



33RD M. C. CHAGLA MEMORIAL GOVERNMENT LAW COLLEGE NATIONAL MOOT COURT COMPETITION, 2026

26th September & 9th - 10th October, 2026

MOOT PROPOSITION

IN THE SUPREME COURT OF INDICA

Foundation for Electoral Integrity & Anr.

.....Petitioners

versus

Union of Indica & Ors.

... Respondents

I. THE REPUBLIC OF INDICA

1. The Union of Indica (“**Indica**”) is a sovereign, socialist, secular, democratic republic in South Asia and the world’s most populous parliamentary democracy.
2. Under Article 324 of the Constitution of Indica (“**Constitution**”), the superintendence, direction and control of elections to Parliament and the State Legislatures, and of elections to the offices of President and Vice-President, vest in the Election Commission of Indica (“**ECI**”). The ECI presently comprises the Chief Election Commissioner (“**CEC**”) and two Election Commissioners (“**ECs**”). Article 324(2) provides that appointments of the CEC and ECs shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

3. For over seven decades, the Parliament made no law governing the manner of such appointments. In practice, the President appointed the CEC and ECs on the advice of the Prime Minister. Successive expert bodies, including the Justice Tandon Committee on Electoral Reforms (1990), and the Law Commission of India in its 255th Report (2015) recommended a broad-based, bipartisan selection mechanism, noting that a body that acts as a referee for political power ought not to be chosen by one of the contestants alone. However, no such law was enacted.

II. THE JUDGMENT IN *DR. KAVITA RAO V. UNION OF INDIA*

4. In 2022, a batch of public interest petitions prayed for an independent mechanism for appointments to the ECI. On 2nd March, 2023, a five-judge Constitution Bench of the Supreme Court of India in *Dr. Kavita Rao v. Union of India* unanimously held that (a) free and fair elections are a part of the basic structure of the Constitution; (b) the independence of the ECI is essential to free and fair elections; and (c) the decades-long failure of Parliament to enact a law under Article 324(2), leaving appointments to the exclusive discretion of the executive, was constitutionally intolerable as a permanent arrangement.
5. The Bench accordingly directed that, until Parliament makes a law in terms of Article 324(2), the CEC and ECs shall be appointed by the President on the advice of a Committee comprising the Prime Minister, the Leader of the Opposition in the House of the People (or, in the absence of such a Leader, the leader of the largest opposition party), and the Chief Justice of India. The Court expressly clarified that its directions were transitional and would continue to hold good only till a law is made by Parliament.
6. In August, 2023, a vacancy in the office of an Election Commissioner was filled through the *Kavita Rao* Committee, with the Chief Justice participating. Ms. Anjali Verghese, a retired civil servant, was appointed without controversy.

III. THE ELECTION COMMISSION (APPOINTMENT, CONDITIONS OF SERVICE AND TERM OF OFFICE) ACT, 2023

7. In the Winter Session of 2023, the Parliament enacted the Election Commission (Appointment, Conditions of Service and Term of Office) Act, 2023 (“**the 2023 Act**”), which received Presidential assent on 28th December, 2023, and came into force on 1st January, 2024. The Bill was passed in the Council of States amidst a walkout by the principal opposition parties and in the House of the People after a debate of approximately three hours.
8. The 2023 Act provides for a Search Committee headed by the Minister of Law and Justice to prepare a panel of five eligible persons, and a Selection Committee comprising the Prime Minister as Chairperson, a Union Cabinet Minister nominated by the Prime Minister, and the Leader of the Opposition in the House of the People to recommend one name to the President of India. The Selection Committee may consider persons *other than* those included in the Search Committee’s panel, and may regulate its own procedure. The Act fixes the salary and conditions of service of the CEC and ECs as equivalent to those of the Cabinet Secretary; under the statutory regime previously in force, they had been equivalent to those of a Judge of the Supreme Court.
9. The Statement of Objects and Reasons records that the Act was enacted “*to fill the legislative vacuum adverted to by the Hon’ble Supreme Court in Dr. Kavita Rao; that appointments to statutory and constitutional posts in the executive domain are quintessentially an executive function for which the Council of Ministers is accountable to Parliament; and that the participation of the Chief Justice in such appointments blurs the separation of powers and risks drawing the judiciary into political controversy.*”

IV. THE VACANCY AND THE APPOINTMENT

10. The then CEC was due to demit office on 14th February, 2024. General Elections to the House of the People were due in April – May, 2024. On 9th February, 2024, the Search Committee finalised a panel of five names. A meeting of the Selection Committee was convened for 06:00 p.m. on 12th February, 2024. The agenda, together with dossiers of two hundred and twelve (212) eligible candidates, was furnished to the Leader of the Opposition, Ms. Meera Kulkarni, at 01:40 p.m. that afternoon; the Search Committee's panel of five (5) was shared at the meeting itself. Ms. Kulkarni sought an adjournment of one week to study the material; the request was declined *"in view of the impending electoral timelines."*
11. By a majority of 2:1, the Selection Committee recommended Mr. Devraj Sethi for appointment as CEC. Mr. Sethi, a retired civil servant of 38 years' standing and a former Secretary, Ministry of Home Affairs, is widely regarded across party lines as able, experienced and personally honest. He had, however, served as Principal Secretary to the Prime Minister from 2021 to 2023 and, until the date of his selection, chaired the National Logistics Commission, a body functioning under the Prime Minister's Office. His name did not figure in the Search Committee's panel of five; the Selection Committee invoked the proviso to Section 8(2) of the 2023 Act to consider him. Ms. Kulkarni recorded a written dissent describing the meeting as *"an empty formality with a predetermined outcome."*
12. The Government placed on record that Ms. Kulkarni had been invited, by letter dated 3rd February, 2024, to suggest names in advance and had declined, stating that she did not wish to legitimise an unconstitutional statute; and that a vacancy in the office of the CEC on the eve of a General Election would have caused graver injury to the electoral process than an expedited selection. The President appointed Mr. Sethi on 13th February, 2024, and he assumed office on 15th February, 2024.

