

# EVA STALIN IAS ACADEMY - BEST IAS COACHING IN CHENNAI

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## *The Election Commission — autonomy in the crosshairs*

lately, the Election Commission of India (ECI) has been a focal point of differences between the government and the judiciary. This time, the clash of opinions is over its appointment.

The Supreme Court of India, in a judgment on March 2, directed that the Chief Election Commissioner (CEC) and the Election Commissioners (EC) will be appointed by the President of India based on the advice of a committee made up of the Prime Minister, the Leader of the Opposition in the Lok Sabha or the leader of the single largest Opposition party and the Chief Justice of India (CJI). This judgment of the Constitution Bench was a major step towards broadening the ECI and enhancing its constitutional status. Article 324 of the Constitution contains a provision for such a law to be enacted by Parliament.

The significance of this judgment also lies in the fact that this was a unanimous judgment of a five-judge Bench. So far, the top officers of the ECI have been appointed by the President of India on the advice of the central government. However, the government of the day, in an unambiguous move, introduced a Bill in the Rajya Sabha on August 10 which if passed will overturn this verdict.

The Bill seeks to replace the Chief Justice of India from the high-powered selection committee, meaning the committee will be made up of the Prime Minister (Chairperson), Leader of the Opposition in the Lok Sabha (Member) and a Union Cabinet Minister to be nominated by the Prime Minister (Member).

The government, through this Bill, has taken the Supreme Court head on, making it clear that it wants greater weightage in the appointments of the top election officials – and thus a greater hold over the institution. Experience and research show that incumbent governments, especially those with authoritarian streaks, do not usually do away with democratic institutions but, instead, relentlessly work towards making them pliant. The institutional structures remain but are drained of their substance. And, in this case, one is dealing with a matter of electoral winnability and a consolidation of state power.

### **An issue that has seen much debate**

The procedure of appointments of the CEC and the ECs has seen much debate in policy and political circles ever since the Constituent



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As the focal point of differences between the government and the judiciary over its appointment procedure, the Election Commission of India is in danger of being weakened

Assembly debates and much has been written about it.

A suggestion during the Constituent Assembly Debates was that the appointment of the CEC should be subject to confirmation by two-thirds majority in a joint session of both Houses of Parliament (Constituent Assembly debates, June 15, 1949). However, Parliament was entrusted with the charge of making appropriate laws on the matter.

The V.M. Tarkunde Committee appointed by Jayaprakash Narayan in 1975, the Dinesh Goswami Committee on electoral reforms set up by the then Prime Minister, V.P. Singh, in the 1990s, and the second Administrative Reforms Commission in its fourth report in 2009 among others made recommendations that the appointments of members of the ECI should be more broad based (through a collegium) than leaving this solely to the government on whose advice the President made these appointments.

In 2006, a suggestion was made by a former CEC, B.B. Tandon, to the former President of India, A.P.J. Abdul Kalam (when both were in office) that a seven-member committee headed by the Prime Minister should choose the CEC and the other ECs. The committee should include the Lok Sabha Speaker, the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Law Minister, the Deputy Chairperson of the Rajya Sabha and a judge of the Supreme Court nominated by the CJI. The Bharatiya Janata Party (BJP) had supported such a suggestion and argued for a representative collegium, which included the CJI to appoint the apex electoral officials. BJP General Secretary Arun Jaitley in a press release on the CPI(M)'s suggested electoral reforms in 2006 had said, 'Any monitoring of Election Commission by Government or their nominee will be destructive of the independence of Election Commission'.

In 2012, senior leader of the BJP and former Deputy Prime Minister L.K. Advani reiterated the argument that such a collegium should be formed with the Prime Minister as its chairman, with the CJI, the Minister of Law and Justice and the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha as its members. He argued that the prevalent system, whereby members to the ECI are appointed by the President, solely on the advice of the Prime Minister, does not inspire confidence among the people.

Interestingly, all these high-level committees,

experienced officers and even the BJP leadership saw the importance of this and recommended that the CJI or a judge appointed by him/her should be a part of this committee; never was a suggestion made that a Union Cabinet Minister should be bestowed with this membership (and that too by replacing the CJI). In asking for reform in the appointment, the idea was to raise the ECI a few notches higher on the free and fair bar and pave the way for expunging biases and attachments to the ruling party. The effort was to curb it from becoming a 'committed', partisan and an incumbent-friendly entity. Through the current Bill, the government, under the BJP, is attempting to push the ECI towards further governmental control strengthening the perception about a democratic weakening.

Suggestions for reforms in the appointment procedure of the ECI came from Opposition parties, wherein the BJP was one of the most vocal parties, mainly during the Congress regime. It was felt, and rightfully so, that ruling parties have a structural advantage over institutions, making them susceptible to manipulation and biases. It was felt that having a more representative selection committee would make elections fairer by reducing the hold of the incumbent party/parties on the ECI. However, during the previous National Democratic Alliance regimes, the BJP leadership did not move on its own (clearly articulated) suggestions. Through the new Bill, it has reversed its own position which it had been voluble about while in the opposition.

### **Held in high regard**

The ECI has been held to be a reliable, responsible and trustworthy institution by the people of India. Handling elections that involve about 900 million voters (2019 election data) through a machinery of 11 million personnel in a setting of economic hardship and inequalities is a remarkable feat. However, going soft on the ruling party or its ideology, as the perception is, whether this has to do with election schedules, electoral speeches, alleged hateful propaganda, electoral rolls or other kinds of malpractices, is eroding not only its own autonomy but also people's trust. Nevertheless, the point remains that the present regime still sees the ECI as an institution with autonomy. And this autonomy does not gel with its goals. It would instead like a firmer grip on the ECI through statutory means.

