

Electoral Integrity and the Controversy of Vote Chori: A Legal and Constitutional Appraisal of the Election Commission of India

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Abstract

The legitimacy of a democracy rests upon the integrity of its electoral process. In India, the Election Commission of India (ECI) is entrusted with the constitutional duty of conducting free and fair elections under Articles 324 to 329 of the Constitution. Yet in recent years, the institution has faced increasing scrutiny following allegations of vote chori—an expression connoting electoral manipulation or the unlawful distortion of vote counts. This article undertakes a legal and constitutional appraisal of the ECI's structure and functioning, exploring the alleged loopholes that create opportunities for administrative and technological irregularities. It evaluates the judicial interpretation of the ECI's powers through landmark decisions such as *Mohinder Singh Gill v. Chief Election Commissioner* (1978), *A.C. Jose v. Sivan Pillai* (1984), *PUCL v. Union of India* (2013), and *Subramaniam Balaji v. State of Tamil Nadu* (2013). The discussion further highlights comparative perspectives from other Commonwealth jurisdictions to assess how electoral commissions maintain public confidence. The paper concludes with reform-oriented recommendations designed to strengthen institutional independence, transparency, and technological accountability within India's electoral machinery.

Keywords: Election Commission of India, vote chori, electoral integrity, constitutional law, judicial oversight

1. INTRODUCTION

Democracy, in its most authentic sense, is predicated upon the consent of the governed, expressed through a free and fair electoral process.¹ India, the world's largest democracy, has prided itself on the conduct of periodic elections since independence. The Election Commission of India (hereinafter "ECI") was conceived as an autonomous constitutional body to safeguard the sanctity of the ballot and to ensure equality of political participation. Despite these safeguards, allegations of manipulation—colloquially described as vote chori or "vote theft"—have periodically tarnished the public perception of India's electoral integrity.

The debate surrounding vote chori is not confined to partisan rhetoric; it raises critical constitutional questions concerning the ECI's independence, accountability, and administrative efficiency. Technological innovations such as the Electronic Voting Machine (EVM) and the Voter-Verifiable

¹ *Constitution of India*, Article 324(1).

Paper Audit Trail (VVPAT) were introduced to enhance transparency, yet their implementation has produced new anxieties about possible electronic interference. Moreover, the increasing use of social media and data analytics in electioneering has expanded the notion of “manipulation” beyond physical ballot tampering to include digital persuasion and information asymmetry.

This paper seeks to interrogate these evolving challenges within a constitutional framework. It aims to evaluate whether the current legal provisions and institutional safeguards are adequate to prevent electoral malpractices, or whether structural reforms are imperative to preserve democratic legitimacy. The article proceeds by first analysing the constitutional foundation of the ECI, followed by a study of judicial precedents delineating its powers.² It then examines administrative vulnerabilities and recent controversies associated with vote chori, and finally it proposes reform-oriented recommendations grounded in comparative and normative analysis.³

2. Constitutional Framework of Electoral Governance

The constitutional architecture of India’s electoral system is anchored in Part XV (Articles 324–329) of the Constitution of India. These provisions collectively delineate the institutional design, authority, and functional autonomy of the Election Commission of India (ECI), ensuring that the conduct of elections remains insulated from political interference.⁴

1. Article 324: The Nucleus of Electoral Authority-

Article 324(1) vests the “superintendence, direction, and control of the preparation of electoral rolls and the conduct of all elections” in the ECI.⁵ This provision embodies the founding vision of the framers to establish an independent constitutional body, rather than a statutory one, so as to maintain neutrality in electoral administration. Dr. B.R. Ambedkar, during the Constituent Assembly Debates, emphasised that an autonomous Election Commission was “indispensable to the preservation of the democratic system.”⁶ Judicial interpretation has further illuminated the scope of Article 324. In *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405, the Supreme Court affirmed that Article 324 operates as a reservoir of plenary powers, enabling the ECI to take any necessary measures to ensure free and fair elections.⁷ The Court observed that “every norm or action in connection with an election must promote, and not obstruct, the process of free choice by the electorate.” Similarly, in *A.C. Jose v. Sivan Pillai* (1984) 2 SCC 656, the Court held that the ECI’s powers under Article 324 are residuary and supplemental, operative only where existing laws are silent or inadequate.⁸

2. Articles 325–329: The Complementary Provisions-

Article 325 guarantees one general electoral roll for every territorial constituency, thereby prohibiting discrimination based on religion, race, caste, or sex.⁹ Article 326 embodies the principle of universal adult suffrage, extending voting rights to every citizen above 18 years of age, subject to disqualifications prescribed by law. Article 327 empowers Parliament to legislate on all matters relating to elections, while Article 328 confers similar power on State Legislatures concerning their own elections.¹⁰ Article

² Press Trust of India (2024, May 9). “Opposition Parties Raise Concerns over EVM Transparency.” *The Hindu*.

