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APPOINTMENT OF THE CHIEF ELECTION COMMISSIONER AND ELECTION COMMISSIONERS IN INDIA: A CRITICAL AND COMPARATIVE CONSTITUTIONAL ANALYSIS IN THE LIGHT OF ANOOP BARANWAL V. UNION OF INDIA CASE

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ABSTRACT

The strength of any constitutional democracy ultimately depends upon the credibility of its electoral process and the independence of the institutions entrusted with conducting elections. In India, this responsibility is constitutionally assigned to the Election Commission of India under Article 324 of the Constitution. Although the framers envisioned the Election Commission as an autonomous and impartial body, the Constitution left the method of appointment of the Chief Election Commissioner and Election Commissioners to future parliamentary legislation. For more than seven decades, in the absence of such a law, appointments were made exclusively by the executive, generating persistent concerns about institutional independence and democratic legitimacy. These concerns were judicially addressed in the landmark decision of the Supreme Court in *Anoop Baranwal v. Union of India*², where the Court prescribed an interim appointment mechanism to protect the constitutional principle of free and fair elections.

This article critically examines the appointment process of the Chief Election Commissioner and Election Commissioners in India through the lens of the *Anoop Baranwal* judgment. It analyses the constitutional framework, traces judicial engagement with electoral independence, evaluates the reasoning and implications of the decision, and situates India's experience within a comparative perspective by examining appointment models in other democratic jurisdictions. The article also assesses subsequent legislative developments and argues that while judicial intervention was necessary,

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² 2023 (6) SCC 1

enduring reform requires a transparent and balanced statutory framework grounded in constitutional morality.

Keywords: Election Commission of India, Appointment Process, Electoral Autonomy, Constitutional Law, Judicial Review, Electoral Reforms.

INTRODUCTION

Elections constitute the foundational mechanism through which democratic legitimacy is created and renewed. In constitutional democracies, however, the mere conduct of elections is insufficient; equal importance attaches to the integrity and independence of the institutions responsible for administering the electoral process. In India, the Election Commission of India occupies a central place within the constitutional scheme as the authority charged with ensuring that elections are conducted freely, fairly, and impartially. Article 324 of the Constitution vests in the Election Commission the power of superintendence, direction, and control over elections to Parliament, State Legislatures, and the offices of the President and Vice-President.

The framers of the Constitution were acutely aware of the risks posed by executive interference in electoral processes, particularly in a newly independent nation transitioning from colonial rule to democratic self-governance. Yet, despite this awareness, the Constitution does not prescribe a detailed procedure for the appointment of the Chief Election Commissioner and other Election Commissioners. Instead, Article 324(2) leaves the matter to parliamentary legislation. The prolonged absence of such legislation resulted in an executive-dominated appointment process that increasingly appeared incompatible with contemporary democratic expectations and constitutional principles.

Against this backdrop, the Supreme Court's decision in *Anoop Baranwal v. Union of India*³ represents a decisive moment in India's constitutional jurisprudence. The judgment reflects judicial concern over the erosion of institutional independence and seeks to recalibrate the balance between constitutional values and political power. This article undertakes a comprehensive analysis of this development, combining doctrinal examination with comparative insights to evaluate the future of electoral governance in India.

³ 2023 (6) SCC 1

RESEARCH QUESTIONS

This study is guided by four principal research questions:

- i. Whether the long-standing executive control over the appointment of Election Commissioners is consistent with the constitutional requirement of free and fair elections.
- ii. Whether the intervention of the Supreme Court in *Anoop Baranwal v. Union of India*⁴ effectively addresses the institutional shortcomings inherent in the appointment process.
- iii. How other democratic systems structure the appointment of election management authorities to balance independence and accountability.
- iv. Whether judicially crafted mechanisms can serve as a durable substitute for comprehensive legislative reform.

HYPOTHESIS

The article proceeds on the hypothesis that executive monopoly over the appointment of the Chief Election Commissioner and Election Commissioners undermines both the actual and perceived independence of the Election Commission of India. It further posits that a transparent, inclusive, and multi-institutional appointment process, supported by statutory safeguards, is essential for maintaining public confidence in electoral democracy.

CONSTITUTIONAL FRAMEWORK OF THE ELECTION COMMISSION OF INDIA

Article 324 constitutes the constitutional foundation of the Election Commission of India. Clause (1) confers broad authority upon the Commission to supervise and control elections, while clause (2) provides for the composition of the Commission and the appointment of its members by the President, subject to any law enacted by Parliament. Although the Constitution accords significant protection to the Chief Election Commissioner by prescribing a stringent removal process analogous to that of a Supreme Court judge, similar protection is not expressly extended to other Election Commissioners.

This structural design has generated two distinct concerns. First, the differential protection accorded to the Chief Election Commissioner and other Election Commissioners creates an internal hierarchy that may affect institutional cohesion. Second, the absence of a legislatively prescribed appointment

⁴ 2023 (6) SCC 1

process has enabled the executive to exercise unchecked discretion. While executive involvement in appointments is not inherently unconstitutional, its exclusive nature raises serious apprehensions regarding impartiality, particularly when the appointing authority is also a participant in the electoral contest.

JUDICIAL APPROACH TO ELECTORAL INDEPENDENCE PRIOR TO ANOOP BARANWAL

The Supreme Court has long recognized the constitutional importance of free and fair elections. In *Mohinder Singh Gill v. Chief Election Commissioner*⁵, the Court emphasized that democracy is sustained through elections conducted in accordance with constitutional norms and entrusted the Election Commission with wide powers to achieve this objective. Similarly, in *T.N. Seshan v. Union of India*⁶, the Court underscored the significance of institutional independence by upholding the multi-member character of the Election Commission.

