

BLOGS

CEC Immunity vs Judicial Immunity: SC Asks Who's Really More Protected?

Shruti chauhan · 07 Oct 2026

Can a constitutional officer enjoy more legal protection than a sitting judge of the Supreme Court? That is the striking question now before the Court, after it remarked that the CEC immunity available under the 2023 Act may in fact be broader than the protection given to judges themselves.

This update breaks down what Section 16 of the Chief Election Commissioner and Other Election Commissioners Act, 2023 actually says, why the Supreme Court found this comparison troubling, and what the pending petitions are really asking for.

What is the Cases Before the Court?

The remarks came while the Supreme Court heard two connected petitions, **Rakesh Kumar Singh v. Union of India** and **Shailendra Mani Tripathi v. Union of India**. Both petitions question whether Chief Election Commissioner Gyanesh Kumar had been unilaterally exercising powers that legally belong to the Election Commission of India as a body, rather than to the CEC alone.

The matter was heard by a Bench comprising Chief Justice of India Surya Kant, Justice Joymalya Bagchi, and Justice V. Mohana. Senior Advocate Vikas Singh, appearing for the petitioners, argued that the Chief Election Commissioner and Other Election Commissioners Act, 2023 had substantially enhanced the authority and legal immunity enjoyed by the CEC, effectively placing the office "on a pedestal even higher than Supreme Court judges."

What Does Section 16 Actually Say?

To understand why this comparison matters, you need to read the provision itself. Section 16 of the [Chief Election Commissioner and Other Election Commissioners Act, 2023](https://clatalogue.com/cec-immunity-vs-judicial-immunity-sc-asks-who-s-really-more-protected) states that notwithstanding anything contained in any other law in force, no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Chief Election Commissioner

or an Election Commissioner, for any act, thing, or word committed, done, or spoken by him while acting, or purporting to act, in the discharge of his official duty or function.

In plain terms, this means the CEC and Election Commissioners are shielded from civil or criminal proceedings for anything done in the course of their official functions, and this **CEC immunity** continues to apply even after the person has demitted office.

How This Compares to a Judge's Protection

This is exactly where the Supreme Court's remark becomes significant. Judges in India are protected under the **Judges (Protection) Act, 1985**, specifically **Section 3(1)**, which similarly bars courts from entertaining civil or criminal proceedings against a judge for acts done in the discharge of judicial duty.

On its face, the two provisions sound almost identical. But Justice Bagchi pointed to a crucial structural difference. Unlike the Judges (Protection) Act, the 2023 Act governing the CEC and Election Commissioners does not expressly preserve the power of appropriate authorities to initiate civil, criminal, or departmental proceedings through any other prescribed process.

Justice Bagchi was candid about the implication of this gap, observing that this level of protection "is perhaps only for the President," and that it does not apply even to judges. This is the core reason the Court flagged **CEC immunity** as potentially broader than judicial immunity itself.

Why This Structural Gap Matters

A protective clause for public officials is not unusual by itself. Governments routinely shield officials from liability for good faith actions taken in discharge of duty, since fear of litigation should not paralyse decision making.

The concern here is different. When a protective provision bars courts entirely, without any accompanying safeguard preserving the ability to initiate appropriate proceedings through a separate mechanism, the shield can start to look less like a safeguard for good faith conduct and more like a blanket immunity from accountability altogether.

Illustration: If a judge commits a genuine act of misconduct in the exercise of judicial function, mechanisms outside ordinary civil or criminal courts, such as impeachment or in-house judicial inquiry, remain conceptually available alongside the protection under the Judges (Protection) Act.

The absence of a comparable express saving clause in Section 16 is what led the Bench to question whether an equivalent accountability mechanism genuinely exists for the CEC and Election Commissioners.

The Backdrop: Challenges Over the Special Intensive Revision

Beyond the immunity question, these petitions arose in the context of serious allegations concerning the Special Intensive Revision, or SIR, of electoral rolls. The petitioners alleged that CEC Gyanesh Kumar had taken several decisions unilaterally, including software modifications linked to the SIR exercise, despite recorded dissent from two of the three Election Commissioners, Sukhbir Singh Sandhu and Vivek Joshi.

Rakesh Kumar Singh's petition specifically sought to restrain the CEC from functioning in that role and asked the Court to declare the entire SIR exercise void for want of lawful collective authority. Shailendra Mani Tripathi's petition, framed somewhat differently, sought the quashing of unilateral decisions and software changes, along with the constitution of an independent Judicial Inquiry Commission or a Special Investigation Team, assisted by cybersecurity and IT experts, to examine how millions of voter names were allegedly deleted across several states during the exercise.

The Bench was careful during the hearing to note that it would not pass any order based solely on media reports, and instead chose to call for formal replies from the Union of India, the Election Commission, the CEC, and the Election Commissioners before proceeding further.

What Happens Next

The Court ultimately declined to suspend CEC Gyanesh Kumar at this stage, with the Bench pointedly asking who would then conduct the elections. However, it issued formal notice to all respondents, which means the Commission's internal decision making process, including the dissent recorded by two Election Commissioners, is now open to judicial scrutiny.

It is also worth noting that the constitutional validity of Section 16 itself is already being examined separately. In January 2026, the Supreme Court had agreed to examine a distinct challenge to Section 16, filed by the NGO Lok Prahari, which argues that this blanket **CEC immunity** is disproportionate and runs counter to Article 14 of the Constitution, which guarantees equality

before the law.

Why This Story Matters

This controversy sits at an important intersection of constitutional accountability and institutional independence. The Election Commission is meant to function as an independent constitutional body under Article 324, with collective decision making among the CEC and Election Commissioners, a structure reinforced by the Supreme Court's own Constitution Bench ruling in *Anoop Baranwal v Union of India* (2023).

If the CEC can genuinely act unilaterally, and simultaneously enjoy immunity broader than that given to judges, critics argue this combination could weaken the very checks the Constitution envisioned for one of India's most powerful institutions. The outcome of these petitions, along with the separate constitutional challenge to Section 16, will likely shape how courts balance institutional protection against individual accountability for India's electoral authorities going forward.