supreme Court gave a unanimous judgement and that judgement was that there should be no Government interference in the appointment of the Election Commission. To end this, we form a committee. This Government did the work of disturbing the balance of that committee by removing the Chief Justice and putting a Cabinet Minister in it and overturning the judgement of the Supreme Court, so that a system is created in which the person they want becomes the Chief Election Commissioner. This is an insult to the Supreme Court because this Government changed the two unanimous judgements of the Constitutional Bench given this year by bringing a Bill in the House. This is an insult to the Supreme Court because this Government changed two unanimous judgements of the Constitutional Bench given this year by bringing a Bill in the House. The first of them was the Delhi Services Bill, which was changed within eight days by bringing an ordinance and then by bringing a Bill in the House and this Bill, which overturns the judgement of the Supreme Court of March 2, 2023 and works to reverse that judgement completely. I would like to tell you that through this Bill, this Government is in a way giving an open challenge to the Supreme Court that whatever judgement you want to give, if we do not like it, then we will bring a Bill and overturn that judgement. The second insult through this Bill is to the Chief Justice of India. The Supreme Court judgement says that the selection committee will consist of three members — Hon'ble Prime Minister, Hon'ble Leader of the Opposition and third, Chief Justice of India. Through this Bill, the Government removed the Chief Justice of India from this three-member committee and replaced him with a Cabinet Minister. There is so much disdain for the Chief Justice of India that this Bill has been brought to remove him from this committee! I would like to remind the Government that from time to time, committees have been formed in this country for electoral reforms and most of the committees have given this suggestion that within the committee, there must be the Chief Justice

of India, whether it is the Tarkunde Committee or the Dinesh Goswami Committee, be it the Vohra Committee, the Indrajit Gupta Committee, the Jeevan Reddy Committee or the Law Commission report of this Government.

Through this Bill, the BJP Government is doing the third insult to a person who was the founder of BJP, who is still the guide of BJP, who is known as the Bhishma Pitamah of BJP. The person who was the former Deputy Prime Minister of India, i.e. Lal Krishna Advani *ji*. Madam, I will put this letter on the Table of the Rajya Sabha. On June 2, 2012, Hon'ble Lal Krishna Advani *ji* wrote a letter to the then Prime Minister, Dr. Manmohan Singh, saying that the role of the Election Commissioner is very important in elections, there is a big question mark on his appointment and his appointment should not be in the hands of the Government. He writes, 'The present system whereby Members to the Election Commission are appointed solely on the advice of the Prime Minister does not evoke confidence in the people. Keeping these important judgements as the exclusive preserve of the ruling party renders the entire selection process vulnerable and open to manipulation and partisanship.' They say that there should be a committee of five members, which should select and appoint the CEC, which includes the Prime Minister, the Leader of the Opposition, Lok Sabha, the Leader of the Opposition, Rajya Sabha, the Chief Justice of India and the Law Minister. That is, it should have two members from the Government, two members from the Opposition and one member from the Judiciary. This committee is very good. That is, Advani *ji* also kept fighting for the independence of the Chief Election Commissioner, for the independence of the Election Commission, but these people did not even even paid attention to what Advani *ji* had demaded. Today, for the second time, I have stood up in the House to ask for LK Advani *ji*'s rights. First, when he said on the Delhi Services Bill that Delhi should be given the status of a full state and today, when he said that the appointment of the Chief Election Commissioner should be done independently and impartially.

Madam, I would like to give three important reasons for which I think the entire opposition including me opposes this Bill. Firstly, this Bill is completely illegal and that is because you cannot reverse a Supreme Court judgment without changing the very basis of it. That is, if you want to reverse the decision of the Supreme Court, then you will have to change the basis on which the Supreme Court refers while giving the decision, you cannot reverse the decision directly. You cannot reverse the decision directly, but these people have tried to hurt the basic spirit of the Supreme Court's decision through this Bill and have violated the impartiality of the Election Commission. The second reason why this Bill is illegal is that this Bill is against the basic structure of the Constitution. The basic structure of the Constitution is free and

fair elections. The basic structure of the Constitution is free and fair elections and democracy. If there is a biased Election Commission, then the elections will also be biased. If the Election Commissioner is selected in a fair manner, then the elections in India will also be unbiased. That is why it completely violates the basic structure of the Constitution.

Madam, I would like to explain another important reason why this Bill gives the complete control of the Election Commission to the Government. Why is the Selection Committee biased in the favour of the Government? The Supreme Court said that there will be a three-member committee that will decide who will sit in the Election Commission, which will include the Prime Minister, the Leader of the Opposition and the Chief Justice of India. By removing the Chief Justice of India from it and including a Cabinet Minister, these people have completely spoiled the control of the selection committee, due to which today the Government has two votes in this committee, and the Government can take all decisions with a 2:1 majority. In this, the decision is not to be taken unanimously, the decision is not to be taken with unanimity, if the government wants, it can take any decision with a 2:1 ratio. That means the entire control - who will be the Chief Election Commissioner, who will be the Election Commissioners - comes in the hands of the Government. It creates such a system that a party man, a Yes Man can become the Election Commissioner, the day is not far that if the BJP wants tomorrow, it can make Sambit Patra the Chief Election Commissioner. With a ratio of 2:1, Sambit Patra can become the Chief Election Commissioner of the country. Just think how dangerous it will be if he becomes the Chief Election Commissioner!

Madam, Para 9 of the Supreme Court Judgement says, The Executive alone, being involved in the appointment, ensures that the Commission becomes and remains a partisan body and a branch of the Executive. The independence of the Commission is intimately interlinked with the process of appointment that is, the Supreme Court says that it decides the entire process of selection - how the elections will be conducted, whether they will be free or fair.

Madam, the Supreme Court in its Para 186 highlights that, 'A person who is weak-kneed before the powerful cannot be appointed as the Election Commissioner. A person who is in the state of obligation or feels indebted to the person who has appointed him fails the nation and can have no place in the conduct of elections, forming the very foundation of our Democracy. An independent person cannot be biased. It is important that the appointment must be overshadowed even by a perception that a yes-man will decide the fate of the democracy and all his promises.' This means that not only is it important to have a fair selection, it is also important that

the fair selection should be visible to the public. It must not only be done, it must be seen to be done. This is what the Supreme Court says.

Madam, the third reason why we are opposing this Bill is that there are no checks and balances in the proposed selection committee. There are no checks and balances because all the decisions will be in favour of the Government, the Ministers in it are from the Government, the LoP has been appointed only for formality. A kind of fixed match is visible in this. Just imagine that there is a committee of three members, in which the Hon'ble Prime Minister is there, let us assume that our LoP Mallikarjun Kharge *ji* is its member and the third member is Law Minister Arjun Meghwal *ji*. Their meeting is going on in which the Hon'ble Prime Minister says that he wants to appoint a person named Ramesh as the Chief Election Commissioner. Kharge sahab says that he does not want to appoint Ramesh but Suresh as the Chief Election Commissioner, then can Arjun Meghwal *ji* who is the Law Minister of this Government can tell the Prime Minister that Ramesh is not right, I will also vote in favour of Suresh who has been nominated by Kharge *sahab*. He should be selected and made the Chief Election Commissioner. That is not possible, so whatever the Government wants, will happen. In a way, this is an act of destroying impartiality and independence of the Chief Election Commissioner. We had heard an idiom in our childhood, '*Jiski Lathi, Uski Bhains*'. This Bill proves completely that the lathi is theirs and through this law, the buffalo is also theirs.

Let me explain it to you through another example. Suppose there is a cricket match between India and Australia, who will be the umpire in that cricket match, will be decided by a three member committee. In that committee, one will be Australia's captain Pat Cummins, second will be Australia's famous player David Warner and third will be India's captain Rohit Sharma. Now if this three member committee selects an umpire, then that umpire will always be with Australia, because Australia has a majority of two to one, so can there be a fair match, can India play independent matches. Something like this is going to happen in this country after the formation of this Election Commission and the introduction of this Bill. Madam, I will go ahead. Please let me speak. ...(*Interruptions*)... Let me speak, do not disturb me. This Bill fails on three key tests, the test of independence, the test of neutrality and the test of constitutionality. It is our constitutional imperative that the Election Commission in the country should be impartial, so that elections are fair. If the Election Commission is not impartial, then the elections will not be fair and people's faith in this democracy will be shaken. I want to tell the Government that if the Government wants to overturn this decision of the Supreme Court, if the Government is so desperate to remove the Chief Justice of India from this committee, then Law Minister, I have come here with a

suggestion. I have three suggestions. If you accept some of these suggestions, I think the entire House will unanimously support your Bill. I have brought three options for you. The first option is that a committee of two members should be formed to decide who will be the Chief Election Commissioner and who will be the Election Commissioners in the Election Commission. In which two people should be the Prime Minister and the Leader of the Opposition. These two members should decide unanimously, with unity, because two people cannot have a majority, so those two people should decide unanimously. Whatever name they decide, we will all accept it. This is the first option. I would like to give Option-2 to the Government, which was given by Lal Krishna Advani *ji*. You should listen to Lal Krishna Advani *ji*, do not listen to me. You do not like the Aam Aadmi Party, but take the formula of your patriarch, founding father, your *Bhishma Pitamah* Lal Krishna Advani *ji*. You constitute a five-member committee and it should have the Prime Minister, Law Minister, Leaders of the Opposition in Lok Sabha and Rajya Sabha and the Chief Justice of India - this five-member committee will select an impartial Election Commission. If you do not like both these options, then I would like to tell you the option that Prof. Shibban Lal Saxena gave in the Constituent Assembly. It was that whatever name this selection committee decides, those names should be brought in the House and with a two-third majority, the name should be passed by the Lok Sabha and Rajya Sabha and that person should become the Chief Election Commissioner. I am arguing positively. I have brought options. If you choose any of these three options, then it is my responsibility to convince and unite the entire opposition. Finally, before concluding my speech, I would like to say that this Bill is* to the democracy of our country. Through this Bill, the BJP wants to hijack the democracy. And, I on behalf of the Aam Aadmi Party, vehemently oppose this Bill because this Bill will ensure that India which is today known as the mother of democracy will tomorrow, unfortunately, be known for mockery of democracy. Through this Bill, you are going to decide the journey from Mother of Democracy to Mockery of Democracy. I would request you with folded hands to take back this Bill. People have great faith in the democracy of the country, do not play with that faith. Thank you very much. Jai Hind, Jai Bharat.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Now, Dr. Amar Patnaik.

DR. AMAR PATNAIK (Odisha): Thank you, Madam Chairperson.

* Expunged as ordered by the Chair.

Madam, I will start with the Statement of Objects and Reasons which is mentioned in the Bill, and that would probably settle a lot of the apprehensions that have been expressed by the Members on my right. The hon. Supreme Court in the writ petition no.104 of 2015, Anoop Baranwal Vs. Union of India, declared that the appointment of CEC and EC shall be made by the President, so and so..., everyone has talked about it, but it has clarified in the judgment very clearly, and I want to reiterate it; the hon. Minister also mentioned it while introducing the Bill that this particular composition of the Prime Minister, the Leader of the Opposition and the Chief Justice of India shall continue until and unless a law is made by Parliament. And, unfortunately, a law was not made in Parliament. I used to belong to an organization, which is the Comptroller and Auditor General of India, which had a law in place — Duties, Powers and Conditions of Service of the CAG of India, 1971. So, I must congratulate the Government that, at least, a law has been made. In that law it has been mentioned how the appointments will be made, what will be the conditions of service and what will be the salary of the Chief Election Commissioner and the Election Commissioners.

Having said that, I will come to the second point. A lot of mention has been made about the independence. There are basically four issues — independence, interference and democracy being trampled upon. Basically, we have made these three arguments. Madam, the point is, there is something called a doctrine, which is a doctrine of fallacy, ‘fallacy of causation’ that if this happens, this will happen; if this happens, that will happen; and this false causality is the main issue out here.

The Bill talks about the appointments, conditions of service, as I mentioned, whereas the transaction of business in the Election Commission has been mentioned at clause 16, Chapter 4, ‘Transaction of Business of Election Commission’. The transaction of business of an Election Commission is to conduct elections. The appointment process is a completely separate issue altogether. People after being appointed only, they will conduct the election, and 17(1) says that ‘the allocation of work will be done by majority’; 17(2) says, ‘how the business, a decision, will be done by majority, the other one was unanimity.’ Some people say that everything should be unanimous. If that is so, will the Election Commission not function if there is no unanimous decision during an election process? I think, that has to be thought about. There is this situation which says that you completely jeopardise the system just because there is no unanimity among the three members or four members or five members. So, I think, it is absolutely an unacceptable proposition which has been put forward by some of my colleagues.

Madam, I will come to the point relating to the issue that the process outlined in the Bill would inevitably lead to a loss of independence for the Election Commission is a fallacy. If such an assertion is held true, it would raise doubts about the efficacy of all Election Commissioners over the past 76 years, given the appointment of ECs has been within the purview of the Executive. Despite this, they have consistently operated independently. Madam, the Election Commission has overseen completion of 17 national and 317 State elections since Independence in 1947. Even under pressure from the Executive branch and governing parties to bow to the demands fed by their desire for electoral success, the ECI has managed to strengthen its autonomy from year-to-year, election-to-election. Let us not forget '1977.' In the post-Emergency elections in 1977, the Opposition was apprehensive about the election process itself. Let me quote. Charan Singh wrote to Jai Prakash Narayan, both Opposition stalwarts in January, 1977, 'Mrs. Gandhi is thinking of staging an election. I call it staging because conditions for a real election, free and fair will be lacking', Raghavan 2017. I can lay it on the Table of the House. As it turned out, Congress was voted out of national office for the first time during these elections, and this was in 1977 when there was a single Chief Election Commissioner. The elaborate process was not there. Now when a process is being brought in through a regular Act of Parliament, I think, it is laudable, extremely praiseworthy to the Government that such a particular process is being brought in.

Madam, now, I will come to the second point relating to a Judge being a part of the process. Now if the Judge was a part of the selection process, what would happen? If the CJI is in the Committee to recommend appointments, it basically raises questions of violation of the doctrine of separation of powers, but I would like to refer to my colleague, hon. Jawhar Sircar, who said, what would happen if in the appointment of CAG, a particular CAG turned out to have a CBI case against him. Now, if this was the situation here, would not the CJI be party to a decision on which he may probably be required to take a decision in the judicial capacity? Would it not be a travesty of justice then? The CJI, being a part of the judiciary, cannot be a part of any selection process in this country.

Now, let me also remind you that under the RTI Act in which most of the States who are represented here have elected the Chief Information Commissioners and Information Commissioners, what the selection process is. The selection process involves the Chief Minister and other senior Ministers and the Leader of the Opposition. All of us have done that. Is all that has been done absolutely trash? Is it something which has been mired in subjectivity, in bias? Absolutely not. So, I think the process is fine and a person from the judiciary cannot be a part of the process.

Madam, I will now come to a point that has been raised quite a bit, which relates to the issue of conduct of elections. After 1989, with no party in a position to win a majority, the ECI faced a few structural constraints on its autonomy. I had mentioned, Madam, that right from the beginning, all Election Commissioners, whether it was a single member or a three-member Commission, have always upheld democracy by conducting free and fair elections. The motive has been to decrease money power, to increase transparency, to increase the number of people having access to the electronic voting machines, access to the booths and, in that process, the model code of conduct was brought out. The model code of conduct does not have any legislative backing. It is a unanimous decision between parties, and that is being enforced by the Election Commission. So, the Election Commission, 1989 onwards, has been holding this model code of conduct as the beacon of democracy and has been holding elections freely and fairly. Of course, there are always allegations and counter-allegations. But I can tell you that in a recent countrywide survey conducted by the Centre for Study of Developing Societies, Delhi, in 1996, after the 11th General Elections, the EC stood as the institution that was trusted the most by people followed by the judiciary, the State Government, local-government, and so on in that order. This was despite not having the advantage or not having the backing of a law to determine the conditions of service, appointments and salaries.

PROF. MANOJ KUMAR JHA: That was in 1996.

DR. AMAR PATNAIK: Yes, Sir. So, this was the opinion way back in 1996. And, since Prof. Manoj Jha has said this, let me say that 1977 is a watermark year in Indian democracy. Democracy was under threat. Even during that time elections were held and Mrs. Indira Gandhi's Government was thrown out. That shows that the Election Commission's transaction of business, which is covered under clauses 16 and 17 in Chapter IV, is not affected by the appointment process that is followed. The appointment process that is followed is something on which I said that the reference is to the RTI Act. Let me also inform the House that insofar as the appointment of the Comptroller and Auditor General of India is concerned, there is not even a Search Committee or a Selection Committee. And, in the Constituent Assembly, Dr. Ambedkar held that the CAG is a functionary that is even more important than the judiciary; still, selection is being done without a Selection Committee and still, it is performing to the best of its abilities in the service of the nation.

Madam, there is one point that I wanted to make in addition which is by way of suggestion. It is mentioned that the Election Commission's Conditions of Service, of

Election Commissioner's transaction of business, 1991 is hereby repealed. Now, what happens to the existing Commissioners and the existing Chief Election Commissioner, who have been appointed by the previous Act? If this is repealed immediately, what happens to their conditions of service? I must thank the hon. Minister for the amendment at no. 37. I had a lot of things to say on that. Fortunately, this amendment has been brought and that is the sense of the House that his status should have been kept at the level of the Supreme Court of India. This has been restored. Only one correction here, hon. Minister -- it is written at page 2; it should be at page 3. Whatever has been mentioned from 43 to 45 is well made.

4.00 P.M.

The other query that I have is that the removal of the Election Commissioners has not been made at par with the removal of the Chief Election Commissioner. In this Amendment, the 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. The other Election Commissioners shall not be removed from office except on the recommendation of the Chief Election Commissioner. Does it mean that they would also follow the same procedure and also an additional recommendation from the Chief Election Commissioner or only the Chief Election Commissioner can remove? I think this clarity has to be brought into this particular Amendment. The Supreme Court and the 1991 Act have already made it very clear that the Election Commissioners and the Chief Election Commissioner should be put on the same footing, except that the Chief Election Commissioner is first among the equals. If that is so, the removal procedure should also be ensured. There is one more point, and this is a very significant point which is related to the independence. The independence of an organisation like Election Commission is more linked to the way their conditions of service are governed. If the conditions of service can be changed after their appointment, if their appointment tenure can be reduced, if their salaries can be reduced and if their removal procedure can be changed, then it is an affront to their independence, not the appointment process. Therefore, in the appointment and conditions of service of the CAG also, it says that none of these can be altered to their detriment after the appointment has been made. Since that has also been maintained in the Bill, I have no hesitation in saying that there is no affront to the independence and interference in the election process that has been argued by many of my colleagues before me. Lastly, the Election Commission is not just a three-member body. It has already been stated eloquently by my colleague, Shri Jawhar Sircar. The

whole world observes the election machinery in India, the largest democracy, and they are completely taken aback and surprised that such an election is held without any kind of a problem and transfer of power takes place. This is happening by the support of the machinery right till the municipality level and the panchayat level. If that is the case, how come the independence of only three members is important? Do you mean to say that the Judges of our judiciary are not independent? Do you mean to say that our District Magistrates, who actually are the Returning Officers during the elections, are not independent? Only these three people should be independent! I think this entire argument is fallacious and is based on absolutely an argument which is *non est* in law, I would say. I would, therefore, end by saying that I support the Bill and I would request the hon. Minister to bring in these clarifications. I would thank him again for bringing him at par with Supreme Court Judge and also would request that their removal procedure should be made equal, in which case their independence would actually and truly be preserved. Thank you.

SHRI G.V.L. NARASIMHA RAO (Uttar Pradesh): Madam, Chairperson, I have a point of order. There are some offensive expressions which have been used in the speech of some Members. I did not want to interject in between. Particularly, my reference is to ...*(Interruptions)*...

THE VICE-CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Can you mention the Rule, please?

SHRI G.V.L. NARASIMHA RAO: This is Rule 238(vii). Is it okay? Let me first take Rule 261. I would like the offensive expressions to be expunged. Term like * was used for a constitutional body. The expression '*Kabza on Chunav Aayog*' was used. These are highly objectionable words. Then, another expression, ' * of democracy ' was used.

THE VICE-CHAIRPERSON (SHRIMATI JAYA BACHCHAN): You are a bit late. You should have objected before Dr. Amar Patnaik started. He never uses such words. Whoever spoke before him, you should have objected at that time. Now, Subhas Chandra Bose Pilli.

* Expunged as ordered by the Chair.

SHRI G.V.L. NARASIMHA RAO: The hon. Member, Shri Raghav Chadha, had used these expressions. I would like these expressions to be expunged.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Mr. Bose please. ...*(Interruptions)*...

SHRI SUBHAS CHANDRA BOSE PILLI (Andhra Pradesh): [†]Honorable Vice-Chairperson Madam, I thank you for giving me the opportunity to speak on this Bill which provides for the appointment of Chief Election Commissioner (CEC) and Election Commissioners (ECs). Respected Madam, on behalf of my party, YSRCP, I support this Bill. Our country is the largest democracy in the world. Conducting free and fair elections is an integral part of our country as provisioned, to the institutions, by the Constitution. The framers of our constitution, in their wisdom, gave the responsibility and duty to the Election Commission to conduct free and fair elections. This Bill provides for rules and procedures for appointing the Chief Election Commissioner and Election Commissioners to the Election Commission and we are discussing this Bill in this House today. Under the chairmanship of the Prime Minister, Leader of Opposition in Lok Sabha i.e. leader of largest Opposition party in Lok Sabha and one Minister as nominated by the Prime Minister from the Union Cabinet, will comprise the Selection Committee, which will recommend names for appointment of Chief Election Commissioner and Election Commissioners to the President of India. The President will issue orders appointing Chief Election Commissioner and Election Commissioners based on the recommendations made by this Selection Committee; this is the aim of this Bill. This Bill also provides for a Search Committee to be constituted to select the eligible candidates. To safeguard the Democratic Rights, conducting free and fair elections is the responsibility of the Election Commission. Respected Madam, this election process will instill more trust in the people and people will protect the Institution of Election, this is the main purpose of this Bill. With these observations, I support this Bill.

PROF. MANOJ KUMAR JHA: Madam, I was listening to the translation. I would like to say that the quality of translation was not good. For instance, 'Search Committee' was referred to as 'Research Committee'. I just thought I should share that.

[†] English translation of the original speech delivered in Telugu.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Even I realised that. You are right. Now, Shri A.D. Singh.