³ Election Commission of India (2023). “Status Paper on EVM and VVPAT.” New Delhi.

⁴ *Constitution of India*, Part XV, Articles 324–329.

⁵ *Id.*, Article 324(1).

⁶ Constituent Assembly Debates, Vol. IX (1949), p. 901.

⁷ *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

⁸ *A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656.

⁹ *Constitution of India*, Article 325.

¹⁰ *Id.*, Articles 327–328.

329, however, places a constitutional bar on judicial interference during the electoral process, mandating that election disputes can only be addressed through election petitions after the results are declared.¹¹ These interlinked provisions construct a delicate constitutional balance: while the ECI wields broad executive authority, legislative competence remains with Parliament and State Legislatures. The judiciary's role is limited but crucial, intervening only when constitutional principles are threatened.

3. Statutory Framework: The Representation of the People Acts-

The Representation of the People Act, 1950, and the Representation of the People Act, 1951, give statutory effect to these constitutional principles. The former concerns the delimitation of constituencies and the preparation of electoral rolls, whereas the latter governs the conduct of elections, qualification and disqualification of candidates, and dispute resolution.¹² The ECI derives significant operational powers from these Acts, particularly Sections 28A–28C, which enable it to direct government officers serving on election duty.¹³

However, judicial scrutiny has occasionally highlighted tensions between the Commission's independence and executive influence. In *T.N. Seshan v. Union of India* (1995) 4 SCC 611, the Supreme Court upheld the validity of a multi-member Election Commission, observing that the presence of multiple Election Commissioners enhances institutional collegiality and reduces the potential for arbitrariness.¹⁴

4. Judicial Characterisation of the Election Commission-

The judiciary has consistently underscored that the ECI is a constitutional body *sui generis*, neither an executive agency nor a statutory tribunal. Its mandate, the Court has reiterated, is to “preserve the purity of the electoral process.”¹⁵ In *Indira Nehru Gandhi v. Raj Narain* (1975 Supp SCC 1), the Supreme Court reaffirmed that “free and fair elections” form a basic feature of the Constitution, and any subversion of electoral fairness would offend the doctrine of the basic structure.¹⁶

Thus, Articles 324–329, read harmoniously with the Representation of the People Acts, establish an intricate constitutional mechanism aimed at balancing executive neutrality, legislative oversight, and judicial restraint—the triadic pillars of India's electoral democracy.

3. Judicial Oversight and Legal Challenges

The Supreme Court of India has played a pivotal role in defining the contours of the Election Commission's constitutional authority. While the Commission enjoys broad discretion under Article 324, this power is not unbridled. Judicial pronouncements have repeatedly affirmed that the ECI functions within the framework of constitutional morality and rule of law.¹⁷

1. Judicial Recognition of Electoral Fairness as a Constitutional Imperative-

In *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405, the Supreme Court held that “free and fair elections” constitute the cornerstone of democracy and are implicit in the basic structure of the Constitution.¹⁸ The Court observed that the ECI's plenary powers must always serve to promote, and

¹¹ *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, AIR 1952 SC 64.

¹² *Representation of the People Act, 1950* (Act No. 43 of 1950).

¹³ *Representation of the People Act, 1951* (Act No. 43 of 1951).

¹⁴ *T.N. Seshan v. Union of India*, (1995) 4 SCC 611.

¹⁵ *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216.

¹⁶ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

¹⁷ *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216.

¹⁸ *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

never subvert, electoral fairness. Similarly, in *Indira Nehru Gandhi v. Raj Narain* (1975 Supp SCC 1), the Court invalidated Clause (4) of Article 329A inserted by the 39th Amendment, declaring that Parliament could not immunise an election from judicial scrutiny.¹⁹

The principle that elections must be free, fair, and credible has been further reinforced in *Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294, where the Court directed the ECI to mandate disclosure of candidates' criminal, educational, and financial backgrounds.²⁰ This judgment signified a shift toward transparency as an electoral right, thereby expanding the ECI's interpretive mandate beyond mere procedural control.

