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CONSTITUTIONAL BOUNDARIES OF THE ELECTION COMMISSION OF INDIA: POWERS, ACCOUNTABILITY AND ELECTORAL DEMOCRACY

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ABSTRACT

The Election Commission of India (ECI) stands in a special position in the Indian Constitution being the guardian of free and fair elections. The Commission was set up for the first time in the Constitution under Article 324, where the Constitution makers had imagined the Commission as an independent body free from executive control. Its functions have since broadened by judicial rulings, congressional action, and administrative creativity to make it a constitutional sentinel for democracy. This research critically explores the confines of constitutional power of the ECI, its supervisory powers, its accountability systems, and its shifting functions in the maintenance of electoral democracy. The study is a historical account of the Commission with an emphasis on the debates of the Constituent Assembly on Articles 324-329, enactment of the Representation of the People Act, 1951, and the changes over the years. It considers the judicial rulings that have expanded the Commission's powers such as Indira Nehru Nagar Gandhi's case against Raj Narain, Mohinder Singh Gill's case against the Chief Election Commissioner and the Union of India case against the Association for Democratic Reforms. The research underscores the judiciary's appreciation of the importance of free and fair elections as a fundamental structure of the Constitution, which further highlights the role of the Commission in protecting the integrity of the electoral process. The paper also reviews the issue of accountability, which includes issues of transparency in appointment, lack of parliamentary oversight, and complaints of selective application of the Model Code of Conduct. The challenges that the Commission faces today, such as the criminalization of politics, the lack of transparency in campaign financing, digital disinformation and technological weaknesses in electronic voting, are explored, with a view to determining the Commission's ability to respond to the digital age. Other democratic country perspectives have been included as recommendations for the necessary changes such as collegium-based appointments, statutory support for the Model Code of Conduct, improved rules on campaign

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funding and strong systems for digital electoral governance.

The study finds that the Election Commission of India has accomplished the maintenance of electoral democracy in terms of its independence and plenary powers, but the future of electoral democracy will rely on enhancing accountability while strengthening the independence. The Commission must be constantly reforming, adapting to technologies and being resilient to ensure it is fulfilling its constitutional mandate and able to respond to the challenges of a quickly changing democratic environment.

Keywords: *Election Commission of India, Article 324, electoral democracy, accountability, judicial interpretation, Representation of the People Act, electoral reforms, digital disinformation, Model Code of Conduct.*

INTRODUCTION

Fundamental rights of democracy are free and fair elections, which form the backbone of the constitutional structure of India. The principle is safeguarded by the Election Commission of India (ECI) under Article 324 of the Constitution of India. The ECI is a unique constitutional body as it has the superintendence, direction and control of elections over Parliament, State Legislatures and the offices of the President and Vice-President. The separation of the Commission from the executive is not a happy accident: the framers of the Constitution knew that an election has to be legitimate if it is to be the basis of representative government. However, its powers have been subject to judicial interpretation, political usage, and academic discussion and have not been settled and are still ongoing.

Our framers wanted to establish an autonomous institution as is evident from the debates of the constituent assembly. Dr. B.R. Ambedkar, who introduced draft Article 324, has expressed that elections should be conducted through an independent body, free from political pressure, for the purpose of establishing credibility of representative institutions.² This attitude of the Assembly underlined a need for autonomy in the electoral process if democracy is to be made fair and just. But autonomy without accountability is likely to be arbitrary, and accountability without autonomy is likely to be subservient to political power. These are the constitutional limits of ECI in a dialectic that is a relationship of the two.³

Judicial interpretation has been very central in outlining these boundaries. The Supreme

² Constituent Assembly Debates, Vol. IX, 1948 (statement of B.R. Ambedkar).

³ Id. (statement of H.N. Kunzru).

Court in *Indira Nehru Gandhi v. Raj Narain* made it clear that free and fair elections are an integral part of the basic structure of the Constitution, making the ECI a constitutional sentinel of democracy.⁴ The judiciary's balancing act in these cases is to expand the scope of the Commission's powers so that it may ensure fairness in elections while at the same time limiting its powers to avoid institutional overreach.⁵

The Commission has powers other than administrative power. In the spirit of the Model Code of Conduct (MCC), the ECI has had the desire to keep the conduct of political parties and candidates under control during an election and has strived to provide a level platform. The MCC is not statutorily empowered but has gained constitutional force through judicial endorsement. However, it is noted that the Commission's power is not legislatively backed, which can result in the potential for political opposition to its enforcement, and poses questions about the extent of the Commission's regulatory powers.