SHRI A.D. SINGH (Bihar): Thank you, Madam Vice-Chairman, for giving me the opportunity to participate in this discussion. I am a little surprised by the results of elections which were held recently. Elections in Karnataka were held on 10th and the result came on 13th, just after three days. Elections in Telangana were held on 30th November and result was declared on 3rd December. In both the places, the ruling party lost and wherever there was a gap of a month or half-a-month, the results were different. I am confused and perplexed by this. So far as the independence of the Election Commission vis-a-vis the Executive is concerned, I would like to say about things happened in recent times. There are two things. I am happy that a particular Member compliments the Congress Party for free and fair elections in 1977 but recently we saw the way one of the Election Commissioners was hounded and he had no option but to resign and go to Manila or some other place. The Constituent Assembly Members were concerned about the need to ensure the independence of the Election Commission. B.R. Ambedkar said, "In order that elections may be free in the real sense of the word, they shall be taken out of the hands of the Government of the day and conducted by the independent body called Election Commission." The need to have an independent body was emphasized in courts in number of cases. In T.N. Seshan v. UOI & Others, it was observed that there could be no two options that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. The proposed Bill jeopardises this fundamental principle and in today's political context where issues are being raised and allegations are levelled on the Election Commission like never before, it will be another nail in the coffin of the Election authorities.

If the Government is just going on reversing the decision of the Supreme Court in this matter, after the five-Judge Bench judgement -- I do not want to repeat what hon. Members have said -- I think, it will be a very sad day in the history for the democracy of India. Some colleagues are talking about emergency. Today, we have undeclared emergency, which is worse than the one which was imposed by Madam Gandhi. The way, the Selection Committee is supposed to select the Election Commissioner, there is no point that we should have a three-Member committee. Let the hon. Prime Minister select a person. With regard to what my colleague from the Biju Janata Dal said about the CAG and other organisations, I can personally tell him how things work. I do not want to mention things in the House because it will not be good.

In the end, I would say that I vehemently oppose this Bill. Madam, our forefathers have given us a Constitution, which really strikes a balance between judiciary, legislature and executive but the way we are going, most of the institutions are being deprived of their powers and whatever the present ruling Government says they behave like that. I vehemently oppose the Bill. Thank you.

THE LEADER OF THE HOUSE (SHRI PIYUSH GOYAL): Madam, it is wonderful to see you on the Chair.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): It is a temporary arrangement.

SHRI PIYUSH GOYAL: When I saw it on the television in my room, it was coming across as very elegant and very distinguished. Very privileged to see you holding the Chair today.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Thank you.

SHRI PIYUSH GOYAL: Madam, I just want to share one thing with my good friend and esteemed colleague, Mr. Singh. He made a sweeping comment that there is an emergency and it is worse than the emergency of that time. This comment is coming from a person from Bihar -- the land of Lok Nayak Jayaprakash Narayan -- which fought to maintain the unity and integrity of India, which is the repository of knowledge in this country, which stood up for high principles and values and fought against the emergency so much so that thousands of political workers, for no fault of theirs except that they opposed the then Government, with no allegations of corruption, no allegations of misdemeanour of any sort, were put behind bars indiscriminately across the country. Probably thousands from Bihar also were there. Many, who today are in the JDU or in the RJD or all the various offshoots -- as they are so many, it is difficult to remember their names also -- were a part of the struggle against the Emergency, which was totally unconstitutional, unwarranted and an attack on democracy in the country! ...*(Interruptions)*... To make such a comment today, when we are all, with great freedom, able to speak in this House, where there is freedom of democracy, freedom of speech, media is vibrant, judiciary is protecting the interests of the people of India, where there is complete freedom across the country and the only people behind the bars are the criminals, are the people in whose houses you find Rs. 353 crores and counting illegally stashed away money, where the only people behind the

bars are murderers, criminals, land mafia, sand mafia, liquor mafia, arms dealers, defence dealers... ..*(Interruptions)*...

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Respected Leader of the House, ...*(Interruptions)*... Excuse me. ...*(Interruptions)*...

SHRI PIYUSH GOYAL: In this day and age, comparing those days of emergency with today is a blot on the very thinking of your party and the esteemed Member of Parliament.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Thank you, the Leader of the House. But if you are talking about freedom, I think he used his freedom. ...*(Interruptions)*... Please take your seat ...*(Interruptions)*... Let's now ...*(Interruptions)*... No. He has said, and so have you. Now please take your seat.

PROF. MANOJ KUMAR JHA: Madam, one minute. What I wish to convey is that we saw enough of freedom yesterday. That was on display by the gesticulation, by the body language. What reference he made was on a metaphorical sense. If it is not made, what kind of democracy it is. You make new buildings, but there is no idea of democratic discourse. Democracy is never there, Madam. If J.P. were alive today, counterfactually speaking, he would have stitched an alliance of all progressive forces against their kind of politics. Thank you, Madam. ...*(Interruptions)*...

SHRI A.D. SINGH: He is talking of a long list of leaders of the freedom struggle. There is not a single leader from Pandit Nehru to Sardar Patel to Gandhi, who did not stay in my House in Patna and Muzaffarpur. So, let them not teach me what democracy is. And let me tell you, one of the Russian big oligarchs had come to meet me a month back. While having dinner in my house, he said, "Mr. Singh, you are more unsafe than me in Russia." So, let anybody not teach me what democracy is. I have already been to jail for not being a criminal. I should have also taken Rs. 10,000 crores from the banks and stayed in London. But I decided that I would fight here, whether you put me in jail again, I am not bothered.

THE VICE- CHAIRPERSON (SHRIMATI JAYA BACHCHAN): Now, Dr. Brittas.

DR. JOHN BRITTAS: Madam, there is a tragic paradox that is in full display. You were not here yesterday. Yesterday, the Government was praising the Supreme Court

for upholding the abrogation of Article 370. If at all an alien had come from some other planet, he would have been completely taken aback by the way the Government was paying respect to the Supreme Court.

(MR. CHAIRMAN *in the Chair.*)

If at all that alien continued for a day more, he would have been shocked to see that there is no relevance for a Supreme Court five-judge judgement. Sir, this is the classic somersault that is happening in the House. The P.M. has been exhorting everybody, including my dear friend Agrawal ji, to make sure that the weddings are done in India. Sir, there is a marriage of convenience that is happening here now. You want it to be a convenient proposition to make sure that the Election Commission is controlled fully by the Government of India. Sir, it is an absolute fact that the intention of the Government is to circumvent the Supreme Court verdict. What was the spirit and letter of the Supreme Court verdict? It was to make the Election Commission independent, impartial and neutral. But the Bill, which you have brought forward, is contrary to the spirit of independence and fairness. I thought that the Government would be willing and yielding for comprehensive electoral reforms. I am afraid we are not seeing the elephants that are roaming around in our drawing room.

MR. CHAIRMAN: Dr. John Britass.

DR. JOHN BRITASS: Sir, there are two pillars of the electoral practice now. One is money power and the other is muscle power. I would have reached out to the Government if at all there were comprehensive electoral reforms that were being brought forward so that it would have cleansed the political arena. Now with this Bill that is being passed, I would say that let us close down Nirvachan Sadan; let an outhouse of the Minister be used for accommodating the Election Commission. Why do we want to waste time, energy and money? That is not required.

Sir, the Supreme Court had said that if at all there is no independence for the Election Commission -- Mahesh Jethmalani ji, I invite your attention - it would lead to disastrous consequences. What does that mean? This Bill is inviting disastrous consequences because you are making the Election Commission dependent, an appendix of the Executive. Precisely that is your intention.

Sir, even the Search Committee the hon. Minister is going to head. Even if the Search Committee decides five or six people, the Selection Committee can pick up somebody outside the Search Committee. They should have been a little more

magnanimous towards the Screening Committee. They should at least respect the Screening Committee. Why is it that even the Screening Committee has been treated like that without any courtesy? Clause 8(2) says that the Selection Committee may also consider any other person than those included in the Panel by the Search Committee. It defeats the purpose of the Search Committee.

Sir, Electoral Bond is another contentious issue. It is with the Supreme Court, so I don't want to comment on it. But the Home Minister had said about era of clean politics and claims were made that it will lead to transparency and accountability in political funding while preventing future generation of black money. The same Electoral Bonds are opaque. That is the contention of the general public. According to me, too. So, the scheme is opaque, undemocratic and legitimizes corruption by the ruling dispensation.

Sir, I want to quote former Secretary Subhash Chandra Garg. He was there when Electoral Bond Policy was being brought in. He said, "Why do businesses or companies donate bonds? Because they are hoping for some favour or seeking to protect their businesses." This is what the former Finance Secretary, who was instrumental and part of that team which brought Electoral Bonds, said. What does that mean?

How can we curb money power and muscle power? According to a study by the CMS, the money spent in the Lok Sabha elections in 2019 saw a growth of seven times from 1998 Lok Sabha polls. At that time, it was deemed to be Rs.9,000 crore. In 2019, the study says, at least Rs.60,000 crore have been dumped for electioneering by the political parties and the major chunk would have been spent by Shri Piyush Goyal's Party. Now in 2024, it is going to double. So any legislation that is being brought forward should be to cleanse the political system, electoral system. Instead of that, you want to make it more opaque rather than cleansing the system. We all know the story of Mr. Ashok Lavasa. ...(*Time-bell rings.*)... What was his fault? Sir, everybody got 3-4 minutes extra.

MR. CHAIRMAN: Please conclude.

DR. JOHN BRITTAS: Yes, Sir, I am concluding.

MR. CHAIRMAN: You have made significant points. Conclude now.

DR. JOHN BRITTAS: Why was an honourable person, Election Commissioner, ejected from his post? Your election department, that is, ED, is very active. There

were raids conducted at his house, at his wife's house and son's house. He was ejected. (*Time-bell rings.*) And it is a fact that even the big tech companies are being used to invade into the privacy which has got cascading effects on elections. Sir, I have one more thing. Why does it vitiate in the electoral arena? It is hate and hate. So, in fact, we go down in manufacturing, the manufacturing of fake news is very robust in this country. (*Time-bell rings.*)

MR. CHAIRMAN: Now, Shri Ram Nath Thakur.

DR. JOHN BRITTAS: Sir, I am winding up.

MR. CHAIRMAN: You have made your points.

DR. JOHN BRITTAS: Sir, these are the serious questions which this Parliament and this House needs to look into. Thank you, Sir.

MR. CHAIRMAN: Okay. You have made good points.

Hon. Members, I have got input from various Members. We will have voting at 6 o'clock. That is the sense of the House. And to have it at 6 o'clock, we will give the floor to the hon. Minister at 5.30. Now, Shri Ram Thakur.

SHRI RAM NATH THAKUR (Bihar): Hon'ble Chairman, Sir, I express my gratitude to you for giving me the opportunity to speak on this Bill. I rise to speak against this Bill. Yesterday, those who are in power were celebrating the decision of the hon'ble Supreme Court, but what happened today; that they are speaking against the decision, its order and its direction. I am surprised. Sir, the first speaker from the ruling Party said about JDU and RJD that these people are part of a family alliance, the family members run the Party. Being an ordinary member of the Janata Dal United, I want to inform them that no one from Nitish Kumar's family is in politics. ...(*Interruptions*)...You are a senior Member, so I did not interrupt you.

MR. CHAIRMAN: Thakur *Saheb*, you are very experienced, when two experienced people discuss, one is not supposed to interrupt.

SHRI RAM NATH THAKUR: Hon'ble Chairman, Sir, I am very worried. I have 58 years of political experience. I see what has happened to the head masters in schools, what has happened to the vice-chancellors. I am seeing the same thing today that there

was trust and faith in the Election Commission among the political Parties and its members, what are we thinking about it, what will be our political future? In this regard, my feelings are devoid of any political affiliations, I am saying this as a political person that you should think, ponder and research on this, then bring the Bill please. The speakers before me had said as to why are we not thinking about the ideology of Ambedkar ji, his research, the thoughts with which he had worked to draft the Constitution? Why are we not doing research, why are we not trying to follow it by implementing it? Why are we not following the directions of hon'ble Supreme Court? This is our thinking. Sir, you must be remembering that N.T. Rama Rao's Government had been toppled down. The Governor had removed that Government. The hon'ble Chief Minister of Andhra Pradesh had come to Delhi to meet the hon'ble President with great confidence along with all the MLAs. There was a belief that the hon'ble President would do justice to them, would give ideas and they would follow them. N.T. Rama Rao got justice and he worked on it.

MR. CHAIRMAN: Please conclude.

SHRI RAM NATH THAKUR: Hon'ble Chairman Sir, I want to request the Government, through you, that we have seen that in the Selection Committee, any person says that he is the guardian of the house and whatever he says, his family members will say the same. If a person goes against it, then they will explain to him that they are the Head, and will make such person to agree to the Head. I will tell you a story. 20 years ago, there was some difference of opinion between me and my wife. She said in anger that she will go to her maternal home.

MR. CHAIRMAN: When, twenty years ago?

SHRI RAM NATH THAKUR: She died on 20th March, 2020. She used to say repeatedly that she would go to her maternal home. We had to run the family. She said in anger that she would go to her maternal home. Then I said that it was okay, she could go to her maternal home, I will send my children to their maternal grandparents' house and I will go to my in-laws' house. Then the same situation will arise. What are you doing? ...*(Interruptions)*...

MR. CHAIRMAN: Thakur *saheb*, Thakur *saheb*.

SHRI RAM NATH THAKUR: What are you doing? This ...*(Interruptions)*...

MR. CHAIRMAN: Hon'ble Member. ...*(Interruptions)*... hon'ble Pramod Tiwari ji is saying that this is the story of every household. I disagree with hon'ble Pramod Tiwari ji. I have not received such threats till date.

SHRI RAM NATH THAKUR: You are lucky. You are lucky that you have not faced such a situation. I want to request you to submit to the Government, the Government should think and I am requesting the Government to withdraw this Bill ...*(Time-bell rings.)*... please withdraw it. Sir, I have just begun my speech.

MR. CHAIRMAN: You have already taken seven minutes.

SHRI RAM NATH THAKUR: Sir, secondly I would like to state that the freedom of the Election Commission is important to ensure fairness and integrity in the conduct of elections. Any perceived influence of the Executive in the election process may raise concerns about the ability of the Election Commission to discharge its responsibilities without bias - this is the verdict of the hon'ble Supreme Court.

Hon'ble Chairman, Sir, I would like to request you that this is a very important Bill and you should not take it lightly. ...*(Interruptions)*... I would like to request that this Bill be sent to the Select Committee. ...*(Interruptions)*...

MR. CHAIRMAN: Thank you. ...*(Interruptions)*... Prof. Ram Gopal Yadav. ...*(Interruptions)*... Five minutes but since the time has been limited to 5.30 p.m., four minutes. ...*(Interruptions)*... Jayaji knows the difficulty of this Chair.

PROF. RAM GOPAL YADAV (Uttar Pradesh): Sir, I would like to mention only two-three things. One is that the makers of the Constitution had deliberated upon the supremacy of the Parliament through the Constitution and had mandated the Executive and the Judiciary to stay within their respective jurisdiction. In a situation where someone challenges a law made by the Parliament, the Judiciary can use the right of Judicial Review and deliver the judgement on it. But the Judiciary cannot play the role of the third Chamber, as had been once said about the US Parliament (Congress). Sir, the President there made a Law and the Judiciary repealed that. Then the Parliament (Congress) made a law, such a clash happened there, but this kind of situation does not exist here in India. Sir, before coming to my point, I would definitely like to say one thing that we should not rely too much on the Judiciary.*

* Expunged as ordered by the Chair.

MR. CHAIRMAN: Hon'ble Ram Gopal ji, hon'ble Ram Gopal ji, one minute.

PROF. RAM GOPAL YADAV: Sir, please let me speak for one minute.

MR. CHAIRMAN: Commenting on the judicial conduct of the Judiciary...

PROF. RAM GOPAL YADAV: Sir, I am not saying anything against the Judiciary.

MR. CHAIRMAN: No, no. There can be no comment on the conduct of the Judiciary.

PROF. RAM GOPAL YADAV: When the Judiciary can go against the Parliament, couldn't I say anything in this regard even inside the Parliament?

MR. CHAIRMAN: No, no. Not that. You said something fundamental earlier, that is a strong point. We all respect the Judiciary as well as the Executive and hope that the Judiciary, the Executive and the Legislature will work in a robust manner in their respective fields.

PROF. RAM GOPAL YADAV: Sir, but this is not happening! If it does so, then it is fine.

MR. CHAIRMAN: But on a particular issue, by taking the name of a person, I will request you, I will urge you that..

PROF. RAM GOPAL YADAV: Sir, the Judicial Accountability Bill was not passed unanimously by the Parliament?

MR. CHAIRMAN: That is a fundamental issue. Please speak on that.

PROF. RAM GOPAL YADAV: The Judiciary did not care about the aspiration of the people and the Parliament, but when it came to Judiciary itself, they cared, they will interfere in others' jurisdiction to the extent they want! But I want to submit that it all depends on the personality of the person. T.N. Seshan had such a personality, he made the people know what the Election Commission is, but now the Election Commission is such that people are watching on TV that the Police is not allowing people to vote, the Police is beating people, we are giving representation, but they

are sitting with their eyes shut. You must have seen it everywhere, you must have seen it in Rampur, everyone has seen it. I went and met the officers in the Election Commission, but the Commission closed its eyes. Sir, this is not the only duty of the Election Commission — right now votes are increasing, votes are being cut, booths are changing, half the locality is here, half the locality is three kilometers away. There are some names which are identified by their caste and religion, and a line is drawn in front of such names. Nearly 50 thousand votes were struck off, but no one listens in Moradabad because Muslim votes are identified by name. You can strike off anyone's name, but there is no hearing. If there are no impartial officials in the Election Commission, if they do not listen to anyone, then what is the meaning of democracy! The meaning of democracy is that people can choose their representatives by their own will, by their honesty, through free and fair elections, and can choose the Government to rule over them. ...(*Time-bell rings.*)...

MR. CHAIRMAN: Thank you. Thank you, Prof. Ram Gopal Yadav.

PROF. RAM GOPAL YADAV: Sir, but this is not happening, so I want to tell the incumbents in the Government that the law you are bringing, will become accordingly. People have doubts on your intentions too, but nominate such people in the Election Commission who have a conscience and who will not let injustice happen, thank you.

MR. CHAIRMAN: Now, Dr. K. Laxman. ...(*time-bell rings.*)... Madam, you have been here. I have given him extra time.

DR. K. LAXMAN (Uttar Pradesh): Thank you Mr. Chairman, Sir, for giving me this opportunity to speak on this Bill on appointment of Election Commission.

MR. CHAIRMAN: Madam, you have been very kind to everyone. You have been very kind. Everyone has appreciated it. So your sitting here has been a great challenge to me.

DR. K. LAXMAN: I stand here in support of this Bill. *Bharat*, is supposed to be the largest democratic country in the world and the mother of democracy. Sir, the appointment of Election Commissioner, the matter has been brought under the purview of the Supreme Court. The Supreme Court has made it very clear about a temporary Committee constituting the Prime Minister, the LoP and the CJI until a law is enacted in the Parliament. But unfortunately, our friends, colleagues started saying

that CJI has been removed from this three-member Committee. Let me inform hon'ble Minister of Law and Justice for including apart from the Prime Minister, the LoP, the Leader of the Opposition and a Union Minister. Subject to correction, for LoP, I don't think there is opposition status even to the present Congress party in the Lok Sabha. In spite of that, our hon. Minister is liberal enough to include the largest party's leader also in the three-member Committee. I am sensing that even in future also, it may happen. Our hon'ble Minister knows the art of prediction also, so included the leader of the party which has got the highest number also. Well, your time will also come.

[THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA) *in the Chair.*]

So, it is no way a violation of the judgement. They should introspect first. It is purely a meritless criticism against this Government on the appointment of the Election Commissioner. We all should introspect as to what happened all these years, what was the methodology adopted in appointing the Election Commission at the national level and even at the State level and how these Election Commissioners were functioning. I really appreciate one of our colleagues from BJD. They start becoming suspicious even on the Returning Officers; this democracy would not have survived without that. I ask about the appointment of the Chairperson and staff of the tribunals, like the National Green Tribunal. Who is the authority appointing them? It is the same Central Government for the last many decades. Even the National Human Rights Commission where the Prime Minister is supposed to be the Chairperson along with the ministers concerned. These people never brought a holistic law for regulating the appointment of CEC and Election Commissioners; there was a policy paralysis, though they were in power for more than six decades. So, when the matter has been brought to the Supreme Court, the Government has tried its best to make a fillip. One of the comments made by the former Chief Election Commissioner, Shri O.P. Rawat is, and I quote, "The issue before the Supreme Court was not who will be on the Selection Committee. It was that as to why did you, the earlier Government, not enact a law as promised or laid down in the Constitution? So, you make a law; until then, our suggested panel will select CEC and ECs. In the Constitution, the Parliament is the supreme law-making body and the Supreme Court has the power to judicially review the Constitution. So, I don't think there is any issue in this." This is the statement given by Shri O.P. Rawat, the former Chief Election Commissioner. Sir, people have started showing much respect and regard towards the Supreme Court judgments. I fail to understand what happened when there was a judgement by the

Supreme Court on Shah Bano case. What made the Government to bring an Ordinance? Was it not a political motive, superseding the Supreme Court judgement? Even then, when Mr. Seshan was the Chief Election Commissioner, he was the man instrumental in bringing the electoral reforms right from implementing strictly the model code of conduct. And the same, the Congress Government in 1993, have added two more persons to belittle T.N. Sheshanji. Mr. Gill and Mr. G.V.G. Krishnamurthy were added to just belittle the powers of T.N. Sheshanji. This is the attitude of the then Government, Congress Government and they will speak of democracy and they speak of internal democracy. And even in 2009, the Chief Election Commissioner N. Gopalaswami had recommended the removal of the person called Navin Chawla. Earlier, our Member has told who is the Secretary for the former Prime Minister! So, sensing that he is in a partisan attitude, working as a member in the Election Commission, Gopalaswami recommended for his removal. But, unfortunately, the then Government rejected the request of this Chief Election Commissioner. This is the democracy which they adopted. Sir, now, our Government has brought a three-member Committee - apart from the Prime Minister, the LoP and the Union Minister are there in it. So, before these so-called Members of the Opposition Parties opposing this Bill, they should not only introspect, they should also know what measures have they taken during the framing of the constitutional norms of separation of powers, what were the methodology, they have followed. More extensively, even in the quasi-judicial. ...(*Time-bell rings.*)...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Your time to speak is over.

DR. K. LAXMAN: Constitutional bodies like CAG, UPSC, NCSC, NCBC, NCST, and so on, they never bothered. And in practice, it was the Government alone; they have decided that way. Sir, finally, by supporting this Bill, I would like to make some recommendations. The black money is playing a dominant role in the present day politics; you have been witnessing how hundreds of crores of rupees now are stashed. ...(*Time-bell rings.*)... Sir, to eradicate black money from the politics, the Government is also...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Now, Dr. Amee Yajnik. Thank you, Dr. K. Laxman.

