

CERTAINTY OF TENURE OF THE ELECTION COMMISSIONERS- A PARAMOUNT NEED

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Abstract

This paper examines the setting up of the Election Commission of India under the Constitution of India. The paper in particular deals with article 324(2) of the Indian Constitution. Under this article, the Election Commission of India consists of the Chief Election Commissioner and other Election Commissioners. Article 324(2) does not provide security of tenure to the other Election Commissioners but only guarantees the security of tenure to the Chief Election Commissioner. Therefore, the two election Commissioners' office is in a vulnerable position owing to clause (5) of article 324 which gives puissant powers to the Chief Election Commissioner on whose recommendation the President can remove from office the two election Commissioners. The author refers to the election Acts of Canada on which the framers of the Constitution relied on while inserting election provisions in the Constitution. The author through this comparative analysis proposes to offers best practices adopted to secure the tenure of the other two election Commissioners.

I Introduction

II *Pari passu* or *Primus inter pares*

III Committee recommendations

IV PILs filed

V Constituent assembly debates

VI Constitutional provisions

VII Canadian election laws

VIII Transaction of Business

IX Conclusion

I Introduction

THE PREAMBLE to the Constitution of India declares India to be a democratic¹ republic. In a representative democracy like our elections held periodically to elect the popular choice of the citizens to various constitutional positions mandates that these elections are held in a free and fair manner. To achieve this goal, the framers of the Constitution felt the need to set up a

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¹As held in *Kesavananda Bharati v. State of Kerala*, AIR 1962 SC 933, "Parliamentary democracy is the basic feature of the Constitution".

constitutional, impartial, independent body under article 324² of the Indian Constitution. The structure, appointment, tenure and removal all being elaborated under article 324 of the Constitution. A brief background on the setting up of the Election Commission will throw light on various aspects like the setting up of the Election Commission in the year 1950³ which saw the office of the Election Commission being headed by a single body consisting of the Chief Election Commissioner (CEC) as was envisaged by the framers of the Constitution. The Joint Committee of both Houses of Parliament submitted a report in 1972 recommending a multi-member body and the Tarkunde Committee⁴ appointed on behalf of the Citizens for Democracy also favoured a multi-member Election Commission in its report submitted in August 1974. Though these recommendations were not implemented immediately, it was implemented in due course. In the year 1989,⁵ the scenario changed when the age for voting was reduced to 18 years from 21 years and thereby necessitated the appointment of additional election commissioners (ECs) which was made by the President⁶ as provided by the Constitution under article 324(2). The Commission was made a multi-member body Commission⁷ by a notification issued under article 324(2) and two election commissioners were appointed on October 16, 1989 who held office until January 1, 1990. Between the years 1990 and 1993 the Commission was a single body Commission with the Chief Election Commissioner at its helm and again on the of October 1, 1993 two more election commissioners were appointed making the Commission a multi-body Commission comprising in total three election commissioners. This composition has carried on since 1993 till date wherein the Commission operates as a multi-body Commission.⁸

² Under Part XV, Chapter: Elections: Article 324 reads as follows: Superintendence, direction and control of elections to be vested in an Election Commission. -

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of president and vice-president held under this shall be vested in a commission (referred to in this as the Election Commission), *available at*: <https://www.constitution.org/cons/india/p15324.html>

³Election Commission of India is a permanent Constitutional Body. The Election Commission was established in accordance with the Constitution on Jan. 25 1950, *available at*: <https://eci.gov.in/about/about-eci/the-setup-r1/> (last visited on Jan. 21, 2020).

⁴Tarkunde Committee: In August 1974, Jaya Prakash Narayan on behalf of the Citizens for Democracy appointed a committee comprising of, V.M. Tarkunde, M.R. Masani, P.G. Mavalankar, A.G. Noorani, R.D. Desai and E. P.W. Decosta. It was known as the Tarkunde Committee which recommended that the election Commission should be a three-member body, *available at*: <http://www.yourarticlelibrary.com/essay/major-committees-on-electoral-reforms-andtheirrecommendations-in-india/24930> (last visited on Jan. 21, 2020).

⁵The Constitution (Sixty-first Amendment) Act, 1989.

