

COMPARATIVE ATTITUDES TO ELECTORAL INSTITUTIONS: PROBLEMS AND REFORM OPPORTUNITIES IN INDIA AND BEYOND

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ABSTRACT

This article engages in a critical analysis of the Election Commission of India (ECI), a Constitutionally established Election Management Body (EMB) that has developed into one of the strongest institutions of Indian democracy. With Article 324 of the Constitution creating it in 1950, the ECI was initially conceptualized as an organ of supervision of elections with a view to seeking procedural legitimacy. With the passage of time, through judicial interpretation and legislative evolution, its mandate has grown significantly in order to exercise very comprehensive supervisory and quasi-judicial powers. The Supreme Court has consistently reaffirmed and strengthened this independence, thus increasing the institutional stature of the Commission.

But the expansion of powers has also raised important issues concerning accountability and transparency. Although the ECI is hailed for conducting free and fair elections, doubts are raised whether the lack of proper checks could undermine democratic equilibrium. With the fast-changing socio-political context, the need for reforms to enhance the independence of institutions, structural accountability, and responsiveness to popular expectations has only gained more strength. This research analyzes the formation, structure, and roles of the ECI in the broader democratic governance framework, contrasts its model with global EMB models, and suggests reforms consistent with global best practices to ensure electoral integrity in India.

Keywords: *Election, Commission, Accountability, Autonomy, Reform*

1. INTRODUCTION

The governance through democracy relies on elections that allow legitimacy to representative institutions and warrant the rule of law. This process requires that EMBS should be independent and efficient in earning the trust of this process. The ECI that is established in accordance with Article 324 of the Constitution of India, 1950 is the constitutional organ charged with the mandate of supervising,

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controlling and regulating the elections to the Parliament, State Legislatures, the offices of the President and VicePresident in India. The challenge of ECI is unique and extremely significant because India has a giant electorate of over 900 million people and is socio-culturally diverse with complex federal logistics.¹

The Commission has demonstrated brilliant independence over the years and insulated to some degree by judicial pronouncements that shelter it against inappropriate executive interference.² ECI has been successful in the electoral integrity through consecutive innovations like introduction of Electronic Voting Machines (EVM) and Voter Verified Paper Audit Trail (VVPAT) that has been used to increase transparency and efficiency in voting.³

These loopholes would ruin the confidence of the citizens who are in need of reforms that would help in the support of participatory democracy.⁴ Competitive multi-party politics is becoming more common, augmented sway of cash and muscular force and augmented needs of inclusive democracy have augmented anticipations of fair and versatile electoral management. The electorate and the political players, alike, at present need an institution that is responsive to the complexity of the governance, technological uproar and the evolving morals of electoral practice.⁵

Technology has brought a revolution to the election process besides displaying the limitation under the form of cyber threats and threats to data integrity. Comparative lessons also reveal that lack of capacity to develop meaningful protection of digital electoral systems may jeopardize the confidence of the masses and lower the integrity elections.⁶

The present research is an evaluation of the possibility whether the balance between the institutional power and accountability in the work of the ECI was reached by practicing the doctrinal legal analysis. According to the comparative

¹ The Constitution of India, 1950, Article 324; Law Commission of India, 170th Report on Reform of the Electoral Laws (1999); Law Commission of India, 255th Report on Electoral Reforms: Issues and Challenges (2015).

² Election Commissioner (Amendment) Act, 1989; *T.N. Seshan v. Union of India*, AIR 1995 SC 1203; (1995) 4 SCC 611.

³ Election Commission of India, Annual Report (New Delhi, 2019); Election Commission of India, Introduction of EVMs and VVPATs (2013–2018).

⁴ Anoop Baranwal v. Union of India, (2023) 6 SCC 161; Law Commission of India, 255th Report on Electoral Reforms: Issues and Challenges (2015).

⁵ Association for Democratic Reforms, Report on Criminalization of Politics in India (2020).

⁶ United Nations Development Programme, Guidelines for Cybersecurity in Elections (2024).

models with other jurisdictions such as Indonesia, South Africa and Kenya, the paper has brought out the fact that institutional accountability and institutional autonomy should probably be in balance. The greatest aspect in its discussion is the fact that the ECI still requires significant reforms like the ability to open appointments and the legal authorities to enforce laws, the formalisation of a permanent secretariat, audit processes and the increased technological controls. The reforms will be very instrumental in enabling the ECI to carry out its constitutional mandate more effectively and enhance the Indian democratic system.

1.1 Objectives

ECI occupies a constitutionally guaranteed and unrivaled position in the Indian democracy and has a hard task to occupy and call free and fair elections in one of the largest electorates in the globe.