Despite these affirmations, the Court historically refrained from intervening in the appointment process, viewing it as a matter falling within the legislative and executive domains. This posture of judicial restraint persisted even as concerns regarding executive dominance intensified. The continued absence of legislative action under Article 324(2)⁷ eventually compelled judicial reconsideration, culminating in the decision in *Anoop Baranwal*.

ANOOP BARANWAL V. UNION OF INDIA: CONTEXT AND CONSTITUTIONAL ISSUES

The petition in *Anoop Baranwal v. Union of India*⁸ challenged the constitutionality of the prevailing appointment process for Election Commissioners on the ground that it compromised institutional independence. The petitioner argued that executive-exclusive appointments violated the basic structure of the Constitution, particularly the principle of free and fair elections. The case thus presented the Court with a fundamental question: whether constitutional silence could justify executive monopoly, or whether judicial intervention was warranted to protect core democratic values.

⁵ (1978) 1 S.C.C. 405

⁶ (1995) 4 S.C.C. 611.

⁷ The Indian Constitution, 1950

⁸ 2023 (6) SCC 1

The matter also raised broader concerns relating to separation of powers. The Court was required to determine whether prescribing an interim appointment mechanism would amount to judicial overreach or constitute a legitimate exercise of its constitutional duty to safeguard democracy.

DECISION AND REASONING IN ANOOP BARANWAL CASE

The Constitution Bench held that free and fair elections are an integral component of the basic structure of the Constitution and that the independence of the Election Commission is indispensable to this principle. The Court reasoned that executive monopoly over appointments creates a reasonable apprehension of bias, which is sufficient to erode public confidence in the electoral process.

Invoking its powers under Articles 142 and 324⁹, the Court directed that, until Parliament enacts a law, appointments to the offices of the Chief Election Commissioner and Election Commissioners shall be made on the recommendation of a committee comprising the Prime Minister, the Leader of Opposition in the Lok Sabha, and the Chief Justice of India. The Court clarified that this arrangement was interim in nature and intended to operate only until legislative action is taken.

CRITICAL ANALYSIS OF THE THIS JUDGMENT

The Anoop Baranwal judgment has been widely regarded as a significant affirmation of constitutional values. By introducing a multi-institutional appointment mechanism, the Court sought to mitigate executive dominance and reinforce the perception of neutrality. The inclusion of the Chief Justice of India was particularly symbolic, reflecting an effort to anchor the process in constitutional balance.

At the same time, the decision has attracted criticism. Some commentators argue that judicial involvement in appointment processes risks diluting the separation of powers. Others note that the interim mechanism lacks detailed procedural safeguards, such as transparent eligibility criteria and a structured selection process. Nonetheless, given the prolonged legislative inaction, the judgment represents a pragmatic and constitutionally defensible response.

LEGISLATIVE DEVELOPMENTS AFTER ANOOP BARANWAL CASE

Following the decision in Anoop Baranwal, Parliament enacted the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

⁹ The Indian Constitution, 1950

The legislation marks the first statutory attempt to regulate appointments under Article 324(2). However, the composition of the selection committee under the Act, which replaces the Chief Justice of India with a Union Cabinet Minister nominated by the Prime Minister, has reignited concerns regarding executive predominance.

While the enactment of the law reflects legislative engagement with the issue, its substantive design raises questions about compliance with the spirit of the Anoop Baranwal judgment. The continued dominance of the executive within the selection committee suggests that the underlying problem of institutional independence remains unresolved.

COMPARATIVE PERSPECTIVES FROM OTHER DEMOCRACIES

A comparative analysis reveals that established democracies generally adopt appointment mechanisms that limit executive discretion through legislative oversight or bipartisan participation. In the *United States*, members of the Federal Election Commission are appointed by the President but require Senate confirmation, ensuring legislative scrutiny. In the United Kingdom, appointments to the Electoral Commission are overseen by Parliament through the Speaker's Committee, emphasizing accountability to the legislature rather than the executive.

Canada follows a particularly robust model, wherein the Chief Electoral Officer is appointed by a resolution of the House of Commons, reflecting cross-party consensus. Australia incorporates judicial participation and parliamentary oversight in the composition of its electoral commission. *South Africa* employs one of the most transparent models, involving public interviews and parliamentary shortlisting prior to presidential appointment.

These comparative experiences underscore the importance of transparency, inclusiveness, and institutional balance in safeguarding electoral independence.

CONCLUSION AND SUGGESTIONS

The analysis demonstrates that executive dominance in the appointment of Election Commissioners has historically weakened the perceived independence of the Election Commission of India. The Anoop Baranwal judgment represents a constitutionally significant corrective, but subsequent legislative developments indicate an ongoing struggle between democratic ideals and political control. Comparative models highlight the necessity of meaningful checks on executive discretion.

The appointment of the Chief Election Commissioner and Election Commissioners is central to the credibility of India's electoral democracy. The Supreme Court's intervention in *Anoop Baranwal v. Union of India* underscores the judiciary's role in preserving constitutional values in the face of institutional inertia. However, the long-term protection of electoral independence cannot rest solely on judicial innovation.

Sustainable reform requires a legislative framework that genuinely reflects constitutional principles of independence, transparency, and accountability. Without such commitment, statutory compliance risks becoming a formal exercise divorced from constitutional morality.

Future reforms should aim to rebalance the selection committee to reduce executive dominance and enhance institutional neutrality. Transparent eligibility criteria and reasoned selection processes should be statutorily mandated. Uniform security of tenure must be extended to all Election Commissioners. Finally, parliamentary oversight mechanisms should be strengthened to ensure accountability while preserving independence.

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