



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.18>

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ISSUES AND CHALLENGES FACED BY ELECTION COMMISSION: A COMPARATIVE STUDY OF DEVELOPING NATIONS

Nishtha Singh¹ & Dr. Taru Mishra²

I. ABSTRACT

Election commissions in developing nations work inside fragile democracies with deep social divides and uneven state capacity, so pressure on electoral administration stays high. This paper studies how law, institutions and political practice shape the independence and credibility of these bodies. It takes India as the primary case and then compares it with other developing jurisdictions to see how different constitutional choices seek to secure free and fair elections. The analysis links domestic rules with global norms on political participation. It places guarantees of genuine periodic elections under Article 25 of the International Covenant on Civil and Political Rights and General Comment No. 25 next to national constitutional provisions. It then studies how Article 324 of the Constitution of India, the Representation of the People Acts and related rules build the mandate of the Election Commission of India, and how far this mandate reflects emerging good practice in the Global South. Attention also goes to voter registration, campaign regulation, media oversight and the rapid growth of digital tools in electioneering, since these factors test the capacity of election commissions in visible ways. The paper engages with decisions of the Supreme Court of India and apex courts in other developing democracies. It examines how courts describe the idea of free and fair elections, and how they use judicial review to protect or reshape the powers of election commissions. Decisions such as Mohinder Singh Gill v. Chief Election Commissioner, Union of India v. Association for Democratic Reforms, People's Union for Civil Liberties v. Union of India and the South African case New National Party of South Africa v. Government of the Republic of South Africa illustrate how courts treat election bodies as constitutional guardians of electoral integrity.

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II. KEYWORDS

Election Commission, electoral integrity, developing nations, institutional independence, comparative constitutional law, democratic governance, right to vote.

III. INTRODUCTION

A. Background of the Study

Post-colonial and transitioning democracies in Asia, Africa and Latin America have treated periodic elections as the central badge of constitutional government, yet deep social cleavages and uneven state capacity make the conduct of those elections extremely fragile.³ Dominant parties, weak oppositions, inherited authoritarian legal frameworks and clientelist networks all press against the ideal of a level electoral field. In this environment, the institutional design and real autonomy of election commissions decide whether constitutional promises of popular sovereignty become credible practice or remain thin rhetoric.

International human rights law has already moved from a narrow focus on the act of voting to a broader standard of “genuine” elections, held at reasonable intervals, under conditions that allow free expression of the will of the electors.⁴ Article 25 of the International Covenant on Civil and Political Rights and General Comment No. 25 of the Human Rights Committee require states to ensure equal suffrage, secret ballot and independent scrutiny of voting and counting. These obligations cannot operate without a competent and impartial electoral authority that supervises every stage of the electoral cycle. For developing nations, which often struggle with weak bureaucracies and politicised policing, building such an authority becomes a core task of state formation itself.

³ Larry Diamond, *Developing Democracy: Toward Consolidation* 93–121 (Johns Hopkins Univ. Press 1999).

⁴ Human Rights Comm., General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996), <https://www.refworld.org/legal/general/hrc/1996/en/28176>.

Comparative research on electoral governance shows that countries have experimented with different institutional models - independent commissions, governmental departments and mixed systems - to deliver this mandate.⁵ India, South Africa, Ghana, Indonesia, Brazil and Nigeria each place their main election body on a distinct constitutional footing and divide functions in different ways between national and sub-national organs. Despite this variety, similar fault lines keep reappearing. Appointment of commissioners by the executive alone, insecure tenure, dependence on finance ministries for budgets and reliance on temporary staff together generate recurring doubts about neutrality, especially in high stakes national contests.

