Election Commissioners' Immunity: The Debate on Section 16

Study/source reference: the Supreme Court's notice on the ADR petition against Section 16: 13 October 2026
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Constitution and Governance: constitutional bodies, independence and accountability

News Reference:

According to the legal report of 13 October 2026, the Supreme Court sought a response from the Centre and the Election Commission on ADR's petition challenging Section 16 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023. The bench had three judges, including Chief Justice Suryakant.

ADR filed this petition (Writ Petition (Civil) number 1337/2026) under Article 32 on 10 October 2026. The petition asks for Section 16 to be declared against Article 14, Article 21 and the basic structure of the Constitution, and for the proceedings that ended when the section came into effect to be restarted. The issue of notice is only seeking a response, not declaring the section unconstitutional.

The independence-accountability balance
Institutional independence: protection of impartial decisions from malicious lawsuits

Section 16's scope: a bar on civil and criminal proceedings over official acts

The need for accountability: keeping the route of inquiry into serious allegations open

The issue of notice is not declaring the section unconstitutional

What Section 16 Says:

Section 16 says that notwithstanding anything in any other law, no court shall entertain or continue any civil or criminal proceeding against any person who is or has been the Chief Election Commissioner or an Election Commissioner, for any act, thing or word done or spoken in the discharge of official duty or function, or while purporting to do so. This is Act number 49 of 2023, which received the President's assent on 28 December 2023 and was published in the Gazette the same day.

The section's text has no condition of good faith or any exception clause, and it covers both current and former office holders. ADR's argument is that this makes it lifelong and unconditional immunity. This is the petitioner's argument, not the court's final conclusion.

Constitutional Background:

Article 324 vests the superintendence, direction and control of elections to Parliament, the state legislatures and the offices of President and Vice-President in the Election Commission. The Chief Election Commissioner can be removed from office in the same manner as a judge of the Supreme Court; other Commissioners cannot be removed without the recommendation of the Chief Election Commissioner.

Article 14 guarantees equality before the law. Differential treatment of a class must have reasonable classification and a rational link with the purpose; this very test applies in the constitutional review of a special arrangement like immunity.

The Two Poles of the Debate:

The independence side: for quick and impartial decisions during elections, office holders need freedom from the fear of malicious lawsuits, otherwise the risk of decisions under pressure remains. It is for this reason that limited immunity over many constitutional posts is considered acceptable.

The accountability side: very broad and lifelong immunity can close the route of inquiry into serious allegations and the victim's remedy. The suggested balance is that official decisions made in good faith stay protected, but the proper legal route stays open over allegations of serious misconduct.

Prelims: Practice Questions

Question 1. What is the correct description of Section 16 of the Act of 2023?

(a) Limited protection over acts only during the term of office

(b) A bar on courts entertaining or continuing civil or criminal proceedings over acts or words in the discharge of official duty by a current or former CEC/EC

(c) A general exemption over all acts of private life

(d) A bar only on civil proceedings, not criminal

See answer and reason
Answer: (b). The section covers both current and former office holders, over official acts, from both civil and criminal proceedings.

Question 2. Which statement is correct about the judicial development of 13 October 2026?

(a) The Supreme Court declared Section 16 unconstitutional

(b) An immediate stay was placed on the Act

(c) The Supreme Court sought a response from the Centre and the Election Commission on ADR's petition; notice is not a declaration of unconstitutionality

(d) The petition was dismissed at the preliminary hearing itself

See answer and reason
Answer: (c). The issue of notice is seeking a response from the parties; the decision on the case's merits will come later.

Question 3. Which statement is correct about Article 324?

(a) The superintendence, direction and control of elections are vested in the Election Commission

(b) The Chief Election Commissioner is appointed by the Chief Justice

(c) The Election Commission works under the Law Ministry

(d) Other Commissioners can be removed by the President at his discretion

See answer and reason
Answer: (a). Article 324 gives the Election Commission the superintendence, direction and control of elections.

Sources:

Gazette of India: the Chief Election Commissioner and Other Election Commissioners Act, 2023 (Act 49 of 2023)

LiveLaw: the Supreme Court's notice on the ADR petition, 13 October 2026

ADR: petition details, Writ Petition (Civil) 1337/2026