

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 9 | Issue 3

2026

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Election Commission: Strengthening Institutional Autonomy

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ABSTRACT

The legitimacy of any democracy rests fundamentally on the credibility of its elections, which must exist not merely in legal texts but in practice across the nation. A free election is one in which all citizens are able to vote for the candidate of their choice, and a fair election is one in which all votes carry equal weight and are counted accurately. In India this responsibility lies with the Election Commission of India, a constitutional body established under Article 324 and entrusted with the superintendence, direction and control of the electoral process. This paper examines the persistent threats to the institutional autonomy of the Commission, principally the opaque process for appointing Election Commissioners, the absence of financial independence, and the asymmetrical protection of tenure between the Chief Election Commissioner and other Election Commissioners. Tracing the historical evolution of the Commission, the relevant judicial pronouncements, and the constitutional and legislative framework, including the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, this paper argues that the current arrangements continue to vest excessive discretion in the executive. It contends that a robust, transparent and bipartisan selection mechanism, together with genuine financial autonomy, is essential to restore public confidence in the neutrality of the Commission and to safeguard the principles of equality, accountability and integrity in India's electoral democracy.

Keywords: Election Commission of India, institutional autonomy, Article 324, appointment of Election Commissioners, electoral reforms, financial independence, Anoop Baranwal.

I. INTRODUCTION

The legitimacy of any democracy rests fundamentally on the credibility of its elections. Free and fair elections must exist not merely in legal texts but also throughout the remotest parts of the nation. It is therefore important to identify the constituent elements of a free and fair election. A free election is one in which all citizens are able to vote for the candidate of their choice, and a fair election is one in which all votes carry equal weight and are counted accurately.¹ In India,

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¹ KARA E. STOOKSBURY, JOHN M. SCHEB II & OTIS H. STEPHENS, ENCYCLOPEDIA OF AMERICAN CIVIL RIGHTS AND LIBERTIES: REVISED AND EXPANDED EDITION 386 (2017).

this responsibility lies with the Election Commission of India, a constitutional body entrusted with supervising, directing and controlling the conduct of the electoral process in the country. The Commission is established under Article 324 of the Constitution, which grants it the power to oversee elections to Parliament, the State legislatures and the offices of President and Vice-President.² The importance of the Commission may be appreciated from the fact that it occupies a key position at the heart of the regulatory architecture of India, acting as the institution that enforces the rules governing the democratic legitimacy of the political system.³

With the passage of time, several recommendations have been made for reform in the powers of the Election Commission, ranging from the Tarkunde Committee, which proposed that the Commission be a three-member body, to the J.P. Narayan Committee, which addressed the procedure for appointing the Chief Election Commissioner, to the Indrajit Gupta Committee on the State funding of elections. Although substantial changes have been introduced in the Commission over the years, its institutional autonomy still remains under stress and bound by the shackles of the executive. Of the last six Election Commissioners, all six were retired Indian Administrative Service officers, a fact that speaks volumes about the appointment process.⁴

One of the foremost concerns is the opaque process for appointing Election Commissioners. The absence of transparent criteria or parliamentary scrutiny has produced a revolving-door system in which retired civil servants aligned with the ruling government dominate appointments. A further challenge to the autonomy of the Commission arises from its dependence on the executive for financial and administrative matters. It lacks financial independence, and this is also a reason why it has no in-house investigative wing capable of effectively monitoring electoral malpractices.

The solution to the problems concerning the institutional autonomy of the Commission lies in the recommendation of the 255th Report of the Law Commission, namely that the protection afforded to Election Commissioners be made equivalent to that enjoyed by judges of the Supreme Court.⁵ This provision requires amendment, because it places the Election Commissioners (with the exception of the Chief Election Commissioner) in a position from which they may be removed without any further review.⁶

² INDIA CONST. art. 324.

