

Delhi Public School Bangalore South



BACKGROUND GUIDE



AIPPM

All India Political Parties Meet

Agenda: Reviewing the election laws in India with special reference to anti-defection law (10th schedule) and appointment of the chief election commissioner (2023 Act passed by parliament).

LETTER FROM EB:

Dear Delegates,

We warmly welcome you to the Lok Sabha. We are absolutely elated to be

serving on part of the Executive Board (EB) of DiPSMUN 2024, and look forward to having you be a part of the All India Political Parties Meet as well, rendering the three days of the conference to be a cherishable and fruitful experience. We will always be there for you at every step, to encourage you, push your boundaries, and re-center focus when needed. We count on you, as much as you might count on us. We look forward to mutual growth, and learning, albeit within the frame of discipline and cooperation. This study guide is a mere framework for your deeper research. It streamlines various angles and viewpoints so that it enables you with the understandings of the concepts revolving around the agenda. However, we cannot emphasize enough the need to pursue your own sources outside the confines of this study guide as it will not cover your individual stances, the compliance of which is imperative to us.

We expect you to go through the readings in this guide, however they must not be the only source from where you derive your arguments. It is advised to gain an understanding by going through the legislation in question as well as the Indian constitution. It would even more beneficial if you take the time out and go through current proceedings in the parliament to keep yourself well versed with the on going political landscape of the country and to ensure you are always aware about the stance of your specific portfolios. Having said that, we can't wait to have all of you in committee and we look forward to three days of fruitful debate and deliberation.

Regards,

Aarav Goel and Krish Minocha

Co-Chairpersons

Niveda Ravi

Moderator

DISCLAIMER

The sources used in this study guide is an all open-source. The content that exists includes certain extractions from various sites, journals, research papers, and is therefore not the work of EB alone. It is to be strongly noted that the classified information below in no way reflects the personal ideologies, mindset, opinions, and political affiliations of the EB. Read widely and extensively. Be aware of your party's policies and actions. Please do not hesitate to contact us for further enquiries/doubts on the committee email disclosed in this guide and/or even if you just want to have a casual conversation with respect to the upcoming conference. We wish you all the best. Happy researching.

COMMITTEE OVERVIEW

The All Indian Political Parties Meet is a non-technical yet powerful committee introduced in order to emulate political realities by bringing to light various layers of polity and governance in India. It is quintessential that members be thoroughly researched about all the current political happenings around the country and the members are also required to be aware of their portfolio's political affiliations, interests, ideology etc.

AIPPM is merely a recommendatory body and not a Lok Sabha, hence only recommendations can be put forward.

Notable outcomes from AIPPM meetings include Electoral Reforms, Population Regulation Bill and Child Labour (Prohibition and Regulation) Act, 1986.

These outcomes highlight the diverse range of topics and issues that are deliberated upon during AIPPM meetings, showcasing the committee's focus on addressing pressing national concerns and fostering constructive dialogue among political parties.

APPOINTMENT OF THE CHIEF ELECTION COMMISSIONER

The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, was passed by both the Lok Sabha and the Rajya Sabha in December 2023. The bill aims to regulate the appointment, conditions of service, and term of office for the Chief Election Commissioner (CEC) and other Election Commissioners (ECs).

- **Election Commission:** The Election Commission will consist of a Chief Election Commissioner (CEC) and other Election Commissioners (ECs). The President will periodically fix the number of ECs.
- **Appointment of the Commission:** The Commission will be appointed by the President, upon the recommendation of the Selection Committee. The Selection Committee will comprise the Prime Minister, Cabinet Minister, and Leader of Opposition in Lok Sabha (or leader of the single largest opposition party). A Search Committee headed by the Cabinet Secretary will suggest five names to the Selection Committee. The Selection Committee may consider any person other than those suggested by the Search Committee.
- **Eligibility criteria:** The CEC and ECs must-
 - (i) be persons of integrity
 - (ii) have knowledge and experience in the management and conduct of elections, and
 - (iii) be or have been Secretary (or equivalent) to the government.