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## INDIA and the hurdle of convincing the voter

The formation of INDIA (the Indian National Developmental, Inclusive Alliance), the 26-member Opposition alliance, has again highlighted an oft-cited adage: elections and alliances are not only about arithmetic but chemistry too. Indeed, multiple elections in the past have shown that arithmetic alone is no guarantee of success. On paper, the INDIA front appears to have arithmetic on its side, but its chemistry is questionable. Without getting its chemistry right, INDIA would find it difficult to take on the might of the Bharatiya Janata Party's (BJP) formidable election machinery that derives its strength from Narendra Modi's charisma and chemistry.

### Decoding the chemistry

While the arithmetic versus chemistry debate has been the subject of much punditry, it is imperative to understand what chemistry implies and entails when it comes to alliance building and elections. In the case of alliances such as INDIA that are composed of diverse parties, there are two aspects of the chemistry of such alliances: chemistry between the alliance partners as well as the alliance's appeal and perception among the voters. To get its chemistry right, INDIA would have to work on both these aspects.

INDIA has many parties which are engaged in direct political contests or have a history of hostilities. Leaders of these parties merely forging an alliance will not translate to electoral success as long as it is accepted by cadres or core voters of the party. The chemistry between the alliance partners depends on the level of animosity between the supporters and voters of these parties which is a product of their past rivalries. Higher animosity between two parties would mean poor chemistry between the parties, resulting in a lower vote transfer as supporters of these parties would be reluctant to vote for a former foe turned ally. For instance, one of the primary reasons for the failure (and lower vote transfer) of the Samajwadi Party-Bahujan Samaj Party alliance was the poor chemistry – a direct consequence of the higher level of animosity between the voters of these parties with a fraught history.



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The second aspect is the chemistry with voters which is determined by the alliance's pitch to the voters and its perception among them. Over the years, the Narendra Modi-led BJP has deepened its chemistry with voters through Mr. Modi's personal charisma and a slew of welfare measures among other things. To ensure good chemistry with the voters, INDIA would have to successfully counter the BJP's accusations of it being a ragtag coalition of overly ambitious individuals and parties with the single-point agenda of unseating Mr. Modi.

### What INDIA must do

A joint, well-coordinated and sustained campaign against the ruling regime and its failures where different parties and leaders of INDIA speak in unison would help the alliance in channelising the grievance of their voters as well as the median voter to a specific action – of voting for the combined Opposition. It would improve the chemistry between different parties in the alliance by overcoming the reluctance of voters leaning towards one of the Opposition parties from voting for an ideologically distant alliance party candidate.

Research shows that such campaigns can boost cross-party strategic voting and vote transfer by 10 percentage points. INDIA's strategy during the monsoon session of Parliament and the no-confidence motion had some evidence of such a campaign.

Given INDIA's composition, i.e., former foes and parties with contrasting ideologies, it is important to ensure that no one party's or group's ideological or policy agendas are seen to be dominating over another's. This calls for reasonable inter-party compromises which need to be highlighted to mute ideological differences, deepen chemistry between allies and facilitate vote transfer between parties with contrasting ideologies. The use of the word "inclusive" instead of "secular" could be seen as a step in that direction. It ensures that core voters of a party such as the Shiv Sena (Uddhav Balasaheb Thackeray) are not alienated.

In 2019, the BJP had constantly warned voters against the possibility of a 'khichdi' coalition of

Opposition parties providing a government that was weak, confused and visionless. INDIA's challenge is to avoid a redux of 2019 and put to rest similar anxieties of voters. It cannot afford to be seen as a hodgepodge coalition driven by sheer anti-Modism with no concrete alternative vision to offer to the electorate. Previous results such as Indra Gandhi's reelection in 1971 and Mr. Modi's own reelection in 2019 have shown the limitations of negative campaigning. While INDIA has repeatedly emphasised that it is much more than an anti-Modi alliance and made "saving democracy" one of its central pitches, the average Indian voter does not vote on such abstract issues and is more concerned by more tangible bread-and-butter issues. To counter criticisms of being merely an anti-Modi alliance, dispel doubts regarding its vision and governance capabilities and to appeal to the average Indian voter by going beyond the abstract questions related to democracy and constitutionalism, INDIA needs to use the Karnataka template of guarantees at the national level.

INDIA has 11 incumbent Chief Ministers including Chief Ministers who have been elected multiple times. Taking a cue from the Karnataka guarantees, INDIA should come up with 11 guarantees derived from successful and popular schemes or initiatives from these 11 States. These guarantees that could target different sections of the electorate such as women, the youth and rural-urban poor would have an air of credibility around them as they would be based on schemes that have been successfully implemented in States. A campaign revolving around these 11 guarantees would help INDIA get its chemistry right with the voters by convincing them of its vision and governance prowess and showing them that it has more to offer than sheer anti-Modism.

In a way, INDIA could do with these 11 promises what Mr. Modi did with his promises based on the Gujarat model in 2014. The significant difference being that instead of one, single model for the entire nation, INDIA would have multiple models to show for – reiterating and highlighting the spirit of federalism: one size does not suit all.