DR. AMEE YAJNIK (Gujarat): Sir, I get up to speak on this very important Bill. But, having listened to all the speakers, especially the hon. Law Minister, I wish they had

gone back to Constituent Assembly debates of June, 1949 and seen the extent of the debate that had taken place on this particular issue of Election Commission. And, the only statement that came out of the whole debate was election politics, election machinery and how election should be completely out of the hands of the Executive. There should be no Executive interference and this should be an independent autonomous body.

Having said that, I come back to the Law Commission Report of 2015, where exactly two lines were said by the Law Commission in the Report. It said that there should not be any breakdown of the rule of law. Now, the rule of law which is meant in the democratic setup today is that there should be strong institutions, a vibrant democracy and all institutions should be independently working for the people of this country post-Independence. Now, coming to the Supreme Court and the Apex Court's judgment in the matter of 2015 has been raked up by many. I have also heard some of them saying that there had been selective liking to the hon. apex court judgments and selective non-liking of the hon. apex court's judgments. Sir, the hon. apex court in the matter of 2015 said that there was a constitutional vacuum because there was no procedure which was shown in a particular Bill by Parliament or that there was no law. So, that vacuum should be filled and, hence, this Bill has come today in 2023, the Chief Election Commissioner and other Election Commissioners Bill, 2023. Sir, why is there the necessity for this Bill? I would like to make some observations which I have seen in the public domain. There have been instances where enlightened citizens have written to the hon. President of our country pointing out that there seems to be a crisis of credibility with this particular institution.

We have seen that there have been instances where intelligent people, intellectuals and academicians have written very strongly that this institution needs a robust mechanism of transparency. A mechanism that is responsible to the people of the country. Hence, you again come to a question what does the Election Commission of this country do? Sir, you can start from electoral bonds, you can start from electoral voter-ids, electoral rolls and you can talk about all the dates and the schedules which are set by the Election Commission for every election; Lok Sabha, Rajya Sabha, President, Vice President or State Legislative Assembly elections. But, the most important part is the silent period of the election where the Election Commission plays kind of a supervisory role where the code of conduct comes into picture. It is where the transparent working of the Election Commission becomes completely open to the people of this country. Sir, the elections are meant for the people of this country, and this voting system is meant for the people of this country. So, when we are talking about setting up of Election Commission of India under this particular Bill, the moot question comes that there is not a set of laws whereby the

Election Commission functions. There are certain kind of procedures. It is said that they are replacing the wordings of the strict laws. These procedures need to be transparent. These procedures if they are done transparently, then the accountability can be seen, it will be very visible. For this, the thrust of the Bill should be that the composition of the Election Commission should be such that whatever I have said should be seen to be implemented. Hence, when we come to the composition, we come to the part where the hon. Apex court had put the word 'Chief Justice of India' where the Committee should be of the hon. Prime Minister, the Leader of the Opposition and the Chief Justice of India. In this Bill, you will find that the composition is, the hon. Prime Minister, a Cabinet Minister and the Leader of the Opposition. Sometimes, we start wondering as to why there is a question, an iota of doubt because if the Cabinet Minister is from the Ruling Party, where would the transparency or the accountability go? Where this would be seen to have been exercised under this Bill? Why is there not an independent, an accountable component in this kind of composition? Sir, when you talk about the Election Commission of India, the people of this country and also the world, they are watching that it is a vibrant democracy. When I was going through the Constituent Assembly debates of 1949, it was just a country that had just become Independent after a long rule of subjugation and at that time, the framers of the Constitution wanted a very, very robust, independent and accountable Election Commission which would decide the fate of the voters, the liking of the voters, the intent of the voters to bring in a democracy, bring in some kind of a ruling dispensation that would only cater to the democracy of this country and build democratic institutions and see that this democracy becomes a vibrant democracy. Sir, the institutions are meant to be for the people of the country and not for the Ruling Parties. The institutions are meant to deliver fairness and if an Election Commission will not be able to see that the elections are conducted in a free and fair manner in a transparent manner, then, where is the component of democracy and where is the way in which the governance model is being shown or projected to the world? And that brings us to the moot question, if this Bill needs some rectification; if the Bill needs to be looked into on several other aspects. It has been functioning for a long while, but, as I have said, that there have been instances. I do not want to pin-point instances because suddenly a huge group of people will get up and start shouting but will not understand as to what is the backbone of bringing an Election Commission of India in a way where it caters to the need of the people of this country and that is the transparent mechanism, the rule of law. Sir, books and books have been written on the rule of law of this country. They are dependent on the independent institutions.

If a Bill weakens the institutions, we have weak institutions in place where anything can be distorted, then the functioning of the democracy cannot be said to be a vibrant functioning. That is why when the Election Commission of India, which is the highest body and the Chief Election Commissioner.. ...*(Interruptions)*... I am not going into the tenure and salary and the period of the tenure. That happens in every other institution. But the composition makes the difference because that composition will decide about the accountability and transparency factor and the performance factor which will tell on these elections. Sir, when I talked about the silent period, nobody has touched upon that. But when there is a silent period, that is the time where the Election Commission has to function very strictly and has to be very vigilant because if that Code of Conduct is breached and when the voters are given the silent period to make up their mind where they want to vote and at that particular time, when a particular ruling dispensation comes up with some kinds of statements that 'we would be doing this, we would be doing that, we have done that' and tries to influence the voters, this falls in the arena of the Election Commission. As there is not a stringent procedure or rule or law, it is governed by its actions and these actions are dependent on who is sitting in that particular Election Commission body. Hence, Sir, coming back to the Election Commission's regulations, procedures and how this Model Code of Conduct and party is being governed, I think, that is the main crux of the whole matter. So, the hon. apex court saw that there is a Constitutional vacuum and this has to go in the arena of the Parliament and the Parliament can only make a Bill or pass a Bill and make a law, hence, that express order was that this should be the composition. But, when the framers, I mean, the Parliamentarians sitting here and bringing a Bill, think that this can be changed, it can be brought in a way where it is not seen as independent composition, where it raises some kinds of doubt and hence this debate and everyone comes out with some point or the other, I think, it is time that the hon. Law Minister looks at this particular point of the composition aspect because anyway the duty is going to be performed. You are in public eye and I don't want to show what has happened in the past. I just mentioned a couple of these issues. Some of them are already pending before the hon. apex court where the Election Commission has been asked a question and that pertains to several factors - party's money, party's intentions, the way the party collects all the money, and how it is not transparent. All these are issues with the Election Commission. It is an administrative function, but yet these matters have gone to the hon. apex court. We should not forget that. Of course, the functions of the Legislature, Executive and Judiciary are all different and the judiciary only interprets what is made by the Parliament and it is implemented by the Executive. But here we have a body which also functions in a way where it interprets and executes both. So, we have to

understand that it is a unique body and how this unique body has to be answerable to the people in order to see that we become a robust democracy. We need to set an example. (*Time-bell rings.*) By shouting, by making sermons, by talking about that we are becoming the world leader that is not going to matter. What you are doing on the ground is the matter before the people of this country. Thank you.

SHRI R. GIRIRAJAN (Tamil Nadu): Mr. Vice-Chairman, Sir, I thank you very much for giving me time to speak. I also thank our party's Floor Leader, Shri Tiruchi Siva. Whenever the hon. Supreme Court intervenes to save the democracy, this Union Government shows its strength through this House and destroys the wishes and views of the Supreme Court. Sir, earlier the National Capital Territory Amendment Bill has been amended by this House. They have done it with a brute majority. Now the Union Government wants to make EC like a puppet. The Bill seeks to exclude the Chief Justice of India from panel to select the Chief Election Commissioner and the Election Commission is deeply flawed. Sir, this Bill undermines the very democratic foundation of picking up very important executives to oversee the election process in an autonomous and neutral roles.

5.00 P.M.

This will provide the worst possible optics to the appointment of election officials from among a set of chosen bureaucrats or others by a panel of Government officials.

Sir, Soviet Premier Joseph Stalin once said, 'It is not the people who vote, it is the people who count the votes.' I think, the present Bill reflects the mindset of the ruling dispensation in execution of the ideas of Joseph Stalin.

In eroding the process of holding elections and counting votes that has been largely done in a fair way to satisfy a large working electoral democracy like India, the present rulers are opening a Pandora's Box may lose forces that may come back to bite.

Sir, this Bill, rather than strengthening the democratic fabric of our nation, poses a risk to the independence and authority of the Election Commission. The proposed legislation undermines a crucial role of the Election Commission which it plays in upholding the democratic principles of our country. I strongly urge every Member of this House to vote against this Bill and, instead, support a fully functioning democracy that India represents.

Sir, now, you are in Treasury Benches. Before 1990, you had only a few Members in this Parliament. Now, you have a brute strength. It will not continue

tomorrow. A day will come when your Acts will be amended. Mind it my friends. Thank you.

SHRI KANAKAMEDALA RAVINDRA KUMAR (Andhra Pradesh): Mr. Vice-Chairman, Sir, I am very thankful to you for giving me this opportunity to participate in the discussion. The Bill pertains to appointment, service conditions and term of the Chief Election Commissioner of India and the other Election Commissioners.

Sir, this Bill has been brought before this House to replace the existing Act which lacks certain aspects pertaining to the office of the Chief Election Commissioner and the Election Commissioners. The lacuna has been pointed out by the Supreme Court and it observed that until proper legislative mechanism is put in place the order will prevail in the appointment, service conditions and tenure of the Chief Election Commissioner and the Election Commissioners. This Bill provides Search Committee and a Selection Committee. The function of the Search Committee is to form a panel of eligible candidates to the post of the Chief Election Commissioner and other Election Commissioners. After forming the panel, it will forward the list of persons to the Selection Committee. The Search Committee will be headed by the Cabinet Secretary and two officers not below the rank of Secretary to the Government of India will be its Members. The Selection Committee will recommend to the President the name of the person to be appointed as the Chief Election Commissioner. Accordingly, they will be appointed by the Government. The provisions, at a glance, seem to be fine. But, if one goes into the provisions contained under Clause 8(2) of the Bill which says that 'the Selection Committee may also consider any other person than those included in the panel of Search Committee.' Therefore, provisions relating to appointment of Search Committee becomes infructuous. The other aspect is about powers. The powers are already conferred under Article 324 to the Constitution.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Kindly conclude. You have been given two minutes.

SHRI KANAKAMEDALA RAVINDRA KUMAR: Sir, I have six minutes time.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): No. You have two minutes.

SHRI KANAKAMEDALA RAVINDRA KUMAR: I am sure, Sir, I have six minutes.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): No.

SHRI KANAKAMEDALA RAVINDRA KUMAR: Sir, I thought I would get six minutes and prepared myself accordingly. I may be permitted.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): No.

SHRI KANAKAMEDALA RAVINDRA KUMAR: Sir, Clause 8 has to be amended. Secondly, there is no mention with regard to appointing authority of the Search Committee members. ...*(Time bell rings.)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Please conclude.

SHRI KANAKAMEDALA RAVINDRA KUMAR: Conducting of elections in a free and fair manner is most important. Representation of Peoples Act is another important thing. These two have to be looked into in connection with the Andhra Pradesh. ...*(Time-Bell rings.)*... Just one more minute, Sir. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Please conclude. ...*(Interruptions)*... Please conclude. ...*(Interruptions)*...

SHRI KANAKAMEDALA RAVINDRA KUMAR: The voters were deleted at the behest of the State Government. ...*(Interruptions)*... That has to be condemned. ...*(Interruptions)*... The recent reforms have to be looked into; Representation of Peoples Act, changing the voters' list, interference of the State Government, and also disposing of criminal cases against the people's representatives, including the Chief Minister of Andhra Pradesh. Thank you, Sir.

MESSAGES FROM LOK SABHA

- (i) **The Appropriation (No.3) Bill, 2023**
- (ii) **The Appropriation (No.4) Bill, 2023**

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Message from Lok Sabha. Secretary-General.

SECRETARY-GENERAL: Sir, with your kind permission, I rise to report that the Lok Sabha at its sitting held on the 12th December, 2023, passed —

- (i) The Appropriation (No.3) Bill, 2023; and
- (ii) The Appropriation (No.4) Bill, 2023.

The Speaker has certified that these Bills are Money Bills within the meaning of Article 110 of the Constitution.

I lay a copy each of the said Bills on the Table.

GOVERNMENT BILL - *Contd.*

The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023

&

Amendments for reference of the Bill to a Select Committee of the Rajya Sabha

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Dr. Dinesh Sharma. You have two minutes. ...*(Interruptions)*...

DR. DINESH SHARMA (Uttar Pradesh): Sir, I would like to congratulate the hon'ble Minister of Law and Justice for bringing this Bill to keep the democratic traditions intact in a transparent, fair manner and under the protection of the Constitution. I think this Bill has touched all aspects. He has already clarified about the previous Bill. Under that, a temporary Selection Committee was constituted under Article 324. The said temporary Committee consists of the hon'ble Prime Minister, the Leader of the Opposition and the Chief Justice of the Supreme Court and this is a temporary arrangement made by the hon'ble Supreme Court till a law is made in this regard. I think that now the responsibility of providing a permanent arrangement while maintaining the democratic traditions, is being fulfilled by the highest institution.

I am surprised at those people who never respected Constitutional institutions fully. Situations like Emergency emerged, various decisions of Courts were changed in the Shah Bano case, but today when the work of providing a complete system based on the facts given, with transparency, with all the amendments has been done in this Bill, then they have raised many objections about it. I am surprised to know this and I could not understand the fear of the Opposition, especially those sitting in front, who have been in power for a long time. What do they fear when the hon'ble Leader of the Opposition will be there in the Selection Committee? How can anything wrong happen when he is there in the Committee? Do they consider their leader weak as the

Leader of the Opposition or do they believe that next time their leader cannot be the Opposition? ...*(Time-bell rings.)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Hon. Member, please conclude.

DR. DINESH SHARMA: Sir, I was given five minutes by the Party.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): The hon'ble Minister is to speak at 5:30.

DR. DINESH SHARMA: Sir, I can say that today this Bill has been brought by completing the fair process of democratic traditions and incorporating all kinds of provisions. Those who think that it is not universal, those who think that there can be partiality in it; I think there is some confusion. ...*(Time-bell rings.)*... Some hon'ble Members say that those who were in an incompatible alliance also say that if JP were alive today - certainly if JP were alive today, he would have opposed the attitudes of the Congress, which were seen at the time of imposing Emergency against the Constitution. I believe that today's Bill is completely just and maintains democratic traditions and I fully support it.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Shri Binoy Viswam.

SHRI BINOY VISWAM (Kerala): How many minutes do I have, Sir?

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Two minutes.

SHRI BINOY VISWAM: Sir, the total time allocated for this Bill was six hours. According to that, we have a right to get six minutes. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): But here two minutes have been mentioned. ...*(Interruptions)*...

SHRI BINOY VISWAM: Sir, please tell me the reason. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Please speak. Your time has already started. ...*(Interruptions)*...

SHRI BINOY VISWAM: How can I put up my points on such an important Bill in two minutes? ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Everyone has been given two minutes. ...*(Interruptions)*...

SHRI BINOY VISWAM: No, Sir. Total time allocated for this Bill was six hours. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Your time is running out. Please start. ...*(Interruptions)*...

SHRI BINOY VISWAM (Kerala.): Sir, my time starts from now onwards for five minutes.

Sir, yesterday, this House saw a scene -- our friends from the BJP, all of them, were very vocal in supporting the Supreme Court. In a high esteem, they praised the Supreme Court yesterday. And, today, what do you see? After 24 hours, they say that Supreme Court is nothing! They forgot their words of yesterday. This is the BJP, Sir. Dr. Ambedkar was quoted here very much. Our friend, Shri Tiruchi Siva, quoted him and we all remember those words. That debate in the Assembly was meant for framing of the Constitution and was very clear. The categorical point is that the Election Commission should be free from the Executive interference and control. But they want to bring it under the control of the Executive, the Prime Minister. For them, Dr. Ambedkar is only for certain hours, certain needs. Normally, they are following the footsteps of Hitler. Hitler had a total disregard for Parliament. In 1930s, Hitler even banned the Reichstag, the German Parliament. These people are trying to sabotage the Parliamentary democracy. Free and fair elections are not important for them. That is why they want...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Please conclude. ...*(Interruptions)*...

SHRI BINOY VISWAM: The Election Commission made by the bureaucrats, controlled by the Prime Minister, obeying the diktats of the Prime Minister is going to see 'one nation, one election' theory of the BJP; it is going to make big damage to the country. And, they want to make sure that only one party would do everything here. Sir, in 2018, Shri Amit Shah made a statement for the workers of the BJP.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Please conclude

SHRI BINOY VISWAM: Sir, the last sentence. Shri Amit Shah said, if he wins the election in 2019, then, for the next 50 years, they will control India. For that purpose, they have brought this Bill. They want to make the Election Commission a goat in their farm house.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Thank you.

SHRI BINOY VISWAM: In that way, (*Time-bell rings.*) we object to it, Sir.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Shrimati Mahua Maji.

SHRIMATI MAHUA MAJI (Jharkhand): Sir, the biggest blow that our country will face as soon as this Bill is passed, is that the sanctity of Democracy of India, a country which has a population of 140 crore and which is revered in the entire world for being the largest democracy and for having the most just and impartial electoral process, will come under doubt. On behalf of my Party, I strongly oppose this Bill. It is unethical, unconstitutional; it is neglect, disregard and disrespect to Baba Saheb Ambedkar and the members of the Constituent Assembly.

Sir, a robust democracy requires free and fair elections, which will become impossible once this Bill is passed. If the ruling Party is in majority in the appointment of the Chief Election Commissioner, then how would it conduct the elections fairly and transparently through the Election Commission? How would the public believe that there is no tampering in EVMs and VVPATs.

Sir, the great thinkers of the modern world, Foucault of France and Agamben of Italy, had also said that the windows of democracy should remain open so that fresh democratic winds can come in, this strengthens the country, but it seems that nowadays Mussolini and Hitler are being read more.

Sir, the Election Commission that exists now, is the Election Commission of the country, just like the hon'ble Supreme Court is the Supreme Court of the country, but the Bill intends to make the Election Commission an agency of the Government of India. If you remove the Chief Justice from the panel of appointment of Election Commissioners and want to include a Cabinet Minister nominated by the Prime Minister, who is the Chairperson of that Committee, then the Commission will perform those functions which the Government wants. After all, why does the Government want to exclude the Chief Justice of India from this Committee? As per the provisions

of the Bill, the Government wants to fix their salary in such a way; as if they are Government officials, currently, they receive a salary equal to that of a Judge of hon'ble Supreme Court, while in the new Bill, the Government wants to keep this equal to that of the Chief Secretary. These days, the Government is constantly being accused of weakening democratic institutions and misusing agencies, so does it want to take control of the Election Commission as well! What is the need of this Bill? Why should the Chief Justice of the Supreme Court not be involved in the selection of the Election Commissioner and if voting takes place in this three-member Committee, then the vote will be in their favour, so what is the need of the Leader of the Opposition? The Government should never forget that there is no such empire or king in the world who has ruled for eternity. Change of power is a universal truth. If our colleagues have any example of this, they should share it here. ...*(Time-bell rings.)*... Sir, I want to submit to the incumbent Party, through you, that we should not forget that this is not the era of thrones and crowns, this is not the era of kings ...*(Time-bell rings.)*...

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Thank you. Thank you very much.

SHRIMATI MAHUA MAJI: This is the era of people's power ...*(Time-bell rings.)*... This is the era of mandate. Our country will tolerate everything, but not an attack on democracy.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Ms. Indu Bala Goswami; not present. Shri Abdul Wahab; not present. Shri Neeraj Shekhar; not present. Shri Ajit Kumar Bhuyan; two minutes.

SHRI AJIT KUMAR BHUYAN (Assam): Sir, democracy and fundamental rights are the soul of the Indian Constitution, and the Election Commission has been a very strong instrument to utilize the confidence among people that their democratic rights will be safe by getting elected representatives in a free and fair election process.

Sir, there has been an amendment in the process and the manner of appointment of the Election Commission way back in 1991 when one-member Commission was converted into three-members Commission to avoid monopoly of one individual, and that amendment was supported by all political parties, including the BJP. But now the amendment that has been put for consideration in the Parliament has no consensus component and rather a bulldozing act.

Sir, the Election Commission must be perceived and honoured as independent; then democracy will flourish. I am sorry to say, the selection of an Election Commissioner will be compromised if the Government of the day has a majority monopoly. The removal of the Chief Justice of India from the selection process will certainly create a strong doubt in the minds of the people of opposition that the incumbent Government has malice intent.

Sir, my sincere suggestion will be, if the Government of the day seems to be seen as judicious in amendment of ECI Act, the Prime Minister and leader of two major opposition parties should be made members of the selection process. Two members from the Government and a third member from the opposition cannot be a fair and unbiased selection committee of the ECI-appointment process. In the wisdom of even a layman, the proposed Bill is nothing but a majority bullet to the soul of the Constitution.

However, the Bill that has been put for consideration is not going to create confidence when already several political parties and individual constitutional experts have expressed doubt about the partiality of the ECI.

Why not two major opposition party leaders in Lok Sabha and the Prime Minister constitute a panel of the selection process to appoint the Election Commission of India?

Sir, I will conclude,

*"Karo sab kuchh lekin aise na karo ki logon ka vishwas hi toot jaaye loktantra se,
Loktantra rahega, to aaoge-jaaoge, lekin agar nahin rahega loktanta,
to kaise phir aaoge?"*

Thank you.

THE VICE-CHAIRMAN (SHRI SUSHIL KUMAR GUPTA): Ms. Kavita Patidar. You have two minutes.

MS. KAVITA PATIDAR (Madhya Pradesh): Hon'ble Vice-Chairman, Sir, I thank you for giving me the opportunity to speak on such an important Bill. Before starting my speech, I would like to submit that recently one hon'ble Member had said that there has never been a king who has lived forever. I want to answer that. The people of this country respect those who are dedicated to the service of the nation and take decisions in the national interest without any discrimination and the results of the three States that have just come out, are an explicit example of this.

Hon'ble Vice-Chairman, Sir, the Election Commission of India provides the backbone of representative democracy in India. It is the guardian of electoral integrity. This Bill provides uniformity in the provisions for appointment, qualifications, term of office and removal of the Chief Election Commissioner and other Election Commissioners.

(MR. CHAIRMAN *in the Chair.*)

Sir, I would like to speak on two points now. Some hon'ble Members of the Opposition have said that this Bill is against the decision of the hon'ble Supreme Court. I would like to tell them that this Bill has been brought in accordance with the decision of the hon'ble Supreme Court regarding the appointment of the Election Commission. The Court had directed the appointment of the Chief Election Commissioner and Election Commissioners through a Committee until Parliament passes a law. The present Bill only fulfills the directions given by the hon'ble Court in its judgment, because finally, the power to make the law lies with the Parliament and the Court had constituted an ad-hoc Committee and not a permanent one. The hon'ble Supreme Court had made it clear that this criterion will remain in force until Parliament makes a law on this matter. The process of making this law has started in Parliament today.