There are still underdeveloped accountability mechanisms related to the ECI. The Commission can be subjected to judicial review, but there is no parliamentary committee for supervising the actions of the Commission, nor is there a clear process for the appointment of Commissioners. The appointments process has been dominated by the executive and an issue of politicization has arisen. Recent decisions, including *Anoop Baranwal v. Union of India*, have attempted to fill this gap by establishing a selection committee to be made up of the Prime Minister, the Leader of Opposition and the Chief Justice of India to make appointments until Parliament passes legislation.⁶ Comparative constitutional studies show that other models exist: the United States Federal Election Commission is partisan, but its membership is subject to congressional background checks; the Electoral Commission of South Africa is statutory, with multi-stakeholder appointments. These models propose reforms for India: introduction of a collegium system, constitutionalisation of the rules of the elections.

The ECI is faced with a twenty-first century with a variety of challenges. In addition to the Commission's electoral management responsibilities, it has faced new challenges with the emergence of digital disinformation and the power of money, as well as the challenges of the regulation of social media platforms. The use of Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trails (VVPATs) has increased efficiency, but has also raised concerns among political stakeholders, which requires more transparency and public trust. Further, it is questionable whether the Commission can enforce electoral laws on the ruling

⁴ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; (1976) 2 SCR 347 (India).

⁵ *T.N. Seshan v. Union of India*, (1995) 4 SCC 611 (India).

⁶ *Anoop Baranwal v. Union of India*, W.P. (Civil) No. 104 of 2015, decided Mar. 2, 2023 (India).

parties, given that there are allegations of selective enforcement which undermine the credibility of the Commission. The challenges highlight the need to review the constitutional scope of ECI, to ensure that the autonomy of ECI is matched with strong accountability mechanisms.

This research article puts the ECI in the context of constitutional democracy by examining three interconnected aspects: powers, accountability and electoral democracy. First, it considers the text and interpretations of the Constitution, to identify the boundaries of the Commission's power. Second, it examines the internal and external mechanisms of accountability and evaluates their effectiveness in reducing arbitrariness. Third, it examines the impact of the Commission's work on the maintenance of electoral democracy in today's world, including in the context of new threats like digital disinformation and opaque electoral funding, and political polarization. The study attempts to add to the debate on institutional design and democratic resilience in India through a doctrinal analysis which also takes a comparative view.

In the end, the constitutional limits of the Election Commission of India are indicative of the conflict between autonomy and accountability. The framers wanted an independent institution that would not be subject to executive control, but they were not quite so clear on how it would be accountable. Judicial interpretation has grown and more powers, but accountability is still dependent upon public trust and political consensus. With a new set of challenges in the way of India's democracy, it is important to rework the constitutional design of ECI. Increasing the accountability of electoral democracy without compromising its autonomy is key to maintain the integrity of electoral democracy. However, the success of India's democratic experiment rests on the shoulders of the capability of the institutions to adjust themselves to the new reality while observing the constitutional spirit, especially the Election Commission.

HISTORICAL EVOLUTION OF THE ELECTION COMMISSION OF INDIA

The Election Commission of India (ECI) is one of the most important constitutional institutions meant to ensure the continuity of democratic process. It is a product of a complex history of constitutional development, political activity and judicial construction. The Commission has been transformed fundamentally in its institutional structure and powers since its establishment during the debates of the Constituent Assembly to the present day, dealing with complicated electoral processes.

Constituent Assembly Vision

The idea of ECI has its roots in the Constituent Assembly debates of 1948. This idea was laid down by Dr. B.R. Ambedkar in his proposed draft Article 324 which envisaged that “the whole of the election machinery should be in the hands of a central independent authority” to ensure impartiality and credibility of elections.⁷ This idea was translated into Article 324 of the Constitution which granted the Commission plenary powers of ‘superintendence, direction and control’ over parliamentary, State Legislative, President and Vice-Presidential elections.