³ Alistair McMillan, *The Election Commission of India and the Regulation and Administration of Electoral Politics*, 11 ELECTION L.J. 187 (2012).

⁴ Election Commission of India, *Ex-Election Commissioners*, MINISTRY OF HOME AFFAIRS (Jan. 16, 2025), <https://secforuts.mha.gov.in/ex-election-commissioners>.

⁵ LAW COMM'N OF INDIA, Report No. 255: Electoral Reforms (2015).

⁶ INDIA CONST. art. 324, cl. (5).

II. CONCEPTUAL AND LEGAL FRAMEWORK OF THE ELECTION COMMISSION

A. Historical context of the Election Commission of India

The Election Commission of India was established on 25 January 1950. The *sine qua non* character of free and fair elections in a democracy was adequately recognised, and the body was created under Article 324 of the Constitution. Initially, the Commission consisted of a single Chief Election Commissioner, and this arrangement continued for the next four decades. The maiden electoral exercise covered 489 constituencies and enrolled nearly 173 million voters, reflecting the capacity of the body to conduct elections without significant interference. The Commission faced difficulties in the 1960s and 1970s, and the declaration of the Emergency proved to be a period of executive interference in electoral matters. The consequences of the Emergency prompted grave reflection on the autonomy of the Commission. The period after the 1980s marked a shift towards a more assertive Commission under the leadership of T.N. Seshan. A further significant change was the reintroduction of a multi-member system in 1993, effected through the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

B. Judicial perspective on the issue

The foundational judgment on the constitutional position of the Election Commission has been *Mohinder Singh Gill v. Chief Election Commissioner*. In that judgment, Justice Krishna Iyer characterised Article 324 of the Constitution as a reservoir of power to ensure free and fair elections.⁷ The Court also addressed the independence of the Commission in *State of U.P. v. Raj Narain*, where the government's argument that it could direct the Commission was rejected. Justice Mathew observed that executive instructions cannot override the Commission's independence under Article 324.⁸ This judgment established the insulation of the Commission from executive directives and erected a safeguard between the preferences of the government and electoral administration. A further pivotal development in the judicial approach occurred in *Election Commission of India v. State of Tamil Nadu*, where the Court confronted attempts by the executive to undermine the authority of the Commission and upheld the Commission's powers against encroachment by the State government.⁹

In *S.S. Dhanoa v. Union of India*, the apex court upheld the constitutional validity of the multi-member structure.¹⁰ In *Common Cause v. Union of India*, the autonomy of the Commission was

⁷ *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 SC 851 (India).

⁸ *State of U.P. v. Raj Narain*, (1975) 4 SCC 428 (India).

⁹ *Election Commission of India v. State of Tamil Nadu*, (1995) 1 SCC 100 (India).

¹⁰ *S.S. Dhanoa v. Union of India*, (1991) 3 SCC 567 (India).

enhanced, and successive legal developments gradually empowered it to issue Model Code of Conduct guidelines.¹¹ These developments reflect the judiciary's commitment to keeping executive interference away from the Commission. The questions relating to the appointment process, however, remained largely unanswered and unaddressed. In *Anoop Baranwal v. Union of India* (2023), the Supreme Court observed that the existing disparity creates the potential for executive influence. Justice K.M. Joseph noted that the differential treatment between the Chief Election Commissioner and other Election Commissioners bears no rational nexus with the object of insulating the Commission from extraneous influences. This flaw renders the structure vulnerable and undermines the collegiate functioning intended for the multi-member Commission.¹² Justice Ajay Rastogi observed that the timing of the appointment of Election Commissioners immediately before crucial electoral exercises raises legitimate doubts about the motivations behind such selections.

It was in *Anoop Baranwal* that the Court directly addressed this institutional vulnerability. While acknowledging the problem of executive-controlled appointments, the Court mandated a new appointment mechanism comprising the Prime Minister, the Leader of the Opposition and the Chief Justice of India. The committee so constituted operated as an interim mechanism pending parliamentary legislation. This judicial intervention marks the first substantive reform of the appointment process since independence. While establishing safeguards against partisan appointments, the judgment nevertheless leaves certain aspects of the selection criteria undefined.