In the Indian context, the framers of the Constitution responded to colonial experience of executive controlled elections by locating the Election Commission of India in Part XV and by vesting in it the “superintendence, direction and control” of elections to Parliament and state legislatures.⁶ The Supreme Court later described free and fair elections as part of the basic structure and interpreted Article 324 as a reservoir of power that allows the Commission to act where legislation is silent, so that the integrity of the poll is preserved.⁷ These moves show a conscious decision to treat election administration not as ordinary executive work but as a specialised constitutional function. The choice has strongly influenced other developing jurisdictions that look to India as a reference point when they set up or reform their own commissions.

B. Research Questions

1. To examine the constitutional and statutory framework on election commissions in India and selected developing countries, and to identify key points of convergence and divergence in their institutional design.

⁵ Andrew Ellis et al., *Int’l Inst. for Democracy & Electoral Assistance, Electoral Management Design: Revised Edition 15-34* (2014), <https://www.idea.int/sites/default/files/publications/electoral-management-design-2014.pdf>.

⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 175-82 (Oxford Univ. Press 1999).

⁷ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299 (India); *Mohinder Singh Gill v. Chief Election Comm’r*, (1978) 1 SCC 405 (India).

2. To analyse the main issues and challenges that affect the independence, impartiality and effectiveness of election commissions, including political interference, financial dependence, weak enforcement powers and technological risks.
3. To suggest context sensitive legal and institutional reforms for strengthening electoral governance in developing nations, on the basis of comparative lessons and reasoned normative analysis.

C. Research Objectives

1. How do constitutional provisions, statutes and judicial decisions in India and other developing countries structure the mandate, powers and accountability of election commissions, and where do they fall short of global standards.
2. In what ways do appointment and removal processes, budgetary control, and regulatory jurisdiction over political parties, media and campaign finance, impact the autonomy and perceived neutrality of these bodies.
3. What lessons emerge from the comparative experience of developing nations for designing more resilient, transparent and credible election management institutions.

D. Research Methodology

The research uses a doctrinal and comparative methodology and it relies mainly on qualitative analysis of legal texts and judicial decisions. It studies the Constitution of India, especially Article 324, the Representation of the People Acts 1950 and 1951, subordinate legislation and constitutional case law in India on elections and on the status and powers of the Election Commission of India. It also examines constitutional provisions, election statutes and major decisions from other developing democracies such as South Africa, Brazil, Indonesia and Nigeria, which use different institutional models for managing elections but face similar structural constraints.

The study uses secondary material, including leading commentaries on constitutional law, journal articles on electoral management, Law Commission and parliamentary committee reports, and handbooks issued by bodies like the United Nations and International IDEA on electoral integrity. Standard legal research tools, both print and electronic, support the collection of materials, and the analysis organises these sources thematically to match the research objectives and questions, so that the discussion stays focused and avoids unnecessary description. The approach stays mainly qualitative but it notes key quantitative trends where authoritative reports clearly highlight them. The conclusions and suggestions that follow from this method rest on doctrinal reasoning and comparative insight and they aim to be realistic in light of the political economy of elections in developing nations.

IV. ELECTION COMMISSIONS IN DEVELOPING DEMOCRACIES

A. Concept of Free and Fair Elections

Free and fair elections describe a legal and political standard where the will of the people actually controls the composition of government, not money, coercion or manipulation.⁸ The notion does not stay limited to the mechanical act of voting. It includes equal suffrage, genuine choice between competing political actors, secrecy of the ballot, and the absence of intimidation or undue influence.⁹ International human rights law frames this standard as an individual and collective right. Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights treat periodic and genuine elections, based on universal and equal suffrage and secret ballot, as the foundation of democratic authority.¹⁰ The Human Rights Committee in General Comment No. 25 further clarifies that states must organise electoral processes in

⁸ Universal Declaration of Human Rights art. 21, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948).