- To seek the constitutional and legal provisions that will allow ECI.⁷
- To determine the expansion in the pragmatic scope of the ECI.⁸
- To evaluate the interaction between electoral legislation and the execution of these legislations.⁹

2. RESEARCH METHODOLOGY

The methodology used is qualitative doctrinal legal research with the intent of examining the constitutional, statutory and judicial structures of ECI from a comparative legal perspective. A legal field such as electoral administration seems particularly suited for doctrinal research. This approach surveys and analyses legal texts, case law and official reports and comments in order to understand and to critique the juridical-institutional tools of the ECI.¹⁰

The research employs statutory interpretation methods drawing on the Constitution of India, the Representation of the People Act, 1951, and judicial precedents. Primary sources include decisions of the Supreme Court, particularly

⁷ The Constitution of India, Article 324; Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951.

⁸ Law Commission of India, 255th Report on Electoral Reforms: Issues and Challenges, 12–18 (2015); Anoop Baranwal v. Union of India, (2023) 6 SCC 161, 175–79.

⁹ M.M.A. Bhat, ‘Governing Democracy Outside the Law: India’s Election Commission and the Challenge of Accountability’, *Asian Journal of Comparative Law*, Vol. 16, 313, 315–18 (2021).

¹⁰ David Silverman, *Doing Qualitative Research: A Practical Handbook*, 5th ed., 2016; Roger Cotterrell, “The Politics of Jurisprudence: Doctrinal Legal Research Methods,” *Legal Studies*, vol. 29, no. 1, 105–25 (2009).

landmark cases establishing the Commission's role and limitations. Secondary sources include constitutional law treatises, academic articles on electoral governance, Law Commission reports, and expert commentaries on Indian electoral processes.

In *Anoop Baranwal v. Union of India*, the Supreme Court held that the independence of the Election Commission is vital to free and fair elections, and appointments cannot be left solely to the Executive. It directed that, until Parliament enacts a law, the CEC and Election Commissioners must be appointed by a committee consisting of the Prime Minister, the Leader of the Opposition, and the Chief Justice of India.¹¹ One of the main topics covered in this research is the analysis of the reports of the Law Commission of India and other government agencies that deal with electoral reforms in order to have a contextualized interpretation of legislative and policy considerations that govern the operation of the ECI. Additionally, the research references institutional studies on electoral commissions in comparative jurisdictions to identify best practices and lessons applicable to India.

The comparative legal method involves examining the institutional designs, statutory frameworks, appointment mechanisms, accountability structures and enforcement powers of electoral commissions in Indonesia, South Africa and Kenya. This comparative analysis illuminates gaps in Indian electoral law and identifies reform pathways supported by successful international models.

3. CONTENT AND DATA ANALYSES

This section analyses the constitutional, legislative, judicial, comparative dimensions of the ECI's operation and institutional development highlighting its strengths, challenges and areas for reform.¹²

3.1 Constitutional and Statutory Foundations

Article 324 of the Indian Constitution confers on the ECI comprehensive powers regarding the conduct of elections to Parliament, State Legislatures, Constitutional offices of President and Vice-President. The framers intended the Commission to be independent to insulate it from executive or political interference, ensuring

¹¹ The Constitution of India, Article 324; Representation of the People Act, 1951; *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161.

¹² Granville Austin, *Working a Democratic Constitution: The Indian Experience* 145 (Oxford University Press, 1999).

electoral fairness and impartiality.¹³ The Representation of the People Act, 1951 supplements Article 324 by detailing procedural aspects by including voter registration, election conduct, candidate registration and resolution of disputes.¹⁴

However, the constitutional provision is terse offering broad-phrased authority with limited procedural directives. Legislative supplements provide specific electoral frameworks but often lack explicit guidance on institutional accountability mechanisms which has contributed to institutional ambiguity over the years.¹⁵

3.2 Evolution of Institutional Composition

The initial design of the ECI was changed in 1989 when it was decided that multiple election commissioners would be introduced instead of a single member to better manage the growing administrative burden and to reduce the amount of power that is held by one person.¹⁶

The constitutional format assures the Chief Election Commissioner a certain degree of security of tenure as he can only be removed on grounds similar to those of a Supreme Court judge. In addition, this protects the office from being arbitrarily relieved by political opponents.¹⁷ In *T.N. Seshan v. Union of India* (1995), the Supreme Court ruled that the Election Commission must operate as a collective body, with the Chief Election Commissioner functioning as *first among equals* rather than exercising unilateral authority.¹⁸

3.3 Operational Enlargements and Technological Integration

The ECI has introduced phenomenal technological innovations, one of which is an electronic voting machine (EVM) that was put into operation in the 1990s and a Voter Verified Paper Audit Trail (VVPAT) which is a paper trail that allows voters to verify the vote entered in the machine as a fourth step in the security.¹⁹

These reforms facilitated polling procedures as well as cut down on the chances of mistakes and also encouraged voting officials' credibility. Meanwhile, the ECI

¹³ Constituent Assembly Debates, Vol VIII, 16 June 1949, 905.

