

Constitutional and Statutory bodies

Constitutional body –

- Constitutional bodies are important bodies in India that derive their powers and authorities from the Indian Constitution.
- They are specifically mentioned in the Constitution, meaning they have dedicated articles.
- Any change in the mechanism of these bodies would require a constitutional amendment.
- Important bodies such as the Finance Commission, the UPSC, the Election Commission, the CAG, National Commissions for SCs and STs, etc. are constitutional bodies.

Statutory body –

- These are non-constitutional bodies as they do not find any mention in the Constitution.
- They are also important bodies due to their function.
- They are created by an Act of Parliament.
- They are called 'statutory' since statutes are laws made by the Parliament or the legislature.
- Since these bodies derive their power from statutes or laws made by the Parliament, they are known as statutory bodies.
- Statutory bodies in India – National Commission for Women (NCWA Act 1990)
- National Child Protection Commission (Commission for Protection of Child rights Act 2005)
- Central Information Commission (Right to Information Act 2005)
- Central Vigilance Commission (Central Vigilance Commission Act 2003)
- National Human Rights Commission (PHR Act 1993)
- National Green Tribunal (NGT Act 2010)
- Central Administrative Tribunal
- National Commission for Minorities
- National Commission for Backward Classes
- Food Security Commission (National Food Security Act 2013)

Executive Body –

- These bodies are non-constitutional and non-statutory.
- They are not mentioned in the Constitution.
- They are also not established by an act of Parliament.
- They are formed by executive resolution or action, which means that they are formed by the government's action only.
- They can be converted into a statutory body by enacting a law. For example, the UIDAI was made into a statutory body after it was established by enacting a new law.
- Executive bodies – NITI Ayog, CBI, National Development Council, Lokpal and Lokayukta.

Election Commission

Article 324 provides an election commission for free & fair election in India. The commission was established on 25th Jan 1950. That's why **25thJan is celebrated as national voter's day**. The Election Commission is provisioned from Article 324 to 329 in Part XV of the Indian Constitution.

General Introduction -

1. **Nature** - Constitutionally autonomous and independent commission
2. **Description** - Part XV of Indian Constitution (Article 324-329)
 - ❖ Article 324 - Election Commission
 - ❖ Formation - 25th January 1950
 - ❖ Headquarter - New Delhi
 - ❖ First Chief Election Commissioner - Sukumar Sen
 - ❖ Present Chief Election Commissioner - Sunil Arora (3 members commission), Rajiv Kumar and Sunil Chandra (other Election Commissioners)
 - ❖ First woman Chief Election Commissioner - V.S. Ramadevi (1990)
 - ❖ First Muslim Election Commissioner - S.Y. Qureshi
 - ❖ First Elections - 1951-52
3. **Main Functions** - direction, superintendence, and control of elections to parliament, state legislatures, the office of President of India and the office of Vice-President of India.



Important Articles -

Article 324-Formation, Structure, procedure of removal etc.

Article 324(1)-Formation of Election Commission -

Superintendence, direction and control of elections to be vested in an Election Commission.

Article 324(2) - Structure of the Commission -

1. Chief Election Commissioner and other Commissioners (determined by the President)
2. **Appointment** - by the President (Article 324(2))
3. The President appoints Regional Commissioners on the recommendation of Election Commission.
4. The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. They are provided with the status, salary, allowances etc same as that of the Judge of the Supreme Court.
5. Tenure - 6 years or 65 years of age, whichever is earlier.
6. Resignation - to the President (324(5))
7. Process of Removal - Chief Election Commissioner - same as that of the Judge of the Supreme Court by the President on the basis of a resolution passed to that effect by both the houses of parliament with a two-thirds majority in both the Lok Sabha and the Rajya Sabha.

Grounds of Removal –

- Incapacity or proved misbehavior.
- Other Election Commissioners – on the recommendation of the Chief Election Commissioner
- The term 'Impeachment' is not used for this process. It is only used for the procedure of the removal of the President which requires special majority of 2/3rd of the total members of the House in which it is initiated. This process is not adopted in any other cases.
- All the commissioners have same salary and allowances.
- The conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

Article 324 (3) - When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

Article 324 (4) - The President may also appoint, after consultation with the Election Commission, such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1)

Article 324 (5)-

The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.