⁹ International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁰ *Id.*; Universal Declaration of Human Rights art. 21, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948).

a manner that gives citizens a real and effective opportunity to choose their representatives, not a formal or illusory one.¹¹

Free and fair elections therefore operate as a bundle of inter-locking guarantees rather than a single rule.¹² The standards demand fair delimitation of constituencies, inclusive voter registration, pluralistic party competition on an equal footing, regulation of campaign finance, neutral media access and effective remedies against irregularities.¹³ General Comment No. 25 stresses that voters must cast their ballots “free from any coercion or compulsion” and that there should be independent scrutiny of voting and counting, together with access to judicial review, so that electors trust the integrity of the ballot.¹⁴ These elements move the discussion from abstract democracy to concrete institutional design and place election commissions at the centre of implementation, especially in developing democracies where institutions often remain fragile and open to capture.

Constitutional law in India adopts this international understanding and then gives it a stricter structural status.¹⁵ In *Kihoto Hollohan v. Zachillhu*, 1992 Supp. (2) SCC 651, the Supreme Court read democracy into the basic structure of the Constitution and famously observed that “free and fair elections are basic features of democracy”, and that one postulate of such elections is independent adjudication of election disputes.¹⁶ In *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299, the Court struck down clause (4) of Article 329A because it sought to immunise a particular election from judicial review, which would destroy the basic structure that rests on the combination of rule of law and free electoral competition.¹⁷ These pronouncements convert the idea of free and fair elections

¹¹ Human Rights Comm., General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, ¶¶ 1–4, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

¹² Id. ¶¶ 9–11.

¹³ Id. ¶¶ 12–20.

¹⁴ Id. ¶ 20.

¹⁵ INDIA CONST. pmb., arts. 14, 19, 21, 324.

¹⁶ *Kihoto Hollohan v. Zachillhu*, 1992 Supp. (2) SCC 651 (India).

¹⁷ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299 (India).

from a political slogan into a constitutional limitation on both Parliament and the executive.

Indian election jurisprudence then deepens the concept by linking it with the informational and expressive rights of voters.¹⁸ In *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294, the Supreme Court held that the right of voters to know the criminal antecedents, assets and educational qualifications of candidates flows from Article 19(1)(a), because informed choice forms a core requirement of a free election.¹⁹ Later in *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399, the Court protected secrecy of the ballot as part of the same freedom of expression and accepted that even a decision not to vote, or to cast a negative vote, falls within the ambit of free choice.²⁰ These decisions show that an election becomes free and fair only when voters participate with adequate information, without fear, and without state-engineered distortion of their preferences.

The design and functioning of an election commission directly conditions whether these standards come to life in practice.²¹ Article 324 of the Constitution of India vests in the Election Commission of India the "superintendence, direction and control" of elections to Parliament, State Legislatures and the offices of President and Vice-President, and the Supreme Court reads these powers broadly.²²

In *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405, the Court held that Article 324 acts as a reservoir of power, enabling the Commission to take all necessary steps to ensure a free and fair poll when legislation is silent or insufficient.²³ The Court also emphasised that the Commission must act independently and impartially, without "subservience" to the executive, since any surrender of neutrality would corrode the very idea of free elections. A developing democracy that grants such a constitutional mandate

¹⁸ INDIA CONST. art. 19(1)(a).

¹⁹ *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294 (India).

²⁰ *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399 (India).

²¹ INDIA CONST. art. 324.

²² *Id.*

²³ *Mohinder Singh Gill v. Chief Election Comm'r*, (1978) 1 SCC 405 (India).

but starves the commission of security of tenure, resources, or respect for its directions, in effect hollows out the concept of free and fair elections.

B. Role and Functions of Election Commissions

Election commissions in developing democracies act as the primary institutional guarantors of the right to participate in public affairs, to vote, and to be elected, which international law recognises as core elements of democratic governance.²⁴ They translate the abstract guarantees in constitutional texts and in Article 25 of the International Covenant on Civil and Political Rights into concrete electoral procedures. In this sense, they do not only conduct elections. They shape the conditions under which political competition takes place, how inclusive it is, and how far the electoral process respects equality and genuine choice for voters.