¹⁴ The Representation of the People Act, 1951, ss 23–29.

¹⁵ B.L. Hansaria, *Elections: Law and Practice* 57 (LexisNexis, 2017).

¹⁶ The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

¹⁷ The Constitution of India, art. 324(5).

¹⁸ T.N. Seshan v. Union of India, (1995) 4 SCC 611.

¹⁹ Election Commission of India, *Status Paper on EVM and VVPAT* (2017).

oversee the Model Code of Conduct (MCC) administration, a non-statutory, yet influential and binding charter for political parties' conduct during the election period. As a regulatory pioneer, the MCC, though not endowed with legal powers, operates mainly on the basis of voter and institutional pressure.²⁰

3.4 Accountability and Oversight Mechanisms

Despite constitutional safeguards and operational efficacy, the ECI's accountability structures exhibit notable lacunae. The absence of a permanent, independently functioning secretariat hampers institutional continuity and transparency.²¹ The Commission operates with limited formal oversight with no external audit body or parliamentary committee mandated explicitly to scrutinize its existence despite its quasi-judicial functions.

The appointment mechanism remains controversial with commissioners appointed by the President on executive advice, lacking formal consultative or bipartisan processes. This opacity invites public suspicion regarding potential politicization, eroding institutional legitimacy.²²

While the MCC is pivotal for ethical electioneering, its non-binding nature limits enforceability. The inability to impose firm sanctions against transgressors diminishes the deterrent effect, raising questions about the efficacy of self-regulation in high stakes electoral contests.²³

3.5 Comparative International Frameworks

Indonesia: Komisi Pemilihan Umum (KPU) enjoys formal independence as mandated by Law No. 7 of 2017, which establishes clear institutional autonomy during all stages of elections nomination, party verification and vote tabulation. The KPU's accountability is enforced by mandatory reporting to both the legislature (DPR-RI) and oversight by the Bawaslu (Elections Supervisory Board), which handles disputes and complaints through mediation or adjudication. Notably, the 2024 simultaneous elections tested Indonesia's commitment to integrity amid allegations of irregularities leading to parliamentary investigations and robust civil society engagement. The selection process for commissioners

²⁰ Election Commission of India, *Compendium of Instructions on Model Code of Conduct* (2021).

²¹ Law Commission of India, 255th Report on Electoral Reforms (2015) para 5.3.

²² P.D.T. Achary, *Constitutional Government and Democracy in India* (Oxford University Press, 2018) 232.

²³ Sujit Choudhry et al, *Constitutional Democracy in Crisis?* 289(Oxford University Press, 2018).

requires parliamentary approval and KPU's financial management is subject to regular audit, ensuring transparency and public confidence.²⁴

South Africa: Independent Electoral Commission (IEC) is constitutionally enshrined (Constitution, 1996, s. 190) as an independent authority responsible for managing elections and referenda. Its five members are publicly interviewed by a multipartisan panel chaired by the Chief Justice shortlisted candidates are then approved by the National Assembly and appointed by the President. Financial autonomy is guaranteed by direct parliamentary appropriations with ring-fenced budgets and mandatory annual reporting to Parliament rather than the executive. Continual risk management, internal audit systems and requirements for public engagement underpin the IEC's reputation for transparency and fair electoral administration. The IEC is recognized for effective technological adoption, voter education and its use of a multiparty liaison committee to resolve disputes and enhance trust.²⁵

Kenya: Independent Electoral and Boundaries Commission (IEBC) was established by the 2010 Constitution, replacing its discredited predecessor. In fact, it succeeded the interim independent electoral commission (IIEC) which earlier replaced Electoral commission of Kenya (ECK) after the 2007 crisis. The Commission's formal independence is embedded through a multi-stakeholder appointment process. A selection panel of civil leaders forwards a shortlist to the President (who appoints seven commissioners with parliamentary approval). The IEBC's budget is administered via an independent statutory fund and subjected to annual audit by the Auditor-General. Reinforcing financial autonomy. The commission administers an expansive electoral code of conduct binding political actors also empowered to undertake or mandate external audits (for example, of voter registers by independent agencies such as KPMG). The legal mandate of the IEBC also grants it residual authority for electoral innovations and accountability reporting.²⁶

²⁴ Law No. 7 of 2017 on General Elections (Indonesia); Prayudi, 'And Responsible 2024 Election: The Challenge Ahead', *Info Singkat*, XV (4), 2023 (DPR-RI); International Foundation for Electoral Systems (IFES), *Elections in Indonesia: 2024 General Elections, FAQ* (Feb. 2024).

²⁵ Constitution of the Republic of South Africa, 1996, s. 190; International IDEA, 'Protecting Electoral Integrity: The Case of South Africa', Case Study, Nov. 2023; Padmanabhan, 'Democracy's Baby Blocks: South Africa's Electoral Commissions' Law and Contemporary Problems (2014).