⁶Constitution of India, 1950, art. 324 (2) of the reads: 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 and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President

⁷The Election Commissioner Amendment Act, 1989 made the Commission a multi-member body.

⁸*Supra* note 3.

Though the framers of the Constitution relied on Canada's election model derived from the *Dominion Elections Act*⁹ and *The Canadian Election Act*¹⁰ for election provisions being incorporated into the Indian Constitution, there appears to be a deviation on several aspects like the independence of the Election Commission, the appointment of the election commissioner, the tenure of service of the office bearers of the Election Commission, the composition of the Election Commission and so on. One of the irregularities that has surfaced ever since the body of the Election Commission was made a multi-body one was that while the office of the Chief Election Commissioner stands protected with relation to his tenure, the same protection has not been offered to the other two election commissioners.

II *Pari Passu* or *Primus inter pares*

When the election Commission functioned as a single member body there arose no dispute and when in the year 1989 by a presidential order and notification, for the first time the Commission became a multi-member Commission, the smooth functioning of the Commission was adversely affected. In the year 1990 by Presidential Order, a notification was issued thereby removing from office the two election commissioners. S. S. Dhanoa a commissioner appointed to the commission in 1989 challenged the 1990 Presidential Notification. In the *Dhanoa* case¹¹ the Supreme Court laid down an important proposition regarding the composition of the election Commission, which was as follows: "There is no doubt that two heads are better than one. That when an Institution like that of the Election Commission is entrusted with vital functions and is armed with executive powers, it is both necessary and desirable that the powers are not exercised by one individual, however wise he may be as it ill-confirms to the tenets of democratic rule. It helps to assure judiciousness and want of arbitrariness."¹² The Supreme Court in the *Dhanoa* case has held that the status of the election commissioners is not *Pari Paasu*, meaning 'on an equal footing' from that of the CEC and the CEC is protected as his conditions of service are secured and cannot be varied to his disadvantage. Post the CEC's appointment he can be removed from his office only like that as a judge of the Supreme Court of India is removed. These protections were not available to the other election commissioners as was held in the above-mentioned case. The conditions of service could be varied to their disadvantage after their appointment and they could be removed by the President on the recommendation of the CEC. These provisions

⁹The passage on July 1, 1920 of the Dominion Elections Act was a very important date in the history of elections in Canada, available at: <http://www.elections.ca/content.aspx?section=res&dir=cons/comp/evol&lang=e> (last visited on Jan. 21, 2020).

¹⁰Canada Elections Act, 2000, available at: <https://laws-lois.justice.gc.ca/eng/acts/e-2.01/> (last visited on 21 January, 2020).

¹¹*SS Dhanoa v. Union of India* (1991) 3 SCC 567, 584.

¹²*Ibid.*

indicate that the CEC is not *primus inter pares* *i.e.*, ‘first among equals’, but is intended to be placed in a distinctly higher position than the other two election commissioners. The court in the *Dhanoa* case also suggested that rules be made to lay down the procedure to transact the business of the Commission as the Election Commission was not only an advisory body but an executive body as well.

As suggested by the Supreme Court, the Parliament in the year 1991 enacted the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991¹³ which was again amended in 1993. According to this act the tenure of the CEC and ECs became six years or 65 years of age, whichever was earlier and CEC and ECs received the same salary equal to that of the judge of the Supreme Court and also provided that all business of the Election Commission shall, as far as possible be transacted unanimously and in case of any disagreement a majority opinion would be binding. The Act, therefore, places the CEC and ECs on par with each other/on the same footing in matters relating to tenure, salaries, and transaction of business, except with regard to removal of the CEC which would be in the like manner as a Judge of the Supreme Court. Whereas the other ECs don’t enjoy the same, as they could be removed from office by the President on the recommendation of the CEC as laid down under article 324(5). Though it is laid down in the *T.N. Seshan*¹⁴ case that, “The recommendations for removal must be based on intelligible, and cogent considerations which would have relation to the efficient functioning of the Election Commission”, unless followed to its letter, may threaten the independence of the ECs. The ambiguity arising out of these provisions with regard to removal have been discussed below. In the ensuing years post the *T.N. Seshan* case, several cases were filed in the Supreme Court and several committees recommended measures for the smooth functioning of the Election Commission.¹⁵

III Committee recommendations

The matter with regard to removal have been deliberated by many committees, like in the year 1974, a committee set up by Jayaprakash Narayan, headed by the then Law Minister Dinesh Goswami suggested some electoral reforms found in the Goswami report.¹⁶ The 225th Law

¹³Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 (Act 11 of 1991).