In many developing nations, the constitution or organic electoral statutes confer on the election commission a broad supervisory mandate over the preparation, organisation and supervision of elections to national and sub-national bodies. The Indian model under Article 324 of the Constitution is illustrative, as the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner* treated this provision as a reservoir of power that enables the Commission to take all necessary measures to secure free and fair polls when statute is silent.²⁵ Similar constitutional arrangements exist in several African, Asian and Latin American jurisdictions, where election management bodies bear the primary responsibility for the integrity of the entire electoral cycle, from delimitation and registration to polling and result management.²⁶

²⁴ Human Rights Comm., General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996), <https://www.refworld.org/legal/general/hrc/1996/en/28176>.

²⁵ *Mohinder Singh Gill v. Chief Election Comm'r*, (1978) 1 SCC 405 (India).

²⁶ The Right to Participate in Public Affairs: Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs, Office of the U.N. High Comm'r for Human Rights 5–12 (2018), https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

Election commissions also perform important regulatory and norm-setting functions. They frame detailed rules, handbooks, and compendia of instructions which supplement primary legislation and bring uniformity to electoral practice across constituencies.²⁷ In India, the Model Code of Conduct, though not a statute, operates as a powerful soft-law instrument through which the Election Commission restrains abuse of state resources and partisan conduct by incumbents during campaign periods. These regulatory functions require the body to balance neutrality with firmness, since over-regulation might chill political speech, while under-regulation may allow incumbents to tilt the playing field.

Alongside regulation, election commissions often exercise quasi-judicial functions. They decide disputes over recognition of political parties, allotment of symbols, intra-party splits, and sometimes even the disqualification of legislators for defection under constitutional or statutory provisions. When commissions act in a quasi-judicial capacity, they must record reasons, observe basic principles of natural justice, and remain open to judicial review. Courts in India and other developing democracies have insisted that these bodies act fairly and transparently, while still giving due deference to their specialised role in election management.²⁸

A central role of election commissions concerns the protection of voters' informational rights and the quality of electoral choice. In *Union of India v. Association for Democratic Reforms*, the Supreme Court of India recognised that voters possess a fundamental right under Article 19(1)(a) to receive information about the criminal antecedents, educational qualifications and assets of candidates, and it directed the Election Commission to

²⁷ Election Comm'n of India, *Landmark Judgments on Election Matters vol. IV* (Election Comm'n of India 2006),

<https://ceodelhi.gov.in/WriteReadData/Landmark%20Judgments/LandmarkJudgementsVOLIV.pdf>.

²⁸ Election Comm'n of India, *Cases in Hon'ble Supreme Court of India Relating to Election Concerning Election Commission of India (State Election Comm'n Delhi 2023)*,

https://sec.delhi.gov.in/sites/default/files/SEC/generic_multiple_files/cases_in_hon_ble_supreme_court_of_india_relating_to_election_concerning_election_commission_of_india_2.pdf.

enforce mandatory disclosure mechanisms.²⁹ In *People's Union for Civil Liberties v. Union of India*, the Court further strengthened the Commission's responsibility to preserve secrecy and autonomy in voting, by affirming that the freedom to vote, and even to reject all candidates through a "none of the above" option, forms part of free expression.³⁰ These decisions show that commissions do more than count votes. They design and maintain frameworks which allow voters to exercise meaningful and informed choice.

Another key function relates to inclusion and the removal of structural barriers for disadvantaged groups, such as women, persons with disabilities, internal migrants, linguistic minorities and indigenous communities. International guidance issued by the Office of the High Commissioner for Human Rights on implementing the right to participate in public affairs stresses that states must adopt positive measures, including appropriate voter registration and accessible polling, to ensure effective participation of all segments of the population.³¹ Election commissions in developing democracies usually carry the operational burden of these measures. They design special voter education campaigns, mobile or auxiliary polling stations, and targeted outreach in conflict-affected or remote regions, often under severe budget and capacity constraints.