Early Years (1950–1970)

The Commission was constituted as a single member Commission under the Chief Election Commissioner (CEC) in 1950. In the early pre-Pakistan years, the Commission was primarily responsible for preparing electoral rolls, delimitation of constituencies and conduct of elections, which were under the statutory provisions of Representation of the People Act, 1951. But the single-member system did not prove up to the demands of the problems that arose, including booth capturing, intimidation of voters, and electoral malpractices.⁸

Expansion of Powers (1970s–1990s)

A watershed moment in the Commission's development was when the Supreme Court in *Indira Nehru Gandhi v. Raj Narain* declared free and fair elections as part of the basic structure of the constitution.⁹ With the leadership of T.N. Seshan, Chief Election Commissioner, ECI acquired unprecedented power in the 1990s and enforced the Model Code of Conduct (MCC) and eliminated electoral malpractices. As a result of his tenure, the Supreme Court in the case of *T.N. Seshan v. Union of India* had to interpret that the Commission is a multi-member body with collective responsibility.¹⁰

Institutional Consolidation (2000s–2010s)

Judicial decisions also further increased the Commission's responsibilities. The Court allowed the ECI to compel disclosure of criminal records and assets of candidates in *Union of India v. Association for Democratic Reforms*,¹¹ and in *People's Union for Civil Liberties v. Union of India*, the Court accorded the voter the right to know as a component of Article

⁷ Constituent Assembly Debates, Vol. IX, 1948 (statement of B.R. Ambedkar).

⁸ Id. (statements of H.V. Kamath & H.N. Kunzru).

⁹ Representation of the People Act, No. 43 of 1951, India Code (1951).

¹⁰ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; (1976) 2 SCR 347 (India).

¹¹ *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294 (India).

19(1)(a).¹² These rulings elevated the Commission from the mere role of an electoral manager to that of a regulator of democratic transparency. The Commission also implemented technological innovations like the Electronic Voting Machines (EVMs), that made electoral processes easier but raised doubts among political players.

Contemporary Developments (2010s–Present)

Jurisprudence on structural accountability is recent. In *Anoop Baranwal v. Union of India*, the Supreme Court had ordered the creation of a selection committee consisting of the Prime Minister, the Leader of Opposition and the Chief Justice of India for appointments to the Commission until Parliament enacted a law, which shows the importance of keeping appointments away from the clutch of the executive.¹³ Meanwhile, the rollout of Voter Verified Paper Audit Trails (VVPATs) has helped to increase transparency, but questions remain regarding their efficacy in ensuring accurate audits. The Commission now has to contend with issues like the regulation of digital disinformation, transparency of electoral funds, and participation of voters.

CONSTITUENT ASSEMBLY DEBATES ON ARTICLES 324–329

The Constituent Assembly of India gave a lot of thought to the machinery of election, since it believed that the legitimacy of representative democracy hinged on the integrity of elections. The articles 324-329 are part of the Constitution and were framed after much deliberation between 1948 and 1949. These provided for the Election Commission of India (ECI), for universal adult suffrage, prohibition of discrimination in electoral registers and restrictions on judicial intervention in elections. The debates show a struggle by the framers to keep elections out of the control of the executive branch and to make them accountable.

Article 324: Superintendence, Direction and Control of elections

Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, introduced Draft Article 289 (now Article 324). Ambedkar pointed out that if the executive or legislature are given the power, "the whole of the election machinery should be in the hands of a central independent authority which should be free from any party interests in order to secure impartiality."¹⁴ Some members, including H.V. Kamath, voiced their apprehensions when the Chief Election

¹² *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).

¹³ *Anoop Baranwal v. Union of India*, W.P. (Civil) No. 104 of 2015, decided Mar. 2, 2023 (India).

¹⁴ *Constituent Assembly Debates*, Vol. IX, 1948 (statement of B.R. Ambedkar).

Commissioner came to be the sole authority in controlling the election process but Ambedkar assured the Assembly that such a scenario would not happen due to various safeguards like the removal system for CEC.¹⁵

The Assembly considered the issue of the Commission being either single or multichamber. As originally conceived, it was a one-member body but a few members wanted it to be collegial to avoid arbitrariness, which led to the constitution being flexible regarding the number of members of the Commission.¹⁶ The debates highlight the framers' desire for independence and allow for the evolution of institutions.

Article 325: One General Electoral Roll

The Assembly's pledge of equality and non-discrimination, is provided for in Draft Article 290 (now Article 325) which stated that there shall be a single electoral roll for each constituency, excluding no persons on the grounds of religion, race, caste, or sex.¹⁷ The use of a single roll was therefore a deliberate move away from the colonial practice of separate electorates, helping to strengthen the principle of 'one person one vote'.¹⁸

Article 326 – Universal Adult Suffrage.