²⁶ Constitution of Kenya, 2010; Independent Electoral and Boundaries Commission (IEBC) Act, 2011; ACE Project, 'Kenya: The Independent Electoral and Boundaries Commission' (2007); Report of the Auditor-General on IEBC, Parliament of Kenya, 2022.

3.6 Interaction Between Electoral Legislation and Representation

The substantive electoral laws in India, primarily the Representation of the People Act interact in complex ways with the democratic imperatives of representation and political competitiveness.²⁷ Issues such as the criminalization of politics documented in multiple Law Commission reports constrain the ability of the ECI to uphold ideal democratic standards purely through administrative actions. The laws simultaneously set formal rules but often struggle with practical enforcement, necessitating either legislative reforms or expanded institutional powers.

3.7 Technological Challenges and Electoral Integrity

Electronic voting poses cybersecurity risks amid emerging political misinformation campaigns, fraud allegations and voter disenfranchisement concerns. Academic assessments emphasize the necessity for ECI to align technological integration with stringent audit trails, transparent reporting, public accessibility to election data to maintain confidence and legitimacy.

4. ARGUMENTS AND DISCUSSION

ECI is the principal constitutionally device, which basically ensures that India remains a country with a democratic system that is free from electoral violations and political manipulations. The intricate coexistence of institutional freedom and accountability represents the very core of the democratic electoral governance system. ECI's independence from the executive, partisan pressures and accountability mechanisms are inevitable to provide an element of legality, openness and confidence to the stakeholders. The paper critically delves into the dimensions of this debate illustrated by the legal precedents, the opinions of scholars and the comparative models of electoral governance.²⁸

4.1 Expansion of Institutional Authority Beyond Original Mandate

The uncertainty in the legal provisions regulating the ECI's powers heightens the problem of drawing the boundary distinction of the decision-making autonomy and hypothetical overstepping of authority.

In his opinion, the changing role of the ECI functions corresponds to the requirement of democratic robustness, which, among other things includes the

²⁷ Law Commission of India, 244th Report on Electoral Disqualifications (2014).

²⁸ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 145 (Oxford University Press, 1999).

responsibility for accurately conducted elections aided by the latest technology and the management of the electoral malpractices that have become rampant in various areas.²⁹ However, this quality of being able to adapt should not be allowed to override the role of institutional checks entirely, as these are in place to prevent the decay of the democratic system or the coming into existence of an electoral technocracy that cannot be held accountable.

4.2 Transparency and Appointment Mechanisms: Safeguarding Independence

The Constitution guarantees the Chief Election Commissioner's (CEC) term by specifying removal only on grounds relatable to Supreme Court judges, hence implementing a security of tenure in practice.³⁰ Appointment process itself is still an executive-centric and non-transparent one where the President appoints the commissioners on the advice of the Union government without any obligatory bipartisan or parliamentary consultation having been conducted.

There are a number of legal scholars who claim that the lack of institutionalised transparency in this case leads to vulnerability to political influence which in turn undermines public trust and may even affect the Commission's impartiality. The Supreme Court's verdict in *Anoop Baranwal v. Union of India* (2023) whereby a collegium is to be constituted to supervise appointments manifests the judiciary's recognition of such a gap.

Practices in Indonesia, South Africa, and Kenya indicate the necessity of the procedures for the appointments that are not politicized to ensure the legitimacy of the institution. In Indonesia, the president-appointed selection team publicly shortlists the candidates for both the General Election Commission (KPU) as well as the Election Supervisory Body (Bawaslu), while parliamentary hearings act as another transparency layer.³¹ In South Africa an independent panel, composed of multiple members headed by the Chief Justice conducts public interviews of the applicants and suggests them to Parliament which then votes on them before the President approves the appointments.³² The appointments to the Independent Electoral and Boundaries Commission (IEBC) of Kenya are rambling, multi-stage, open process, with a public call for applications, selection, vetting by a representative panel, structured parliamentary approval, and final presidential

²⁹ Ramaswamy, *Electronic Voting in India: Opportunities and Risks* 65 (2011).

³⁰ *T.N. Seshan v. Union of India*, (1995) 4 SCC 611.

³¹ ACE Project, 'Indonesia – Voter Registration Case Study' (2024).

³² My Vote Counts South Africa, *IEC Commissioner Appointment Process Report 2022* (2023).

appointment.³³ These layered consultative procedures based on openness and broad-based participation are recognized as very important to the mitigation of executive overreach and the enhancement of public trust in electoral commissions.

