

New CEC, New Law

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New CEC, New Law: The Debate Over Election Commission's Independence

Context

The **Election Commission of India (ECI)** is responsible for conducting **free and fair elections** in the country. It consists of:

- **Chief Election Commissioner (CEC)**
- **Two Election Commissioners (ECs)**

The **CEC and ECs play a crucial role in upholding democratic principles**, ensuring impartiality in electoral processes. The appointment of these officials has historically been a subject of debate, particularly regarding **executive influence and institutional independence**.

On **February 15, 2025**, former IAS officer **Gyanesh Kumar** was appointed as the **Chief Election Commissioner (CEC) of India**, replacing **Rajiv Kumar**. His appointment was made under the provisions of the **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023**.

Evolution of the Appointment Process of the Chief Election Commissioner

1. Previous System of Appointment

- The **President of India** appointed the **CEC and ECs** based on the **advice of the Prime Minister**.
- **No parliamentary law** governed the appointment process.
- The **senior-most Election Commissioner** was conventionally **elevated to CEC**.
- **Seniority** was determined by the **date of appointment notification**.

Issues with the previous system:

- **Lack of transparency** as appointments were **executive-driven**.
 - **No formal eligibility criteria** were specified.
 - The process gave **excessive control to the ruling government**, raising concerns over **political influence**.
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2. New Appointment Process Under the 2023 Act

The **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023** introduced a **structured selection process**.

Appointment Procedure:

- **Search Committee** (headed by the **Law Minister**) shortlists **five candidates**.
- **Selection Committee** (comprising the **Prime Minister, Leader of the Opposition, and a Union Minister nominated by the PM**) selects the final candidate.
- The **President** officially appoints the **CEC and ECs** based on the **Selection Committee's recommendation**.

Eligibility Criteria:

- Candidates must have served as a **Secretary to the Government of India**.
- Must have **integrity and experience in election management**.

Terms of Service:

- The **CEC and ECs are not eligible for reappointment**.
 - The **total tenure cannot exceed six years**, including time served as both **EC and CEC**.
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LoP's Dissent and Supreme Court Challenge

The new **appointment process** has faced **opposition** due to concerns over **executive dominance**.

1. Objections Raised by the Leader of Opposition (LoP)

- **LoP Rahul Gandhi** submitted a **dissent note**, requesting the **appointment be deferred** until the **Supreme Court** delivers its verdict on pending petitions.
 - The key issue is the **removal of the Chief Justice of India (CJI) from the Selection Committee**, reducing **judicial oversight** in the process.
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2. Supreme Court Case Against the New Process

- The **Association for Democratic Reforms (ADR)** has challenged the **2023 Act** in the **Supreme Court**, arguing that it **undermines the independence** of the **Election Commission**.
 - The **Supreme Court** is set to hear the case on **February 19, 2025**, a day after **Rajiv Kumar's retirement**.
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Why Was the Appointment Process Changed?

1. Supreme Court's March 2023 Judgment

The Supreme Court had ruled that the **CEC and ECs should be appointed by a high-powered committee** consisting of:

- **The Prime Minister**
- **The Leader of the Opposition**
- **The Chief Justice of India**

This was meant to **reduce executive dominance** and enhance **neutrality** in appointments.

2. Government's Response and the 2023 Act

Before this system could be implemented, the **government passed the 2023 Act**, which **removed the CJI from the Selection Committee** and replaced them with a **Union Minister (nominated by the PM)**.

Implications of this change:

- **Increases executive control** over Election Commission appointments.
 - **Weakens judicial oversight**, raising concerns over potential **political influence**.
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Implications and Unresolved Issues

1. Pending Supreme Court Verdict

- The Supreme Court will decide whether **Parliament can override a Constitution Bench ruling** through legislation.
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2. Political Debate and Public Trust

- The **opposition argues** that the new law **reduces the autonomy** of the Election Commission.
 - Questions remain over **whether elections will continue to be conducted impartially** under the new system.
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3. Impact on Future Elections

- The **legitimacy of the new appointment process** may impact **public confidence** in the Election Commission's independence.
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Conclusion

The appointment of **Gyanesh Kumar as CEC** marks the **first implementation of the 2023 Act**. However, the **controversy surrounding the appointment process remains unresolved**. The **Supreme Court's decision** will be crucial in determining whether the new law upholds or undermines the **independence of India's electoral system**. Until then, the **debate over executive control and institutional integrity continues**.

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