The introduction of universal adult suffrage (Article 291 or 326) was a revolutionary step inasmuch as the socio-economic status of India at the time of Independence did not consider universal suffrage as a viable option.¹⁹ This was later changed by the Constitution (Sixty-first Amendment) Act, 1988, and the age for voting was reduced to 18. The provision was later amended by the Constitution (Sixty-first Amendment) Act, 1988, which lowered the voting age to 18.²⁰

Article 327 and 328: Legislative Competence

The discussions in both the drafts of Article 292 and 293 (subsequently Article 327 and 328) show a worry about maintaining a balance between the central and the state power.²¹ Parliament was also empowered with overriding powers to provide uniformity, but State Legislatures had the power to make their own laws in respect of their elections. The dual

¹⁵ Id. (statement of H.V. Kamath).

¹⁶ Id. (debates on Draft Art. 289).

¹⁷ INDIA CONST. art. 325.

¹⁸ Constituent Assembly Debates, Vol. IX, 1948 (statement of K.M. Munshi).

¹⁹ INDIA CONST. art. 326.

²⁰ Constituent Assembly Debates, Vol. IX, 1949 (statement of Jawaharlal Nehru).

²¹ INDIA CONST. arts. 327–328.

competence was a consequence of the federal character of the Constitution and ensured that there were national standards.

Article 329: Bar on Judicial Interference

Draft Article 294 (subsequently Article 329) provided that during the period of elections, no interference with election matters should be allowed through the courts.²² The debate on whether this provision infringed on judicial review was ongoing among members, but Ambedkar stressed that judicial review needed to be in place once the results of the elections were declared, and that intervening in the process could lead to instability.²³

Post-Constitutional Judicial Development

The Supreme Court has been very instrumental in interpreting the articles 324-329. The above cases highlight the constitutional interpretation of the Commission in the course of which the jurisdiction of the Commission has been interpreted in a way that respects the intent of the framers of the Constitution while increasing the jurisdiction of the Commission.²⁴

EXPANSION OF POWERS THROUGH JUDICIAL INTERPRETATION

The Election Commission of India (ECI) was created under Article 324 of the Constitution and was originally designed to be an administrative body that would be responsible for conducting elections, superintending, directing and controlling them. Power was vested in the constitution in very general and undefined terms, thus creating room for controversy. The Supreme Court of India has been instrumental in broadening the scope of the Commission and thus in making it a constitutional watchdog of democracy over the years. In the landmark judgments, the judiciary has carved out a space for free and fair elections within the basic structure of the Constitution, shifting the nature of the Commission's role from electoral management to one of significance. This chapter looks at how this judicial evolution has broadened the scope of judicial power for the ECI and places it in the context of constitutional democracy.

In *N.P. Ponnuswami v. Returning Officer*, the Supreme Court had ruled that the "process of elections" is excluded from judicial scrutiny under Article 329(b).²⁵ It had noted

²² INDIA CONST. art. 329.

²³ Constituent Assembly Debates, Vol. IX, 1949 (statement of B.R. Ambedkar).

²⁴ *N.P. Ponnuswami v. Returning Officer*, AIR 1952 SC 64 (India).

²⁵ *N.P. Ponnuswami v. Returning Officer*, AIR 1952 SC 64 (India).

that election petitions are the forum for resolving complaints once the results of the election have been announced. This case decided that judicial intervention is not acceptable, but it also accepted the implicit Commission's plenary power to run elections without disruption.

In *Mohinder Singh Gill v. Chief Election Commissioner*,²⁶ the Court clarified the scope of Article 324 and said that the Commission has plenary powers to act in those areas which are not specifically mentioned in the statute, where this is required for free and fair elections. This judgment, by Justice Krishna Iyer, was a watershed moment, and expanded the powers of the Commission beyond the call of duty.²⁷

In *Indira Nehru v. Raj Narain*, the doctrine of free and fair elections was well entrenched and the Court declared that free and fair elections form part of the basic structure of the Constitution.²⁸ This took the role of the Commission to a higher level, since now it was the institutional protector of a fundamental structural principle.

