

(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

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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 as 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

5 **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.

10 **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.

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Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 is hereby repealed.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

20 (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.

10 of 1897. (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)