4.3 Enforcement Powers and the Model Code of Conduct

MCC that focuses on maintain purity and morality of the electoral practices, is essentially a non-binding one in terms of enforcement powers.³⁴ This brings about a certain dilemma where the commission is forced to rely to a very large extent on the cooperation of the political fraternity and subjective persuasion, which although being a very effective way of enforcement, are yet not supported by any punishments which can be put into action. As a result, infringements of the MCC like the misappropriation of the government machinery, hate speech, money power are, *inter alia*, violations that are not strictly regulated, allowing the unfairness of elections to be perpetuated.

The Law Commission of India and several reports suggest the need for the statutory enactment of the MCC or similar ones with explicit provisions for punishment to empower the ECI in supervisory capacity.³⁵ Such a step would lessen the present system's discrepancies in electoral accountability that it tolerates and reinstate the principles of democracy by preventing the occurrences of malpractices through the establishment of legally enforceable frameworks.

4.4 Institutional Infrastructure and Accountability Deficiencies

ECI, is the Supreme Constitutionally safeguarded authority, despite the fact that it lacks a permanent, professionally, and legally safeguarded secretariat. This restricts continuity in an organisation, technical skills as well as long-term planning. Law Commission's report deals with this issue as it highlights the need for a statutory basis for setting up a permanent secretariat under independent oversight to guarantee the latter's autonomy in regulating and administering itself.

A lack of external audits or parliamentary review with a specific mandate for assessing the ECI's functioning and finances further accountability.³⁶ The

³³ Independent Electoral and Boundaries Commission Act, Kenya, 2011; Report of the Auditor-General on Independent Electoral and Boundaries Commission, Parliament of Kenya (2022).

³⁴ Prakash Shah (n 2) 102.

³⁵ Law Commission of India, 170th Report on Reform of the Electoral Laws (1999).

³⁶ Transparency International, *Electoral Integrity Report 2023* 23 (Transparency International, 2023).

assessments of Transparency International note that such overseas oversight structures play a crucial role in establishing instruments of trust among the public and in preventing the abuse of power. Specifically, the ECI's co-existence and operation as a court require corrective measures to be in accordance with procedural fairness to avoid the situation of judicial capture or administrative arbitrariness.

4.5 Electoral Technology and Integrity Challenges

India's technological aspect of elections is a double-edged administrative feature as it offers the administrative authorities a chance to solve problems while at the same time posing a risk to the democratic nature of elections risk.³⁷ Besides, devices like EVMs and VVPAT have been instrumental in the effectiveness of Indian elections and the visibility of voting methods have been the main causes of the major decrease in fraud cases that were previously seen in elections conducted via paper ballots. Nevertheless, the political debate surrounding their reliability, security is still going on as well as the public debate. Cybersecurity issues comprise the infection of the software through hacking, which also adds to conspiracy theories around elections.

The widespread and academic consensus recommends that the implementation of several protective measures to conceal the use of electoral technology from the manipulations or public trust should include the instatement of transparency protocols, real-time monitoring, and voter education.³⁸ Besides transparency there should be independent verification procedures and multi-stakeholder involvement, which are the most convincing international best practices for the legitimacy of the regularity of elections.

4.6 Comparative Global Perspectives on Autonomy and Accountability

Indonesia: KPU is granted strong statutory autonomy as detailed in Law 7 of 2017. In charge of administering elections that are independent of the executive branch, thus, elections free from undue political influence are held. Transparency of the appointment is ensured through a selection panel appointed by the president that publicly shortlists candidates and subjects them to parliamentary hearings thus, ensuring democratic legitimacy and the trust of multi-stakeholder. Accountability is supported by various institutional mechanisms such as the obligation to report to the legislature and the supervision by the Election Supervisory Board (Bawaslu),

³⁷ United Nations Development Programme, *Enhancing Electoral Integrity through Technology* 22 (2024).

³⁸ *Ibid.*

which also has the power to impose penalties on electoral violations. These checks and balances constitute a complex system in which autonomy is safeguarded but are under the control of normative accountability that are implemented through legal and political institutions.³⁹

South Africa: The Independent Electoral Commission (IEC) is an example of a model of a system that is independent and free from interference as defined by the Constitution. The IEC which is established under section 190 of the Constitution is protected from executive interference through a multi-institutional appointment process led by the Chief Justice and involving other key constitutional officeholders. The public interviews of candidates enhance the transparency, while the direct budgetary allocation from Parliament guarantees the financial autonomy. The flow of accountability takes place through obligatory parliamentary reporting and political stakeholders engagement through multiparty liaison committees. This outline features the legitimacy of an institution by combining the free functioning with the organized and participative oversight mechanisms.⁴⁰