- **Term and reappointment:** Members of the Election Commission will hold office for six years, or until they attain the age of 65 years, whichever is earlier. Members of the Commission cannot be re-appointed. If an EC is appointed as a CEC, the overall period of the term may not be more than six years.
 - **Salary and pension:** The salary, allowances, and other conditions of service of the CEC and ECs will be equivalent to that of the Cabinet Secretary. They will have an option to draw pension and other retirement benefits from the service that they belonged to previously.
 - **Removal:** The Bill retains the manner of removal of CEC and ECs as specified in the Constitution. The CEC may be removed in the same manner and on the same grounds as a Supreme Court Judge. ECs may be removed only upon the recommendation of the CEC.
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CEC ACT:

On 12 December 2023, the Rajya Sabha passed the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Office and Terms of Office) Bill, 2023.

The Bill set up a committee of its own to nominate members to the Election Commission. This committee comprised the Prime Minister, Leader of Opposition and a Union Cabinet Minister, nominated by the Prime Minister instead of the CJI of India.

The new Bill met with immediate criticism. Many claimed that it went against the spirit of the Supreme Court's judgement as it replaced the CJI with a member of the Union Cabinet.

On 21 December 2023 the Lok Sabha also passed the Bill. It received the President's assent on 29 December 2023.

The Union government has opposed pleas to the Supreme Court seeking a stay on the Chief Election Commissioner and Other Election Commissioners Act, 2023. The Centre denied allegations that Gyanesh Kumar and Sukhbir Singh Sandhu were hastily appointed as election commissioners to preempt Supreme Court orders. In a hearing on March 15, the Supreme Court refused to stay the appointments of Sandhu and Kumar and the Chief Election Commissioner and Other Election Commissioners Act, 2023.

The Centre's affidavit came in response to petitions filed by Congress leader Jaya Thakur and the non-governmental organization Association for Democratic Reforms. The non-governmental organisation challenged the constitutionality of Section 7 of the Act, which lays down provisions for the appointment of the chief election commissioner and two other election commissioners.

Thakur's plea sought new election commissioners to be appointed according to the Supreme Court judgement in the case of Anoop Baranwal Versus Union of India.

In March 2023, the top court formed a selection committee consisting of the prime minister, the leader of the Opposition in the Lok Sabha, and the chief justice of India, to shield the Election Commission from executive influence. The new law has brought the selection of election commissioners back under the Centre's control and given the ruling party the decisive voice in appointments to the Election Commission.

The Centre argued that the 2023 Act is a "significant improvement" in the appointment process, providing for a more democratic, collaborative, and inclusive exercise. It also contended that the petitioners' case is based on a "fundamental fallacy" that the independence of an institution can only be maintained when the selection committee is of a particular formulation.

CASE STUDY:

The Election Commission of India (ECI) is responsible for supervising, directing, and controlling elections to Parliament, state legislatures, and the offices of the President and Vice-President of India. The ECI comprises three members: the Chief Election Commissioner (CEC) and two Election Commissioners (ECs). In *Anoop Baranwal v Union of India* (2023), the main contention was whether the method of appointing members to the ECI was unconstitutional for violating the right to free and fair elections. The petitioners claimed that the President was making appointments to the ECI based on Prime Minister recommendations, breaching the independence of the ECI and threatening fair elections.

On 2 March 2023, a five-judge Constitution Bench led by Justice K.M. Joseph delivered the judgement in the case, which directed the creation of a committee comprising the Prime Minister, the Leader of the Opposition, and the Chief Justice of India to advise the President on ECI appointments. This committee would exist until Parliament came up with a law for appointments.

On 12 December 2023, the Rajya Sabha passed the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Office, and Terms of Office) Bill, 2023, which set up a committee to nominate members to the ECI. The new Bill met with immediate criticism, as it replaced the CJI with a member of the Union Cabinet.