V. DEVELOPMENTS AFTER THE ANNOUNCEMENT OF ELECTIONS

13. The General Elections were announced on 5th March, 2024. On 22nd March, 2024, the ECI, by a unanimous and reasoned order, rejected a complaint alleging that a speech of a senior Union Minister violated the Model Code of Conduct, while on the same day issuing a show-cause notice to an opposition Chief Minister for remarks concerning the armed forces. The ECI stated that both decisions applied its published Model Code precedents. However, public commentary was sharply divided.

VI. PROCEEDINGS BEFORE THE SUPREME COURT

14. On 28th March, 2024, the Foundation for Electoral Integrity, a registered society engaged in electoral reform research and litigation since 2002, and Ms. Kulkarni jointly, filed a Writ Petition under Article 32 of the Constitution, praying, *inter alia*, that:

- a) Sections 6, 7, 8 and 10 of the 2023 Act be declared unconstitutional;
- b) the appointment of Mr. Sethi be quashed; and
- c) appointments to the ECI be made in accordance with the *Kavita Rao* Committee until a constitutionally valid law is enacted.

15. The Union of Indica raised preliminary objections. It was urged that the Writ Petition was a politically motivated attempt, on the eve of polls, to cast a cloud over the electoral machinery; that the Petitioners had acquiesced in the 2023 Act, which had been in force for over fourteen months, and moved the Court only after an adverse Model Code decision; that the challenge, in substance, called in question the conduct of an ongoing election; and that no legally enforceable right of the Petitioners was infringed. On 16th April, 2024, a three-judge Bench declined interim relief, observing that the balance of convenience lay against disturbing the electoral machinery mid-election, but directed that any further appointment to the ECI would abide by the result of the petition, and referred the matter to a Constitution Bench of five judges.

16. The General Elections concluded peacefully, and results were declared on 23rd May, 2024, and the incumbent coalition was returned to office. The Union also contends that the challenge has,

in any event, been rendered academic. However, the Petitioners contend that the 2023 Act continues to govern every future appointment and that Mr. Sethi continues in office. The Constitution Bench has set the matter down for final hearing.

ISSUES FOR ADJUDICATION

The Five-Judge Constitution Bench has framed the following issues:

1. Whether the Writ Petition is maintainable, having regard to the objections of *locus standi*, delay and acquiescence, justiciability, and the contention that the petition in substance calls in question the conduct of an election and/or has been rendered academic?
2. Whether Sections 7 and 8 of the 2023 Act, insofar as they constitute a Selection Committee with a preponderance of members of the Union executive and exclude the Chief Justice of India, violate Articles 14 and 324 of the Constitution and damage the basic structure, namely free and fair elections secured through an independent Election Commission?
3. Whether the 2023 Act impermissibly nullifies the directions of the Constitution Bench in *Dr. Kavita Rao* without removing the basis of that judgment, and is thereby void as offending the separation of powers or whether the directions in *Dr. Kavita Rao* ceased to operate, by their own terms, upon the enactment of a parliamentary law under Article 324(2)?
4. Whether the appointment of Mr. Devraj Sethi as Chief Election Commissioner is vitiated by procedural unfairness and/or a reasonable apprehension of bias and, if any provision of the 2023 Act is held to be unconstitutional, what relief may appropriately be moulded, including the validity of acts already done?

NOTE

1. For the purposes of this Moot Proposition, all laws of the Union of Indica are *pari materia* with those of the Republic of India. Participants should assume that all relevant constitutional and legal provisions of India are directly applicable in Indica.
2. The Constitution, statutes, and judicial precedents of Indica are identical to those of India.
3. The judgment in *Dr. Kavita Rao v. Union of Indica* is in *pari materia* with *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161.
4. The facts stated in this Proposition are agreed and cannot be disputed or supplemented. Reasonable inferences may, however, be drawn from the stated facts.
5. This Proposition is a fictional academic exercise. Any resemblance to persons, parties or institutions, living or otherwise, is solely for the purpose of mooting and is not a comment on any pending litigation.
6. The Moot Proposition is purely a work of fiction and created solely for the purpose of the Moot Court Competition. The characters, institutions, organisations, and events depicted in this Moot Proposition are purely fictional. Any similarity or resemblance to actual persons or actual events is purely coincidental and unintentional. The Moot Proposition does not intend to defame/denigrate/hurt the sentiments of any person(s), institution, communities, groups, or class of persons.
7. Participants are at liberty to frame and argue issues in addition to those provided in the Moot Proposition.

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The Moot Proposition of the 33rd **M. C. Chagla Memorial Government Law College National Moot Court Competition, 2026**, has been drafted as an original work by **Mr. Mohit Khanna**, an alumnus of Government Law College, Mumbai, Batch of 2019, currently practicing as a Counsel at the Hon'ble Bombay High Court. The Moot Proposition is the intellectual property of Mr. Khanna, and any reproduction, distribution, or use without prior permission is strictly prohibited.