The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991

- Salary and allowances of all three members would be same (same as that of the Judge of Supreme Court) (Section – 3)
- Salary – 2.5 Lakh Rs/month
- the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment
- **Tenure** – 6 years/65 years of age (Section – 4)
- **Resignation** – to the President.
- **Process of Removal** – Chief Election Commissioner–same as that of the Judge of Supreme Court.
- Other Election Commissioners – on the recommendation of the Chief Election Commissioner.

Article 324 (6) - The President, or the Governor of a State, shall, when so requested by th Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

Article 325 - No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll on ground of religion, race, caste or sex.

Article 326 - Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

Article 327 - Power of Parliament to make provision with respect to elections to Legislatures.

Article 328 - Power of Legislature of a State to make provision with respect to elections to such Legislature.

Article 329 - Bar to interference by courts in electoral matters.

Election Commission (Article 324)

Article 324 provided for the appointment of an Election Commission to superintend, direct and control the elections. The Commission is an all-India body having jurisdiction over elections to Parliament, State Legislatures, offices of the President and Vice-President.

Election Commission, having control over the entire election process in the country, is done to prevent injustice, which could be done by regional, State Governments, discriminating against any section of the people in the matters relating to elections. The Commission is constituted as an autonomous and independent body, with a view, to ensure the conduct of **free and fair elections**, which feature is held to be a **basic structure of the Constitution**. It has been said to be the most important arbitrator on holding of the elections.

Constitution of the Election Commission

Clause (2) of Article 324 provides that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. Until Parliament makes any law in that behalf, the Chief Election Commissioner and other Election Commissioners are appointed by the President. When any other Election Commissioner is so appointed, the Chief Election Commissioner; shall act as the Chairman of the Election Commission.

The President may also appoint, after consultation with the Election Commission, such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of its functions. The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. These rules, however, are subject to any law made by Parliament in this respect.

Chief Election Commissioner vis-a-vis other Election Commissioners

Provision to Clause (5) of Article 324 says that 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 and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. It is thus clear that the Election Commissioners do not hold the same position as does the Chief Election Commissioner.

The number of other Election Commissioners is determined by the President and can be removed from their office in the manner provided in the Proviso to Clause (5) of Article 324[by president on recommendation of CEC, although it isn't bounded to president]. The other Commissioners hold their office during the pleasure of the President, subject to any law made by Parliament in this regard. Again, while the conditions of service of the CEC cannot be varied to his disadvantage, the conditions of service of other Commissioners are determined by President by rule, subject to any law made by Parliament in this regard.

Multi-member Election Commission

The commission was established in 1950 and originally only had a Chief Election Commissioner. Two additional Commissioners were appointed to the commission for the first time on 16 October 1989 (on the eve of the 1989 General Election), but they had a very short tenure, ending on 1 January 1990.

The Election Commissioner Amendment Act, 1989 was adopted on 1 January 1990 which turned the commission into a multi-member body: a 3-member Commission has been in

operation since then and the decisions by the commission are made by a majority vote. The Chief Election Commissioner and the two Election Commissioners who are usually retired IAS officers draw salaries and allowances at par with those of the Judges of the Supreme Court of India as per the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Rules, 1992.

In *T.N. Seshan v. Union of India*, the Supreme Court unanimously upheld the constitutionality of the Act equating the status, powers and authority of the two Election Commissioners with that of the CEC. The Court held that the CEC did not enjoy a status superior to other Election Commissioners even though there were differences between the service conditions of the CEC and other CEs. The scheme of Article 324, it was held clearly provided for a multi-member body comprising of the CEO and other ECs.

Article 324(2) empowers the President of India to fix from time to time the number of Election Commissioners other than the Chief Election Commissioner. The Chief Election Commissioner and the two Election Commissioners draw salaries and allowances same as those of the judges of the Supreme Court of India.

The Chief Election Commissioner or an Election Commissioner holds office for a term of **6 years** from the date on which he assumes his office or till he attains the **age of 65 years**, whichever is earlier.