The judiciary also granted more powers to the Commission in matters of transparency and voters rights. In *Union of India v. Association for Democratic Reforms*, the Court held that the Commission may require disclosure of candidates' criminal antecedents, assets, and liabilities under Article 324, going beyond electoral issues of logistics.²⁹ This was further established in *People's Union for Civil Liberties v. Union of India*, where the Court validated the voter's right to know as part of Article 19(1)(a).³⁰

The Commission's ability to regulate political parties and campaigning has also been confirmed by the courts. Such interpretations of the law have strengthened the Commission's regulatory powers to tackle emerging issues as seen in *Kuldip Nayar v Union of India*, which upheld a reform in Rajya Sabha elections,³¹ and in *Subramanian Swamy v Election Commission of India*, where the Court directed the Commission to adopt Voter Verified Paper Audit Trails (VVPATs) to ensure greater transparency in the electronic voting process.³²

Recent case law has tackled issues of 'structural accountability'. In *Anoop Baranwal v. Union of India*, the Supreme Court had stipulated a selection committee of the Prime Minister, Leader of Opposition and Chief Justice of India to make appointments to the Commission, so as to ensure that the selection process was not dominated by the Executive.³³

²⁶ *Mohinder Singh Gill v. Chief Election Commr.*, AIR 1978 SC 851 (India).

²⁷ *Id.* at 861.

²⁸ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; (1976) 2 SCR 347 (India).

²⁹ *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294 (India).

³⁰ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).

³¹ *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1 (India).

³² *Subramanian Swamy v. Election Comm'n of India*, (2013) 10 SCC 500 (India).

³³ *Anoop Baranwal v. Union of India*, W.P. (Civil) No. 104 of 2015, decided Mar. 2, 2023 (India).

MILESTONES IN THE EVOLUTION OF INDIA'S ELECTORAL FRAMEWORK

The history of electoral democracy in India can be seen through three pivotal moments: the Representation of the People Act, 1951 (RPA, 1951); the landmark electoral reforms of the 1990s; and the twenty-first century, which has brought forth new challenges for electoral democracy in India. Each milestone is a step in the evolution of electoral integrity, transparency, and technological adaptation, and gives the Election Commission of India (ECI) more powers and responsibilities.

Representation of the People Act, 1951

This Representation of the People Act, 1951 was introduced by the Law Minister, Dr. B.R. Ambedkar, under Article 327 of the Constitution and incorporated detailed provisions with respect to the qualifications and disqualifications of the members of Parliament and State Legislatures, nomination, scrutiny, withdrawal and declaration of results, mechanism for election petition and resolution of disputes etc.³⁴

The Act dealt with corrupt practices, such as bribery, undue influence, fostering enmity based on religion and caste and use of religion to secure votes which were attempts to limit the role of money power in the elections. It also restricted election expenditure and required disclosure of funds. Importantly, Section 29A also provided statutory status for the political parties and said that political parties must register with the ECI.³⁵

Judicial interpretation has strengthened the accountability mechanisms in the Act. The significant ruling in *Lily Thomas v. Union of India* was that disqualification should be effective from the date of the conviction and that the legislative privileges should not be allowed to be abused.³⁶

It thus laid the procedural foundation for the electoral democracy in India in the RPA, 1951, uniformity and fairness in the conduct and provision of remedies for electoral offence. It is still one of the foundations of electoral law and it is constantly updated to reflect new issues and challenges.

The reform of the electoral system in the 1990s.

By the late 1980's, elections had become marred by electoral malpractice, booth

³⁴ Representation of the People Act, No. 43 of 1951, India Code (1951).

³⁵ Id. § 29A.

³⁶ *Lily Thomas v. Union of India*, (2013) 7 SCC 653 (India).

capturing and criminalization of politics, leading to a loss of confidence in the democratic process by the public. During the 1990s there was a surge of reforms to rebuild credibility.

There were several committees that were critical. The Shyam Nandan Committee (2001) suggested a new approach to financing elections that would curb private party funding and eliminate an electoral fund. The Babulal Bera Committee (2001) proposed removing all political parties from the Election Commission of India's (ECI) meetings to give greater autonomy to the electoral body. The S. Rathi Committee (2005) recommended that the ECI be fully independent. The KP Reddy Committee (2005) called for the establishment of a permanent parliamentary committee on electoral reforms. The Justice KM Radhakrishnan Committee (2008) recommended that private movements of money be limited outside the electoral yard. The Justice Balbir Singh Sidhu Committee (2008) suggested that money be channeled exclusively through the Election Commission of India (ECI), thereby eliminating the need for private movements of money.