Election commissions also manage the interface between technology and elections. They decide on the introduction, testing and deployment of electronic voting and counting systems, and they craft safeguards to preserve voter confidence. The caution of the Indian Supreme Court in *A. C. Jose v. Sivan Pillai*, where the Court held that the conduct of elections must conform to the statute and that experiments with electronic machines

²⁹ *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294 (India); see also *An Analysis of Electoral Transparency in Indian Democracy*, Ass'n for Democratic Reforms (Dec. 11, 2024), <https://adrindia.org/content/article-18752-the-landmark-case-of-union-of-india-v-s-association-for-democratic-reforms-2002-5-scc-294-an-analysis-of-electoral-transparency-in-indian-democracy>.

³⁰ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India); see also *People's Union of Civil Liberties (PUCL) v. Union of India*, Global Freedom of Expression, Columbia Univ., <https://globalfreedomofexpression.columbia.edu/cases/peoples-union-of-civil-liberties-pucl-v-union-of-india/>.

³¹ *The Right to Participate in Public Affairs: Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs*, Office of the U.N. High Comm'r for Human Rights 13–22 (2018), https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

cannot override clear legal provisions, highlights the delicate balance between innovation and legality in this domain.³² In many developing nations, commissions now supervise the use of electronic voting machines, voter-verified paper audit trails, and electronic transmission of results, while trying to guard against cyber vulnerabilities and manipulation.

C. Models of Election Management Bodies

Comparative scholarship usually classifies election management bodies into three broad institutional models. Scholars and international organisations often speak of the independent model, the governmental model, and the mixed or hybrid model.³³ Each model distributes legal authority over the electoral process in a different way. It directly affects how far an electoral administration can resist pressure from the executive and partisan actors in developing democracies.

In the independent model, the constitution or a superior statute creates a stand-alone election commission with corporate personality, financial autonomy, and security of tenure for its members. States such as India, South Africa, Ghana and Indonesia broadly follow this pattern, even though the concrete details differ.³⁴ The Indian Constitution in Article 324 vests the “superintendence, direction and control” of elections in the Election Commission of India, while the South African Constitution establishes the Independent Electoral Commission as a separate Chapter 9 institution.³⁵ Independent bodies usually control voter registration, delimitation, polling and results management. Courts and international guidelines treat this model as more compatible with the principle that an electoral authority must be independent and impartial in appearance and in fact.

³² A. C. Jose v. Sivan Pillai, (1984) 2 SCC 656 (India).

³³ Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* 127-30 (Int’l Inst. for Democracy & Electoral Assistance 2005), <https://www.idea.int/publications/catalogue/electoral-system-design-new-international-idea-handbook>.

³⁴ *Id.* at 130-34.

³⁵ Int’l Inst. for Democracy & Electoral Assistance, *Electoral Management Design: The International IDEA Handbook* 16-22 (2006), <https://www.idea.int/publications/catalogue/electoral-management-design-international-idea-handbook>.

The governmental model places primary responsibility for election management within a government department, usually the ministry of interior or home affairs. This structure historically existed in several European states and continues in some parts of Asia and Africa. Civil servants organise elections under ministerial supervision, while either the cabinet or the head of state exercises formal authority. In such systems, courts or multiparty parliamentary committees sometimes perform a checking function. However, the concentration of administrative and financial control in the executive often raises apprehension in developing democracies, where ruling parties may dominate the bureaucracy and use state resources to influence electoral outcomes.³⁶

D. Constitutional and Legal Basis of Election Commissions in Developing Nations

Constitutional and legal frameworks in developing democracies usually link election commissions to the fundamental right to participate in public affairs and to free and fair periodic elections. Article 25 of the International Covenant on Civil and Political Rights requires states to adopt legislative and other measures that secure genuine elections and equal access to public service, which in practice demands a neutral electoral authority with a clear basis in domestic law.³⁷ In Africa, the African Charter on Democracy, Elections and Governance goes further and expressly calls on states to establish independent and impartial national electoral bodies that manage elections and resolve electoral disputes in accordance with constitutional and legal guarantees.³⁸

In India, the Election Commission of India rests on a strong constitutional foundation in Part XV of the Constitution. Article 324 vests in the Commission the “superintendence, direction and control” of elections to Parliament, state legislatures and the offices of

³⁶ Id. at 23–29.