Kenya: Under the Kenyan Constitution, the Independent Electoral and Boundaries Commission (IEBC) acts as a model of a combined system that was created after the 2007 electoral crisis to revive the public trust in administration of elections. The freedom of the IEBC is secured by the Constitution, however, its selection process is subject to a number of vetting layers by a panel consisting of various public figures. The method ensures both transparency and wide-ranging accountability. The financial independence is ensured by an independent fund which is subjected to an annual audit by the Auditor-General. The IEBC's mission includes the active implementation of the electoral code with the possibility of judicial review, thus indicating the presence of legal accountability in the system of the commission's autonomy.⁴¹

These illustrate that autonomous electoral institutions require transparent appointment mechanisms, strong accountability frameworks and financial independence to effectively foster electoral integrity. While the models vary, the shared commitment to mitigating executive capture and enhancing public trust

³⁹ Law No. 7 of 2017 on General Elections (Indonesia); "Elections in Indonesia: 2024 Regional Head Elections," IFES (2024); DPR RI Public Reports (2023).

⁴⁰ Constitution of South Africa, 1996, s. 190; IEC Annual Report (2023); "IEC Commissioner Appointment Process Report," My Vote Counts South Africa (2022).

⁴¹ Constitution of Kenya, 2010; Independent Electoral and Boundaries Commission Act, 2011; Auditor-General's Report on IEBC (2022); Kenya Parliament Oversight Documents (2023).

through consultative, transparent and rule-bound procedures is a universal imperative.

5. RESULT/FINDINGS

5.1 Institutional Evolution and Expanded Mandate

The transformation of the ECI into a supervisory agency that is constitutionally designed into a quasi-judicial and regulatory body that is possessed by massive authority.⁴² This development arose because of the size and heterogeneity of the electorate in India and the need to have a strong checkpoint due to the constant threat to electoral integrity. The role of the Commission is growing through its growing interference in campaign finance, disqualification of candidates, the inner democracy of parties and the integrity of voter roll.⁴³ Although this growth has seen the ECI balance the wanton exercise of power by political actors has occasionally emerged within a legal grey zone with the limits of authority being established more by case law and pragmatism than by statute.⁴⁴

5.2 Statutory Uncertainties and Legislative Support

The results confirm the opinion that the legal and procedural particularism that the ECI is built on is weaker than one would want such an institution to be. The lack of statutory status of key regulatory instruments, most importantly MCC, makes enforcement impossible and leaves the ECI relying on a voluntary approach and executive cooperation.⁴⁵ Although the Law Commission and other expert bodies suggest it, Parliament still does not enact reforms that would grant the MCC the force of law or define punitive powers the Commission may impose in case of violation that led to a normative accountability gap.⁴⁶

5.3 Transparency in Appointment and the Executive Influence Risk

Current method of appointment of Election Commissioners can be characterized as crooked appointments are made by the executive arm without clear guidelines or bipartisan vetting. Cases like the one *Anoop Baranwal v Union of India* (2023) highlight the necessity to reform a collegium model to that employed in the high

⁴² Radhika Bhat, 'The Evolving Role of Election Commissions in Emerging Democracies', 56 *Economic and Political Weekly* 32 (2021).

⁴³ P.B. Mehta, 'The Rise of the Election Commission', (2017) 52 *Economic and Political Weekly* 15.

⁴⁴ *Ibid.*

⁴⁵ Law Commission of India, 170th Report on Reform of Electoral Laws (1999).

⁴⁶ Justice J.S. Verma, Committee on Electoral Reforms Report (Government of India, 2013) 41.

judicial appointments to ensure the perception and actuality of Commission independence.⁴⁷

5.4 Tenure Security/Institutional Vulnerability

CEC is given solid constitutional protection such as removal that is achieved only in a procedure that resembles that of the Supreme Court judges.⁴⁸ Nonetheless, EC are more susceptible because their appointment is not so strictly regulated, which may allow exerting indirect influence on the CEC by affecting the tenures of colleagues.⁴⁹ This is an institutional weakness that is noted by scholars and law reform commissions and has the potential to drive the overall independence of the ECI.⁵⁰

5.5 Administrative and Institutional Deficits

ECI, is the Supreme Constitutionally safeguarded authority, despite the fact that it lacks a permanent, professionally, and legally safeguarded secretariat. This restricts continuity in an organisation, technical skills as well as long-term planning. Comparative analysis involving the electoral organizations in Indonesia, South Africa and Kenya shows that such jurisdictions have both made permanent staffing and resource autonomy statutory priorities that has positioned them with greater resilience in operations and isolation of political cycles.

5.6 Weaknesses of Enforcement and Ethical Compliance

The lack of binding and substantive sanctions by the ECI as breaches of the MCC undermines its ability to curb malpractices in campaigns of high stakes, where persons misusing the state machinery or committing crimes to result in the election.⁵¹ The Commission has been very skillful in capitalizing on the censure of the people and media attention. Lack of legally stipulated punishments to those caught violating leads to unequal application and according to the Transparency International, undermines the normative electoral discipline.⁵²

⁴⁷ M.M.A. Bhat, *Democracy and Institutional Design: Lessons from India* 233 (LexisNexis, 2021).