Leadership was also a factor in the institution. During the tenure of Chief Election Commissioner T.N. Seshan (1990-96), he had enforced the Model Code of Conduct (MCC) with unprecedented strictness and curbed the use of official machinery and money power. This marked a turning point, where the ECI became a proactive regulator and no longer a passive administrator.³⁷

These were supported by legislative changes. Electors' Photo Identity Cards (EPIC) were introduced in 1988 which lowered the voting age from 21 to 18, thus expanding the democratic base of the electorate.³⁸ The advent of Electronic Voting Machines (EVMs) in 1998 and their universalization in Goa in 1999 marked a revolution in the electoral system.³⁹

Transparency was further enhanced through judicial expansion. Through this the Supreme Court gave the ECI the power to disclose the criminal records and assets of candidates, in *Union of India v. Association for Democratic Reforms*, as a means to ensure transparency in democracy.⁴⁰ In *People's Union for Civil Liberties v. Union of India*, the Court noted that the right to know was a part of Article 19(1)(a).⁴¹ This changed the contours of the ECI's work from merely electoral logistics to also a regulator of transparency in democracy.

The reforms of the 1990s thus brought credibility to the electoral process in India, tackling issues of criminalization, malpractice, opacity. These are the beginnings of the ECI's

³⁷ T.N. Seshan v. Union of India, (1995) 4 SCC 611 (India).

³⁸ Election Commission of India, Introduction of EPIC Programme, 1993.

³⁹ Election Commission of India, Use of EVMs in Goa Assembly Elections, 1999.

⁴⁰ Union of India v. Ass'n for Democratic Reforms, (2002) 5 SCC 294 (India).

⁴¹ People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399 (India).

institutionalization as a constitutional protector of democracy.

Digital Era Challenges

The 21st century is bringing new challenges, especially in the digital era. The deployment of EVMs and VVPATs across the country has led to greater efficiency and transparency, but the demand for 100% VVPAT verification is still politically charged, due to uncertainties regarding technical reliability.

There is a major risk of security breaches and misinformation. Micro-targeting of social media propaganda and deepfakes, as well as AI-powered propaganda, have added to the difficulty of electoral regulation.⁴² The shadow “influencer economy” frequently evades expenditure caps and the MCC, defeating transparency.

Structural challenges persist. Addressing almost one billion voters against the backdrop of limited budgetary resources is a strain on the Commission's capacity. The question of “One Nation, One Election” is one that demands constitutional changes and a huge scaling up of logistical operations and thus is capable of being discussed only after considering its feasibility and fairness.

The Commission's role keeps growing because of judicial decisions. In the cases of "Subramanian Swamy vs. Election Commission of India"⁴³ the Supreme Court recognised the necessity to set up a selection committee that comprises of the Prime Minister, Leader of Opposition and Chief Justice of India until Parliament drafts legislation on the issue of insulating the Commission from executive control; and the case of "Anoop Baranwal vs. Union of India" the Supreme Court directed the Commission to introduce VVPATs to increase transparency in the electronic voting process.⁴⁴

Academic commentators focus on flaws in EVMs, misinformation amplification through algorithms, and lack of regulation. Electoral integrity needs multi-faceted governance, including governance by means of a modernized electoral system and platform accountability, and governance through civic education.⁴⁵

⁴² See generally R. Bhattacharya, “Digital Disinformation and Electoral Integrity in India,” 12 Indian J. Const. L. 45 (2021).

⁴³ Subramanian Swamy v. Election Comm’n of India, (2013) 10 SCC 500 (India).

⁴⁴ Anoop Baranwal v. Union of India, W.P. (Civil) No. 104 of 2015, decided Mar. 2, 2023 (India).

⁴⁵ See generally S. Palshikar, “Democracy in the Digital Age: Challenges for Electoral Regulation,” 58 Econ. & Pol. Wkly. 32 (2023).