¹⁴*T.N. Seshan v. Union of India* (1995) 4 SCC 611: (1995) 5 JT 337.

¹⁵M.P. Jain, *Indian Constitutional Law* 828 (LexisNexis, New Delhi, 7thedn, 2014).

¹⁶Ministry of Law and Justice, “Report of the Committee on Electoral Reforms” (1990), available at: <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf> (last visited on Jan. 21, 2020).

Commission's report¹⁷ also with a view to strengthening the office of the Election Commission of India suggested some reforms that would, in turn, offer constitutional protection to the members of the Election Commission of India. Just after the 14th Lok Sabha Elections the Election Commission of India felt the need to amend certain provisions of the law and thereby urged the government through a letter dated July 5, 2004 to strengthen the Election Commission. The same cause was taken up by the Election Commission of India in December 2016 which sought to remedy certain electoral practices. These changes so recommended have to be made by the Parliament.

IV Public interest litigations filed

The above-mentioned concerns have been raised in various public interest litigations (PIL) filed in the Supreme Court which seeks clarifications from the court on various questions arising out of the ambiguity contained in part XV of the Indian constitution with regard to elections and article 324(5)¹⁸ in particular being the main subject of contention which deals with the removal of other election commissioners and regional commissioners by the President only on the recommendation of the CEC.

The PIL filed¹⁹ seeks Constitutional amendments to be made with regard to article 324 which will remedy article 324(5). The PIL filed is also in consequence a challenge to clause (5) of article 324 aiming to treat the two election commissioners on par with the CEC in matters of removability that treats with discrepancy the removal of the CEC and the two election commissioners, placing the two election commissioners in a vulnerable position with regard to tenure by granting blanket powers to the CEC on whose recommendation the President is empowered to remove from office the election commissioners. The CEC here assumes puissant powers as the sole body who decides the removal of the two election commissioners.²⁰ Though article 324(5) deals with removal of other election commissioners and regional election commissioners, answers are sought from the centre with regard to the two election

¹⁷Law Commission of India, "Electoral Reforms", available at: <http://lawcommissionofindia.nic.in/reports/report255.pdf> (last visited on Jan. 21, 2020).

¹⁸Art. 324(5) reads: Subject to the provisions of any law made by Parliament, 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:

Provided that the CEC shall not be removed from his office except in like manner and on the grounds as a judge of the Supreme Court and the conditions of service of the CEC shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

¹⁹*Ashwini Kumar Upadhyay v. Union of India and Election Commission of India*, 2018 (1) SCALE 170.

²⁰Constitution of India, 1950, Proviso to article 324(5) reads: Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

commissioners only as they are considered equal in position to the CEC and thereby to uphold the independence and the constitutionality of the non-partisan body set up to direct, control and superintend over the elections that take place within the Union of India.

The contentions raised in the PIL is that the independent status given to the Election Commission was to ensure that elections within the country are held in a free and fair manner which mandates that the body that is responsible for this task be free from any fear of carrying out its duties without the slightest fear of incurring the displeasure of the executive. This independence of the two election commissioners' tenure as contended in the PIL is under threat as the removal of the two election commissioners is at the mercy of the President who is constitutionally authorized to remove them based on the recommendation made by the CEC.

V Constituent assembly debates

In the constituent assembly debates, B.R. Ambedkar's proposal²¹ was two-fold with regard to appointment and tenure of election commissioners. The first being, to have four to five election commissioners thereby making the Commission a permanent body and the second proposal being to confer powers on the President to appoint commissioners on an ad hoc basis whenever there arose a need. Out of the two proposals laid down, the constituent committee steered a middle course, *i.e.*, to have a body consisting of one chief, leaving the conditions of service and tenure and further appointments of any other election commissioners at the sweet will of the President.