Several former Commissioners have subsequently taken political positions or accepted other appointments. Former Chief Election Commissioner M.S. Gill joined the Union Cabinet after his retirement.¹³ This revolving-door phenomenon strikes at the fundamentals of public perception of the independence of the Commission.

C. Constitutional provisions under Article 324

The Election Commission is established under Article 324 of the Constitution of India, which vests the superintendence, direction and control of elections in the Commission and describes its powers. Although the article confers autonomy on the Commission, the appointment of the Election Commissioners remains a point of contention. Article 324(2) of the Constitution provides that the Election Commission shall consist of the Chief Election Commissioner and

¹¹ *Common Cause v. Union of India*, (1996) 2 SCC 752 (India).

¹² *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161 (India).

¹³ *Manohar Singh Gill: Former Chief Election Commissioner*, FREE PRESS J. (June 13, 2023), <https://www.freepressjournal.in/india/manohar-singh-gill-birthday-must-know-facts-about-indias-former-election-commissioner>.

such number of other Election Commissioners, if any, as the President may from time to time fix, and that the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.¹⁴

On a *prima facie* reading of this provision, it is evident that the framework leaves considerable discretion to the executive branch. To understand the manner in which the provision was drafted, it is first necessary to appreciate the intention and vision underlying its creation. The framers of the Constitution envisioned an evolving electoral machinery that would gradually change its form and nature in step with the democracy and society of the country. During the Constituent Assembly debates, Dr. B.R. Ambedkar emphasised that the adaptability of such provisions is their key feature, stating that the Assembly had not tied down the future Parliament to any particular form of administration.¹⁵ It is unfortunate that this flexibility has, in practice, become a weakness of the constitutional scheme. The absence of necessary constitutional safeguards regarding appointment criteria has allowed successive ruling governments to exercise unfettered discretion in these matters. A further difficulty concerns Article 324(5) of the Constitution, which provides that the Chief Election Commissioner shall not be removed from office except in like manner and on like grounds as a judge of the Supreme Court, that the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after appointment, and that any other Election Commissioner or Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.¹⁶

This provision governs the removal process for Election Commissioners and creates an asymmetrical framework of protection. The difference in protection between the Chief Election Commissioner and the other Election Commissioners creates gaps in the independent decision-making of the latter. The position of an Election Commissioner, alongside the Chief Election Commissioner, was created to provide greater stability, a wider perspective and reduced dominance by a single individual in election-related decisions. Where such a substantial gap exists in the protection afforded to the tenure and removal of an Election Commissioner, the arrangement becomes tantamount to having no such safeguard at all, because the Election Commissioner can never express a free opinion without the fear of removal at the instance of the Chief Election Commissioner.

¹⁴ INDIA CONST. art. 324, cl. (2).

¹⁵ Dr. B.R. Ambedkar, *Constituent Assembly Debates*, CONSTITUTION OF INDIA (Sept. 15, 1949), <https://www.constitutionofindia.net/debates/15-sep-1949/>.

¹⁶ INDIA CONST. art. 324.

D. Legislative framework

The primary instrument governing the appointment of Election Commissioners is the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023. Section 4 of the Act provides that the Chief and other Election Commissioners are to be appointed under the hand and seal of the President.¹⁷ The Selection Committee comprises the Prime Minister as Chairperson, the Leader of the Opposition in the House of the People, and a Union Cabinet Minister.¹⁸ The Selection Committee is empowered to regulate its own procedure,¹⁹ and it may also consider any person other than those included in the panel.²⁰

Whether the framework provided by the 2023 Act displays an inclination towards a particular side is discussed in the chapters that follow. The panel established by this Act differs from those proposed by earlier authorities, such as the Law Commission Report of 2015. An earlier statute, the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, also existed; however, that Act did not address the procedure for appointing the Election Commissioners.