On 2 January 2024, Madhya Pradesh Mahila Congress Committee General Secretary Dr. Jaya Thakur moved to the Supreme Court seeking a stay on the newly enacted law. The Association for Democratic Reforms also filed petitions challenging the Act, arguing that it contravenes the Constitution Bench judgment in *Anoop Baranwal (2023)* and should be insulated from political and executive interference.

On 9 March 2024, Election Commissioner Arun Goel resigned ahead of the upcoming 2024 General Elections, reducing the ECI to a one-member body. Jaya Thakur filed a stay application against the Act on 11 March 2024, and ADR filed an application on 12 March 2024. On 15 March 2024, the Supreme Court Bench agreed to sit for an urgent hearing on the matter.

ANTI- DEFECTION LAW

What is Anti - Defection Law?

The anti-defection law in India was enacted to address the perceived problem of instability caused by democratically elected legislators in India's Parliamentary System of Government shifting allegiance from the parties they supported at the time of election, or disobeying their parties' decisions at critical times such as during voting on an important resolution. It is encapsulated in the Tenth Schedule of the Indian Constitution, added by the 52nd Amendment Act in 1985

The anti-defection law deals with situations of defection in Parliament or state legislatures by:

- a) members of a political party,
- b) independent members, and
- c) Nominated members.

In political scenario defection is a situation when a member of a political party leaves his party and joins hands with other parties. The practice of 'defection' in Indian politics has always been the breeding ground of political instability and uncertainty in the country. A Member could be disqualified:

- If he or she voluntarily gives up the membership of a political party or joins any other political party after the election, votes or abstains from any crucial voting contrary to the directive circulated by his/her respective political party.
- A nominated member if he/she joins any political party after six months from the date he/she takes his seat.

If, not less than two-thirds of the members of the legislature party have agreed to merge with other party they are exempted from disqualification.

Chairman or the Speaker of the House have absolute power in deciding the cases pertaining to disqualification of members on the ground of defection.

Though the law has succeeded in a reasonable way but due to some of its loopholes, it has not been able to achieve the best it can.

The government may consider suggestions given by various committees and make suitable amendments to the existing law to help it to develop to the best possible extent.

Key Provisions of Anti Defection Law

Lays the grounds for disqualification of the member's. States that there will be no disqualification of members if they represent a faction of the original political party, which has arisen as a result of a split in the party. A defection by at least one-third members of such a political party was considered as a split which was not actionable. States the exemption from disqualification. Confers power on the Speaker or the Chairman of a House, before which the question of disqualification of a member has arisen, to answer on the question of disqualification of such member, with the decision of such Chairman or Speaker being final. The Chairman or Speaker of a House can establish rules to implement the provisions of this Schedule, including maintaining registers or records of political parties for different House members, and providing reports from political parties regarding the admission of House members and officers to such parties. These rules ensure transparency and accountability in the House.

CASE STUDIES:

1) Kihoto Hollohan vs Zachillhu (1992).

The Supreme Court in 'Kihoto Hollohan' settled a constitutional challenge to the Tenth Schedule, determining whether the Speaker's powerful role violated the doctrine of basic structure. The court upheld the Speaker's discretion in deciding cases of disqualification of MLAs, a doctrine laid down in 'Kesavananda Bharati vs State Of Kerala' (1973). The petitioners argued that the Speaker should have broad powers, given the possibility of bias. The majority judgment, authored by Justices M N Venkatachaliah and K Jayachandra Reddy, affirmatively stated that Speakers hold a pivotal position in Parliamentary democracy and are expected to make far-reaching decisions. The provisions were intended to strengthen Indian Parliamentary democracy by curbing unethical political defections. However, Justices Lalit Mohan Sharma and J S Verma disagreed, arguing that the Speaker's tenure depends on the continuous support of the majority in the House, making him unsuitable for an independent adjudicatory authority. They advocated for an independent adjudicatory mechanism for resolving disputes related to the competence of House Members, a fundamental feature of the Indian Constitution.

