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## Executive Influence Vs. Institutional Independence: A Commentary on the Election Commissioners Appointment Case (*Anoop Baranwal v. Union of India*) with 2024 Legislative Developments

~ *Mayank Chaurasia*

### Introduction

The institutional independence of the Election Commission of India (ECI) is not just a procedural luxury lying in the framework, instead, it is a constitutional condition for the legitimacy of democracy. The Article 324 of the Indian constitution established the Election Commission of India (ECI) vesting it with the superintendence, direction, and control of all elections to parliament, state legislatures, and the offices of the president and vice-president<sup>1</sup>. When the appointment process gives privileges to the executive structurally, the independence becomes contingent on individual integrity rather than an institutional design. Here, the Supreme Court's Constitution Bench judgment in the case "*Anoop Baranwal v. Union of India*" confronted this design defect and attempted a limited constitutional repair by prescribing an interim mechanism of selection<sup>2</sup>. The subsequent legislative response and the litigation that was followed in 2024 exposes a deeper conflict, that is, whether India's constitutional democracy will treat electoral governance as a public trust insulated from power, or as an administrative domain where executive discretion can be normalized.

### Background and Issues

The petition challenged the long-standing undergoing practice in which the executive effectively controlled the appointments of Chief Election Commissioner (CEC) and Election Commissioners (ECs), despite the presence of Article 324(2) that states that such appointments are "subject to the provisions of any law made in that behalf by Parliament<sup>3</sup>." From past decades, Parliament enacted

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<sup>1</sup> INDIA CONST. art. 324(1).

<sup>2</sup> *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161; 2023 (3) SCALE 640.

<sup>3</sup> INDIA CONST. art. 324(2).

laws on service conditions and tenure (e.g. the 1991 Act), but did not codify any transparent framework for appointment<sup>4</sup>. This “*constitutional silence*” permitted the dominance of executive, where on other side, ECI’s independence was defended as a convention rather than secured by law. The core constitutional issues here was whether a purely executive-controlled appointment process undermines (a) Equality and non-arbitrariness under Article 14, (b) The constitutional requirement of free and fair elections as part of the basic structure, and, (c) the independence embedded in article 324’s design<sup>5</sup>.

## **The Supreme Court Holding and Reasoning**

In March 2023, the constitution bench held that the existing appointment practice undergoing is dominated by the executive which posed a serious threat to the ECI’s independence and thereby to free and fair elections<sup>6</sup>. SCI thus recognized a legislative vacuum under Article 324(2), where the court exercise its constitutional authority to issue directions until parliament enacted any law.<sup>7</sup> The Court directed that the appointments of the CEC and ECs be made by the President of India on the advice of a three-member committee comprising of the Prime Minister, The Leader of the Opposition in the Lok Sabha (or the leader of the largest opposition party), and the Chief Justice of India<sup>8</sup>.

The judgement’s reasoning is grounded in the first principles : (1) Free and Fair elections are foundational to democratic constitutionalism; (2) Institutional independence is indispensable to securing them; and (3) Independence cannot be left to executive grace<sup>9</sup>. The court also noted here that structural vulnerabilities within the Article 324 itself includes differential removal protections between the CEC and the other ECs, which eventually can distort internal decision-making and invite pressure<sup>10</sup>.

Doctrinally, the Baranwal fits within the court’s broader pattern of “constitutional gap” where the parliament’s inaction may threaten constitutional function. But still, it also reflects a restrained posture, that is, it did not craft a full collegium model, instead, it crafted a balanced committee using the presence of the CJI as an institutional counterweight rather than judicial takeover.

## **Commentary and Critique: Independence Requires More than Procedure**

Baranwal is seems to be persuasive in diagnosing the institutional harm that was caused by executive dominance. In the terms of political economy, an appointment process is controlled by

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<sup>4</sup> Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, No. 11 of 1991, INDIA CODE.

<sup>5</sup> *Anoop Baranwal*, (2023) 6 SCC 161.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see also SCC Online case note summarizing committee direction.