III. CHALLENGES TO THE INSTITUTIONAL AUTONOMY OF THE ELECTION COMMISSION

The challenges to the institutional autonomy of the Election Commission have been shaped by the changing political landscape of the country. In a study by Amit Ahuja, the influence of the executive on the decision-making of the Commission is examined.²¹ It is also significant that the institutional autonomy of the Commission has not been threatened to the same degree throughout the period since independence. During certain periods, such as the first few decades after independence, the Commission was able to perform its duties effectively. The nature of the government and the balance of power at the central level have proved decisive in determining the extent of executive influence over the Commission.

On this point, the discussion centres on the fact that, since 2014, and for the first time after a gap of twenty-six years, a single party regained a parliamentary majority in India. It should be noted that all the governments between 1989 and 2014 were coalition governments, in which

¹⁷ The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, No. 49, Acts of Parliament, 2023, § 4 (India).

¹⁸ *Id.* § 7.

¹⁹ *Id.* § 8(1).

²⁰ *Id.* § 8(2).

²¹ Amit Ahuja & Susan Ostermann, *The Election Commission of India: Guardian of Democracy*, in THE OXFORD HANDBOOK OF INDIAN POLITICS (2020).

no single party enjoyed a parliamentary majority, and the same single-party government continued in power after 2019. Against this background, it is not entirely surprising that the executive may have resorted to the practice of making favourable appointments to the Commission. Among the concerns raised are the delay in the implementation of the Model Code of Conduct, which allowed the ruling government to announce new programmes that might influence voters.²² This was followed by the disqualification of twenty legislators of an opposition party from the Delhi Assembly.²³ A further issue raised concerned the muted response to an alleged violation of the Model Code by a leader of the ruling party during the 2019 parliamentary election campaign.²⁴ The objection of the opposition related to a statement attributed to the leader of the ruling party that the opposition was taking refuge in places where the majority was in a minority.

In such circumstances, the risk arising from the appointment of Election Commissioners by the executive appears to be borne out. It becomes difficult to maintain the integrity and reputation of the Commission if the appointed Commissioners do not take appropriate and unbiased steps to conduct elections in a neutral manner.

A further issue concerns the tenure of the State Election Commissioners. The tenure and upper age limit of the State Election Commissioner have been frequently modified in the State of Uttar Pradesh.²⁵ The State Election Commissioner plays a pivotal role in conducting elections in a fair manner. Under Article 243K of the Constitution of India, the service conditions and tenure of the State Election Commissioner are determined by the Governor.²⁶ In December 2006, the rules of 1994 were amended to extend the tenure from five to seven years, together with a change in the upper age limit. In June 2007, the earlier order altering the tenure was restored.²⁷

On a closer examination of these events, it emerges that the amendment of 2006 was effected by an outgoing government, while the change in the following year was issued by a newly

²² *Why Election Commission Didn't Announce Gujarat Assembly Poll Dates*, TIMES OF INDIA (Oct. 13, 2017), <https://timesofindia.indiatimes.com/india/why-election-commission-didnt-announce-gujarat-assembly-poll-dates/articleshow/61064735.cms>.

²³ Soumya Pillai, *Disqualification of AAP MLAs Approved*, THE HINDU (Nov. 28, 2021), <https://www.thehindu.com/news/cities/Delhi/president-disqualifies-20-aap-mlas/article61491662.ece>.

²⁴ *Election Commission Gives Clean Chit to PM Modi*, INDIA TODAY (Apr. 30, 2019), <https://www.indiatoday.in/elections/lok-sabha-2019/story/pm-modi-did-not-violate-model-code-of-conduct-election-commission-1513952-2019-04-30>.