⁴⁸ *T N Seshan v Union of India*, (1995) 4 SCC 611.

⁴⁹ Law Commission of India (n 5).

⁵⁰ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 156 (Oxford University Press, 1999).

⁵¹ Prakash Shah (n 1) 121.

⁵² Transparency International, *Global Corruption Barometer: Politics and Elections* 52 (Transparency International, 2023).

5.7 Technological Initiatives and Integrity Problems

EVMs turning point and the installation of VVPATs have not only increased the effective utilization of the election process but have also addressed the particular weaknesses that existed in paper-ballot system. In addition, rumours of EVM tampering where machines are kept, software audit procedures, and security level that is not disclosed to the final consumers continue.⁵³ The existing literature and the global practices are leading to the need of security audits with multiple layers, external testing, and the participation of the people with the purpose of reducing suspicion and raising trust.⁵⁴

5.8 Cybersecurity and Misinformation

Digitalisation of electoral rolls and the application of information technology during the election process have introduced new areas of weaknesses. According to United Nations Development Programme (UNDP) electoral security reports, due to a lack of cyber preparedness, the system is vulnerable to external interference, misinformation, and large-scale disenfranchisement due to technical malfunction or data leaks.⁵⁵ The ECI has addressed these problems though not steadily with much reliance on the government resource allocation and will.⁵⁶

5.9 Comparative Lessons and Reform Opportunities

Many of the weaknesses found in India have been countered elsewhere by statutory reform, multi-stakeholder consultation and ongoing institutional auditing. E.g. the EC of Indonesia ensures transparent reporting to Parliament and formal annual audits, as mandated by legislation mandates. The IEC of South Africa is constitutionally independent and subject to parliament oversight. Kenya IEBC is appointed through a reputation-based vetting system that is open and participatory which includes several stakeholders legally obliging them to the enforcement of the code of conduct, and operating a transparent management system. These examples show that the degree of political and administrative independence, which goes along with the required openness and systematized responsibility, empowers

⁵³ Ramaswamy, *Electronic Voting in India: Opportunities and Risks* 66 (Sage Publications, New Delhi, 2011).

⁵⁴ Association for Democratic Reforms, Report on EVMs and VVPATs (2019) 12.

⁵⁵ United Nations Development Programme (UNDP), *Cybersecurity and Elections: A Handbook for Electoral Management Bodies* 44 (UNDP, 2024).

⁵⁶ Sunil Abraham and Snehashish Ghosh, 'Elections and Technology in India: Data Security Risks', 14 *Indian Journal of Law and Technology* 102 (2019).

the trust of the people to a greater extent and, therefore, lowers the chances of the power abuse in such polarised situations.⁵⁷

Synthesis of Results

The discussion admits that the key benefits of the ECI, which consist of increased autonomy, flexibility, and solid institutional legacy are partially undermined by a variety of endemic weakness that include non-transparent appointment practices, limited enforcement and adaptation capacities with technological and oversight norms. The main issue of the ECI is the achievement of structural reforms in the form of transparent and depoliticized appointments, enforceable electoral codes, effective cybersecurity systems, professionalization of the secretariat, and enhance parliamentary oversight, which, besides the fact that they make the commission more visible to the populace and accountable to them, also introduce changes.⁵⁸ The ECI can continue to safeguard the democratic rights of India only when it adopts such reforms under the new challenges of political election integrity.

6. CONCLUSION AND SUGGESTIONS

The Election Commission of India remains a pivotal constitutional institution in India's democratic framework, essential for managing free, fair and credible elections in one of the world's largest democracies.⁵⁹ However, as the powers and responsibilities of the ECI have expanded significantly over time, the institution has faced mounting pressures from institutional ambiguities, opaque appointment processes, limited enforcement mechanisms, and resource constraints. The fundamental tension between ECI's autonomy and its accountability structures remains unresolved, creating vulnerabilities that could undermine the integrity of electoral processes as political polarization increases and technological threats evolve.⁶⁰

6.1 Specific Recommendations for Institutional Reform

⁵⁷ *Ibid.*

⁵⁸ Suri, K.C., *Democracy, Electoral Reforms and the Election Commission of India*, Oxford University Press, 2019; Vaishnav, M., *When Crime Pays: Money and Muscle in Indian Politics*, Yale University Press, 2017; Election Commission of India, *Annual Report*, 2022.

⁵⁹ Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* 214 (Oxford University Press, 1999).

⁶⁰ M.P. Singh, 'Election Commission of India: Institutional Design and Autonomy', 51(1) *Economic and Political Weekly* 65 (2016).