<sup>9</sup> *Anoop Baranwal*, (2023) 6 SCC 161.

<sup>10</sup> *Id.*

the government of the day that creates incentives for the regulatory capture, therefore, commissioners may be perceived (fairly or not) as aligned with the executive preferences, that reduces the public trust and weakens the ECI's deterrent authority. The court's interim committee by including CJI aims to inject non-partisan legitimacy and may resist capture through plural participation.

However, the judgment also reveal to us the limits of judicial engineering, that are: First, the court's remedy is structurally fragile because it depends on the executive compliance and legislative good faith; Second, the inclusion of the CJI while normatively defensible, it reopens the recurring debate about judicial presence in executive appointments. Still, in the electoral context, the stronger argument is functional, that is, the ECI's independence is so central to the constitutional democracy that appointment design must include a counter-majoritarian stabilizer.

From a rights perspective, the real constitutional injury is distributive, that means, when electoral governance is perceived as executive aligned, those with less political powers, marginalized group, opposition parties, and other dissenting voices disproportionately bears the cost. Thus, the elections in this sense becomes less equal as a democratic mechanism when the referee is institutionally tethered to the incumbent.

## **2024 Legislative Developments and the Return of Executive Centrality**

However, Parliament subsequently enacted the Chief Election Commissioner and other election commissioners (Appointment, conditions of service and Term of office) Act, 2023 ("2023 Act") which was brought into force by government notification<sup>11</sup>. The act established a selection committee and related procedures by significantly modifying the Baranwal Model. This legislation replaces the chief justice of India with the a Union Cabinet Minister that was nominated by the Prime Minister, alongside the Prime Minister and the Leader of Opposition<sup>12</sup>. This design is not a cosmetic shift, instead it restores the executive predominance because two out of three members are effectively within the executive control.

From the standpoint of institutional design, the 2023 Act risks the conversion of constitutionally sensitive appointment into an executive-managed process with a dissenting minority voice. The leader of Opposition's presence can register objection, but eventually cannot alter the outcome. This is precisely structural problem which Baranwal attempted to mitigate.

In March 2024, the supreme court (in proceedings challenging the 2023 Act and related appointments) declined to stay appointments made under the new regime and flagged the concerns regarding the "hurried" appointment process and the limited material shared with the leader of the opposition<sup>13</sup>. Civil society reporting a similarly noted refusal of judiciary to grant interim stay

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<sup>11</sup> The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, No. \_\_ of 2023 (India) (as passed).

<sup>12</sup> PRS Legislative Research, The CEC and Other Election Commissioners Bill, 2023 (Legislative Brief) (noting composition of selection committee as per bill and changes).

<sup>13</sup> *Order*, Supreme Court of India (Mar. 22, 2024) (refusing interim stay in challenge to 2023 Act; noting issues around appointment process).

while expressing concerns about the procedure followed<sup>14</sup>. These 2024 developments matters because they show the court's cautious approach, where it has not yet finally adjudicated that the act's constitutionality, but it has indicated the unease of procedure. Meanwhile, the appointments continue under a framework is widely criticized as diluting independence.

## **Conclusion**

Anoop Baranwal stands as an important intervention in the constitutional framework as it recognizes that electoral fairness requires institutional design that resists incumbent advantage. The 2023 Act operationalized in practice and challenged in the proceedings that continued into 2024 and appears to reintroduce the executive centrality in a domain where the constitutional logic demands insulation. The unresolved litigation will likely determine whether the independence is treated as an enforceable constitutional requirement or reduced to a matter convention. If the constitutional promise is of free and fair elections and it must remain meaningful, then the appointment mechanisms must be designed to prevent capture and ensure transparency, and maintain the public's trust that the referee is not appointed by only one team.

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<sup>14</sup> Ass'n for Democratic Reforms, Why has the SC refused to issue an interim order to stay selection and appointment of Election Commissioners? (Mar. 2024).