²⁵ *Retirement Age of SEC Raised to 70 Years in UP*, TIMES OF INDIA (Nov. 20, 2021), <https://timesofindia.indiatimes.com/city/lucknow/retirement-age-of-sec-raised-to-70-yrs-in-up/articleshow/87808377.cms>.

²⁶ INDIA CONST. art. 243K.

²⁷ N. Vamsi Srinivas, *How a Judgement by Allahabad High Court Has Become Relevant in Jagan's SEC Dispute*, DECCAN CHRONICLE (2020), <https://www.deccanchronicle.com/nation/politics/130420/why-a-2007-judgement-by-up-high-court-has-become-relevant-in-jagans.html>.

elected government. In June 2014, again during a period of changing governments, the tenure and upper age limit were altered to five years and sixty-five years respectively. The ease and frequency of such changes to the conditions governing the office of the Commissioner raise serious questions about the absence of institutional autonomy of the Commission.²⁸

More recently, the Government of Andhra Pradesh introduced an amendment to the Andhra Pradesh Panchayat Raj Act, 1994, proposing changes to the tenure, eligibility and method of appointment of the State Election Commissioner.²⁹ The ordinance amending that Act received the assent of the Governor, and an order retiring the incumbent was issued soon afterwards.

An important suggestion in this regard was put forward by the Second Administrative Reforms Commission, namely a mandatory cooling-off period of five years. Unfortunately, this recommendation has been consistently evaded by successive governments.³⁰

The service conditions also remain notably inadequate in their lack of post-retirement restrictions on Commissioners. There is no cooling-off period before a former Commissioner may accept a government appointment after the expiry of the tenure. The absence of such safeguards has the potential to create informal channels of influence. The appointment of former Chief Election Commissioner Sunil Arora as a Governor illustrates such revolving-door activity.³¹ The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice highlighted the vulnerability of the Commission in this respect and recommended mandatory cooling-off periods for all constitutional functionaries, including Election Commissioners. This important recommendation also remains unimplemented across successive governments.³²

IV. PROPOSED REFORMS AND THE WAY FORWARD

Under the current framework, the fiscal independence of the Election Commission remains constrained. The Commission depends on annual budgetary allocations from the Union Government. According to information published by the Election Commission of India, the secretariat of the Commission has an independent budget, which is finalised in direct consultation between the Commission and the Finance Ministry of the Union Government. It is significant that the information expressly states that the budget is finalised after a process of

²⁸ Joydip Ghosal, *State Election Commissions of India: The Desirable Reforms that India Needs Today*, 2 COMPARATIVE L. REV. 119, 121 (2021).

²⁹ *Id.*

³⁰ SECOND ADMIN. REFORMS COMM'N, Fourth Report: Ethics in Governance 56-58 (2007).

³¹ Julio Ribeiro, *Fall of the EC's Office*, THE TRIBUNE (Apr. 30, 2021), <https://www.tribuneindia.com/news/comment/the-fall-of-the-ecs-office-246125/>.

³² PARLIAMENTARY STANDING COMM. ON PERSONNEL, PUB. GRIEVANCES, L. & JUSTICE, 61st Report on Electoral Reforms 20 (2015-16).

consultation. The Commission further states that the Finance Ministry generally accepts the recommendations of the Commission for its budget.³³ The language used here assumes the general acceptance of the budget rather than establishing a genuinely independent one. In such circumstances, the Commission must seek governmental approval for expenditure beyond its ordinary requirements.

Various committees and bodies have recommended different compositions for the body that appoints the Election Commissioners. With some variations, their principal recommendations may be summarised as follows.