Concerns raised by Pandit Hriday Nath Kunzru²² as found in the constituent assembly debates on protecting the tenure and office of the other election commissioners was that while the CEC can work without any fear of displeasing the Executive, as removal of the CEC on the grounds of misbehaviour and incapacity by the Parliament will require a two-thirds majority in both the Lok Sabha and the Rajya Sabha which by all means is not an easy task to achieve thereby aiming to secure independence of tenure to facilitate the efficient functioning of the CEC but the same safeguard being unavailable to the other election commissioners who could be removed by the President on the recommendation of the CEC by granting discretionary powers in the hands of

²¹Constituent Assembly Debates on June 15, 1949, available at <https://indiankanoon.org/doc/1336469/> (Last visited on January 21, 2020) Constituent Assembly Debates: B.R. Ambedkar: "...There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office throughout without any break, or to permit the President to have ad hoc body appointed at the time when there is an election on the anvil..."

²²*Ibid.*

the CEC clearly brings about a difference in treatment of colleagues. The remedy that Pt. Hruday Nath Kunzru offered to this anomaly was that the Parliament should be authorised to make provisions for these matters by making suitable laws. But even after so many years have elapsed, laws in this regard have not been enacted by the Parliament.

VI Constitutional provisions

The intent of the framers of the Constitution while insertion of article 324(2) was that the Election Commission shall consist of a CEC and such number of election commissioners as the President may from time to time fix and their appointment shall be subject to any law made in that behalf by the Parliament.²³ A thorough reading of the ensuing sub-clause (5) of article 324 provides that subject to the provisions of any law made by the Parliament the President can act in this behalf with regards to two functions only, which are, conditions of service and tenure. Perusing clause (2) of article 324 with regard to fixing of the number of other election commissioners and appointment of CEC, there is a clear mention that it shall be “subject to the provisions of any law made in that behalf by the Parliament’ be made by the President. ‘Law made by the Parliament’ as laid down under article 324(5)²⁴ and ‘Law made in that behalf by the Parliament’ as laid down under article 324(2)²⁵ certainly differ in their application. While the latter can be construed to mean that the President is to act based on the provisions of law made by the Parliament with regard to the appointment of CEC and other election commissioners. The former means that the tenure and conditions of service are such that the President may by rule determine based on a law enacted by the Parliament, which means that the President has the power to determine under clause (5) conditions of service and tenure but not under clause (2), appointment which is subject to the enactment of a Law.

If the appointment of election commissioners is in the like manner as that of the CEC then it is implied that the framers of the Constitution intended that the same should apply to removal also, which means that the Parliament has to by law make provisions for removal. The pertinent

²³Constitution of India, 1950, art. 324(2) reads: 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 and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

²⁴ Constitution of India, Art. 324(5) reads : Subject to the provisions of any law made by Parliament, 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: Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the 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: Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

²⁵*Ibid.*

question here is if the other election commissioners enjoy powers equal to that of the CEC, is it justified for a sole authority acting on behalf of the Commission to remove the two election commissioners thereby threatening their independence? B.R. Ambedkar's emphatic words justify the above question when he said that 'there was no guarantee that the office of the CEC and other election commissioners may not be under the thumb of the Executive'. To understand this, it is important to examine whether the body of the Election Commission of India can be considered an 'Independent' body.

VII Canadian election laws

The Canadian Constitution from which the framers of the Indian Constitution drew inspiration also declares the position of the CEO (Chief Electoral Officer)²⁶ as being an independent, nonpartisan body. The appointment of the CEO is only after consultation with the members of the opposition parties in the Parliament. The name of the nominee suitable for the position of the CEO is forwarded to the House of Commons, and the appointment of the CEO takes place after a resolution is adopted in the House of Commons²⁷ and as seen clearly all the members of the house which includes the members of the opposition contribute in the selection process and therefore it can be stated that the office of the CEO is truly an independent and non-partisan one, where the CEO is completely independent of any governmental or political influence.

Questions of independence of the Commission can also be raised, as the expenditure of the Election Commission of India is a 'voted expenditure'²⁸ unlike other Constitutional bodies like the Union Public Service Commission (UPSC),²⁹ Comptroller and Auditor General (CAG)³⁰ and the Supreme Court which is a 'charged expenditure' (non-votable) expenditure. In Canada, expenditure can be drawn in two ways, by an annual appropriation which provides for the salaries of permanent employees including the CEO subject to the approval of the Parliament

²⁶ "Appointment of Chief Electoral Officer", available at: <http://www.elections.ca/content.aspx?section=abo&dir=ceo/app&document=index&lang=e> (Last visited on Jan. 21, 2020).