Freedom of Election Commission

The Constitution envisages the setting up of an independent, autonomous Election Commission. To secure independence of action, Article 324 contains the following provisions:

- a. That the CEC shall not be removed from his office except in the like manner and on the like grounds as a Judge of the Supreme Court.
- b. That the conditions of service of the CEC shall not be varied to his disadvantage after his appointment.

The CEC is, therefore, protected against political and executive influence and for that reason, he can discharge his functions without fear, favour or pressure from the executive or the party in power. Even the tenure of office of other Election Commissioners and the Regional Commissioners is also free of the executive control in so far, none of them can be removed from office except on the recommendation of the CEC. This check on the executive's power is to safeguard the independence of not only these functionaries but the Election Commission as a body.

Staff of the Election Commission [Article 324 (6)]

The Election Commission generally has few staff of its own. It, however, can demand necessary staff from the Central and State Governments whenever required. For that purpose, Clause (6) of Article 324 provides that the President, or the Governor of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1).

Functions of the Election Commission

The Election Commission performs the following functions :

- a. The superintendence, direction and control of the preparation of electoral rolls for all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President.
- b. The conduct of all the elections mentioned.
- c. To advise the President or the Governor of a State, as the case may be, on the question of disqualification of any Member of Parliament or a member of a State Legislature, respectively.

Article 324 has been held to be plenary in character, vesting the whole responsibility in the Election Commission for national and State elections. The power conferred on the Commission under Article 324(1) is subjected to two limitations, namely:

- i. When Parliament or any State Legislature has made a valid law relating to or in connection with elections, the Commission shall act in conformity with such law.
- ii. The Commission while exercising power shall conform to the rule of law, act bone fide and be amenable to the norms of natural justice.

Superintendence, Direction and Control of Elections

The expression superintendence, direction and control and the conduct of all elections in Article 324 (1) has been held to include such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion. It would, therefore be legitimate, on the part of the Commission, to make general provisions even in anticipation or in the light of experience, in respect of matters relating to symbols.

In the interest of free and fair elections, for the safety and security of electors and with a view to prevent intimidation and victimisation of electors, the Commission has full power to direct the manner of counting of votes. Directives issued by the Election Commission for transfer of those officers from one district to another, who had completed more than four years of stay in one district, have been held not ultra vires Article 324(1).

Article 324 has been said to be a reservoir of power, leaving scope for exercise of residuary power by the Commission in its own right, as a creature of the Constitution. The Commission, may, therefore, issue directions, asking the candidates to furnish information relating to their assets, educational qualification, antecedents of his life, etc.

One General Electoral Roll for every Constituency (Article 325)

Article 325 provides :

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

System of Adult Suffrage (Article 326)

Article 326 incorporates the system of adult suffrage for elections to the Lok Sabha and the Legislative Assembly of every State. According to this system, a person to be registered as a voter for these elections must comply with the following requirements:

- i. He must be a citizen of India.
- ii. He must not be less than 18 years of age on the appointed day.
- iii. He must not be otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime, corrupt or illegal practice.

Parliament has enacted the Representation of People Act, 1950 which requires a person, to be registered as a voter, to fulfill the following conditions:

- i. He must be a citizen of India.
- ii. He must not be declared to be of unsound mind by competent court.
- iii. He must not be disqualified from voting under a law relating to corrupt and illegal practices or other offences in connection with elections.

No person is entitled to be registered in the electoral roll for more than one constituency or of any constituency more than once. A person shall be disqualified from voting at any election for 6 years if he is convicted of any of the specified offences punishable with imprisonment or who, upon the trial of an election petition is found guilty of any corrupt practice. This disqualification may, however, be removed by the Election Commission, for reasons recorded by it in writing.

Right to Vote is a constitutional Right

The right to vote or stand as a candidate for election is a creature of statute or a special law and must be subject to the limitations imposed by it. These rights are not absolute rights, nor are held to be fundamental right. It is a constitutional right.

Enactment of laws with respect to Elections (Articles 327 and 328)

Article 327 provides that Parliament may, from time to time, by law, make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or the Legislature of a State. The law may include provisions for the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. The law so made shall be subject to the provisions of the Constitution.