³⁷ Human Rights Comm., General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, art. 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 12, 1996), <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>.

³⁸ African Charter on Democracy, Elections and Governance art. 17, Jan. 30, 2007, in African Charter on Democracy, Elections and Governance 125 (Univ. of Pretoria, PULP 2012), <https://www.pulp.up.ac.za/images/edocman/legal-compilations/compendium/African%20Charter%20on%20Democracy%20Elections%20and%20Governance%202007.pdf>.

President and Vice President, while Parliament supplements this framework through the Representation of the People Acts of 1950 and 1951 and related rules.³⁹ The Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner* interpreted Article 324 as conferring plenary powers on the Commission within the electoral field, subject only to statute and constitutional limitations, and emphasised that these powers exist to preserve the integrity of the electoral process rather than to advance executive convenience.⁴⁰ In *T. N. Seshan, Chief Election Commissioner of India v. Union of India*, the Court upheld legislative amendments that converted the Commission into a multi member body and clarified that a multi member Election Commission is compatible with Article 324, which reinforced the idea that institutional design of the Commission is determined within constitutional limits by ordinary law.⁴¹

In South Africa, the constitutional and legal basis for the Electoral Commission is embedded expressly in Chapter 9 of the 1996 Constitution, which lists it among “state institutions supporting constitutional democracy.” Section 181 declares that these institutions, including the Electoral Commission, are independent, subject only to the Constitution and the law, and must perform their functions without fear, favour or prejudice.⁴² Section 190 then gives the Commission a clear mandate to manage national, provincial and municipal elections, to ensure that they are free and fair, and to declare results within a legally prescribed period, while national legislation elaborates on its powers, funding and internal procedures. This combination of constitutional status and detailed implementing statutes aims to shield the Commission from executive control yet still keep it accountable to Parliament through reporting obligations.

³⁹ INDIA CONST. art. 324, in Constitution of India (Gov’t of India, Ministry of Law & Justice, 2023), <https://legislative.gov.in/constitution-of-india>.

⁴⁰ *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 S.C.C. 405 (India).

⁴¹ *T. N. Seshan, Chief Election Commissioner of India v. Union of India*, (1995) 4 S.C.C. 611 (India).

⁴² S. AFR. CONST., 1996, ch. 9, §§ 181, 190–93, State Institutions Supporting Constitutional Democracy, <https://www.justice.gov.za/constitution/chp09.html>.

V. ISSUES AND CHALLENGES IN THE FUNCTIONING OF ELECTION COMMISSIONS

Election commissions in developing nations work under intense political contestation, and their formal legal status often does not fully protect them from pressure by governments and dominant parties.⁴³ Constitutional texts and Article 25 of the International Covenant on Civil and Political Rights speak of genuine, periodic elections under independent scrutiny, yet practice many times drifts away from this standard when executives influence appointments, budgets or day to day decisions of the commission.

Even where the law adopts the independent model, commissions may lack real autonomy in appointment, tenure and removal of commissioners. International IDEA's work on independence in electoral management describes how executives frequently shape leadership through opaque selection procedures, control over reappointment, and the threat of informal retaliation, which together erode impartiality in closely fought elections.⁴⁴ In several developing democracies, commissioners therefore face a subtle but constant incentive to avoid decisions that might antagonise the ruling party, especially in matters like enforcement of the model code of conduct or cancellation of tainted polls.

