

IndiaCode

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

(ACT NO. 49 OF 2023)

[*As on the* 1*st July*, 2026]

LIST OF ABBREVIATIONS USED

G.S.R.	*for*	General Statutory Rules.
S.O.	,,	Statutory Order.
Notifn.	,,	Notification.

IndiaCode

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

———

ARRANGEMENT OF SECTIONS

———

CHAPTER I

PRELIMINARY

SECTIONS.

1. Short title and commencement.

2. Definitions.

CHAPTER II

APPOINTMENT AND TERM OF CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS

3. Election Commission.

4. Appointment of Chief Election Commissioner and other Election Commissioners.

5. Qualifications of Chief Election Commissioner and other Election Commissioners.

6. Search Committee.

7. Selection Committee.

8. Power of Selection Committee to regulate its own procedure.

9. Term of office.

CHAPTER III

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

10. Salary, etc.

11. Resignation and removal.

12. Leave.

13. Pension.

14. Right to subscribe to General Provident Fund.

15. Other conditions of service.

16. Protection of Chief Election Commissioner and other Election Commissioners.

IndiaCode

CHAPTER IV

TRANSACTION OF BUSINESS OF ELECTION COMMISSION

SECTIONS.

17. Transaction of business.

18. Disposal of business.

CHAPTER V

MISCELLANEOUS

19. Power to remove difficulties.

20. Laying.

21. Repeal and saving.

IndiaCode

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

ACT NO. 49 OF 2023

[*28th December*, 2023.]

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

(*2*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—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

3. Election Commission.— 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.

1. 2nd day of January, 2024, *vide* Notifn. No. S.O. 35 (E), dated 2nd of January, 2024, *see* Gazette of India, Extraordinary, Part II, sec. 3 (*ii*).

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

5. Qualifications of Chief Election Commissioner and other Election Commissioners.—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.

6. Search Committee.—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.

7. Selection Committee.—(*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. Power of Selection Committee to regulate its own procedure.— (*1*) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chief Election Commissioner or other Election Commissioners.

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

9. Term of office.—(*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.

(*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.

PRSLawCode

CHAPTER III

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

10. Salary, etc.—(*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:

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.

IndiaCode

(*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. Resignation and removal.—(*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.

(*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.

12. Leave.—(*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.

13. Pension.—(*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.

14. 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 under the General Provident Fund (Central Services) Rules, 1960.

15. Other conditions of service.—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.

16. Protection of Chief Election Commissioner and other Election Commissioners.—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

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

18. Disposal of business.—(*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.

CHAPTER V

MISCELLANEOUS

19. Power to remove difficulties.—(*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.

(*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. Laying.—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.

21. Repeal and saving.—(*1*) The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 (11 of 1991) is hereby repealed.

(*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 (10 of 1897) with regard to the effect of repeal.

———

IndiaCode

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.

ARJUN RAM MEGHWAL.

NEW DELHI;
The 4th August, 2023.

IndiaCode