²⁷ The position of Chief Electoral Officer (CEO) was created in 1920 by the Dominion Elections Act. The Chief Electoral Officer is appointed for a 10-year non-renewable term by a resolution of the House of Commons. He or she reports directly to Parliament and is thus completely independent of the government of the day and all political parties. He or she can be removed from office only for cause, by the Governor General after a joint request following a majority vote by the House of Commons and Senate, available at: <http://www.elections.ca/content.aspx?section=abo&dir=ceo/app&document=index&lang=e> (last visited on Jan. 21, 2020).

²⁸ Paul G. Thomas, "Comparative Assessment of Central Electoral Agencies" (2014). The ECI Secretariat's budget is not a charge on the Consolidated Fund of India, but is a voted allotment approved in Parliament. According to an agreement between the central government and state governments, the Secretariat's administrative expenditures are wholly met through budget grants of the central government's Ministry of Law and Justice.

²⁹ All the expenditure of UPSC is charged expenditure. Ministry of Personnel, Public Grievances & Pensions, "Accounts at a Glance" (2010), available at: https://dopt.gov.in/sites/default/files/fINAL-%20AAG.PPGP__0.pdf (last visited on Jan. 21, 2020).

³⁰ Art. 148(6) of the Constitution of India reads: The Administrative expenses of the office of the Comptroller and Auditor General, including all salaries, allowances and pensions payable to or in respect of pensions serving in that office, shall be charged upon the Consolidated Fund of India.

and the CEO using his statutory authority can draw on general governmental revenues without Parliamentary approval which is to empower elections Canada to be ready at all times to conduct electoral events.

During discussions of the draft articles that came up before the Constituent Assembly on the 15th of August 1949, Shibban Lal Saksena³¹ proposed an amendment to the draft article which dealt with the manner of the appointment of the Chief Election Commissioner to be changed from direct appointment by the President to appointment by two-thirds majority in a Joint Session of both the houses of the Parliament as appointment by the President mandated no legal requirement that the President could consult with other parties or for that matter with the opposition parties as well. The President appointing the Election Commissioners meant that the President would act at the behest of the Prime Minister and his Council of Ministers, who would aid and advice the President who in turn shall, in the exercise of his functions, act in accordance with such advice³² which would defeat the entire set up of the Election Commission on the grounds of being an independent body as the Election Commission through its members is answerable to the cabinet rather than the Parliament.

In the words of Kuladhar Chaliha³³ as expressed in the Constituent Assembly debates, that a body cannot be considered to be outside the Executive when the President who is a party-man will be in charge of appointment of the CEO. A thorough comparative analysis of election laws of India and Canada throw sufficient light and also offers answers to questions raised in several cases filed in the Supreme Court of India with regard to ambiguity over appointment and removal of the other election commissioners and Election Commission expenditure.

VIII Transaction of business

The President of India by powers granted to him under clause (3) of article 77³⁴ of the Constitution of India has enacted rules under The Government of India (Transaction of Business)

³¹Constitutional Assembly Debates on June 15, 1949, available at: https://cadindia.clpr.org.in/constitution_assembly_debates/volume/8/1949-06-15(last visited on Jan. 21, 2020). "...but whosoever is chosen must be a person who enjoys the confidence of at least two-thirds majority of both the Houses of Parliament so that one single party in power cannot impose its own man on the country".

³²Constitution of India, 1950, art. 74: Council of Ministers to aid and advise the President;

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

³³<https://indiankanon.org/doc/1155224/> Kuladhar Chaliha "...a body outside the Executive should be there to conduct the elections; but what is that body outside the Executive? It is the President who will select the Chief Election Commissioner and he is a party-man whatever it may be and will have the same prejudices and bias towards his own party-man..."