Similar power is conferred by Article 328 on the Legislature of a State with respect to the elections to the Houses of the State Legislature. The power of the State Legislature is subjected to the provisions of the Constitution and any law made by Parliament.

In the exercise of the power conferred by Article 327, Parliament has enacted the Representation of the People Acts, 1950 and 1951 and the Delimitation Commission Act, 1952. The Election Commission is to act not inconsistent with these Acts.

Settlement of Election Disputes (Article 329)

Clause (a) of Article 329 provides that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purported to be made under Article 327 or Article 328 shall not be called in question in any Court.

Clause (b) of Article 329 as amended by the Constitution (19th Amendment) Act, 1966, provides that not with standing any thing in the Constitution, no election to either House of Parliament or the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by

the appropriate Legislature. In pursuance of this Clause, Parliament enacted the Representation of the People Act, 1951. The Act has vested the power to decide any election petition, in the High Courts.

The delimitation of constituencies as enshrined in Articles 82 and 170 is a necessary process, as important as the elections themselves. It is a bureaucratic process. According to Article 82 of the Constitution, Parliament enacts a Delimitation Act after Census that is held every 10 years.

- ✳ The Union government then constitutes a Delimitation Commission headed by a retired Supreme Court judge.
- ✳ The commission examines population data, existing constituencies, the number of seats to be analysed, holds meetings with all the stakeholders and submits its recommendation to the government.
- ✳ The draft report of the Delimitation Commission is published in the Gazette of India, the official gazettes of the states concerned and at least two vernacular publications seeking feedback from the general public.

The delimitation is supposed to take place every 10 years. It is done by Delimitation Commission. The Constitution (84th Amendment) Act, 1976 freezed it till 2001. There have been three Delimitation Commissions, in 1952, 1963 and 1973, before the present Commission appointed in 2002 with Justice Kuldeep Singh as its Chairman.

The Notification issued based on the report of the Delimitation Commission is held to be final and binding. It would have the effect of law. No government can make any changes or choose to alter it. It cannot be challenged before any Court either. If a person felt that he was not given due opportunity of being heard or felt that the Commission was not following the procedure prescribed, he could have approached the High Court, prior to issuance of the final Notification and sought appropriate directions.

Committees related to Elections

1. **Tarkunde Committee 1974-75** – Constituted by Jaiprakash Narayana
2. **Dinesh Goswami Committee** – 1990
3. **Indrajeet Gupta Committee** – 1998
4. **K.Santhanam Committee**
5. **Tankha Committee** – 2010

Chief Election Commissioners of India

Chief Election Commissioners of India	Tenure
Sukumar Sen	21 March 1950 – 19 December 1958
Kalyan Sundaram	20 December 1958 – 30 September 1967
S. P. Sen Verma	1 October 1967 – 30 September 1972
Nagendra Singh	1 October 1972 – 6 February 1973
T. Swaminathan	7 February 1973 – 17 June 1977

S.L. Shakdher	18 June 1977 – 17 June 1982
R.K Trivedi	18 June 1982 – 31 December 1985
R.V.S Peri Sastri	1 January 1986 – 25 November 1990
V.S. Ramadevi	26 November 1990 – 11 December 1990
T.N Seshan	12 December 1990 – 11 December 1996
M.S Gill	12 December 1996 – 13 June 2001
James Michael Lyngdoh	14 June 2001 – 7 February 2004
T. S. Krishnamurthy	8 February 2004 – 15 May 2005
B. B. Tandon	16 May 2005 – 29 June 2006
N. Gopaldaswami	30 June 2006 – 20 April 2009
Navin Chawla	21 April 2009 – 29 July 2010
S. Y. Quraishi	30 July 2010 – 10 June 2012
V. S. Sampath	11 June 2012 – 15 January 2015
Harishankar Brahma	16 January 2015 – 18 April 2015
Nasim Zaidi	19 April 2015 – 5 July 2017
Achal Kumar Jyoti	6 July 2017 – 22 January 2018
Om Prakash Rawat	23 January 2018 – 1 December 2018
Sunil Arora	2 December 2018 – October 2021