2) RAJENDRA SINGH RANA VS SWAMI PRASAD MAURYA (2007)

In 2003, 13 MLAs from the Bahujan Samaj Party (BSP) supported the bid made by Mulayam Singh Yadav, founder of the Samajwadi Party, to form the U.P. Government. Swami Prasad Maurya, the leader of the BSP filed a petition with the Speaker for the disqualification of these 13 MLAs. The Speaker rejected the petition, accepting the argument that there was a split in the BSP, and did not disqualify the MLAs.

Mr. Maurya challenged the decision in the SC in 2006. A 5-Judge Constitution Bench held that the 13 MLAs voluntarily gave up their membership and were disqualified, as they had written a letter to Governor T.V. Rajeswar requesting him to invite the Samajwadi Party to form the government. The Court held that the disqualification would be said to have taken place the moment the members commit the act of defection. They further held that the Speaker could not initiate disqualification proceedings suo moto, and would have to be approached with a petition first.

THE WHIP SYSTEM

The concept of the whip was inherited from colonial British rule. It is used in parliamentary parlance often for floor management by political parties in the legislature. A whip is a written order that political party issue to its members for being present for an important vote, or that they vote only in a particular way. The term is derived from the old British practice of “whipping in” lawmakers to follow the party line. They are vital in maintaining the links between the internal organisation of the party inside the Parliament. A whip is also an important office-bearer of the party in the Parliament. In India, all parties can issue a whip to their members. Parties appoint a senior member from among their House contingents to issue whips. This member is called a Chief Whip, and he/she is assisted by additional Whips. Constitutional status: The office of “whip”, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government.

Non-applicability of Whip: There are some cases such as Presidential elections where whips cannot direct a Member of Parliament (MP) or Member of Legislative Assembly (MLA) on whom to vote.

- The whip plays a crucial role in ensuring the smooth and efficient conduct of business on the floor of the House.
- He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- He ensures discipline among party members in the House.
- He identifies the signs of discontent among MPs and informs the respective leaders of their party.

- He or she acts as a binding force in the party and is responsible for maintaining the internal party organisation in the Parliament and.
- Violation of whip: If an MP violates his party's whip, he faces expulsion from the House under the Anti Defection Act.
- The only exception is when more than a third of legislators vote against a directive, effectively splitting the party

The Constitution (Fifty-second Amendment) Bill, 1985 (Anti-defection Law)

The Government introduced the Constitution (Fifty-second Amendment) Bill in the Lok Sabha on 24 January 1985 which led to amendment in Article 101, 102, 190 and 191 of the Constitution to provide the grounds for vacation of seats for the disqualification of the members; and also inserted Tenth Schedule. It lays down provisions regarding Shri Venkatasubbaiah's resolution in Lok Sabha read as under:-

"This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard".

Main recommendations of the Y. B. Chavan Committee:

- A Committee of the representatives of the parties in Parliament and State Assemblies be constituted to draw up a code of conduct for the political parties with particular reference to the problem of defections and to observe its implementation.

- No person who was not a member of the lower House should be appointed as Minister/Chief Minister. The Committee advised for a Constitutional amendment in this regard without affecting the existing incumbents in office.
 - The Committee further recommended that a defector should be debarred for one year or till such time he resigned his seat and got re-elected, from appointment to the office of a Minister, Speaker, Deputy Speaker or any post carrying salary and allowances to be paid from the Consolidated Fund of the Union or the States or from the funds of the Government
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QARMA

1. How does the anti-defection law impact free speech and dissent within a parliamentary democracy?
 2. How can the anti-defection law be balanced with the principles of free speech and dissent in order to ensure a robust and democratic parliamentary system?
 3. How should the power of the Speaker to disqualify members be structured to ensure it remains non-partisan and fair?
 4. How can the appointment process of the Chief Election Commissioner (CEC) be structured to include judiciary involvement while maintaining impartiality and transparency?
 5. What measures can be taken to ensure the legality and constitutionality of the Chief Election Commissioner (CEC) and Election Commissioners (EC) Appointment Act?
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