Legislative Enactment and Statutory Support: Parliament must enact comprehensive legislation that formally establishes the legal status of the Model Code of Conduct with explicit punitive provisions. This should include graduated sanctions for electoral violations ranging from monetary penalties to barring of political candidates. This will transform the MCC from a voluntary charter dependent on political cooperation into a legally binding instrument with enforceable consequences, significantly strengthening the ECI's capacity to prevent electoral malpractices. **Law Commission of India, 255th Report on Electoral Reforms: Issues and Challenges (2015)**

Transparent and Depoliticized Appointment Mechanism: The appointment process for Election Commissioners must be reformed through legislation to establish a collegiumbased system similar to higher judicial appointments, as recommended by the Supreme Court in Anoop Baranwal v. Union of India. This collegium should comprise the Prime Minister, Leader of the Opposition, and Chief Justice of India, ensuring multipartisan vetting and parliamentary oversight. This mechanism will eliminate executive monopoly in appointments, enhance institutional legitimacy, and insulate the Commission from partisan pressures.

Institutional Infrastructure Development: The ECI requires a permanent, statutorily protected secretariat with professional staff, adequate funding mechanisms, and independent administrative authority. This secretariat must operate on multiyear budget allocations ring-fenced from electoral cycles, ensuring continuity of institutional memory, technical capacity, and long-term planning. This structural change will enable the ECI to respond effectively to emerging challenges including cybersecurity threats, voter education, and technological innovations.

Parliamentary Oversight and External Audit: Parliament should establish a dedicated Standing Committee on Electoral Affairs with explicit mandate to conduct regular scrutiny of the ECI's functioning, financial management, and policy decisions. Additionally, the ECI should be subjected to annual independent external audits by the Comptroller and Auditor General with public reporting requirements. This dual oversight mechanism will enhance accountability without compromising institutional independence.

Cybersecurity and Technological Safeguards: The ECI must align its technological protocols with international best practices including mandatory security audits of electronic voting systems, cryptographic verification of voter databases, and real-time monitoring of electoral infrastructure. An independent technology audit panel comprising cybersecurity experts, electoral law specialists,

and civil society representatives should oversee technological implementations before deployment in elections.

Stakeholder Engagement and Transparency: The ECI should establish formal consultation mechanisms with civil society organizations, academic institutions, technology sectors, and political parties through a structured Electoral Governance Council. This Council should meet periodically to discuss emerging vulnerabilities, share feedback on electoral administration, and develop collaborative solutions to institutional challenges. Regular public disclosure of election data and electoral administration reports will further enhance transparency.

6.2 Constitutional Amendment Consideration

If statutory reforms prove insufficient to address systemic accountability deficits, consideration should be given to a limited constitutional amendment to clarify the ECI's mandate, enshrine the collegium appointment mechanism, establish the permanent secretariat's constitutional status, and define parliamentary oversight procedures. This would provide constitutional protection to reform measures preventing their reversal by subsequent governments.⁶¹

6.3 Comparative Lessons for Sustainable Reform

The electoral commission models in Indonesia, South Africa and Kenya demonstrate that electoral institutions can achieve both autonomy and accountability through carefully designed structural reforms. Indonesia's dual institutional structure (KPU and Bawaslu) provides checks and balances. South Africa's multipartisan appointment process ensures political legitimacy. Kenya's comprehensive legal framework combines constitutional protection with enforceable accountability. India can synthesize lessons from these models tailored to its federal structure and constitutional framework.

6.4 Implementation Roadmap

These reforms should be implemented through a phased approach beginning with statutory measures through parliamentary legislation (Model Code of Conduct enforcement, cybersecurity standards), followed by institutional reforms within executive discretion (appointment collegium, Standing Committee on Electoral

⁶¹ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 234–45 (Oxford University Press, 1999).

Affairs), and potentially constitutional amendment if broader systemic reform proves necessary. This phased approach allows democratic deliberation while accelerating necessary institutional strengthening.

6.5 Concluding Remarks

The ECI's role as guardian of Indian democracy has been largely successful in maintaining electoral integrity despite significant institutional constraints and evolving political challenges. The Supreme Court's landmark decision in *Anoop Baranwal v. Union of India* (2023) represents a critical juncture requiring Parliament to translate constitutional imperatives into statutory reforms. By implementing transparent appointment mechanisms, enforceable electoral codes, professional institutional infrastructure, and structured parliamentary oversight, India can ensure that the ECI continues to safeguard democratic integrity while remaining accountable to constitutional values and public expectations. These targeted reforms will strengthen the ECI's capacity to manage contemporary electoral challenges including digital threats, political polarization, and rising public expectations for institutional legitimacy. Only through such comprehensive reform can the ECI fulfill its constitutional mandate as a truly independent, accountable, and effective electoral guardian in India's evolving democracy.⁶²

⁶² Zoya Hasan, *Politics of Inclusion: Castes, Minorities and Affirmative Action* 176 (Oxford University Press, 2009).