Sir, this Bill aims to address various aspects, this Bill includes definition of expressions, procedure of appointment, qualifications, establishment of Search Committee and Selection Committee, term of office, salary, resignation, removal, pension etc. ...(*Time-bell rings.*)...

Sir, with your permission, I would like to speak on one more point which is very important. In fact, through this Bill the Leader of the Opposition also has a role to play in the appointment of Election Commissioners.

MR. CHAIRMAN: Please conclude.

MS. KAVITA PATIDAR: Through you, I want to ask the hon'ble Members from the Opposition in this House...

MR. CHAIRMAN: Thank you, Ms. Kavita Patidar. Dr. M. Thambidurai; two minutes.

DR. M. THAMBIDURAI (Tamil Nadu): Mr. Chairman, Sir, I was the Minister of Law, Justice and Company Affairs during 1998-99. We have seen many Law Ministers.

Why the Bill could not have come in the last 71 years, I fail to understand. Now, because of the Supreme Court's intervention recently the Bill has come. I don't understand what the necessity is. That is the first part. Secondly, in the past 71 years, the Election Commission has conducted elections fairly. Otherwise, we would not have come here. Therefore, we cannot blame the Election Commission and bring such a Bill. Also, some Members from that side talked about dynastic politics. As far as the AIADMK Party is concerned, our Party General Secretary, Edappadi Palanisamy made it clear that in the AIADMK Party, there cannot be any dynastic politics. That was followed earlier by *Perarignar Anna*, *Puratchi Thalaivar MGR*, *Puratchi Thalaivi Amma*. We never followed dynastic politics. It is in a democratic way that our Party has been functioning. When I was the Law Minister, Dr. Gill was the Election Commissioner. I never interfered and he functioned independently. Now, Sir, you have appointed me as Chairman of the Committee on Government Assurances. For discussing reforms in the Election Commission, we asked representatives of the Election Commission to appear before the Committee, but they said that they cannot appear before the Committee because they are an independent body and that we can ask only the Ministry to appear before the Committee. Therefore, the Election Commission still functions independently. The Government is not interfering. Hence, I don't think there is any necessity for his kind of a Bill.

MR. CHAIRMAN: Shri Deepak Prakash; two minutes.

SHRI DEEPAK PRAKASH (Jharkhand): Hon'ble Chairman, Sir, I rise to speak in support of this Bill. This Bill has been brought during *Amrit kaal*. This is a Bill that would express immense meaning in few words. Many hon'ble Members from the Congress Party have discussed the writ of the year 2015, here. They are presenting incomplete decisions before the House, but it is a fact that this Bill has been brought in compliance with the decision given by the hon'ble Supreme Court in the case of *Anoop Baranwal vs Union of India*. This House has the right to make any law or repeal any law. We all are proud that we are the hon'ble Members of the House where laws are made and repealed.

The appointment procedure in this entire Bill is transparent and a democratic procedure of appointment has been mentioned in it. I want to know under this Bill that when the appointment were made during the Congress regime, whether there was a Search Committee at that time? Whether there was a Selection Committee earlier? Earlier during the Congress regime, there was neither a Search Committee nor a Selection Committee, rather the situation was '*khata na bahee, jo ek pariwaar kahe*,

wahi sahi'. I want to ask my hon'ble colleagues from the Congress and the Opposition, sitting in front of me. ...*(Time-bell rings.)*... in 1989 when there was only one member in the Election Commission, then through an official order, the then Prime Minister made added two more members to it. I want to ask as to what happened to the appointment process at that time? In 1990, when V.P. Singh's Government came, at that time ...*(Interruptions)*... Sir, give me protection for a minute. In 1990, when V.P. Singh's Government came, a Commissioner was again appointed, but in 1993, when the process of Election Commission reform was accelerated by T.N. Seshan, the Narasimha Rao Government appointed another Commissioner...

MR. CHAIRMAN: Shri G.K. Vasan; you have two minutes.

SHRI G.K. VASAN (Tamil Nadu): Sir, as a modern democracy, the mammoth onus of conducting elections is on the Chief Election Commissioner. We have witnessed ballot boxes being carried through rough areas in this country. As a part of successive exercise of voting for crores of people in this country, my Party feels that, from time to time, it is necessary that we review the functioning of the electoral system, streamline the procedures and also provide adequate resources for the smooth conduct of elections. As a part of this exercise, successive Governments have brought amendments to electoral laws like the Representation of the People's Act. Today, the law is being enacted with a lot of riders like Election Committee, Selection Committee, Search Committee or Qualification Committee to get the confidence of voters so that free and fair elections can take place in the country. I am sure that the hon. Minister will address the concerns of hon. Members. With this, I conclude. Thank you.

MR. CHAIRMAN: Very effective! The next speaker is Shri Ajay Pratap Singh. You have two minutes. Shri Ajay Pratap Singh, you have two minutes.

SHRI AJAY PRATAP SINGH (Madhya Pradesh): Hon'ble Chairman, Sir, I support the Bill that has been presented in the House. Our hon'ble colleagues have given their arguments in favour of and against this Bill. Our hon'ble colleagues from the Opposition have given very good discourses, but I want to remind them that if anyone's election has been cancelled in this country due to malpractice in elections, it was the country's first woman Prime Minister hon'ble Shrimati Indira Gandhi, against whom the Allahabad High Court had given a verdict and as a result the country had to

suffer an Emergency. Secondly, I also want to remind them that when T.N. Seshan *ji* had made the countrymen realize the power of the Election Commission as to what the impartiality of the Election Commission is, what the fearlessness of the Election Commission is, then if anyone has put the work of putting shackles on the feet of the Election Commission, then it was the then Congress Party Government, so today, when they talk about the impartiality of the Election Commission, their words seem a bit artificial. Our hon'ble colleagues, while participating in this debate, have said that under the provisions made here for the appointment of the Election Commission, the Selection Committee that has been constituted includes the Leader of the Opposition and the majority is of the ruling Party. ...(*Time-bell rings.*)... Those who talk about votes - if the Leader of the Opposition is there in the Selection Committee, if members from the ruling Party are there in the Committee, it is such, because they could reach a right decision by discussing among themselves. Sir, it is not always about votes, everywhere. This democracy means discussion, to draw conclusions after discussion and deliberation and doing some work for the betterment of this country. This Selection Committee has been constituted for this very purpose, therefore, Chairman Sir, I conclude my speech by supporting this Bill, thank you very much.

MR. CHAIRMAN: Shri Ramji - not present. Shrimati Priyanka Chaturvedi. You have two minutes. Make the most of it.

SHRIMATI PRIYANKA CHATURVEDI (Maharashtra): Sir, I always prepare such a long speech, but because of the timing, literally everything gets ruined.

MR. CHAIRMAN: The world record for 100-metre race is 9 seconds. Go ahead.

SHRIMATI PRIYANKA CHATURVEDI: Sir, we are discussing about the Election Commission, the duty of the Election Commission is not only to conduct free and fair elections, update electoral rolls, enroll adults who vote, in the electoral rolls, but also, if there is any dispute or split among political Parties, then the responsibility of taking a decisive and fair decision lies with the Election Commission. There was a split between two Parties in Maharashtra, the argument of one of which, is still continuing in the Election Commission and the other in the Supreme Court. Sir, I just want to submit that if the decisions of the Election Commission are 2:1, then they will not be fair at all. Every time there will be a bias in the decision. Section 8 has been introduced in it, in which it has become 'one versus none'. If the hon'ble Prime

Minister decides that he would not abide by the choices of the Search Committee, the choices of the Selection Committee, then he does not have to follow anyone, he will have his own decision, as per Section 8 that too has been kept valid. Sir, I believe and my request is only this, because two minutes... Sir, I have 50 more seconds. Sir, if I quote the hon'ble Supreme Court, then there is a problem here. Baba Saheb Ambedkar *ji* had...

MR. CHAIRMAN: Thank you.

SHRIMATI PRIYANKA CHATURVEDI: Sir, 40 seconds are still left. ...*(Interruptions)*... When there was Constituent Assembly and the Constitution was drafted, Baba Saheb Ambedkar *ji* had said in the spirit that it should be kept away from interference of the Government. The hon'ble Supreme Court delivered its verdict in the same spirit. Keeping the same spirit intact, it is the responsibility of the Government that the Election Commission has to be totally fair and free of bias and I want to submit this, through you, to the hon'ble Minister of Law and Justice.

MR. CHAIRMAN: Shrimati Vandana Chavan. You have two minutes.

SHRIMATI VANDANA CHAVAN (Maharashtra): Sir, the Election Commission plays an exceptionally important role in upholding the democratic structure of our country. The test of credibility of the Election Commission is not only in their efficiency and the fairness of elections, but also in the neutrality where it has to show that it does not bow down to the ruling party. Lately, on the one hand, turning a blind eye by the Election Commission when the ruling party netas delivered hate speeches or resorted to indecent character assassination or quoting false facts and figures, and on the other side putting behind bars members of the opposition even at the slightest slip of the tongue or which seemed like a slightest slip shows the changing role of the once extremely credible Election Commission.

In my limited time, I will just touch upon three points. First, I would like to ask the hon. Minister as to why the Government has not included the Chief Justice of India in the Selection Committee in spite of a specific directive in the Supreme Court ruling. Second, with so much executive control with the Election Commission, will it not become a 'yes man' of the present dispensation? Third, clause 6 says that the Search Committee is supposed to submit five Members on the panel. I want to ask: Why only five? Why not all the Members? That too, after submitting the five names, it

is up to the Selection Committee whether they want to accept it or not, or just shun it totally.

With elections around the corner in 2024, with the sudden introduction of the Bill, that too bypassing the order of the Supreme Court, the move is suspect. This Bill, in the present form, in my submission, is a mockery of the expectations of the people and the democracy as a whole. Thank you, Sir.

SHRI DEREK O'BRIEN (West Bengal): Sir, I have a point of order.

MR. CHAIRMAN: Shri Arjun Ram Meghwal.

SHRI DEREK O'BRIEN: *

MR. CHAIRMAN: You were not here.

SHRI DEREK O'BRIEN: *

MR. CHAIRMAN: Hon. Member, you were not present in the House. ...*(Interruptions)*...

SHRI DEREK O'BRIEN: *

MR. CHAIRMAN: No, it will not go on record. One second ...*(Interruptions)*... Nothing will go on record. I have not given the floor. I had taken sense of the House. The leaders had spoken to me. The House had authorized it, and even questioning the House ...*(Interruptions)*...

SHRI DEREK O'BRIEN: *

MR. CHAIRMAN: If you were not present, no one can help you. I am sorry. ...*(Interruptions)*... You are putting on record something which the House has approved. Sense of the House was taken. House is supreme. We cannot allow this. I have gone by the sense of the House.

Now, hon. Minister to reply to the discussion.

* Not recorded.

SHRI SUKHENDU SEKHAR RAY (West Bengal): Sir, I have a small clarification. ...*(Interruptions)*...

THE MINISTER OF STATE OF THE MINISTRY OF LAW AND JUSTICE; THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS; AND THE MINISTER OF STATE IN THE MINISTRY OF CULTURE (SHRI ARJUN RAM MEGHWAL): Thank you hon'ble Chairman, Sir...*(Interruptions)*...things would be clear after my reply. Hon'ble Chairman, Sir, I am thankful to all the hon'ble Members who participated in the discussion on the Bill today. The discussion was started by Shri Randeep Singh Surjewala from the Congress and was concluded by Shrimati Vandana Chavan from the NCP. A total of 26 hon'ble Members expressed their views in the discussion. Some hon'ble Members might have spoken in a hurry, but the suggestions were excellent, so I express my gratitude to everyone through you.

Hon'ble Chairman, Sir, an Act was passed in 1991 which had a lacuna. Otherwise, we would have not been discussing it in the House today. Now, I will not go into how the lacuna was left in 1991. The Constitution makers had said that the Parliament should make Acts under Article 324, but the mistake was that it was not made until 1991. The Act which was made in 1991 was titled - The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. When someone filed a PIL, they said that you have not even made an Act regarding appointment. The Constitution makers had said in Article 324(2) that the Parliament would make a law regarding the appointment process. Therefore, I am standing among you today, for a limited purpose. When there was a lacuna in this in 1991, then the hon'ble Supreme Court directed to make a law. Till the law was made, they made a stop-gap arrangement, which they were referring to that the hon'ble Supreme Court constituted a Committee. They were repeatedly mentioning that we are destroying the Constitution, that we do not follow what is mandated in the Constitution. Sir, since you are an expert of the Constitution, I would say that the Constitution makers also wrote Article 324, in which they said that the Parliament will make a law for the Chief Election Commissioner. Hon'ble Chairman, Sir, I would like to draw your attention to the fact that Article 50 has also been created by the Constitution makers, which intends - separation of powers. The Judiciary will not interfere in the Executive and the Executive will also not interfere in the Judiciary. This separation of powers is also in Article 50. We have brought this Bill under it.

MR. CHAIRMAN: Neither would it interfere in the domain of the Legislature.

SHRI ARJUN RAM MEGHWAL: Yes Sir, neither would it interfere in the domain of the Legislature. Every pillar of Indian democracy would do its respective job. Executive will do its work, legislators will do theirs and Judiciary will do its work. This Article 50 has been inserted by the Constitution makers, so that no one is above the Constitution. We also believe this. Hon'ble Surjewala *ji* was preaching, I don't know why he was doing so. He also mentioned two-three proverbs. Sir, I will also mention a proverb. Sir, you are from Rajasthan and you must know Marwari too. He must be sitting here. Hon'ble Surjewala *ji*, *shayad aapne hiye mein kaanchhi nahi pheri* (You probably did not introspect). *Hiya* means heart. In Kabir's language, it can be said that you did not introspect and if I say it in English - then all the proverbs you were mentioning, were not correct-Those who have not introspected themselves, they are preaching us! Do you know how you appointed Naveen Chawla *sahab*, M.S. Gill *sahab*? Everyone knew the ideology, but we do not want to go into it. We are here among you today for a limited purpose. I would like to reply to a few fundamental questions, like Amar Patnaik *saheb* raised very fundamental questions ...*(Interruptions)*...

SHRI RANDEEP SINGH SURJEWALA (Rajasthan): Sir, I have a point of order since the hon. Minister referred to me.

SHRI ARJUN RAM MEGHWAL: *Hiye mein kaanchhi nahi pheri*, (He did not introspect), that is all I said. In Marwari, '*Hiya*' means 'heart' and '*kaanchhi pherna*' means if there is any problem in it, then one should do full introspection, as Kabir said that one should look inward. They did not look inward at all and started accusing us. They said that no one is above the Constitution. We also believe that no one is above the Constitution. You too read Article 50, you too read Article 324. Why did you keep lacunae in the law in 1991? I will again remember Baba Saheb and say what he said on 25 November, 1949. Hon'ble Surjewala *ji* quoted him, so I also want to quote. He said, "Let us resolve that whatever evils/wrongful things are in our way, due to which the Government has to ... for the public, we should resolve those evils without any delay." Sir, this was an evil because anybody could interfere in it. Now this is an Executive function, everybody knows it.

Well, he is asking as to why the hon'ble Prime Minister is there in the Selection Committee! Now the people of this country have elected him. "WE, THE PEOPLE OF INDIA", this is the first sentence of our Constitution. The people elected the Prime Minister and he is arguing that he should not be in the Selection Committee, I don't understand what kind of argument he was making! Does the hon'ble Prime Minister

have no role in the Executive function? The Leader of the Opposition, whom we have in the Selection Committee, was not even mentioned, by whoever spoke!

Sir, I want to submit two-three things through you. This Bill is for a limited purpose. On August 10, 2023, I introduced this Bill in the Rajya Sabha. We have brought this Bill by replacing the Act of 1991. There was no provision for appointment in it, so we have added a provision for appointment in it. This is what was directed in the decision of hon'ble Supreme Court that was delivered on March 2, 2023. Hon'ble Supreme Court said that until the Parliament makes any law, this Committee is being constituted. Therefore, we have brought the Bill as per the Supreme Court's directions.

Sir, hon'ble Amar Patnaik submitted views about removal. As far as I understand the provision of removal, the Chief Election Commissioner can be removed in the same manner and on the same grounds as the procedure by which an hon'ble Judge of the hon'ble Supreme Court can be removed. Clause 4 of Article 124 of the Constitution mandates the procedure for removal of the Chief Election Commissioner would be the same which is described for the removal of a hon'ble Judge of the hon'ble Supreme Court. As far as the removal of the Election Commissioner is concerned, it is also written in the Constitution. It is written in Article 324. As far as the removal of the Election Commissioner is concerned, there is a provision under Clause 5 of Article 324 of the Constitution that the Election Commissioner can be removed on the recommendation of the Chief Election Commissioner. Both these things are clear. You had raised this issue, so I mentioned it.

Secondly, someone said that those who do not conduct elections, do not know about elections. I have also been the District Collector in district. At that time, we did not contest any election, so did we not conduct elections? I want to say, through you, that the working mechanism of the Election Commission is impartial, will remain impartial and the Government is also committed to keep it impartial. We are committed to ensure that all the institutions during the incumbency of hon'ble Narendra Modi work in an impartial manner. ...*(Interruptions)*... Sir, there is no doubt about it. I just mentioned M.S. Gill *saheb* and Chawla *saheb*. Well, someone just mentioned it, Thakur *saheb* said or I don't know who said that if Jayaprakash Narayan were alive, whether he would have opposed us. Sir, I am saying it clearly that if Jayaprakash Narayan were alive, he would have supported hon'ble Narendra Modi *ji*. He would have supported hon'ble Narendra Modi *ji* 100 percent, there is no doubt about it. ...*(Interruptions)*... Well, Manoj Jha *saheb* said it. He would have supported hon'ble Narendra Modi *ji*.

Sir, I have also brought an official Amendment. When this original Bill was introduced, many things were discussed in it. The Government is sensitive, so it thinks.

MR. CHAIRMAN: Hon'ble Minister, hon'ble Randeep Singh Surjewala *ji* had given some important indications, you can at least agree on them. He had specifically mentioned the four fundamentals of Election Commission.

SHRI ARJUN RAM MEGHWAL: Yes, I do agree. "Nonpartisanship, fearlessness, transparency", I remember that too, Sir.

MR. CHAIRMAN: Sanctity.

SHRI ARJUN RAM MEGHWAL: Sanctity.

MR. CHAIRMAN: Then he requested to protect these.

SHRI ARJUN RAM MEGHWAL: Sir, *inhone hiya mein kaanchi nahi pheri* (He did not introspect). The subject was the same. Sir, the official amendment that I have brought, there was a clause 6 in it, in which there was a subject of Search Committee, we have made a little change in it. Earlier it was under the chairmanship of the Cabinet Secretary, now it is under the chairmanship of the Ministry of Law and Justice and two Secretaries are its members.

Sir, many hon'ble Members raised the issue of salary, hon'ble Tiruchi Siva *sahab* also raised the issue of salary, but through official amendment, provision has been made for salary equal to that of a Supreme Court Judge. We have made an official amendment in Condition of Service-Clause 15, in which the President will notify the rules and determine and notify them, we have made this provision. We have added a Clause 15A, which is important. Since a matter had come up in Mehboob Nagar, Telangana that a trial Judge had sent a notice to the Chief Election Commissioner and Commissioner, so we have added a Clause 15A related to protection. If CEC or EC takes any action while performing his duty, conducts any hearing or gives any order while performing his duty, then in such cases no Court will be able to take any action against him, we have mentioned this thing about protection.

Sir, I would try to conclude my speech by saying two-three more things, because you were also saying that voting would be held at 6 o'clock. You said one

thing as to why only IAS? Perhaps hon'ble Surjewala *ji* had said it. Elections are being conducted since 1951 and 1952. The credibility of the Election Commission has also increased in the country, that is why no such malpractice has happened till now. Hon'ble Chadha *saheb* is probably sitting right now. He is saying that we can appoint anyone. Sir, at least, kindly have a thorough reading of the Bill. The qualification has been mentioned in it. Someone will be appointed only according to that qualification, we cannot appoint anyone else. Secretary rank - this qualification is given. You should have read this Bill. ...*(Interruptions)*...

Sir, hon'ble Jawhar Sircar *saheb* raised some issues. You have said a good thing that there was flood situation somewhere, even then the process of election was conducted on boats - this is a good thing. You mentioned the process of election on boats as well. I hail from Rajasthan, a resident of the desert. There are sand dunes in my place. I saw that people used to go to vote on camels. The Election Commission had such a specialty that, for our faraway village, they used to keep camels so that people could go to vote sitting on the camel. So, all these processes have been made by the Election Commission. This is how we have been learning year after year, election after election. The Election Commission has earned its credibility and has also maintained impartiality.

Sir, one issue which hon'ble Chadha *saheb* had probably mentioned, I don't know how the Congress Party would take it. He said if only we make some such amendments, accept his suggestions, he would mobilise the entire Opposition. Was he speaking in the guise of hon'ble Kharge *saheb*, this I could not understand!

MR. CHAIRMAN: Ignore it.

SHRI ARJUN RAM MEGHWAL: I had a little confusion. I asked what the topic was ...*(Interruptions)*...

SHRI RANDEEP SINGH SURJEWALA: Sir, I have a point of order. ...*(Interruptions)*... Sir, I have a right to ...*(Interruptions)*...

MR. CHAIRMAN: Randeep Singh Surjewala *ji*, there is no reflection on you. ...*(Interruptions)*... It was not attributed to you. ...*(Interruptions)*... No, No. ...*(Interruptions)*... I have taken note of it. ...*(Interruptions)*... It was attributed neither to you nor to Shri Raghav Chadha.

SHRI ARJUN RAM MEGHWAL: You said it. I have heard it. ...*(Interruptions)*... You said that if we accepted your suggestions, you would mobilise the entire Opposition. You were speaking like the Leader of the Opposition, so I only asked whether you had taken the place of Kharge *saheb*.

MR. CHAIRMAN: This is a lighter moment. Go ahead.

SHRI ARJUN RAM MEGHWAL: Sir, I request you that the Bill that we have brought, is not against any decision of the hon'ble Supreme Court. We have brought it under the directions given by the hon'ble Supreme Court; we have brought it under the provisions of Article 324 (2) of the Constitution; we have brought it as per the doctrine of Separation of Powers under Article 50, which is written in the Constitution itself. Therefore, I would request, through you, to pass this Bill unanimously, this is a very progressive law. Thank you, Sir.