2. **PUCL v. Union of India: Right to Vote and Right to Know-**

The decision in *People's Union for Civil Liberties (PUCL) v. Union of India* (2013) 10 SCC 1 marked a transformative moment in Indian electoral jurisprudence. The Court recognised the "right to vote" as an extension of the freedom of expression under Article 19(1)(a), emphasising that the ability to make an informed choice is integral to democratic participation.²¹ By introducing the "None of the Above" (NOTA) option, the Court reinforced that voter autonomy and secrecy are essential dimensions of free elections.²²

While the ECI implemented the NOTA system through administrative directions, critics argued that its introduction without legislative sanction reflected an expansion of the Commission's quasi-legislative powers. Nonetheless, the Court upheld such innovations as necessary for enhancing voter confidence, thereby validating a purposive interpretation of Article 324.²³

3. **Subramaniam Balaji v. State of Tamil Nadu: Populism and the Election Commission's Ethical Role-**

In *Subramaniam Balaji v. State of Tamil Nadu* (2013) 9 SCC 659, the Supreme Court addressed the issue of pre-election promises and welfare schemes announced by ruling parties. Although the Court refrained from declaring such promises unconstitutional, it directed the ECI to formulate guidelines within the Model Code of Conduct (MCC) to regulate populist announcements.²⁴ This decision recognised that the ECI's responsibilities extend beyond technical supervision to the ethical supervision of political conduct.

However, subsequent controversies have exposed the ECI's inconsistent enforcement of these guidelines. Critics contend that selective application of the MCC has eroded public trust and emboldened incumbents.²⁵ This judicially endorsed ethical oversight, therefore, remains aspirational rather than operational.

4. **Kuldip Nayar v. Union of India: Revisiting Electoral Representation-**

In *Kuldip Nayar v. Union of India* (2006) 7 SCC 1, the Court upheld the amendment introducing open ballot voting for Rajya Sabha elections. While the judgment was primarily concerned with legislative autonomy, it underscored that electoral reforms cannot be divorced from constitutional principles of representation and accountability.²⁶ The Court reiterated that the ECI's function is not merely

¹⁹ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

²⁰ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

²¹ *People's Union for Civil Liberties (PUCL) v. Union of India*, (2013) 10 SCC 1.

²² *Id.*, para. 37.

²³ *Ibid.*

²⁴ *Subramaniam Balaji v. State of Tamil Nadu*, (2013) 9 SCC 659.

²⁵ *The Hindu* (2019, April 11). "Model Code of Conduct: EC's Uneven Record of Enforcement."

²⁶ *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1.

mechanical but normative, tasked with ensuring that the democratic process reflects the genuine will of the people.

5. Judicial Review and Institutional Accountability-

Despite recognising the ECI's broad discretion, the Supreme Court has consistently maintained that its decisions are subject to judicial review on grounds of mala fides, unreasonableness, or violation of constitutional norms.²⁷ In *Election Commission of India v. Ashok Kumar* (2000) 8 SCC 216, the Court held that while election-related disputes are generally deferred until after polling, judicial intervention is warranted when the ECI's actions threaten the very foundation of free elections.²⁸ Thus, the judiciary operates as a constitutional sentinel, ensuring that autonomy does not devolve into arbitrariness.

Collectively, these decisions illustrate a nuanced judicial philosophy: while the ECI must remain insulated from political pressures, it cannot operate beyond constitutional accountability. Judicial oversight, therefore, acts as a corrective mechanism, aligning institutional autonomy with democratic integrity.

4. Administrative Loopholes and the Allegation of Vote Chori

The legitimacy of a democracy rests not merely upon the conduct of elections but upon the perception of their fairness and credibility. In India, the allegation of vote chori — literally, “vote theft” — has emerged as a rhetorical and political charge against the Election Commission's administrative apparatus. While the term has acquired populist overtones, its underlying concerns pertain to electronic voting machine (EVM) reliability, voter-verifiable paper audit trails (VVPATs), and procedural transparency.