³⁴ Constitution of India, 1950 of art.77 Cl (3): ("Conduct of Business of the Government of India ") of the Constitution of India lays down as follows:"(3) The President shall make rules for the more convenient transaction of the business of the Government of India , and for the allocation among Ministers of the said business"

Rules 1961³⁵ to facilitate the convenient transaction of business. The (Transaction of Business) Rules has provided expressly under the third Schedule, Rule 8, serial number 22,³⁶ that the appointment, removal and resignation of the CEO and other election commissioners shall be made by the President and Prime Minister of India. Though the above-mentioned rules grant powers of appointment and removal in the hands of the President, the rule of law demands that there be a mechanism that offers a transparent system of appointment and security of office provided to the other two election commissioners. Following the Canadian model of appointment can be considered an unbiased and transparent way of appointment and B.R. Ambedkar's views to leave it to the Parliament to make a suitable law in this regard is noteworthy.

As provided in the Chief Commissioner and other Election Commissioners (Conditions of Service) Act, 1991, the term of office/tenure of the CEC as well as the other two election commissioners is sixty five years or six years, whichever is earlier and each of them receives a salary and remuneration which is equal to that of a judge of the Supreme Court³⁷ and whenever there arises any disagreement with regard to a particular issue, the majority decision is taken which reaffirms faith in the democratic values of the Commission, Only matters with regard to removal from office of the other two election commissioners is different from that of the CEC as is evident from the constitutional provisions. Though the law provides that the two election commissioners can be removed by the President on the recommendation of the CEC the law is silent with regard to the procedure to be followed for removal. The procedure if detailed with clarity can offer transparency which could be considered as one method of removal, the other method is to treat the two election commissioners on par with the CEC in the matter of removal, whereby the removal can be initiated by the Parliament thereby securing the tenure of the two election commissioners. True autonomy of the Commission can be achieved only if safeguards can be provided to the office of the election commissioner.

The *suo moto* initiative that can be taken by the CEC against his colleagues without consultation with any other body has been considered as an unfettered power which allows arbitrary removal. Even the President of India as provided under article 74(1)³⁸ has to act on the aid and advice of

³⁵Under the above provision, the President has made the "Government of India (Allocation of Business) Rules, 1961", available at: <http://mhrd.gov.in/allocation-business> (last visited on Jan. 21, 2020).

³⁶According to The (Transaction of Business) Rules has provided expressly under the third Schedule, Rule 8, serial number 22 that the Appointment, resignation and removal of the Chief Election Commissioner and other Election Commissioners- Authority to whom to be submitted is The Prime Minister and the President.

³⁷M.P. Jain, *Indian Constitutional Law* 828 (LexisNexis, New Delhi, 7thedn., 2014).

³⁸The Constitution Of India

the Prime Minister, Such discretion granted in the hands of a single person *i.e.*, the Chief Election Commissioner without a clear justification has to be remedied without which, the exercise of powers by the CEC with regard to removal of the other two election Commissioners being a discretionary power may be termed to be arbitrary. Equality in employment and appointment and inequality in removal without valid reasoning may be a question that will hound the persons in the Election Commission if a solution is not offered by the Parliament at the earliest.

IX Conclusion

When such anomalies are too evident to ignore, the vast discretionary powers granted to the CEC for removal of election commissioners considering the above-mentioned issues may have to be relooked into to safeguard the independence of the other two election commissioners from any kind of arbitrary influence of power with regard to removability. Though the framers of the Constitution have relied on various Canadian election laws, there has been a deviation from all of these laws in its application and the lacunae need to be remedied. Laws and reforms that strengthen and provide security of tenure to the other two election Commissioners which in turn will provide free and fair dissemination of electoral reforms for the betterment and in the interest of the democratic nation of the Republic of India and a ‘Charged budget’ on the Consolidated Fund of India would truly symbolizes independence of the non-partisan body which will facilitate the smooth functioning of the Commission.

The right direction towards achieving the said purpose would be if the Supreme Court lays down proper rules/guidelines based on the Canadian model. In the interest of democracy, limiting the powers of the CEC would pave the way for the conduct of free and fair elections as enumerated under the Constitution of India. With powers being vested in a single person, the question that needs clarification is whether the office of the CEC and other two Election Commissioner can be considered as *Pari Passu* meaning going hand-in-hand or the CEC be treated as *Primus inter pares* meaning ‘first among equals’ or does he really have a hegemony over the other two can be decided only after the court adjudicates based on the merits of the case thereby offering a finality to the problem. The Parliament may by law remedy the lacuna by enacting suitable legislation thereby securing the tenure of the other two election commissioners.

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration