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ANOOP BARANWAL VERSUS UNION OF INDIA (2023): THE HISTORIC VERDICT FOR FREE FAIR & INDEPENDENT ELECTION

- *SIDRA MALIK*

INTRODUCTION

Just as elections play a vital role in a democratic nation, the institution responsible for conducting them is equally indispensable to our democracy. Without a robust and independent Election Commission, free and fair elections are impossible, which would inevitably create deep loopholes within our democratic framework. If the Election Commission fails to function effectively and impartially, the very core of democracy collapses. This is precisely why the institution of the Election Commission has recently been at the center of intense public debate and a significant institutional tussle regarding its independence and appointment process.

To resolve this critical tussle, the Supreme Court of India stepped in with a monumental and historic judgement. The apex court recognized that to ensure free, fair, and impartial elections, the appointment process of the Election Commissioners must itself be fiercely independent. By doing so, the Supreme Court actively sought to insulate the Election Commission from executive interference and dominance, establishing a system where the referee of Indian democracy cannot be handpicked by the ruling government alone.

CASE LAW : ANOOP BARANWAL VERSUS UNION OF INDIA (2023)

FACTS OF CASE

A writ Petition was filed under **Article 32 of the Indian Constitution** by Anoop Baranwal, challenging the complete lack of fairness and transparency in how the Chief Election Commissioner (CEC) and Election Commissioners (ECs) were appointed. The petitioner highlighted a major constitutional loophole in **Article 324(2)**, pointing out that although our founding fathers wanted Parliament to create a specific law for these appointments, no such law was passed for over the years. Instead, the entire system was left to the **Government of India (Allocation of Business) Rules, 1961**. The petitioner powerfully argued that these 1961 Rules were completely silent on the exact selection process and eligibility criteria, creating a system that totally lacked transparency, fairness, and neutrality. Because this closed-door system was not accessible or open to the public, it directly violated **Part III (Fundamental Rights)** of the Constitution by being completely arbitrary. To fortify this stance, the petitioner heavily relied on the landmark *SCAORA v. Union of India* (Judges' Case) precedent, demanding that just as executive monopoly was removed from appointing judges to protect the Judiciary, it must also be removed from appointing Election Commissioners to safeguard the ultimate independence of Indian democracy.

RESPONDENT ARGUES

The Government strongly defended their side and said they were not doing anything wrong or unfair. Here are their main points:

It's in the Constitution (Article 324(2)). The Government argued that there is no violation at all. Article 324(2) of the Constitution clearly gives the President the power to appoint the Chief Election Commissioner. And since the President works on the advice of the Council of Ministers (the Government), this power is legal and constitutional.

They also argued that the courts should not interfere in this matter. The Constitution makers chose to give this power to the Executive, so the courts have no reason to change it.

The Government emphasized that making these appointments is the work of the executive. Judiciary can not interfere in the works of executive. If the Judiciary steps in and creates a new system, it will be a violation of "Separation of Powers".

ISSUE OF THE CASE

Issue 1: Whether the Supreme Court has the constitutional power to issue guidelines for the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (ECs) when Parliament has failed to make a law.

Issue 2: Whether the current appointment process—where the executive enjoys absolute monopoly—violates the Fundamental Rights (Part III) of citizens by being arbitrary, non-transparent, and unfair.

JUDGMENT

The final decision of the Court came on March 2, 2023. After carefully observing and analyzing all the facts, arguments, and evidence for around two months, a 5-judge Constitution Bench delivered this unanimous historic judgment.

The Court raised serious questions about the existing system and gave the following crucial observations:

- The Court pointed out that Article 324(2) of the Constitution clearly expected the Parliament to make a proper law for the appointment of the Chief Election Commissioner (CEC). The Court questioned why no such law had been made even after 70+ years of independence, leaving the system to run purely on executive choice.
- The Court clarified that when there is a clear constitutional vacuum (a gap in the law) and the Executive fails to do its work properly, the Judiciary can definitely interfere and play an active role to protect the system.
- The Court stated that it has the absolute power to issue guidelines in such situations to fill the legal gap. It gave the example of the landmark case *Vineet Narain v. Union of India*, where the Supreme Court had similarly stepped in to issue guidelines to secure the independence of the CBI.
- The Court emphasized that if the Executive remains inactive, it becomes the ultimate duty of the Judiciary to step in and fulfill the true objective and spirit of the Constitution.
- The Court made it clear that democracy cannot survive without transparency. Therefore, holding free and fair elections is a core part of the Basic Structure of the Constitution, and it must be protected at all costs.
- The Court also highlighted a major loophole in the current setup. It pointed out that

while the Constitution provides strong protection to the Chief Election Commissioner (CEC) against easy removal, it unfortunately does not give the same security or protection to the other Election Commissioners (ECs).

The Supreme Court ruled that the President of India appoint the Chief Election Commissioner and Election Commissioners based on recommendations made by a committee comprising:¹

1. The Prime Minister of India,
2. The Leader of the Opposition in the Lok Sabha, and
3. The Chief Justice of India.
4. In cases where the Leader of the Opposition is unavailable, the Leader of the largest party in the Opposition in the Lok Sabha will serve on the committee.

● This arrangement, the Court ordered, will remain in place until Parliament enacts the necessary legislation.

CONCLUSION

In short, the Supreme Court made it clear free and fair election is the part of basic structure and it's most important for our democratic country. Judiciary will always protect constitutional institution whenever there is delay in making laws.

REFERENCES:

Indian Constitution

[Anoop Baranwal vs Union Of India Ministry Of Law And ... on 2 March, 2023](#)

[Anoop Baranwal v. Union of India - The Legal Quorum](#)

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Sidra Malik
Blog
Anoop Baranwal vs Union Of India
(2023):
The Historic Verdict for
Free Fair and Independent Election

¹[Anoop Baranwal v. Union of India - The Legal Quorum](#)