SHRI RANDEEP SINGH SURJEWALA (Rajasthan): Hon'ble Chairman, Sir, ...*(Interruptions)*...

MR. CHAIRMAN: There is no provision for clarification. I shall now put... ...*(Interruptions)*... Nothing will go on record. ...*(Interruptions)*... Okay. ...*(Interruptions)*... Mr. Sukhendu Sekhar Ray. ...*(Interruptions)*... He had indicated earlier also.

SHRI SUKHENDU SEKHAR RAY: Sir, I have only one constitutional point because according to my Party, this Bill suffers from unreasonableness and arbitrariness. Why I am saying so? It is because there is no reasonable nexus between the objects and the provisions of the Bill in as much as nothing is spelt out in the Bill as to why the Chief Justice has been replaced by a Minister although the norm set up by the Supreme Court continued for eight long years and continues to hold good. So, why is this replacement? There is no clarification from the Minister.

MR. CHAIRMAN: Okay. ...*(Interruptions)*... I shall now put the amendment moved by Dr. John Brittas for reference of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, to a Select Committee of the Rajya Sabha to vote.

The question was put and the motion was negatived.

... (Interruptions) ...

(At this stage, some hon. Members left the Chamber.)

SHRI ELAMARAM KAREEM (Kerala): Sir, you did not call me personally. ...*(Interruptions)*... You are only reading. ...*(Interruptions)*... I moved the amendment. ...*(Interruptions)*...

MR. CHAIRMAN: No, no. You are part of a committee. ...*(Interruptions)*...

SHRI ELAMARAM KAREEM: Each and every Member should be called and asked whether he is moving it or not. ...*(Interruptions)*...

MR. CHAIRMAN: Take your seat. ...*(Interruptions)*... Please take your seat. Hon. Members, I am scrupulously following the procedure. It was already indicated whether you wanted to move. That has been moved. Now, it is negated. The amendment is negated. ...*(Interruptions)*...

I shall now put the amendment moved by Dr. V. Sivadasan for reference of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, to a Select Committee of the Rajya Sabha to vote.

The question was put and the motion was negated.

MR. CHAIRMAN: Now, the question is:

That the Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto, be taken into consideration.

The motion was adopted.

MR. CHAIRMAN: We shall now take up Clause-by-Clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

MR. CHAIRMAN: In Clause 5, there are three Amendments; Amendments (Nos. 1 and 2) by Dr. John Brittas and Amendment (No. 17) by Shri Elamaram Kareem. Dr. John Brittas, are you moving the Amendments? Yes or no.

Clause 5 - Qualifications of Chief Election Commissioner and other Election Commissioners

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No. 1) That at page 2, line 20, for the words “are holding or have held”, the words “have been a Judge of the Supreme Court or Chief Justice of a High Court or have held” be substituted.

(No. 2) That at page 2, after line 22, the following proviso be inserted, namely,—

“ Provided that such persons should have completed at least one year after their retirement without accepting any post-retirement employment in the Central Government or any of the State Governments, immediately preceding the date of consideration of their name for appointment either as Chief Election Commissioner or Election Commissioner.”

MR. CHAIRMAN: Now, Amendment (No.17) by Shri Elamaram Kareem. Is he here? ...*(Interruptions)*...

SHRI ELAMARAM KAREEM: Sir, I move:

(No. 17) That at page 2, line 20, the words “are holding or”, be deleted

MR. CHAIRMAN: I shall now put the Amendments (Nos. 1 and 2) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put the Amendment (No.17) moved by Shri Elamaram Kareem to vote.

The motion was negatived.

Clause 5 was added to the Bill.

MR. CHAIRMAN: In Clause 6, there are four Amendments; Amendment (No. 3) by Dr. John Brittas, Amendment (No. 18) by Shri Elamaram Kareem, Amendment (No. 24) by Shri K.C. Venugopal, not present, and Amendment (No. 33) by Shri Arjun Ram Meghwal. Are you moving the Amendments? Amendments moved except Shri K.C. Venugopal who is not present and Shri Elamaram Kareem, not present. Dr. John Brittas, are you moving?

Clause 6 - Search Committee

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No. 3) That at page 2, line 23, for the words “Cabinet Secretary”, the words “incumbent Chief Election Commissioner”, be substituted.

MR. CHAIRMAN: Shri Elamaram Kareem, not present. Shri K.C. Venugopal, not present. Shri Arjun Ram Meghwal, are you moving?

SHRI ARJUN RAM MEGHWAL: Sir, I move:

(No. 33) That at page 2, for lines 23 to 25, the following be substituted, namely:-

“6. A Search Committee headed by the Minister of Law and Justice and comprising of two other members not below the rank of Secretary to the Government of India, shall prepare a panel of five persons for”.

MR. CHAIRMAN: I shall now put the Amendment (No.3) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put the Amendment (No.33) moved by Shri Arjun Ram Meghwal to vote. The question is:

(No. 33) That at page 2, for lines 23 to 25, the following be substituted, namely:-

“6. A Search Committee headed by the Minister of Law and

Justice and comprising of two other members not below the rank of Secretary to the Government of India, shall prepare a panel of five persons for”.

The motion was adopted.

Clause 6, as amended, was added to the Bill.

MR. CHAIRMAN: In Clause 7, there are eight Amendments; Amendments (No. 4 and 5) by Dr. John Brittas, Amendments (No. 19 and 20) by Shri Elamaram Kareem, not present, Amendment (No. 25) by Shri K.C. Venugopal, not present and Amendments (Nos. 26 and 27) by Dr. V. Sivadasan, not present. ...*(Interruptions)*...

DR. V. SIVADASAN: Sir, I am present.

MR. CHAIRMAN: Good, I have noted your presence. You are very elegantly dressed today. ...*(Interruptions)*... Amendment (No. 30) by Prof. Manoj Kumar Jha, not present. Dr. Brittas, are you moving?

Clause 7 - Selection Committee

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No. 4) That at page 2, line 33, *for* the words “a Union Cabinet Minister to be nominated by the Prime Minister”, the words “the Chief Justice of India or a Judge of the Supreme Court to be nominated by him”, be ***substituted***.

(No. 5) That at page 2, lines 38 to 40, be ***deleted***.

MR. CHAIRMAN: Now, Amendments (Nos. 26 and 27) by Dr. V. Sivadasan.

DR. V. SIVADASAN (Kerala): Sir, I move:

(No. 26) That at page 2, line 33, *for* the words “a Union Cabinet Minister to be nominated by the Prime Minister”, the words “a Judge of the Supreme Court of India nominated by the Chief Justice of India”, be ***substituted***.

(No. 27) That at page 2, lines 38 to 40, be ***deleted***.

MR. CHAIRMAN: I shall now put Amendments (No. 4 and 5) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put the Amendment (No.26 and 27) moved by Dr. V. Sivadasan to vote.

The motion was negatived.

Clause 7 was added to the Bill.

MR. CHAIRMAN: In Clause 8, there are two Amendments; Amendment (No. 6) by Dr. John Brittas and Amendment (No. 31) by Prof. Manoj Kumar Jha. Are you moving the Amendments?

6.00 P.M.

Dr. John Brittas, are you moving the Amendment? No; your voice is loud enough.

DR. JOHN BRITTAS: Sir, at least, I need to say in mic.

MR. CHAIRMAN: Hon. Members, now it is 6.00 p.m. If the House agrees, we may extend the sitting beyond 6.00 p.m. for disposal of the Bill.

Clause 8 --Powers of Selection Committee to regulate its own procedure

DR. JOHN BRITTAS (Kerala): Sir, I move:
(No.6) That at page 3, lines 3 and 4, be deleted.

The question was put and the motion was negatived.

Clause 8 was added to the Bill.

MR. CHAIRMAN: In Clause 9, there are five Amendments; Amendments (Nos. 7 and 8) by Dr. John Brittas; Amendment (No.21) by Shri Elamaram Kareem; not present; Amendment (No.28) by Dr. V. Sivadasan and Amendment (No.32) by Prof. Manoj Kumar Jha; not present. Dr. John Brittas, are you moving your Amendments?

Clause 9 --Term of Office

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No.7) That at page 3, line 7 for the words, "sixty-five", the word "seventy", be substituted.

(No.8) That at page 3, after line 12, the following be inserted, namely:-

"(4) The Chief Election Commissioner and other Election Commissioners shall not, for a period of one year from the date on which they cease to hold office as such, accept any employment either under the Central Government or under any State Government."

MR. CHAIRMAN: Dr. Sivadasan, are you moving your Amendment?

DR. V. SIVADASAN (Kerala): Sir, I move:

(No.28) That at page 3, for lines 8 and 9, the following be substituted, namely:-

"The Chief Election Commissioner shall not be eligible for re-appointment or for any other postings under the Central Government or any of the State Governments, whereas other Election Commissioners shall not be eligible for re-appointment."

MR. CHAIRMAN: I shall now put Amendments (No. 7 and 8) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put Amendment (No. 28) moved by Dr. V. Sivadasan to vote.

The motion was negatived.

Clause 9 was added to the Bill.

MR. CHAIRMAN: In Clause 10, there are eight Amendments; Amendments (Nos. 9 to 13) by Dr. John Brittas and Amendments (Nos. 34 to 36) by Shri Arjun Ram Meghwal. Dr. John Brittas, are you moving your Amendments?

Clause 10 --Salary, etc.

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No.9) That at page 3, lines 17 and 18, for the words "the Cabinet Secretary", the words "a Judge of the Supreme Court", be substituted.

(No.10) That at page 3, after line 21, the following be inserted, namely:-

"Provided further that conditions of service of the Chief Election Commissioner and other Election Commissioners shall not be varied to their disadvantage after appointment."

(No.11) That at page 3, line 33, for the words "Cabinet Secretary", the words "a Judge of the Supreme Court", be substituted.

(No.12) That at page 3, line 39, after the word, "such, "the words, "subject to the provisions of section 5, ", be inserted.

(No.13) That at page 3, line 40, for the words "Cabinet Secretary", the words "a Judge of the Supreme Court", be substituted.

MR. CHAIRMAN: Now, hon. Minister.

SHRI ARJUN RAM MEGHWAL: Sir, I move:

(No.34) That at page 3, for lines 16 to 18, the following be substituted, namely:-

"10. (1) The Chief Election Commissioner and other Election Commissioners shall be paid a salary which is equal to the salary of a Judge of the Supreme Court: ".

(No.35) That at page 3, line 33, for the words "Cabinet Secretary", the words "Judge of the Supreme Court" be substituted.

(No.36) That at page 3, line 40, for the words "to the Cabinet Secretary", the words "in accordance with the rules for the time being applicable to the service to which he belonged before his appointment as Chief Election Commissioner or an Election Commissioner" be substituted.

MR. CHAIRMAN: I shall now put Amendments (Nos. 9 to 13) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put Amendments (Nos. 34 to 36) moved by the hon. Minister to vote. The question is:

(No.34) That at page 3, for lines 16 to 18, the following be substituted, namely:-

"10. (1) The Chief Election Commissioner and other Election Commissioners shall be paid a salary which is equal to the salary of a Judge of the Supreme Court: ".

(No.35) That at page 3, line 33, for the words "Cabinet Secretary", the words

"Judge of the Supreme Court" be ***substituted***.

- (No.36) That at page 3, line 40, ***for*** the words "to the Cabinet Secretary", the words "in accordance with the rules for the time being applicable to the service to which he belonged before his appointment as Chief Election Commissioner or an Election Commissioner" be ***substituted***.

The motion was adopted.

Clause 10, as amended, was added to the Bill.

MR. CHAIRMAN: In Clause 11, there are two Amendments; Amendment (No. 14) by Dr. John Brittas and Amendment (No.37) by Shri Arjun Ram Meghwal. Dr. John Brittas, are you moving your Amendment?

Clause 11 --Resignation and Removal

DR. JOHN BRITTAS (Kerala): Sir, I move:

- (No.14) That at page 3, ***for*** lines 44 and 45, the following be ***substituted***, namely:-
"removed from office except in accordance with the manner and grounds for removal of a Judge of the Supreme Court, as laid down in clauses (4) and (5) of article 124. ".

MR. CHAIRMAN: Now, hon. Minister.

SHRI ARJUN RAM MEGHWAL: Sir, I move:

- (No.37) That at page 2, ***for*** lines 43 to 45, the following be ***substituted***, namely:-
"(2) The 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.
(3) The other Election Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner. ".

MR. CHAIRMAN: I shall now put Amendment (No. 14) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put Amendment (No.37) moved by hon. Minister to vote. The question is:

(No.37) That at page 2, ~~for~~ lines 43 to 45, the following be ***substituted***, namely:-

"(2) The 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.

(3) The other Election Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner. "

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clause 12 was added to the Bill.

MR. CHAIRMAN: In Clause 13, there is one Amendment; Amendment (No. 15) by Dr. John Brittas.

Clause 13 --Pension

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No.15) That at page 4, lines 9 to 18, be ***deleted***.

The question was put and the motion was negatived.

Clause 13 was added to the Bill.

Clause 14 was added to the Bill.

MR. CHAIRMAN: In Clause 15, there is one Amendment--in the long race, at last, Dr. John Brittas has made an exit--Amendment (No.38) by Shri Arjun Ram Meghwal. ...*(Interruptions)*....

DR. JOHN BRITTAS: Sir, I am there. My amendment is to protect the Election Commission. ...*(Interruptions)*...

MR. CHAIRMAN: Your amendment is not there. ...*(Interruptions)*.... Now, the Minister.

Clause 15- Other conditions of Service

SHRI ARJUN RAM MEGHWAL : Sir, I move :

- (No.38) That at page 4, *for* lines 28 to 31, the following be *substituted*, namely:-
"15. Save as otherwise provided in this Act, the President may by rules determine the conditions of service relating to travelling allowance, medical facilities, leave travel concession, conveyance facilities, and such other conditions of service relating to the Chief Election Commissioner and other Election Commissioners."

MR. CHAIRMAN : I shall now put Amendment (No.38) moved by hon. Minister to vote. The question is :

- (No.38) That at page 4, *for* lines 28 to 31, the following be *substituted*, namely:-
"15. Save as otherwise provided in this Act, the President may by rules determine the conditions of service relating to travelling allowance, medical facilities, leave travel concession, conveyance facilities, and such other conditions of service relating to the Chief Election Commissioner and other Election Commissioners."

The motion was adopted.

Clause 15, as amended, was added to the Bill.

MR. CHAIRMAN : There is one Amendment (No.39) by Shri Arjun Ram Meghwal for insertion of new Clause 15A.

New Clause 15A-Protection of Chief Election Commissioner and other Election Commissioners

SHRI ARJUN RAM MEGHWAL : Sir, I move :

- (No. 39) That at page 4, *after* line 31, the following be *inserted*, namely:-
"15A. Notwithstanding anything contained in any other law for the time being in force, no court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official duty or function."

MR. CHAIRMAN: I shall now put Amendment (No.39) moved by hon. Minister to vote. The question is:

(No. 39) That at page 4, *after* line 31, the following be *inserted*, namely:-

"15A. Notwithstanding anything contained in any other law for the time being in force, no court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official duty or function."

The motion was adopted.

Clause 15A was added to the Bill.

Clause 16 was added to the Bill.

MR. CHAIRMAN: In Clause 17, there are two Amendments; Amendment (No.16) by Dr. John Brittas and Amendment (No. 29) by Dr. V. Sivadasan. Dr. Brittas, are you moving your Amendment?

Clause 17- Disposal of Business

DR. JOHN BRITTAS (Kerala): Sir, I move:

(No.16) That at page 4, line 39, *for* the words, "All business", the words "Save as provided in sub-section (1), all business", be *substituted*.

MR. CHAIRMAN: Dr. V. Sivadasan, are you moving the Amendment?

DR. V. SIVADASAN: Sir, I move:

(No.29) That at page 4, line 38, after the words "other Election Commissioners", the words, "and as far as possible, written rules shall be laid down for the conduct of the business of the election Commission", be *inserted*.

MR. CHAIRMAN: I shall now put the Amendment (No.16) moved by Dr. John Brittas to vote.

The motion was negatived.

MR. CHAIRMAN: I shall now put the Amendment (No.29) moved by Dr. V. Sivadasan to vote.

The motion was negatived.

Clause 17 was added to the Bill.

MR. CHAIRMAN: In Clause 18, there is one Amendment (No. 22) by Shri Elamaram Kareem; not present.

Clause 18 was added to the Bill.

MR. CHAIRMAN: In Clause 19, there are five Amendments; Amendment (No.23) by Shri Elamaram Kareem and Amendments (Nos. 40 to 43) by Shri Arjun Ram Meghwal. Shri Elamaram Kareem; not present. Now, the Minister.

Clause 19-Laying

SHRI ARJUN RAM MEGHWAL: Sir, I move:

- (No.40) That at page 5, line 8, for the words "order made under section 18", the words "rule and order made under this Act" be substituted.
- (No.41) That at page 5, line 12, for the word "order", the words "rule or order" be substituted.
- (No.42) That at page 5, line 13, for the word "order", wherever it occurs, the words "rule or order" be substituted.
- (No.43) That at page 5, line 16, for the word "order", the words "rule or order" be substituted.

MR. CHAIRMAN: I shall now put AmendmentS (No. 40 to 43) moved by hon. Minister to vote. The question is:

- (No.40) That at page 5, line 8, for the words "order made under section 18", the words "rule and order made under this Act" be substituted.
- (No.41) That at page 5, line 12, for the word "order", the words "rule or order" be substituted.
- (No.42) That at page 5, line 13, for the word "order", wherever it occurs, the words "rule or order" be substituted.
- (No.43) That at page 5, line 16, for the word "order", the words "rule or order" be substituted.

The motion was adopted.

Clause 19, as amended, was added to the Bill.

Clause 20 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

MR. CHAIRMAN: Now, Shri Arjun Ram Meghwal to move that the Bill, as amended, be passed.

SHRI ARJUN RAM MEGHWAL: Sir, I move:

That the Bill, as amended, be passed.

The question was put and the motion was adopted.

MR. CHAIRMAN: The House stands adjourned to meet at 11.00 A.M. on Tuesday, the 13th December, 2023.

The House then adjourned at twelve minutes past six of the clock till eleven of the clock on Wednesday, the 13th December, 2023.

PUBLISHED UNDER RULE 260 OF RULES OF PROCEDURE AND CONDUCT OF
BUSINESS IN THE COUNCIL OF STATES (RAJYA SABHA)

21.12.2023

168

12.10 hrs

CHIEF ELECTION COMMISSIONERS AND OTHER
ELECTION COMMISSIONERS (APPOINTMENT,
CONDITIONS OF SERVICE AND TERM OF OFFICE)
BILL, 2023

As Passed by Rajya Sabha

[Translation]

HON. CHAIRPERSON: Item No. - 23, Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, Hon. Minister.

... (*Interruptions*)

[English]

THE MINISTER OF STATE OF THE MINISTRY OF LAW AND JUSTICE, MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF CULTURE (SHRI ARJUN RAM MEGHWAL): Hon. Chairperson Sir, with your permission, I rise to move: **

** Moved with the recommendation of the President.

“That the Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration.” ... *(Interruptions)*

HON. CHAIRPERSON: Please go back to your seats and do not show these placards.

... *(Interruptions)*

[Translation]

SHRI ARJUN RAM MEGHWAL: Hon. Chairperson, Sir, I have appeared before this esteemed House for a very limited purpose, with your permission. ... (*Interruptions*) The Supreme Court came underscoring the need to enact certain laws governing the appointment of the Election Commissioners of India under Article 324 as had been envisaged by the framers of the Constitution. ... (*Interruptions*) Many years passed but no law was enacted in this regard. In the absence of such a law, the Supreme Court had made a stopgap arrangement pending the enactment of a law by Parliament in this regard. ... (*Interruptions*) So then somebody went to PIL and after that the Hon. Supreme Court made a stop gap arrangement that it will remain so till the Parliament makes a law. ... (*Interruptions*) Therefore, there is a law before Parliament regarding appointments. ... (*Interruptions*) Who is the Chief Election Commissioner or the other Election Commissioner? ... (*Interruptions*) There was no law regarding appointment. ... (*Interruptions*) Therefore, I have appeared before the august House with the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill which has already been passed by the Rajya Sabha on 10th August, There were some official amendments to it which I would like to mention first. An official amendment to this Bill was

related to Clause Six. ... *(Interruptions)*. Earlier the Search Committee would be headed by a Cabinet Secretary. ... *(Interruptions)* Through this official amendment, the Search Committee will now be headed by the Law Minister and two Secretaries will be its Members. ... *(Interruptions)* Thereafter, the Selection Committee will be headed by the Prime Minister. ... *(Interruptions)* In clause ten of this bill, we have proposed an official amendment before you that the salary will be equal to that of the Hon. Supreme Court Judge. This is an official amendment made. We have made the third amendment - Condition of Services. With this, an official amendment has been made in clause fifteen, in which His Excellency the President will notify the rules and notify what will be his condition of services. The salary will be equal to the Hon. Supreme Court Judge. It will be determined by His Excellency the President A new clause in clause fifteen(a) is added through this official amendment. ... *(Interruptions)* The Chief Election Commissioner and other Election Commissioners have been provided safeguards against any action to be taken by the court of law for any decision taken by them while performing their duty. in such cases, if the CC and EC take any action while performing their duty, no action will be taken against them in the court. ... *(Interruptions)* This will be protection, I have brought such official amendments here. This was a major task for the executive and the

framers of the constitution also mentioned in Article 50, that the separation of powers, the executive should do the work of the executive, the judiciary should do the work of judiciary, the work of the legislative should be done by the legislature, this is a step forward in this direction. ... (*Interruptions*) There is progressive law. I would like it to be discussed and after discussion I request it to pass it unanimously. Thank you.

HON. CHAIRPERSON: Motion moved:

"That a Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners and the procedure for the transaction of business by the Election Commission and for matters connected therewith or incidental thereto, as passed by the Rajya Sabha, be taken into consideration."

[English]

SHRIMATI CHINTA ANURADHA (AMALAPURAM):

Thank you, hon. Chairperson Sir, for allowing me to share a few thoughts on the proposed Bill that is, the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023. ...
(Interruptions)

We are the biggest democracy in the world and hence, free, fair and impartial elections are an integral element of our political structure. ... *(Interruptions)* The Constitution makers, in their wisdom, entrusted the Election Commission with the responsibility of conducting elections in the country. Today, we are here to discuss a Bill that will amend the manner of appointment of the Chief Election Commissioner and Election Commissioners to the Election Commission. ... *(Interruptions)*

The Bill seeks to provide that the Chief Election Commissioner and other Election Commissioners will be appointed by the President on the recommendation of a Selection Committee, which shall consist of the Prime Minister as Chairperson, the Leader of the Opposition in Lok Sabha or the leader of the single largest Opposition party as Member, and a Union Cabinet Minister nominated by the Prime Minister as Member.