The Goswami Committee, in 1990, suggested that the Chief Election Commissioner be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition in the Lok Sabha, and that the other Election Commissioners be appointed by the same panel with the addition of the Chief Election Commissioner.³⁴

The Seventieth Constitutional Amendment Bill of 1990 proposed including the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha, together with the Leader of the Opposition in the Lok Sabha, in the consultative process for appointing the Chief Election Commissioner.³⁵

The Report of the National Commission to Review the Working of the Constitution recommended a panel comprising the Prime Minister, the Leader of the Opposition in the Lok Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha for the appointment of the Chief Election Commissioner.³⁶

The Law Commission, on the other hand, recommended the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India as the members of the body appointing the Chief Election Commissioner,³⁷ and the Supreme Court adopted the same composition in a judgment delivered in 2023.³⁸ The Second Administrative Reforms Commission proposed the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha.

From the foregoing, it is apparent that most of the committees, as well as the decision of the Court, share common ground in favouring the inclusion of the Prime Minister and the Leader

³³ Election Commission of India, *ECI Setup*, ELECTION COMM'N OF INDIA (Aug. 2025), <https://www.eci.gov.in/about-eci>.

³⁴ COMM. ON ELECTORAL REFORMS, Report of the Committee on Electoral Reforms 9 (1990).

³⁵ PRS India, *Legislative Brief*, PRS INDIA (Sept. 2023), <https://prsindia.org/billtrack/prs-products/prs-legislative-brief-4256>.

³⁶ SECOND ADMIN. REFORMS COMM'N, Fourth Report: Ethics in Governance 56 (2007).

³⁷ LAW COMM'N OF INDIA, Report No. 255: Electoral Reforms 102 (2015).

³⁸ The object sought to be achieved was the elimination of executive dominance in the procedure for appointing Election Commissioners. See *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161 (India).

of the Opposition in the Lok Sabha. The differences relate to the remaining members: some favoured the inclusion of the Deputy Chairman of the Rajya Sabha, while others preferred the Chief Justice of India. The question is which option ought to be adopted. In *Anoop Baranwal v. Union of India*, the Court was of the view that the Chief Justice of India should be the third member. However, the recently enacted Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, in Section 7, provides for a Selection Committee comprising the Prime Minister, the Leader of the Opposition in the Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister.

The difficulty with this Selection Committee is plain: it does not resolve the very problem it was enacted to address. With a member nominated by the Prime Minister, in addition to the Prime Minister, sitting on the Committee, it will be difficult for the Leader of the Opposition to make an effective contribution to a body in which he is outnumbered by the government. Such committees are constituted so that an unbiased body selects important office-holders; this is the very essence of public trust in bodies such as the Election Commission. Without this basic element of fairness, such bodies cannot command public trust at every stage of their functioning. Accordingly, in order to provide a robust form of institutional autonomy to the Commission, the Union Minister on the Selection Committee should be replaced by the Chief Justice of India. This would open three distinct horizons of power, opinion and perspective within the Committee, thereby minimising the probability of bias towards any particular candidate.

Expanding the selection panel to include the Speaker of the Lok Sabha and the Chief Justice of India would provide the balance that the panel currently lacks. Such a composition would not only prevent dominance by the Prime Minister, given that the third member under the present scheme is itself appointed by him, but would also provide a wider field of selection for the process.

V. CONCLUSION

The independence of the Election Commission of India lies at the heart of the framework envisioned by the makers of the Constitution. The preceding analysis demonstrates, however, that the present system of appointments and the functioning of the institution have allowed excessive executive influence to permeate what was intended to be a neutral constitutional body.

The current framework under the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, continues to vest overwhelming discretion in the executive by affording it a two-to-one majority in

deciding the appointment of Election Commissioners. This stands in contrast to the position that the Court sought to establish in *Anoop Baranwal v. Union of India*.

Only a robust, transparent and bipartisan selection process can restore public confidence in the neutrality of the Commission. Such a process would also help to safeguard the principles of equality, accountability and integrity against political influence. In conclusion, the path to strengthening India's electoral democracy lies in a stringent and unbiased mechanism for appointing the members of the Election Commission, coupled with genuine financial autonomy, so that its basic functions are not left at the behest of the government.

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