SUPERVISORY AND ADMINISTRATIVE POWERS OVER ELECTIONS

The Election Commission of India (ECI) plays a pivotal role in the constitutional structure of Indian democracy. The provision is worded broadly and was intentionally created to give the Commission the “superintendence, direction and control” of elections to Parliament, State Legislatures, and the President and Vice-President.⁴⁶ It is clear that the Constitution's framers intended to entrust the Commission with “plenary” powers to guarantee free and fair elections. The powers and duties of the ECI include electoral rolls' preparation, the conduct and scheduling of elections, the monitoring of adherence to electoral norms and results' declaration. Judicial interpretation, over time, has grown these powers and the Commission is now known as a constitutional sentinel of democracy.

Constitutional Foundation

The provision in Article 324(1) is drafted in wide terms to enable the ECI to exercise powers which are not specifically mentioned in law.⁴⁷ The Commission's supervisory powers are therefore explicitly provided for in the Constitution of India in the debates of the Constituent Assembly and not through Parliamentary legislation.⁴⁸

Administrative Functions

The Commission has broad powers of administration. It draws up electoral lists and updates them, and also prescribes the date for Lok Sabha, Rajya Sabha, State Assemblies and Presidential elections without discriminating against anyone on the basis of universal adult suffrage as enshrined in Article 326 and no discrimination under Article 325.⁴⁹ It oversees polling officers, returning officers and presiding officers to keep them neutral and efficient. It also keeps a check on adherence to the Model Code of Conduct (MCC), provides instructions for media reports and opinion polls and regulates expenditure of campaigns.⁵⁰

In the last few decades, the Commission has implemented new technology like Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trails (VVPATs) as part of its supervisory powers to modernize electoral processes.⁵¹

⁴⁶ INDIA CONST. art. 324.

⁴⁷ Id.

⁴⁸ Constituent Assembly Debates, Vol. IX, 1948 (statement of B.R. Ambedkar).

⁴⁹ INDIA CONST. arts. 325–326.

⁵⁰ Election Commission of India, Model Code of Conduct Guidelines, 2019.

⁵¹ Election Commission of India, Introduction of EVMs and VVPATs, 1999–2013.

The recognition of supervisory powers by the judiciary.

The Supreme Court has repeatedly acknowledged the plenary powers of the Commission. Justice Krishna Iyer states that Article 324 of the Indian Constitution gives the Commission plenary powers to act in areas not specifically covered by legislation so long as it is necessary to ensure free and fair elections.

In *People's Union for Civil Liberties v. Union of India*, the Court further strengthened the Commission's supervisory powers and laid down the principle of the voter's right to know as part of Article 19(1)(a).⁵²

More recently, in the case of *Sw. Narendra Kumar and Ors vs. Union of India*, the Court held that there exists a structural accountability by mandating a Selection Committee for appointments to the Commission, reinforcing the independence of the Commission. In another recent case, in *Subramanian Swamy v. Election Commission of India*, the Court again reiterated its supervisory role over the technological innovations, mandating that the Commission implement VVPATs to enhance transparency in electronic voting.⁵³

Challenges in Supervisory Role

The Commission is beset with many problems, even with its wide powers. Ruling parties have been accused of discriminatory enforcement of the MCC, which calls for concern regarding impartiality. Resource limitations such as staff and funds affect the Commission's ability to oversee campaigns that is driven by an almost infinite number of voters. The question of "One Nation, One Election" raises logistical and constitutional issues that must be addressed by the Commission in a way that is efficient and fair.⁵⁴

CONCLUSION AND SUGGESTIONS

An analysis of the constitutionality of ECI, its powers, accountability and role in maintaining electoral democracy shows a complex institutional path. The framers of the Constitution had conceived the Commission as an independent entity to protect the sanctity of the elections. Its authority has grown over the decades, by judicial rulings, legislative changes, and administrative innovations. However, the pressures and constraints of political pressures, technological change and accountability are still putting it to the test. This research must then bring together the historical development, doctrinal changes, and challenges as well as

⁵² *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).

⁵³ *Subramanian Swamy v. Election Comm'n of India*, (2013) 10 SCC 500 (India).

⁵⁴ Law Commission of India, Report No. 255 on Simultaneous Elections, 2015.

providing positive recommendations for reform in the text's conclusion.

The Election Commission of India has become an integral part of Indian democracy. Under Article 324, its supervisory and administrative functions have allowed it to run election on a scale unprecedented, overseeing the participation of hundreds of millions of voters throughout a wide range of geographical areas. The Commission's adaptability is reflected in its processes for preparing electoral rolls, scheduling elections, enforcing the Model Code of Conduct, and introducing new technologies like Electronic Voting Machines and Voter Verified Paper Audit Trails. It has also been granted judicial recognition of its plenary powers, granting it even more constitutional status as a protector of free and fair elections. But without accountability, autonomy runs the risk of arbitrariness, and without autonomy, accountability runs the risk of subservience to political power. The tension between these priorities will continue to be the biggest challenge for the Commission.

It is an indication of how resilient the Commission has been throughout its history. The Commission has continuously evolved to meet changing realities from the enactment of the Representation of the People Act, 1951, that established the legal framework for conducting elections through the reforms in the 1990s to combat the criminalization and malpractices of elections. New challenges have come with the digital age, such as the threats of disinformation, cybersecurity issues, and the complexities of regulating social media campaigns. While monitoring electoral processes remains the Commission's core responsibility, it is also needed to reach out to technology regulation and civic education.

The Commission's accountability mechanisms are not well developed. There is no parliamentary committee to oversee its work, nor is there a clear process for Commissioners to be appointed, and although it is subject to judicial review, it has the ability to act independently. However, concerns are raised about politicisation, as the executive has consolidated an appointment monopoly which has led to doubts about public confidence. Recent court orders requiring a selection committee for appointments are a recognition of this gap, but a legislative reform is needed to put in place transparency and independence. There are examples of other democracies which may offer suggestions for change, such as collegium systems for appointments, statutory codification of electoral norms, and multi-stakeholder oversight.

The Commission's implementation of the Model Code of Conduct is a picture of its strengths and weaknesses. Judicial affirmation has given the MCC constitutional credibility, but it is lacking in statutory authority, which makes enforcement subject to political opposition. The legal underpinnings of the MCC would be strengthened, providing more credibility and effectiveness. Likewise, the financing of elections is a critical issue yet to be addressed. The

transparency of donations, corporate misuse of funds and the influence of money power in the elections are harmful to the electoral process. Complete changes in the mechanism of financing political parties, such as disclosing the sources of political funding and capping political spending, are necessary to restore confidence in the public.

New solutions are needed for the digital era. Micro-targeted propaganda, algorithmic misinformation amplification, and deepfakes make electoral regulation more difficult. The Commission needs to establish strong monitoring mechanisms to track digital campaigns, work with technology providers to limit the spread of disinformation and promote digital literacy for voters. Cybersecurity modernization is also crucial to safeguard electoral infrastructure against external threats. The Commission's supervisory functions need to be extended to these new fields, while not being impeded by technological innovation in its influence on the electoral process.

It is therefore necessary for suggestions for reform to cover the structural, procedural and technological aspects. The Commissioners appointment should structurally be made independent. A collegium of the Prime Minister, the leader of opposition, the Chief Justice of India and members of civil society may be a way to ensure transparency and balance. In the process, the Model Code of Conduct needs to be legally backed, to give the Commission the power to ensure that they are complied with. Campaign finance reform should include disclosure of contributions, limits on corporate funds and tight limits on spending.

The Commission must adopt a digital approach to regulation, technologically speaking. Collaborations with social media platforms to monitor disinformation, development of algorithms to detect deepfakes, and voter education campaigns on digital literacy are essential. Electoral data should be encrypted and EVMs safeguarded from external interference, which should be prioritized in cybersecurity modernization. The Commission should also seek to innovate on platforms like blockchain voting systems, which can increase transparency and security.

Normatively, the Commission's commitment to inclusiveness needs to be strengthened. To strengthen democracy, it is vital to ensure the participation of marginalized groups, tackle voter disenfranchisement and increase gender equality in electoral processes. Exciting the people to vote with the understanding of the issues is a vital component of civic education campaigns, especially in the face of apathy and misinformation. The Commission's mandate is to go beyond electoral management to democratic empowerment.

To sum up, the Election Commission of India represents the constitutional ideals of free and fair elections as the crux of democracy. Judicial interpretation coupled with its supervisory

and administrative powers, has helped it protect electoral integrity. However, due to the issues of accountability, politics and technical disruption there is a need for constant reform. These measures are crucial to protect the sanctity of elections, including strengthening of accountability mechanisms, codification of electoral norms, regulation of campaign financing, and digital regulation. The Commission needs to be dynamic and must keep pace with changes in reality and retain its faith in the Constitution. The success of the Indian democratic experiment rests on the strength of the country's democratic institutions and the Election Commission is leading the way.