The Bill also provides for a Search Committee, which will prepare a panel of five persons for the consideration of the Selection Committee. The smooth functioning of our Election Commission is critical for ensuring a fair and unbiased electoral process and thus, upholding our democratic values.

Thus, this Bill must strengthen public trust in the electoral process and ensure that the integrity of the election system is protected.

With these comments, I conclude my speech and support the Bill on behalf of my YSR Congress Party. Thank you.

[Translation]

DR. SANJAY JAISWAL (WEST CHAMPARAN): Hon. Chairperson, Sir, I rise to speak in support of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Tenure) Bill, 2023.... *(Interruptions)*

Hon. Chairperson, the beauty of the Constitution of India is that it explains the rights of all very clearly. Article 50 of the Constitution distinctly separates the powers between the Executive and the Judiciary. ... *(Interruptions)* Similarly, Articles 121 and 122 indirectly reinforce this separation between the Judiciary and the Legislature, under which, except in certain circumstances, the conduct of judges cannot be discussed in Parliament, and the Constitution also prevents judicial interference in parliamentary proceedings. ... *(Interruptions)* This has been provided so that institutions remain independent and the rights of citizens are protected; this was the intent of the framers of our Constitution. ... *(Interruptions)* While maintaining the supremacy of Parliament, its sovereignty has also been limited through judicial review. But we also see that on many committees the Hon. Prime Minister and the Leader of the Opposition were Members. Yet due to the conduct of the Congress and its scams, the public did not consider them worthy even of the post of Leader of Opposition. ... *(Interruptions)*

Thereafter, Shri Modi Ji displayed magnanimity and brought about changes through the Cabinet. The leader of the largest Opposition party, irrespective of whether the post pertains to the Lokayukta, the Police Act, the Director of the CBI or any other institution, was earlier not included, as the law clearly stated that the Leader of the Opposition must be a member. The Hon. Prime Minister, showing statesmanship, amended this arrangement and ensured that the leader of the largest Opposition party is included in such committees. ... *(Interruptions)*

Hon. Chairperson, on the other hand, the Opposition is unable to accept how the son of a poor tea seller is serving the poor as the Hon. Prime Minister of this country. They cannot accept how the daughter of a tribal society holds the highest constitutional office. They cannot accept how a son of a backward Jat community is the Vice President. ... *(Interruptions)* Their rhetoric has made the people reject them. They want only dynastic leaders at the top, and they ridicule poor, backward, tribal and Dalit representatives when they rise to lead. This distorted mindset will be answered strongly in the 2024 elections. ... *(Interruptions)*

Hon. Chairperson, if anyone has misused the appointment of Chief Election Commissioners, it has been the Congress party. ... *(Interruptions)* When Indira Gandhi was Prime Minister, she

appointed her personal secretary as Chief Election Commissioner. When T. N. Seshan became an example of democratic strength, two more Election Commissioners were appointed to dilute his authority. The Congress did this. ... (*Interruptions*) A Government servant was made Chief Election Commissioner and immediately after retirement was made a Rajya Sabha MP and even a Minister; this too was done by the Congress Party. They have repeatedly constituted committees against the spirit of the Constitution to influence the CEC.

Hon. Chairperson, Sir, I express my gratitude to the Hon. Supreme Court for pointing out the legal vacuum regarding the appointment of Election Commissioners, and our Government has addressed it. I would like to thank the Hon. Prime Minister and the Hon. Law Minister, who, after Babasaheb Ambedkar, is the first from the Scheduled Caste community to hold this office, for bringing this Bill, which is a very good Bill.

It also comes to mind that the Congress is not in power today due to its own conduct. When the Supreme Court gave the Shah Bano judgment, an amendment was passed here to overturn it. This is the character of the Congress, which never allows constitutional institutions to function freely. Our Government understands these actions well. I express my gratitude that under the chairmanship of the Hon. Prime Minister, a Cabinet Minister and

the leader of the largest Opposition party, who cannot qualify as Leader of Opposition, have been included. Before that, the Search Committee under the Hon. Law Minister will prepare a panel of five names from among Secretaries of the Government of India or equivalent officers.

I express my gratitude that the Chief Election Commissioner and other Election Commissioners have been granted immunity so that no civil or criminal case will arise from decisions taken during their tenure, giving them full freedom to act impartially. I would like to thank the Union Government for this. Their salary has also been aligned with that of the Supreme Court. Another important provision is that while Parliament can take action against the CEC, the CEC can recommend action against other Election Commissioners. We have also seen how, during the Congress rule, confidential decisions were leaked informally, and even then impeachment was not allowed to proceed. Hon. Chairperson, Sir, I express my gratitude to the Hon. Prime Minister. When the Hon. Supreme Court examined the matter in the Anoop Baranwal case, it found that the intent of the framers of the Constitution had not been fully realised for 75 years. The Hon. Prime Minister has fulfilled that intent by ensuring transparency, just as he has worked to fulfil the aspirations of every poor person through rights-based schemes. This law too has now been fulfilled.

I am always amused that Congress leaders blame EVMs rather than accept their shortcomings. It is good for us that they remain unaware of their own faults. I express my gratitude to the Hon. Prime Minister for bringing this Bill, which will ensure transparency and enable the Election Commission to function effectively. Thank you very much.

SHRI RAHUL RAMESH SHEWALE (MUMBAI SOUTH-CENTRAL): Thank you, Hon. Chairperson.

Hon. Chairperson, I support the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023 introduced by the Hon. Minister of Law and Justice on behalf of myself and my party, Shiv Sena.

Hon. Chairperson, Article 324(2) states that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as may be decided by the President from time to time, and the President shall appoint the Chief Election Commissioner and other Election Commissioners. In March 2023, the Supreme Court ruled that the CEC and ECs would be appointed by the President of India on the advice of a Committee consisting of the Prime Minister, the Leader

of the Opposition in the Lok Sabha and the Chief Justice of India. But Parliament can enact a law regarding their appointments. As a result, the Hon. Minister of Law and Justice has introduced this Bill under the leadership of the Hon. Prime Minister Shri Narendra Modi ji.

Hon. Chairperson, this Bill will repeal the Election Commission (Election Commissioner Conditions of Service and Transaction of Business) Act, 1991. The CEC and other ECs will be appointed by the President on the recommendation of the Selection Committee. The Selection Committee will consist of the Prime Minister as Chairperson, the Leader of the Opposition in the Lok Sabha as Member, and a Union Cabinet Minister nominated by the Prime Minister as Member, which I welcome.

Hon. Chairperson, this is a good arrangement in the Bill, as earlier stated by hon. Members, that if the Leader of the Opposition in the Lok Sabha is not recognised, then the leader of the largest Opposition party in the Lok Sabha will assume this role.

Hon. Chairperson, as per this Bill, a Search Committee has been constituted which will prepare a panel of five persons for the consideration of the Selection Committee. This is a positive step, which will facilitate the Selection Committee to select the Chief Election Commissioner or Election Commissioner and ensure transparency in the selection process. I welcome this step of the

Government.

Hon. Chairperson, as per this Bill, the Search Committee will be chaired by the Cabinet Secretary and will include two other Members not below the rank of Secretary to the Union Government, who possess knowledge and experience in election-related matters. This will help prepare a panel of experienced persons. I congratulate the Hon. Minister of Law and Justice for this provision.

Hon. Chairperson, as per this Bill, the Selection Committee may also consider candidates who are not included in the panel prepared by the Search Committee. This will prevent the monopoly of the Search Committee and reflects the thoughtful approach of the Minister.

Hon. Chairperson, as per this Bill, persons who are holding or have held posts equivalent to the rank of Secretary to the Union Government and who have expertise in election management and administration will be considered for the panel. Another positive feature is the determination of qualifications for appointment to these posts. These are the issues on which the Hon. Minister of Law and Justice has prepared this Bill after in-depth study, and he deserves congratulations.

Hon. Chairperson, the Bill retains the same term of office as in the 1991 Act, and the CEC and other ECs will not be eligible

for reappointment.

Hon. Chairperson, Sir, the Bill provides that all business of the Election Commission shall be conducted by consensus, and in case of difference of opinion between the CEC and other ECs on any matter, the decision shall be taken by majority vote. Hon. Chairperson, the Bill upholds the earlier provisions regarding removal and resignation, and if the Chief Election Commissioner or Election Commissioner wishes to resign, they may submit their resignation to the President as provided in the 1991 Act. Hon. Chairperson, I again congratulate the Hon. Minister of Law and Justice, and with these words, I support this Bill. Thank you.

[English]

SHRI BHARTRUHARI MAHTAB (CUTTACK): Thank you, Sir.

The office of Election Commission of India came into existence in the 1950s but it was in 1991 that the Parliament first framed the law. ... (*Interruptions*) Today, when the Law Minister stood up to place the Bill for consideration and passing after it has been passed in Rajya Sabha, he categorically stated that one thing was lacking in 1991 law and that was pointed out by the Supreme Court after a public interest litigation was filed. ... (*Interruptions*)

The Supreme Court said that the Parliament has to frame the law relating to appointment of Chief Election Commissioner of India. So, on that basis, now a Bill is before us for consideration and number of things have come up. While the Bill is in public domain, the major issue that came up for discussion, deliberation and criticism is that the Government is appropriating full power to appoint Chief Election Commissioner. The Supreme Court had suggested a model and in that model it was the Prime Minister of India, Leader of Opposition in Lok Sabha or the largest group in Opposition in Lok Sabha and Chief Justice of India. But those people who are criticising it fail to go into the details of the judgement of the Supreme Court where it is categorically stated that

this is for a temporary period until and unless the Parliament frames a law. ... *(Interruptions)*

Today, the Bill has been placed before the Parliament by the Government or the Executive as is the practice in our country. Whatever Bills are to be placed in the Parliament are to be placed by the Government itself for framing the law. ... *(Interruptions)* But we should not forget one thing. Article 324 of our Constitution states that the Election Commission will comprise the Chief Election Commissioner and such Election Commissioners as the President may decide and this clearly stipulates that the Executive will suggest to the President and the President's Notification will come.

The Constitution specifies that the President will appoint the CEC and ECs subject to the provisions of an Act of Parliament. The Executive's role in appointing the CEC and EC was discussed in the Constituent Assembly as the President acts on the aid and advice of the Prime Minister. ... *(Interruptions)* Dr. Ambedkar had pointed out that the election machinery should be out of the control of the Government. ... *(Interruptions)* Members of the Constituent Assembly agreed to leave the appointment mechanism of the ECI to the discretion of Parliament. ... *(Interruptions)* Here, there was a little distinction between Parliament making the law and the Executive appointing the CEC and EC. ... *(Interruptions)*

In 1991, as I had stated earlier, Parliament passed the Election Commission Act setting the salary of the CEC and ECs at the same level as the Supreme Court Judge. It did not provide for their appointment process, which continued to be decided by the President. In March, 2023, the Supreme Court declared that their appointment should not be done by the Executive. It mandated a selection process, which would hold until Parliament makes a law. ... *(Interruptions)* The court directed that the appointment should be done by the President on the recommendations of the Selection Committee. ... *(Interruptions)* The Selection Committee will consist of the Prime Minister, the Leader of Opposition in Lok Sabha and the Chief Justice of India. ... *(Interruptions)* Now, this Bill is making a correction to it. ... *(Interruptions)* The Bill before us today has a Selection Committee, but instead of Chief Justice of India it has a Cabinet Minister proposed by the Prime Minister. ... *(Interruptions)*

It is said that the Selection Committee is dominated by the Government. ... *(Interruptions)* The critics say that the Government has a majority, which may undermine the independence of the Election Commission of India. ... *(Interruptions)* But are we not aware that the heads of several other independent bodies such as Chief Information Commission, Central Vigilance Commission are

also appointed by a panel similar to the one proposed by this Bill.

... (*Interruptions*)

Appointments to the constitutional bodies such as Union Public Service Commission and Comptroller and Auditor General of India are made by the President. I am inclined to mention here that the Chief Justice of India, being in the Committee to recommend the appointment, raises the question of the violation of the doctrine of separation of power as the appointment falls in the domain of the Executive. Since the Chief Justice of India is going to be a Member, as it was proposed at that time while recommending the Committee, in case there is a case of impropriety that comes up against the Election Commission of India Members in the court, it would cause embarrassment to the office of Chief Justice of India. The court also had rejected, we should not forget, the National Judicial Appointments Commission and refused to involve an elected executive on the pretext of judicial independence being the basic structure. So, in this case, how can it be prudent to be a part of the Selection Committee?

Amidst all the talk of democratic backsliding in India in certain forums, it is notable that nothing is being said about the lack of fairness or integrity of the election process. The credit for it goes to the Election Commission of India. The Supreme Court, of course,

noted that the ECI stands on a higher pedestal in the constitutional scheme due to its functional duties.

In our Constitution, Parliament is the supreme law-making body and the Supreme Court has the power to judicially review the constitutionality of every law. I believe, the Election Commission has to be independent of the Executive. The appointments of CEC and ECs so far have been fair and politically neutral. People expect Election Commission to be fair to all the parties. They must enforce the Code of Conduct with an iron hand, just like it was done by Mr. Seshan, but without his abrasiveness. Most of the CECs who followed Seshan in office did just that. They dispensed justice with firmness but without pomp and show.

Today, our primary focus should not be on the presence or absence of the Chief Justice of India in the Select Committee but on ensuring the structural and operational independence of the Election Commission of India by giving the power or by retaining the power with the Executive to appoint the Chief Election Commissioner which is akin to giving a player the power to appoint the umpire.

For more than 70 years, the Election Commission has overseen and upheld the integrity of all national elections. It has kept nation's democratic nature untarnished. That is the reason why people world

over look up to our election processes and at times they also invite our Election Commissioners to be witness to their elections.

It is clear that article 324 has been crucial in making Election Commission of India carry out its responsibility without outside interference and this brings me to make a comparison about how other parliamentary democracies have appointed their Election Commission.

Goswami Committee had recommended certain things in 1990 and after that, in 1991, a law was framed. But when we compare it to South Africa, United Kingdom, United States, and Canada, we find a marked difference. There, the Election Commission is totally independent from the Executive. Though, at times, they are responsible to the Senate or to Parliament, as here, in our law, impeachment has become a provision where if a CEC has to be removed, he can only be removed as it is done for the judges of the Supreme Court and a correction has already been made as an amendment in the Bill presented in Rajya Sabha. I believe that that is the right direction which the Government has taken by keeping at par the CEC with the judges of the Supreme Court.

[Translation]

SHRI SHANKAR LALWANI (INDORE): Hon. Chairperson, Sir, our Law Minister, respected Meghwal ji, has brought a very important Bill.

Sir, India is the largest democracy in the world and holding elections in a fair manner is extremely important in a democracy. For fair elections and a strong democracy, it is essential that Election Commissioners are appointed in a fair manner. The Government has introduced a Bill in this regard. Sir, this Bill deals with the procedure, service conditions and appointment of the Chief Election Commissioner and Election Commissioners. The main provision in it is that there will be two committees, a Search Committee and a Selection Committee, which will carry out the entire process of appointment in a transparent manner.

Hon. Chairperson, Sir, the Chairman of the Search Committee will be the Cabinet Secretary and its Members will be officers of the rank of Secretary who have knowledge and experience of elections. The Committee will consider the appointment of the Chief Election Commissioner and Election Commissioners and prepare a panel of five names. The Search Committee will send this panel to the Selection Committee.

The Selection Committee will be headed by the Hon. Prime Minister and will include the Leader of the Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister. If there is no recognised Leader of the Opposition, the leader of the largest Opposition party will assume this role. The Selection Committee will select in a transparent manner and send its recommendation to the President. Sir, as mentioned in the Bill, the term of the Chief Election Commissioner shall be six years or up to the age of 65 years. Even for removal, a procedure similar to that applicable to High Court judges has been provided. Sir, the Government is ensuring a transparent and fair process for the selection of the Chief Election Commissioner and Election Commissioners through this Bill, which will ensure fair elections in the future. I would also request the Hon. Law Minister that under the leadership of the Government, about 1500 obsolete laws have been repealed and the changes introduced in the justice and criminal laws through the three new Bills are revolutionary. Over the past years, we have seen ‘One Nation One Tax (GST)’, ‘One Nation One Ration Card’, ‘One Nation One Health Card’, ‘One Nation One Grid’, and many such initiatives. Now, it is the demand of the people that there should also be ‘One Nation One Election’. I urge the Law Minister that this demand should be fulfilled at the earliest. Sir, I support this Bill. Thank you.

SHRI SANJAY SETH (RANCHI): Hon. Chairperson, Sir, Johar.

Sir, I rise to speak in support of the Chief Election Commissioner and other Election Commissioners Bill, 2023. I start with four lines:

‘Chodo kal ki batein, kal ki baat purani

Naye daur mei likhenge, hum milkar nayi kahani

Hum Hindustani, Hum Hindustani’

(Leave yesterday's talk, yesterday's talk is old,

We are writing a new story together in a new era,

We are Indians, we are Indians.)

HON. CHAIRPERSON: You've sung it very colloquially.

SHRI SANJAY SETH: Sir, we are volunteers of the Sangh, the song plays, we sing the song. ... (*Interruptions*)

Sir, under the leadership of the Hon. Prime Minister Shri Narendra Modi, India is undergoing reforms, and we all have the opportunity to correct many long-standing shortcomings. We are proud that in this Amrit Kaal of independence, we are witnessing these reforms. Just yesterday, the Hon. Minister of Home Affairs

took important steps in Indian law and order and removed complex, century-old laws. This is a transformative step in the judicial system, where earlier the emphasis was only on punishment, but now the system will work to ensure justice.

Hon. Chairperson, Sir, I express my gratitude to the Hon. Prime Minister and the Hon. Minister of Home Affairs, for which future generations will remember us. We will give these generations a stable and strong democracy and a stronger India, and we are moving in this direction. We may or may not be alive when India celebrates 100 years of independence in 2047, but we believe our generations will be proud of us. They will say that the country found leadership that worked to remove centuries of limitations and mentality linked with old structures. They will also know what compulsions earlier Governments faced which continued for decades. Congress ruled the country for most of this time, and future generations will ask why nothing changed. The work of breaking these old structures has been done today.

Sir, I feel proud sitting in this House that the Hon. Prime Minister has given us this opportunity, and I call upon my friends in the Opposition to witness these historic reforms in this golden period of independence. The foundation of a new India is being laid.

You should also contribute positively to this national effort. Do not try to obstruct reforms. Contribute, and you too will share the credit.

Sir, The Chief Election Commissioner and Election Commissioner Bill is a strong and forward-looking step towards reforming the electoral system. I would like to urge everyone to support this Bill. It will not only change the electoral system but also create new possibilities. I would like to ask why these reforms were not brought earlier. Congress ruled for the longest period; why did it not recognise the need for change? Because it was functioning not as a democracy but as a family-centric structure. It concentrated power in a few hands. Those days are over. Today the country trusts the leadership of the Hon. Prime Minister. This is the Government of Modi, and today the entire country depends on Modi's guarantee. In this guarantee, the people and democracy of India are safe. This is my firm belief.

Hon. Chairperson, Sir, it is worth reflecting on why the Congress did not remember all these years that respect should be given to the Opposition. Today the nation is watching who weakened democratic values and who harmed democratic institutions. Democracy is strengthened by public faith. Earlier, people were ignored; their concerns were dismissed. Congress

created a leadership model centered around a family, weakening democratic culture.

Hon. Chairperson, Sir, the Leader of the Opposition will participate in the process laid out in this Bill. The Hon. Prime Minister Shri Narendra Modi has ensured that every component of democracy is respected. As much as the ruling party is necessary, so is the Opposition. But the attitude of the Opposition is not positive; it seeks to distract from the issue. Such an attitude harms democracy.

Hon. Chairperson, the nation has moved towards positive politics. The country now wants positivity, results, certainty, growth, not false assurances or empty speeches. Gone are the days when leaders would speak and nothing would happen. Today, 140 crore citizens are witnessing how Modi's guarantee works. Every promise of the Hon. Prime Minister is being fulfilled. That is why the people say, "It is possible if Modi is there." Sir, in this Amrit Kaal, India wants guarantee. I am proud that the Hon. Prime Minister has given guarantees to every section of society and has fulfilled these guarantees. Sir, history is changing. The Opposition has changed. Now the country does not follow their direction, because the public has

understood their approach. Earlier, the head of the Government would select the Election Commissioner. That is why they are uneasy today when reforms come. Today, the Modi Government has given a place to the Leader of the Opposition in the Selection Committee for appointing Election Commissioners. I would like to ask them why there is discomfort because decisions are no longer based on their preferences. Their leadership once controlled everything, but now that is not the case. Sir, it is visible that the Opposition is weakening. In 2024, the entire Opposition may shrink further. The public is prepared for this. They are not uneasy about the Government's reforms; they are uneasy because they cannot stop them. The public has selected their chief servant, and they have full faith in him. Sir, this explains the Opposition's objection to the Bill. Their approach is not new. If we recall the appointment of the Election Commissioner in 1996, we can understand their past conduct. Today, when this Bill is being discussed, the Opposition's disruption only reflects a lack of faith in democratic functioning.

HON. SPEAKER: Now conclude your speech.

SHRI SANJAY SETH: Sir, 140 crore citizens want Modi ji's guarantee. This is Modi's guarantee. What has never happened before, we are doing now. Whatever happens here will be

democratic, and I assure you of that. This is the guarantee of the Modi Government. I support this Bill and say that it is possible if Modi is there.

[English]

SHRI ASADUDDIN OWAISI (HYDERABAD): Thank you, Mr. Chairperson, for giving me this opportunity.

At the outset, let me make it very clear that I stand to oppose this arbitrary and biased Bill which the Government is bringing in to ensure that the independence of Election Commission is finished forever. The reason I oppose this Bill is because if the voters start feeling that the ECI is not an impartial and non-partisan body, the legitimacy of our democracy comes into question.

Hon. Chairperson, Sir, this Bill overturns the hon. Supreme Court Constitutional Bench's judgment on appointment of CEC and ECs. I agree that the Parliament has been given this power under Article 324. But I submit that the parliamentary power is not a power to defeat the purpose of Article 324 but rather to further its purpose. Its purpose is to ensure an independent and impartial body. But this Bill is being brought in to create an Election Commission which will work in the shadow of the Prime Minister Shri Modi. The Search Committee and Selection Committee, a total of six people, are involved in two stages. Out of these six people, there is only one independent person, that is, the LoP. Every other person either is a part of the Ruling Party or are officers who are serving in the Government. Obviously, anyone they recommend will be a

person who is acceptable to the Government. And anyone with an independent mind will not be accepted. The allegation of bias will be difficult to defeat. What is the problem the Prime Minister Mr. Modi has in having the Chief Justice of India as part of the Committee? The Government has given no reason to exclude the voice of Legislature and Judiciary from the appointment. The appointment process is now in full control of the Executive, that is, the Prime Minister. Having CJI in the Committee will add legitimacy to the ECI in the eyes of the public. By bringing in such a legislation, you are ensuring that the legitimacy which the ECI enjoys now, will decrease in the eyes of the common people.