1. Electronic Voting Machines and the Question of Credibility-

Since their nationwide adoption in the early 2000s, EVMs have been heralded as an innovation ensuring accuracy and efficiency. Yet, allegations of tampering and manipulation have persisted, particularly during closely contested elections. In *Subramanian Swamy v. Election Commission of India* (2013) 10 SCC 500, the Supreme Court acknowledged these apprehensions and directed the Commission to introduce VVPATs to enhance transparency and voter confidence.²⁹ The Court emphasised that the integrity of the electoral process must be “beyond suspicion,” and that transparency is indispensable to democratic legitimacy.³⁰

Despite this judicial endorsement, VVPAT deployment remains limited. The 2019 general elections, for instance, saw extensive complaints regarding mismatch in VVPAT counts and delayed disclosures.³¹ The ECI's refusal to conduct comprehensive cross-verification of EVMs with VVPAT slips in all constituencies was criticised as inconsistent with the principle of free and fair elections under Article 324.³²

2. Procedural Opacity and Counting Delays-

Administrative opacity during vote counting has often fuelled suspicions of irregularities. Reports of late-night counting halts, unexplained power outages at counting centres, and delayed publication of constituency-wise data have undermined public confidence.³³ Although the ECI attributes such delays to

²⁷*Mohinder Singh Gill*, supra note 18.

²⁸ *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216.

²⁹ *Subramanian Swamy v. Election Commission of India*, (2013) 10 SCC 500.

³⁰ *Id.*, para. 29.

³¹ *The Indian Express* (2019, May 24). “VVPAT Verification: Opposition Parties Demand 100% Matching.”

³² *People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1.

³³ *The Hindu* (2019, May 24). “Counting Day Delays Raise Transparency Concerns.”

logistical complexities, the absence of a codified, publicly accessible “Election Conduct Protocol” has left wide discretion in the hands of local returning officers.

The Supreme Court in *A.C. Jose v. Sivan Pillai* (1984) 2 SCC 656 observed that while the ECI possesses plenary powers under Article 324, such powers cannot be exercised arbitrarily or in derogation of statutory safeguards under the Representation of the People Act, 1951.³⁴ Accordingly, deviations from transparent counting procedures may amount to administrative mala fides if not adequately justified.

3. The Challenge of Institutional Neutrality-

A recurring theme in allegations of vote chori is the perceived politicisation of the Election Commission. Appointments to the Commission have historically been made at the discretion of the executive, leading to claims of bias or selective enforcement of the Model Code of Conduct.³⁵ The Supreme Court, in *Anoop Baranwal v. Union of India* (2023) 6 SCC 32, attempted to address this institutional vulnerability by mandating a neutral appointment mechanism comprising the Prime Minister, the Leader of Opposition, and the Chief Justice of India.³⁶ The judgment described the ECI as “the sentinel of democracy,” whose independence is “the life breath of the Constitution.”³⁷

Nevertheless, the subsequent Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 diluted this framework by replacing the Chief Justice with a Cabinet Minister nominated by the Prime Minister.³⁸ Critics argue that this legislative intervention has effectively reversed the constitutional gains secured by *Anoop Baranwal*, reasserting executive dominance over the ECI’s composition.³⁹

4. Digital Vulnerabilities and Data Privacy-

The integration of digital voter databases and electoral roll verification systems has introduced new challenges of data security and surveillance. Instances of unauthorised data-sharing between electoral databases and government welfare schemes have raised apprehensions of voter profiling and targeted mobilisation.⁴⁰ In the absence of comprehensive data protection legislation, such practices threaten both voter anonymity and the constitutional right to privacy affirmed in *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.⁴¹

5. VVPAT Auditing and Public Trust-

The *Association for Democratic Reforms v. Election Commission of India* (2024) petition before the Supreme Court sought 100% VVPAT verification to ensure election integrity. While the Court declined to grant full cross-verification, it reiterated that public trust is the ECI’s most valuable constitutional asset.⁴² The judgment urged the Commission to strengthen procedural transparency, particularly in handling VVPAT slips and disclosing audit reports.

The persistence of vote chori allegations, therefore, is less a reflection of technical failure and more an

³⁴ *A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656.

³⁵ *The Wire* (2022, Dec 7). “ECI and the Challenge of Independence.”

³⁶ *Anoop Baranwal v. Union of India*, (2023) 6 SCC 32.

³⁷ *Id.*, para. 59.

³⁸ Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, s. 3(2).

³⁹ *Scroll.in* (2023, Dec 14). “New EC Appointment Law Undermines Supreme Court Judgment.”

⁴⁰ *Internet Freedom Foundation Report* (2022). “Data Sharing in Electoral Processes.”

⁴¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴² *Association for Democratic Reforms v. Election Commission of India*, W.P. (C) No. 241 of 2019, decided on 26 April 2024.

outcome of institutional opacity. The ECI's defensive posture in the face of public scrutiny has aggravated perceptions of bias, weakening the moral legitimacy that underpins its constitutional authority.