Hon. Chairperson, Sir, what is worse under Clause 8(2)? The Selection Committee can recommend the name of any persons even if they are not part of the list of names provided by the Search Committee. So, what will the Law Minister do? And under Clause 7(2), an appointment will be valid even if the Selection Committee is not validly formed or even if the Committee has vacancy. The Government is openly saying that once they have chosen a man or woman, then it cannot be challenged even if it is improperly done. So, without an LoP, you can take anyone.

Clause 5 says that a CEC or an EC can only be someone who has served as Secretary to the Government of India. Why is there only the Secretary? Why can you not expand the eligibility criteria

to include anyone with knowledge and experience of how elections are conducted? Why should it not include scholars, civil society, and other persons? We can place a condition that those Members must not be elected who are appointed officers or hold Government positions at the Executive, or Legislative, or Judicial branch at the time of appointment. We can add a condition that any past political affiliation can disqualify them. But to limit the appointment to the people who are Secretaries to the Government of India, the Government is basically saying that as long as you are faithful to us, we will ensure that you will get a rightful post under the Executive.

Their proximity to the existing Government is being considered as the qualification, when it should be considered otherwise. So, proximity, faithfulness and capitulation are very important for anyone to get these posts.

I now come to Clause 6. It provides that a search committee must be constituted under the Chairmanship of Law Minister. Who will appoint the two other persons? Will it be the Law Minister? Why create this facade? Say openly that the Prime Minister will appoint and get done with it. The law is unclear on to who will appoint this Committee, who will appoint the other two persons. More than this, it is obviously a political process with no

independent or impartial voice to suggest names other than those that are acceptable to the hon. Prime Minister.

May I suggest that the Standing Committee for Law and Justice should participate in the process? If you do not want the Committee to prepare the list, let them at least collate recommendations or nominations of eligible people. Let the Committee at least interview the people who the search committee recommends. Let there be a democratic process so that the appointees are filtered. And what is the procedure to be adopted by the search committee? Will it be by majority or consensus? Will the dissenting party have a right to make the dissent public? Will the minutes of meeting be made public? Will they be laid before this august House? Will both the Committees provide reasons for recommendations? All of these requirements must be part of the legislation. There should be complete transparency on who is appointed and who is not.

Now look at Clause 16. It provides a blanket immunity to EC and CEC from any proceedings or any act done in the course of the duty. For example, if they have done a patently illegal thing, should not the higher judiciary have a chance to assess their merits and hold them accountable? Why is it that you are doing this? Who are they? No one is a holy cow in Indian democracy. Even if the Prime

Minister does anything wrong, he is subject to correction by judiciary.

In Anoop Baranwal case, in paragraph 9, the Constitution Bench of the Supreme Court had said:

“The Executive alone being involved in the appointment, ensures that the Commission becomes and remains a partisan body and a branch of the Executive. The independence of the Commission is intimately interlinked with the process of appointment.”

The Constitution Bench in paragraph 165 said:

“The Election Commissioners including the Chief Election Commissioner blessed with nearly infinite powers and who are to abide by the fundamental rights must be chosen not by the Executive exclusively and particularly without any objective yardstick.”

You are completely going against what the Supreme Court has said. Read paragraph ‘A’ of the Constitution Bench judgement,

“Like the Judiciary, the Election Commission must display fearless independence. In the absence of norms regarding the appointment, a central norm, viz., institutional integrity is adversely affected. An

independent appointment mechanism would guarantee eschewing of even the prospect of bias.”

Sir, Dinesh Goswami Committee on electoral reforms in 1990 said the same thing. They said that for CEC, the Chief Justice and the Leader of Opposition should be there; and for Election Commissioner, the Chief Justice and Leader of Opposition in Lok Sabha should be there. National Commission to Review Working of the Constitution, Report 2002 said, the Prime Minister, Leader of Opposition in Lok Sabha, Leader of Opposition in Rajya Sabha, the Speaker of Lok Sabha and the Deputy Chairperson of Rajya Sabha should decide as to who should be made CEC and ECs.

Report 255 of Law Commission headed by Justice A.P. Shah said that the appointment of all ECs including CEC should be made by the President with a three-Member collegium or a selection committee consisting of the Prime Minister, the Leader of Opposition in Lok Sabha and the Chief Justice of India.

What did Baba Saheb Ambedkar say? I mean you do not have regard for Baba Saheb Ambedkar. The Prime Minister and all of you say, Baba Saheb Ambedkar, this and that. But what did Baba Saheb say? Baba Saheb Ambedkar said this on 15th June, 1949. I

am reading only a few lines of what great Ambedkar had said who I feel was the tallest leader India has ever produced....*

HON. CHAIRPERSON: Do not record these things. ...
(Interruptions)

SHRI ASADUDDIN OWAISI: What Baba Saheb Ambedkar said was that at every stage in the making of the Constituent Assembly, a Committee was to be appointed to deal with what are called Fundamental Rights.

[Translation]

HON. CHAIRPERSON: Please delete it. Please delete the comparison between the two.

[English]

SHRI ASADUDDIN OWAISI: The Committee made a report that it should be recognised that independence of election and avoidance of any interference by the Executive in the election to the legislature should be regarded as a fundamental right and provided for in the chapter dealing with fundamental rights.

When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as

* Expunged as ordered by the Chair.

of fundamental importance, it should be provided for in some other part of the Constitution and not in the chapter dealing with fundamental rights.

13.00 hrs

Baba Saheb goes on and says that but the House affirms without any kind of dissent, that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be free from any kind of interference from the executive of the day. You are going against what our Constituent Assembly and Dr. Baba Saheb Ambedkar said ... *(Interruptions)* I am concluding. Section 10 of the Bill provides that the salaries of EC and CEC shall be equivalent to the Cabinet Secretary. Why are you degrading it? Earlier, the salaries were equivalent to the Supreme Court judges. Why is the Government doing it? It is being done to control them ... *(Interruptions)* Sir, I am concluding. It is a very important point. The salaries and benefits available to the judges of the Supreme Court can only be altered by the Parliament. Whereas the benefits and other things of the Cabinet Secretary can be decided by the Executive upon the recommendations of Central Pay Commission. Sir, it is very important to know that the Election Commission funds are not drawn from the Consolidated Fund of India. Can the Government change it? That is why I feel that this Bill creates a trust-deficit in

the eyes of people for CEC and ECs. This will be wrong for our democracy. If an impartial and non-partisan body is not there, then the legitimacy of our democracy comes into question. That is why I stand to oppose this Bill. I do not know whether the hon. Minister has the authority to accept these suggestions. Thank you.

[Translation]

DR. (PROF.) KIRIT PREMJBHAI SOLANKI (AHMEDABAD WEST): Hon. Chairperson, Sir, I would like to thank you very much for allowing me to present my views on this important Bill. I am also grateful that you have given me an opportunity to speak for the first time in this new temple of democracy, for which I express my sincere gratitude. The Government under the leadership of Hon. Prime Minister Shri Narendra Modi ji has undertaken several reforms, and our learned Minister has brought this Bill concerning the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners. I rise in support of this very important Bill, which has been passed by the Rajya Sabha and sent to this House. I also express my gratitude to the Hon. Supreme Court because it entrusted Parliament with the responsibility relating to the appointment of the Chief Election Commissioner and Election Commissioners, for which this Bill has now been brought.

Our Hon. Prime Minister Shri Narendra Bhai Modi ji often says that elections are the biggest festival of democracy. Elections should be conducted in a fair and transparent manner, and maximum voter participation must be ensured. The Prime Minister

clearly believes that the Election Commission must remain impartial, and on this basis clause 7 of the Bill provides for a Selection Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha, and a Union Cabinet Minister to be nominated by the Prime Minister. I support this provision. I also want to remind the House that the Hon. Prime Minister had brought significant electoral reforms through the Election Laws (Amendment) Bill, 2021, which was passed by this House and has since been implemented in several elections. Sir, I would like to draw the attention of the House, especially the Opposition Members, to the importance of that reform. Many Members of the Opposition, including the Congress Party, had opposed that Bill and termed it undemocratic. They had even entered the Well of the House, and the Bill was passed amidst their opposition. I would like to highlight that one of the key reforms included in that Bill addressed the problem of multiple voter registrations. It was found that many individuals were registered in more than one constituency and voted from multiple places, leading to bogus voting. To prevent such bogus voting and to strengthen transparency, the Government linked voter identity with the Aadhaar card. Those who now call this undemocratic must recognise that this step was necessary to protect the integrity of elections.

Sir, because of such reforms, our electoral system is becoming stronger. Those who claim that these Bills are undemocratic should recall the Emergency days, when opposition leaders were jailed, and democratic rights were curtailed. Today, in Modi ji's Government, only those involved in corruption, cash recoveries or illegal activities face action. The Bill brought by the Hon. Minister aims to strengthen the Election Commission so that elections remain fair, transparent and impartial. This Bill will reinforce the mechanism of the Election Commission. It ensures that appointments are made through a transparent process by a Selection Committee as laid down in clause 7. Elections are indeed the biggest festival of democracy, and ensuring an impartial and efficient Election Commission is essential. I again express my gratitude to the Government for bringing this Bill, which seeks to uphold transparency and fairness.

Sir, I would like to thank you very much once again for giving me the opportunity to speak on this Bill. I support this Bill wholeheartedly.

[English]

SHRI JAYADEV GALLA (GUNTUR): Thank you, Sir, for giving me this opportunity to speak on this very important piece of

legislation which primarily deals with various aspects, such as appointment, tenure, salary, and other conditions of service of the Chief Election Commissioner and the Election Commissioners. Sir, I support this Bill.

Sir, there were many issues when the Bill was introduced in the Rajya Sabha on 10th August, 2023. But, while considering the Bill in the Rajya Sabha on 12th December, the hon. Minister has moved official amendments and addressed almost all issues. I am thankful to him for that. But, there are still a few issues left that I wish to flag for strengthening the institution of the Election Commission of India.

I welcome that the Search Committee which was originally proposed to be headed by a bureaucrat that is now, after official amendment, headed by the hon. Law Minister with two other Members. I understand that the Selection Committee, after this amendment, will select ECs from among five persons identified by the Search Committee and no other person will be directly selected by the Selection Committee. It is welcome.

Sir, I also welcome the insertion of new Clause 15A which gives protection to the CEC and the ECs from criminal or civil proceedings for any act done or anything spoken while discharging

their duties during their tenure. This will help them to work fearlessly, freely, and fairly.

The third issue I wish to submit is that the Election Commission is a quasi-judicial body and, as per Article 324, for the removal of Chief Election Commissioner, the same procedure has to be followed which is prescribed for the removal of a Supreme Court Judge. So, my point is that when the Election Commission is a quasi-judicial body and its removal is on the lines of a Supreme Court Judge – the salary is the same – I feel, as hon. Member Shri Mahtab ji also suggested, it would strengthen the institution of the Election Commission if we could also consider appointing a Supreme Court Judge as an Election Commissioner. Hon. Minister may consider this.

Sir, the core function of the Election Commission is the preparation of electoral rolls and conducting elections in a free and fair manner. But, if you look at my State of Andhra Pradesh, the ground reality is the other way around. The DEOs and EROs are not following the directives of the ECI in preparing error-free electoral rolls due to various pulls and pressures.

A delegation from Telugu Desam Party met the full ECI, and a letter was also written by the former CM, Shri Nara Chandrababu Naidu garu in August and also last month about the subjugation of

democratic rights of people of AP through electoral malpractices and removing the names of TDP supporters and sympathizers from the electoral list. Hence, I appeal to the Hon. Minister to immediately deploy non-local electoral roll observers in AP from the Government of India to stop electoral malpractices in AP forthwith. The unfortunate part is that the field machinery deployed, instead of correcting mistakes in the electoral rolls which is the crux of the issue, took a casual approach by transferring the responsibility to lower officers and not following strict and meticulous instructions which were given by the ECI.

Sir, due to this, there are more than 10 lakh cases that have remained unprocessed as on the date of publication of draft electoral rolls. And, after the publication of draft rolls, 13.5 lakh applications have been filed as of 13th December, 2023, for correction. Thus, a total of 23.77 lakh applications have to be enquired about by the Election Commission in Andhra Pradesh before publishing the final rolls.

Sir, the elections are approaching fast and time is running out. Hence, I appeal to the Hon. Law Minister for immediate deployment of external observers from the Government of India in order to closely monitor the electoral roll work in AP, remove deceased voters from the voter list of AP, include names of people whose names have been removed, rectify demographically and

photographically similar entries, and finally, stop the deletion of names of TDP sympathizers and supporters.

With these submissions, I hope that the Hon. Minister will take serious note of what is happening in Andhra Pradesh about revision of electoral rolls and take sincere and suitable steps to make error-free electoral rolls in AP. Thank you very much, Sir. ...

(Interruptions)

[Translation]

SHRI SUDHEER GUPTA (MANDSAUR): Hon. Chairperson, I rise to make my statement in support of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023.

Sir, the country has been consistently discussing elections and electoral processes for a long time, and whatever feelings people have regarding these systems also reach this House. Hon. Prime Minister Shri Narendra Modi has placed before the nation the idea of strengthening electoral systems, and a committee has also been constituted under the chairmanship of a former President to examine related matters. There have been discussions across the country regarding electoral rolls, and the idea that elections should be conducted with a clear and uniform framework. The main role in improving these procedures is undoubtedly that of the Election Commission. It is encouraging that through this Bill, the system of appointment of Election Commissioners, their terms of service, and their tenure have been clearly defined. Clause 2, which empowers the President to determine the number of Election Commissioners from time to time, is a good administrative provision.

Sir, the Bill provides that Election Commissioners will be appointed from among persons holding a rank equivalent to Secretary to the Government of India. This is a sound provision for maintaining the dignity of the post. It ensures that persons selected will have integrity, experience in election management and an understanding of conducting elections.

Sir, I am pleased to note that the Search Committee will be headed by the Cabinet Secretary and will include two Members of the rank of Secretary. The Search Committee will prepare a panel of five names and place its recommendations before the Selection Committee.

Sir, the provision stipulates that the Appointment Committee, which will make recommendations to the President regarding the Selection Committee, shall be chaired by the Hon. Prime Minister. A committee under the chairmanship of the Prime Minister will be fully transparent, as it includes the Leader of the Opposition as a Member.

In addition, one Cabinet Secretary nominated by the Hon. Prime Minister has also been included in the committee.

Sir, the Opposition parties often raise concerns before the nation on this issue. However, it is clearly evident here that the Leader of the Opposition in the Lok Sabha has been included as a

Member of this committee. This provision clearly establishes that if, for any reason, a Leader of the Opposition is not formally recognised in the Lok Sabha, then the leader of the single largest opposition party in the House shall be deemed to be the Leader of the Opposition for this purpose. This presents an important opportunity before the people of the country. Today, the electorate has the chance to assess the conduct of Opposition Members and, based on that assessment, to choose a representative from among them to be nominated to this committee. Members who indulge in disruption, who insult constitutional institutions, who raise questions influenced by foreign interests, who attempt to fragment the nation, who provoke divisions on the basis of caste, or who seek solutions to their questions abroad, will be judged accordingly by the people. The people will decide whom they wish to send to the Opposition benches and whom they wish to entrust with the responsibility of serving as the Leader of the Opposition in the Lok Sabha. They will choose a leader who is not opposed to national interests, who is committed to the nation, and who upholds constitutional values. This opportunity now lies before the people of the country.

Sir, I am pleased to submit that the Selection Committee may also consider any other person apart from those included in the panel recommended by the Search Committee. It is further provided

that the tenure of this committee shall extend until either a period of six years or the attainment of the age of 65 years, whichever is earlier, and until then the individual shall continue to hold office. The explanatory note clearly states that the pay, allowances, service conditions and other entitlements of the Chairperson have been deliberated in this legislation in parity with those of a Cabinet Secretary. It is also explicitly provided that a person rendering such service shall be entitled to pension and commuted pension in accordance with the provisions laid down herein. Additionally, a provision for commutation of 50 per cent of the pension at the time of retirement has also been incorporated in this Bill.

Sir, if a Commissioner wishes to relinquish office, he may do so by submitting his self-signed resignation letter to the President. The Bill contains provisions dealing with leave, allowances and other service conditions. It is evident that the system will work through a Search Committee and a Selection Committee, ensuring transparency in the entire process. The country is moving into a new phase with these structured mechanisms.

I extend my full support to this Bill and also urge the public to appreciate that this system offers clarity and transparency. The Member from the Opposition who will serve on the Selection Committee should be one who contributes positively to the

democratic process, as this role is vital for strengthening the nation.
A responsible and nationally committed Opposition can support the
country's progress.

Sir, I strongly support this Bill once again. Thank you.

SHRI DILIP GHOSH (MEDINIPUR): Thank you, Hon. Chairperson.

Hon. Chairperson, the Hon. Minister of Law and Justice has brought the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, and I rise to speak in favour of this Bill. There is no new law being created here; rather, legal status is being given to the framework and system under which these appointments were operating earlier, in accordance with the directions of the Hon. Supreme Court. This Bill has been brought keeping those directions in view.

Sir, the country which we proudly describe as the mother of democracy is also the world's largest democracy. The greatest exercise of this democracy is the electoral process. Those who conduct elections and those who are entrusted with such constitutional and sensitive positions carry immense responsibility. Their duties, their accountability and their authority must be clearly defined and transparently articulated. We are well aware that positions of this nature have, on several occasions in the past, been misused. In particular, the country's oldest party, the Congress, during its tenure, utilised these offices to the fullest extent possible. Not only that, even the dignity and stature of the individuals occupying these posts were compromised. In order to ensure that

such practices are not repeated in the future, it is essential that clear, unambiguous and transparent provisions are laid down in this regard.

Sir, it is through these constitutional offices that the Hon. President and the Hon. Vice President of the country are elected, and Members of the Lok Sabha, Rajya Sabha, State Legislative Councils and State Legislative Assemblies are chosen. Therefore, the entire system must be transparent, robust and based on well defined conventions. It is for this reason that this Bill has been brought before the House today. I extend my support to this Bill and urge all Hon. Members to support it as well.

Sir, this is our democracy, and the elections that sustain it must be conducted in a well regulated and dignified manner. Those entrusted with the responsibility of administering elections must also rise above all controversy and maintain the highest standards of integrity. We are aware that nearly 70 to 80 crore citizens participate in the electoral process in our country. This exercise is carried out at a fixed time and must be completed in a transparent and orderly manner. It is remarkable that a system designed decades ago still allows every citizen, even an illiterate person, to participate equally, with the same voting right as the highest office-holder. The Bill brought today aims to complete, refine and stabilise this

process. I believe that this will help prevent any controversy in future elections.

Sir, the provisions in this Bill are meant to give clarity to the system. The appointment mechanism must be beyond dispute. Under the Constitution, such posts must be selected with neutrality and fairness, and the Bill ensures this by strengthening the institutional mechanism. The clarity provided in this Bill regarding the responsibilities, rights and terms of the Election Commissioners will reinforce democratic functioning. Sir, it is also important that the appointment system does not become dependent on informal conventions. Therefore, legal clarity is essential. Many countries struggle with complex election processes, but our system has maintained consistency and trust. The Bill seeks to preserve and enhance this trust. In our country, constitutional institutions must function without ambiguity, and the provisions of this Bill support that principle. Sir, the work of legal refinement has been ongoing for many years. The Government has also removed several obsolete laws, and many important reforms have been introduced across various sectors. These steps require administrative will and the collective support of society. The Prime Minister has provided both direction and clarity in strengthening democratic institutions.

Sir, when posts of such importance function within a clear legal framework, the possibility of dispute is removed. Just as other constitutional posts enjoy protection to ensure impartial functioning, it is necessary that the Chief Election Commissioner and Election Commissioners also function with similar stability and independence. This Bill ensures that their service conditions and responsibilities are well defined so that they may fulfil their roles effectively.

Sir, we must recognise that this system has evolved over time. Much like customs in a family that continue unless codified, electoral practices have long operated on established conventions. However, to avoid confusion, a clear legal framework is necessary. This Bill provides that framework. It will now be recorded in history that this work was formalised through clear legislative intent and that a well-structured system was established. Sir, today the House is not as full, yet this Bill is significant because it strengthens our electoral process. Those who earlier did not act to provide legal clarity now oppose reforms introduced to make the system more transparent. Strengthening the institution of the Election Commission is in the interest of democracy. We have a Government led by the Hon. Prime Minister, which is committed to giving full rights to every section of society and ensuring development for all. This Bill follows the same path by

ensuring that the institution responsible for conducting elections is protected, strengthened and made more transparent. Strong institutions create strong democracies.

Sir, I believe this Bill will strengthen and refine our electoral system. I would like to request all Members to support this Bill so that it may be passed and implemented effectively. I support the Bill. Thank you.

SHRI RAJIV PRATAP RUDY (SARAN): Hon. Chairperson, Sir, thank you. Today the Government has brought a provision regarding the Members of the Election Commission, and I stand to speak in favour of it.

A constitutional institution that we all respect requires clarity in its appointment, service conditions and practices, and this Bill seeks to dignify that institution by bringing its framework in line with established constitutional standards. This is the same institution through which you assume the Chair in the House; through the same process, we come here after winning elections and the Government is formed. Sir, the Election Commission, which the Opposition sometimes questions, has been given dignity and clarity through this legislation, bringing its appointments and terms of service closer to the model applicable to the Judges of the Supreme Court.

Sir, we all contest elections, and as the announcement of an election approaches, various processes begin much earlier. When the voter lists are published, the machinery begins its work. A Returning Officer decides even the distance of a polling booth for the poorest voter. India, with 140 crore people, has an electoral system unmatched anywhere in the world. Notifications are issued, observations are invited and district-level meetings are held. Recently, at a Booth Committee meeting, the Collector chaired the

meeting, and as an Member, I gave suggestions. This is the fairness of our system.

Sir, earlier elections were announced and conducted in traditional ways, but now when the Election Commission holds a press conference, decisions made there reach 140 crore people at once. The Election Commission is that institution which commands full trust of every politician and Government employee. The electoral mandate of the entire nation is conducted through this process. There is no comparable system in the world. We have unwavering faith in the Election Commission. It has a small office in Delhi, but Parliament provides it with delegated powers that extend across India. When Lok Sabha elections are held, all administrative systems work under its oversight. Sir, I wish to take this forward. Our colleagues, including senior Ministers, are here. They are important persons in Government, but when they file their nomination papers for elections, the Returning Officer or Collector oversees the process and we stand before him. This is the strength of democracy. It is possible that after the elections, the Collector may meet us in our chamber, but on the day of nomination, the authority lies with him, and we all respect that process.

Sir, in my political life, I have witnessed situations that

reflect the uniqueness of this system. In Bihar, an examination question once asked which parliamentary constituency in India elections had conducted at more than a thousand booths without countermand. The answer relates to a rare event in Indian electoral history. Elections were held at 1200 booths without cancellation, and in one case, re-polling was done at 1243 booths. Such a situation has rarely occurred in Indian history. These examples show the infallibility and strength of the system. Sir, we trust the Supreme Court, which has constitutional status. Along with the Legislature and Executive, the press is considered the fourth pillar, and the Election Commission is rightly regarded as the fifth pillar of our democracy. For months during the election period, India's administrative and electoral systems function through this one institution, operating within the constitutional framework.

Sir, I congratulate the Government, the Prime Minister and the Home Minister for this decision. Those who serve in the Election Commission, whether Collectors or Returning Officers, carry a great responsibility, and ensuring clarity in their appointment and service terms is essential. This decision will strengthen the institution and contribute to the growth of our democratic system.

Sir, as I conclude, I wish to state that the decision brought forward

by the Government regarding the Election Commission is appropriate and timely. Let us strengthen this institution; let its role remain dignified and free from controversy. The democratic system that we have established must continue to grow and be recognised across the world. On behalf of this House, I congratulate and thank the Government and the Minister for presenting this Bill. Thank you.

SHRI ARJUN RAM MEGHWAL: Thank you, Chairperson, Sir. In the discussion that started today with [English] The chief election commissioner and other election commissioners (appointment, conditions of service and term of office) bill, 2023, [Translation]

Hon. Chairperson, about 12 Members participated in this discussion which began today on the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023. I would like to thank all Hon. Members who have given several important suggestions. This Bill relates to a constitutional provision that has existed since independence. When the country became independent and the Constituent Assembly deliberated on how elections would be conducted, the framers of the Constitution introduced Article 324. They provided in Article 324(1) that the superintendence, direction and control of elections shall vest in the Election Commission. They further provided in Article 324(2) that Parliament shall make a law

with respect to the appointment of the Chief Election Commissioner and other Election Commissioners. This matter remained unattended in the 1991 Act because, although the Act dealt with service conditions and transaction of business, it did not address the method of appointment.

Hon. Chairperson, much has been said regarding the Supreme Court's decision dated 2 March 2023. It is important to clarify that the Supreme Court did not prescribe any permanent arrangement. It stated clearly that *until Parliament makes a law in consonance with Article 324(2)*, the arrangement it suggested would operate only as a temporary mechanism. The Government has brought this Bill strictly in accordance with that direction. Therefore, the suggestion that the Government is doing something contrary to the Court's decision is incorrect. This Bill is a direct response to the constitutional expectation and the Supreme Court's direction.

Hon. Members mentioned the composition of the Search Committee. It is now officially amended, and the Law Minister will chair the Search Committee. Members also referred to the Constituent Assembly and earlier committees. It is true that committees like the Dinesh Goswami Committee examined electoral reforms. However, the matter of appointment of the Chief

Election Commissioner, as envisaged in Article 324(2), remained for Parliament to determine. The appointment of the Chief Election Commissioner is an executive function and cannot exclude the executive from the process. That is the constitutional position. Some Hon. Members spoke about the reforms undertaken by the Government. I wish to place the exact number on record: 1,562 obsolete laws have been abolished. ‘One Nation One Election’ was also mentioned. A committee has been formed in this direction, and further work is underway. During the celebration of 75 years of independence, we evaluated how far the country had progressed and identified the direction for the next 25 years. Our goal is to make India a developed country by 2047. This is the Amrit Kaal, the period of resolve envisioned by the makers of the Constitution, including Baba Saheb Dr. B.R. Ambedkar, who had stated that if any weakness appears in our constitutional arrangements, it should be identified and corrected swiftly. There were also observations regarding the respect shown to Baba Saheb.

Hon. Members have referred to issues relating to Dr. Ambedkar. The Prime Minister has ensured unprecedented honour to Baba Saheb. A memorial has been built at 26, Alipur Road—where Baba Saheb spent his last days—at a cost of Rs. 100 crore. Important sites associated with his life, including his birthplace, his

place of education, and his place of devotion, have been recognised and developed as Panch Teerthas. The Dr. Ambedkar International Centre on Janpath was also built during this period. These are concrete steps reflecting the respect shown to Baba Saheb. Recently, the Supreme Court installed a statue of Dr. Ambedkar in advocate's robes to commemorate the centenary of his enrolment as an advocate in 1923, which is a matter of pride for the nation.

Hon. Members raised questions regarding qualifications. Clause 5 of the Bill clearly states that the Chief Election Commissioner and other Election Commissioners shall be appointed from among persons who are holding or have held a post equivalent to the rank of Secretary to the Government of India and are persons of integrity with knowledge and experience in managing and conducting elections. This addresses concerns raised about eligibility.

Hon. Chairperson, I believe all major points raised in the discussion have been responded to. The purpose of this Bill is to put in place a clear statutory mechanism for appointments, which the Constitution had envisaged but which was not legislated upon in 1991. The Supreme Court's temporary arrangement was never meant to be permanent. Parliament has now fulfilled its constitutional duty as required under Article 324(2). Therefore, through you, I request this august House to pass the Chief Election Commissioner and Other Election Commissioners

(Appointment, Conditions of Service and Term of Office) Bill, 2023, by consensus. Thank you.

HON. CHAIRPERSON: The question is:

"That a Bill to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners and the procedure for the transaction of business by the Election Commission and for matters connected therewith or incidental thereto, as passed by the Rajya Sabha, be taken into consideration."

The motion was adopted.

HON. SPEAKER: Now the House will consider the bill clause wise

The question is:

"That clauses 2 to 21 stands part of the Bill."

The motion was adopted.

Clauses 2 to 21 were added to the Bill.

Clause 1, Enacting Formula and the Long Title were added to the Bill.

HON. SPEAKER: Hon. Minister, now you move the bill to be passed.

SHRI ARJUN RAM MEGHWAL: Hon. Chairperson, Sir, I beg to move:

"That the Bill be passed."

HON. CHAIRPERSON: My question is:

"That the Bill be passed."

The motion was adopted.

Rani Mishra
//TRUE COPY//

Bill No. LVII-F of 2023

**THE CHIEF ELECTION COMMISSIONER AND
OTHER ELECTION COMMISSIONERS
(APPOINTMENT, CONDITIONS OF
SERVICE AND TERM OF OFFICE)
BILL, 2023**

(AS PASSED BY THE HOUSES OF PARLIAMENT—

RAJYA SABHA ON 12TH DECEMBER, 2023

LOK SABHA ON 21ST DECEMBER, 2023)

ASSENTED TO ON 28 DEC, 2023 ACT No. 49 OF 2023
--

Bill No. LVII-F of 2023

**THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION
COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE
AND TERM OF OFFICE) BILL, 2023**

(AS PASSED BY THE HOUSES OF PARLIAMENT)

A

BILL

*to regulate the appointment, conditions of service and term of office of the Chief
Election Commissioner and other Election Commissioners, the procedure for
transaction of business by the Election Commission and for matters
connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as
follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Chief Election Commissioner and other Election
Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification
in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Chief Election Commissioner" means the Chief Election Commissioner appointed under clause (2) of article 324 of the Constitution and in accordance with this Act;

(b) "Election Commission" means the Election Commission referred to in clause (1) of article 324 of the Constitution;

(c) "Election Commissioner" means any other Election Commissioner appointed under clause (2) of article 324 of the Constitution and in accordance with this Act;

(d) "Search Committee" means the Search Committee for preparation of panel of persons for consideration for appointment as Chief Election Commissioner and other Election Commissioners; and

(e) "Selection Committee" means the Selection Committee that recommends appointment of Chief Election Commissioner and other Election Commissioners.

CHAPTER II

APPOINTMENT AND TERM OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

Election
Commission.

3. The Election Commission shall consist of—

(a) Chief Election Commissioner; and

(b) such number of other Election Commissioners as the President may fix from time to time.

Appointment
of Chief
Election
Commissioner
and other
Election
Commissioners.

4. The Chief Election Commissioner and other Election Commissioners shall be appointed by the President by warrant under his hand and seal.

Qualifications
of Chief
Election
Commissioner
and other
Election
Commissioners.

5. The Chief Election Commissioner and other Election Commissioners shall be appointed from amongst persons who are holding or have held a post equivalent to the rank of Secretary to the Government of India and shall be persons of integrity, who have knowledge of and experience in management and conduct of elections.

Search
Committee.

6. A Search Committee headed by the Minister of Law and Justice and comprising two other members not below the rank of Secretary to the Government of India, shall prepare a panel of five persons for consideration of the Selection Committee, for appointment as the Chief Election Commissioner and other Election Commissioners.

Selection
Committee.

7. (1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Leader of Opposition in the House of the People—Member;

(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(2) The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of, the Selection Committee.

8. (1) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chief Election Commissioner or other Election Commissioners.

Power of
Selection
Committee to
regulate its
own
procedure.

(2) The Selection Committee may also consider any other person than those included in the panel by the Search Committee.

9. (1) The Chief Election Commissioner and other Election Commissioners shall hold office for a term of six years from the date on which he assumes his office or till he attains the age of sixty-five years, whichever is earlier.

Term of office.

(2) The Chief Election Commissioner and other Election Commissioners shall not be eligible for re-appointment.

(3) Where an Election Commissioner is appointed as Chief Election Commissioner, his term of office shall not be more than six years in aggregate as the Election Commissioner and the Chief Election Commissioner.

CHAPTER III

SALARY, ALLOWANCES AND OTHER CONDITIONS OF SERVICE OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

10. (1) The Chief Election Commissioner and other Election Commissioners shall be paid a salary which is equal to the salary of a Judge of the Supreme Court:

Salary, etc.

Provided that the salary, allowances and other conditions of service of the Chief Election Commissioner and other Election Commissioners, holding office immediately before the date of commencement of this Act shall not be varied to their disadvantage.

(2) If a person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner, was in receipt of, or being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Central Government or a State Government, his salary in respect of service as the Chief Election Commissioner or an Election Commissioner shall be reduced—

(a) by the amount of that pension; and

(b) if he had, before assuming office, received, *in lieu* of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

(3) The Chief Election Commissioner and other Election Commissioners shall be entitled to dearness allowance as may be admissible to Judge of the Supreme Court.

(4) The Chief Election Commissioner and other Election Commissioners shall be entitled to encashment of fifty per cent. of earned leave to his credit at the time of completion of tenure.

(5) Where the Chief Election Commissioner or an Election Commissioner had retired from the service of the Central Government or a State Government prior to appointment as such, the aggregate period for which the encashment of unutilised earned leave he shall be entitled, shall be subject to a maximum period as admissible in accordance with the rules for the time being applicable to the service to which he belonged before his appointment as Chief Election Commissioner or an Election Commissioner.

11. (1) The Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office.

Resignation
and removal.

(2) The 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.

(3) The other Election Commissioners shall not be removed from office except on the recommendation of the Chief Election Commissioner.

Leave.

12. (1) The Chief Election Commissioner or an Election Commissioner may be granted leave in accordance with the rules for the time being applicable to the service to which he belonged before the date of his appointment and he shall be entitled to carry forward the leave standing at his credit on such date, irrespective of the provisions contained in section 13.

(2) The power to grant or refuse leave to the Chief Election Commissioner or an Election Commissioner and to revoke or curtail leave granted to him, shall vest in the President.

Pension.

13. (1) Where the Chief Election Commissioner or an Election Commissioner was in service of Government, he shall be deemed to have retired from the service on the date on which he enters upon office as the Chief Election Commissioner or an Election Commissioner, as the case may be.

(2) The Chief Election Commissioner or other Election Commissioners who at the time of his appointment as such, was in service of the Central Government or a State Government, shall at his option to be exercised within a period of six months from the date of such appointment, be entitled to draw his pension and other retirement benefits under the rules applicable to the service to which he belonged, with effect from the date of his appointment as the Chief Election Commissioner or other Election Commissioner.

(3) Except where the Chief Election Commissioner or an Election Commissioner demits office by resignation, he shall be deemed, for the purposes of this Act, to have demitted his office only if,—

(a) he has completed the term of office specified in section 9; or

(b) he has attained the age of sixty-five years; or

(c) his demission of office is medically certified to be necessitated by ill-health.

Right to
subscribe to
General
Provident
Fund.

14. Every person holding office as the Chief Election Commissioner or an Election Commissioner shall be entitled to subscribe to the General Provident Fund under the General Provident Fund (Central Services) Rules, 1960.

Other
conditions of
service.

15. Save as otherwise provided in this Act, the President may by rules determine the conditions of service relating to travelling allowance, medical facilities, leave travel concession, conveyance facilities, and such other conditions of service relating to the Chief Election Commissioner and other Election Commissioners.

Protection of
Chief Election
Commissioner
and other
Election
Commissioners.

16. Notwithstanding anything contained in any other law for the time being in force, no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Chief Election Commissioner or an Election Commissioner for any act, thing or word, committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official duty or function.

CHAPTER IV

TRANSACTION OF BUSINESS OF ELECTION COMMISSION

Transaction
of business.

17. The business of the Election Commission shall be transacted in accordance with the provisions of this Act.

18. (1) The Election Commission may, by unanimous decision, regulate the procedure for transaction of its business and also allocation of its business amongst the Chief Election Commissioner and other Election Commissioners. Disposal of business.

(2) All business of the Election Commission shall, as far as possible, be transacted unanimously, and if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

CHAPTER V

MISCELLANEOUS

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, within a period of five years from the date of commencement of this Act, by order not inconsistent with the provisions of this Act, remove the difficulty. Power to remove difficulties.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

20. Every rule and order made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or order, or both Houses agree that the rule or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order. Laying.

21. (1) The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 is hereby repealed. 11 of 1991. Repeal and saving.

(2) Anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. 10 of 1897.

A

BILL

to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto.

(As passed by the Houses of Parliament)

MGIPMRND—552LS—03.01.2024.

Ravi Mishra
//TRUE COPY//

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

I.A No. _____ OF 2026

IN

WRIT PETITION (CIVIL) NO. _____ OF 2026

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC
REFORMS

... PETITIONER

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

APPLICATION FOR STAY

To,
The Hon'ble the Chief Justice of India
and His Companion Justices of the
Hon'ble Supreme Court of India

The humble application of the Applicant above-named

MOST RESPECTFULLY SHOWETH:

1. The Applicant has filed the accompanying Writ Petition in public interest under Article 32 of the Constitution of India, challenging the constitutional validity of Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 (the, "**Act**"). The facts of the case are set out in detail in the Writ Petition and are not repeated here for the sake of brevity. The Applicant craves leave of this Hon'ble Court to refer to and rely upon the contents of the Writ Petition and its Annexures as part of the present application.

2. The present application relies on the legislative record placed before this Hon'ble Court. It also seeks relief that is narrowly framed, so that it does not affect the composition or functioning of the Election Commission, the conduct of any election, or any appointment made under the Act.

3. The Applicant submits that Section 16 is ex facie unconstitutional for the following reasons:

- a. Section 16 bars “any Court” from entertaining or continuing any proceeding, without limiting itself to subordinate courts. Section 16 confers on a statutory class an immunity wider than the Constitution grants its highest offices.
- b. Section 16 reproduces the language of Section 3 (1) of the Judges (Protection) Act, 1985, but omits Section 3 (2) of that Act, which preserves civil, criminal and departmental action against present and former Judges. It is submitted that no other constitutional or statutory functionary in India enjoys an immunity that combines the absence of a good-faith requirement, a sanction mechanism and a saving clause.
- c. The legislative record shows that the provision was enacted without any stated justification. It formed no part of the Bill as introduced on 10.08.2023, and the Statement of Objects and Reasons dated 04.08.2023 does not refer to it. It was disclosed to the Rajya Sabha on 12.12.2023 only in a single sentence of the Minister’s opening remarks and received no debate in that House. The only reason recorded for it was that it would enable the CEC and ECs to discharge their functions independently, which concerns serving office-holders alone. In the Lok Sabha, the only objection to the immunity went unanswered. The Applicant relies on this record to show that the lifelong and unconditional reach of Section 16, and in particular its extension to former office holders, rests on no stated basis.

POWER OF THIS HON’BLE COURT TO GRANT INTERIM RELIEF

4. In *M.C. Mehta v. Union of India*, (1987) 1 SCC 395, this Hon’ble Court held that under Article 32 it has the implicit power to issue whatever direction, order or writ is necessary, “including all incidental

or ancillary power necessary to secure enforcement of the fundamental right". The Court further held that this power is not only injunctive but also remedial, and that Article 32 would be robbed of its efficacy if a violator could escape it by acting quickly.

5. This Court has granted stay on the enforcement of a particular provision, its effect and even the complete legislation if the circumstances so required:

S.N.	CASE PARTICULARS	SUBJECT
1.	<i>M.Nagraj vs. Union of India</i> W.P. (C) 61/2002, Order dt. 08.04.2002 [3J]	While referring the question of law to a larger bench, interim relief was granted to people affected by the amendment.
2.	<i>Ashok Kumar Thakur v. Union of India</i> , (2007) 4 SCC 361 at page 379 [3J]	Operation of S. 6 of the Central Educational Institutions Act, 2006 was stayed.
3.	<i>K.S. Puttaswamy v. Union of India</i> , (2015) 8 SCC 735 [3J]	Enrolment and effect of Aadhar card was not mandatory till the outcome of the petition.
4.	<i>Prakash Singh & Ors. v. Union of India</i> WP(C) 310/1996, Order Dt. 03.07.2018 [3J]	Any legislation/rule framed by States or Centre contrary to the directions contained in the order to remain in abeyance.
5.	<i>Waqf Amendment Act, 2025 (1), In re</i> , (2025) 10 SCC 1	Part of Section 3(r) and complete Section 3-C(2), (3) & (4) were stayed

6. The interim relief sought would cause no prejudice to the Respondents. It would not affect any appointment made under the Act, the tenure, salary or conditions of service of the CEC or ECs, the functioning of the Election Commission, or the conduct of any election. It would only preserve the remedies of affected persons pending the final decision. The CEC and ECs would remain free to defend any

proceeding on its merits, and the courts retain their ordinary powers to dismiss frivolous or vexatious proceedings at the threshold.

7. The Applicant therefore submits that it has made out a strong prima facie case, and that the balance of convenience, the risk of irreparable injury and the public interest are all in favour of the grant of interim relief. Unless the relief is granted, the Applicant and the public at large will suffer irreparable loss and injury.

8. The present application is made bona fide and in the interest of justice.

PRAYER

In the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:

- a) Stay the operation of Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 pending the final disposal of the Writ Petition;
- b) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case

AND FOR THIS ACT OF KINDNESS, THE APPLICANT, AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY:



Ms. RANI MISHRA

ADVOCATE FOR THE PETITIONER

Drawn By;
Tushar Srivastava &
Akshaya Ganpath, Advocates

Settled By:
Mr. Gopal Sankaranarayanan,
Sr. Advocate

FILED ON: 10.10.2026

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. _____ OF 2026

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS

...PETITIONER

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

INDEX OF PAPERS

S.N.	PARTICULARS	TRUE COPIES	COURT FEE
1.	Writ Petition with Affidavit	1+3.....	520/-
2.	Annexure P-1 to P-10	1+3.....	Nil
3.	Application for Stay	1+3.....	200/-
4.	Vakalatnama & Memo of Appearance	1+3.....	10/-
5.			
6.			
7.			
8.			
		TOTAL	730/-

Rani Mishra

Ms. RANI MISHRA

Advocate Supreme Court
For the Appellant (s)/Petitioner(s)/
Respondent(s)/Caveator
43, Lawyers Chamber
Supreme Court of India
New Delhi - 110001

CODE NO. 3510

MANOHAR LAL, Clerk

Identity Card Nos. 3490

Mob.: 9818572400 & 7838202726

FILED ON: 10.10.2026

IN THE SUPREME COURT OF INDIA

CIVIL/ ~~CRIMINAL/APPELLATE~~/ORIGINAL/JURISDICTION

I.A. No. _____ OF 2026

IN

~~S.L.P./C.A. & C.R.A./W.P./T.P./R.P./Cust. (C)/(CRL)~~ No. _____ OF 2026

ASSOCIATION FOR DEMOCRATIC REFORMS..... Petitioner(s)

Appellant (s)

VERSUS

UNION OF INDIA & ANR.....Respondent(s)

VAKALATNAMAI/We .VIPUL MUDGAL S/o SHRI JAI KUMAR MUDGAL.....
Trustee of the Petitioner Organization... the PETITIONER

In the above Petition Appeal do hereby appoint and retain.

Ms. RANI MISHRA, Advocate

To act and appear for me/us in the above Petition/Appeal and on my/our behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents and receive money on my/our behalf in the said Petition/Appeal and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid advocate on record in pursuance of this authority

Dated 10TH day of OCTOBER 2025
Accepted, Identify & Certified:

Rani Mishra**Ms. RANI MISHRA**
(Advocate)**VIPUL MUDGAL, PETITIONER**

Appellant(s)/Petitioner(s)/Respondent(s)

MEMO OF APPEARANCE

To
The Registrar
Supreme Court of India
New Delhi

Sir,

Please enter my appearance for the above-named appellant(s)/Petitioner(s)/Respondent(s) in the above mentioned matter

Dated 10TH day of OCTOBER 2026

Rani Mishra**Ms. RANI MISHRA**
(Advocate)

For the Appellant(s)/Petitioner(s)/Respondent(s)

The address for service of the said Advocate is:

43, Lawyers Chamber, Supreme Court of India, New Delhi – 110001

Mob.: 9958891971

Email: rani.mishra3@gmail.com

Date: 09-10-2026

AUTHORISATION

This is to certify that Dr. Vipul Mudgal, Trustee, 'Association for Democratic Reforms' (ADR), a registered Society under the Societies Registration Act XXI of 1860 (Registration No. S/11017 of 5th June 1980), is authorized to represent/plead/file on behalf of 'Association for Democratic Reforms' in the matter titled Association for Democratic Reforms & Ors Vs. Union of India; W.P (C) No. ____/2026.

We further authorise him to perform all such acts in the present case which he deems fit and proper in the interest of justice. It is further clarified that this includes the authority to file applications in the above-mentioned matter.



Maj General Anil Verma (Retd)
Head

Association for Democratic Reforms
Plot No. E-5, 3rd Floor, Lane-1,
Westend Marg,
Saidulajab,
New Delhi - 110030

प्रजा ही प्रभु है!