5. Towards Institutional Reform: Strengthening Electoral Integrity

The preceding analysis demonstrates that the controversy surrounding vote chori is not a mere political slogan but a symptom of deeper structural fragilities within India's electoral administration. A constitutional democracy can only thrive when its electoral institutions inspire unimpeachable trust. Thus, restoring the credibility of the Election Commission of India (ECI) requires a comprehensive reform package combining constitutional, statutory, and technological safeguards.

1. Ensuring Structural Independence-

To secure genuine institutional autonomy, the appointment process of Election Commissioners must be insulated from executive influence. The framework suggested by the Supreme Court in *Anoop Baranwal v. Union of India* (2023) 6 SCC 32 — involving the Prime Minister, the Leader of Opposition, and the Chief Justice of India — should be restored through constitutional amendment rather than statutory discretion.⁴³ Fixed tenures and non-renewable appointments would further deter political inducement and enhance decisional independence.

2. Codifying Electoral Procedures-

While Article 324 confers wide powers upon the ECI, the absence of a uniform procedural code has permitted discretionary variation across constituencies. The enactment of a Comprehensive Electoral Administration Act could codify standards for vote counting, VVPAT verification, data publication, and observer reporting. Such codification would align India with Commonwealth best practices, as reflected in the United Kingdom's Electoral Administration Act 2006.⁴⁴

3. Technological Transparency and Auditability-

Technological interventions must be complemented by mandatory third-party security audits of EVM and VVPAT systems. Independent audit panels, possibly comprising representatives from the Comptroller and Auditor General, academia, and civil society, should verify the integrity of software and hardware prior to every general election. Furthermore, a real-time public dashboard displaying constituency-wise VVPAT statistics would reinforce transparency.⁴⁵

4. Digital Ethics and Data Protection-

Given the increasing digitalisation of electoral processes, data-driven campaigning must be regulated by a robust legislative framework on political data use. The Personal Data Protection Bill should explicitly cover electoral databases and require the ECI to maintain transparency in voter data sharing. Lessons may be drawn from the European Union's General Data Protection Regulation (GDPR), which recognises the electoral register as sensitive personal information.⁴⁶

5. Judicial Oversight and Electoral Offences-

The judiciary must continue to serve as the guardian of electoral fairness. Special election benches in High Courts could expedite adjudication of electoral disputes and offences under the Representation of the People Act, 1951. In *Indira Nehru Gandhi v. Raj Narain* (1975) Supp SCC 1, the Supreme Court

⁴³ *Anoop Baranwal v. Union of India*, (2023) 6 SCC 32.

⁴⁴ United Kingdom, *Electoral Administration Act 2006* (UK Public General Acts 2006 c. 22).

⁴⁵ Election Commission of India (2023). *Status Paper on EVM and VVPAT*. New Delhi.

⁴⁶ European Parliament (2016). *General Data Protection Regulation (GDPR)*. Regulation (EU) 2016/679.

underscored that free elections are part of the basic structure of the Constitution.⁴⁷ Regular judicial monitoring of ECI guidelines can therefore ensure that administrative discretion remains tethered to constitutional principles.

6. Public Engagement and Voter Confidence-

Electoral integrity ultimately depends upon citizen confidence. The ECI should institutionalise participatory transparency measures — including open-data publication, citizen audits, and periodic consultations with political parties and civil-society organisations. Public disclosure of internal reports, even in summary form, would transform the ECI from a defensive bureaucracy into a genuinely participatory constitutional institution.⁴⁸

Conclusion

The controversy of vote chori underscores a paradox of India's democratic success: an electoral system that commands global admiration yet faces domestic scepticism. While India's Constitution entrusts the Election Commission with near-plenary powers under Article 324, the exercise of these powers must constantly be balanced by transparency, neutrality, and accountability. Judicial precedents from Mohinder Singh Gill to Anoop Baranwal have reiterated that the ECI is not merely a statutory body but the “conscience-keeper of the democratic process.”

Restoring this conscience requires reforms that move beyond procedural compliance to embrace ethical governance. Structural independence in appointments, codified electoral procedures, technological auditability, data privacy, and participatory transparency form the quintet of reforms necessary to ensure that every ballot cast reflects the true will of the people. Only then can India's democracy truly claim immunity from the recurring spectre of vote chori.

⁴⁷ *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp SCC 1.

⁴⁸ *The Hindu* (2023, May 15). “Restoring Trust in the Election Commission.”