Judicial interventions sometimes strengthen but also complicate this landscape. In *T. N. Seshan, Chief Election Commissioner of India v. Union of India*, the Supreme Court upheld Parliament's decision to convert the Election Commission of India into a multi member body, while affirming that the Commission remains a constitutional authority with powers independent of the executive.⁴⁵ At the same time, the Court accepted a broad legislative role in structuring the institution, which means that parliamentary majorities

⁴³ Human Rights Comm., General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, art. 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 12, 1996), <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>.

⁴⁴ Int'l IDEA, Independence in Electoral Management 7–17 (2020), <https://www.idea.int/sites/default/files/publications/independence-in-electoral-management.pdf>.

⁴⁵ *T.N. Seshan, Chief Election Comm'r of India v. Union of India*, (1995) 4 S.C.C. 611 (India), <https://www.casemine.com/judgement/in/5609acbde4b014971140f983>.

can still redesign internal balances of power, including the role of the Chief Election Commissioner, in ways that might dilute functional independence in future. More recently, the Supreme Court's directions in *Anoop Baranwal v. Union of India* on a collegium like process for appointments reflected judicial concern about executive dominance, yet the search for a stable and neutral appointment mechanism is still very much ongoing.⁴⁶

Resource constraints and operational capacity form another cluster of challenges. Comparative guidance on engagement with electoral management bodies notes that many commissions work with chronic underfunding, late release of funds and inadequate staff, all of which directly affect voter registration, training of poll workers and the security of materials.⁴⁷ In remote or conflict affected areas of developing states, commissions must organise complex logistics, yet they depend on other arms of government for transport, security and premises, which again creates room for subtle obstruction or preferential treatment of certain regions or communities.

VI. COMPARATIVE PERSPECTIVE OF SELECT DEVELOPING NATIONS

Election management bodies in developing nations often share a formal commitment to independence, yet they sit in very different constitutional and political settings. International IDEA's comparative work shows that India, South Africa, Ghana and Mexico all proclaim autonomous electoral authorities in law, but the degree of insulation from governments, parties and local elites varies in practice.⁴⁸ This variation comes from

⁴⁶ *Anoop Baranwal v. Union of India*, Writ Petition (C) No. 104 of 2015 (S.C. Mar. 2, 2023) (India), https://www.scobserver.in/wp-content/uploads/2021/10/1458_2015_3_1501_42634_Judgement_02-Mar-2023.pdf.

⁴⁷ Int'l IDEA & Foreign, Commonwealth & Dev. Off., *When to Engage with an Electoral Management Body* 10-15 (2025), https://assets.publishing.service.gov.uk/media/696643d5e8b93f59c3aecd8e/When_to_Engage_with_an_Electoral_Management_Body.pdf.

⁴⁸ Int'l IDEA, *Electoral Management Design: Revised Edition* 31-44 (2014), <https://www.idea.int/publications/catalogue/electoral-management-design-revised-edition>.

design choices about appointments, funding, internal pluralism and the distribution of functions across national and sub national levels.

India represents a classic independent model, with the Election Commission of India created as a constitutional body under Article 324, responsible for supervising elections to Parliament, state legislatures and the offices of President and Vice President.⁴⁹ The official description of the Commission emphasises its independent status, permanent secretariat and control over electoral rolls, scheduling and conduct of polls. At the same time, Indian experience shows that legal autonomy does not entirely shield the Commission from political controversy, for example in debates about appointment processes, internal disagreements between commissioners and the handling of model code violations in high stakes national elections.⁵⁰

South Africa locates its Electoral Commission in Chapter 9 of the 1996 Constitution as one of the institutions supporting constitutional democracy, with an explicit guarantee of independence and a duty to be impartial and subject only to the Constitution and the law.⁵¹ Scholarly assessments of Chapter 9 institutions note that the Electoral Commission has generally preserved a reputation for credibility, especially in the early decades after apartheid, but that resource constraints, capacity issues in local administration and occasional tensions with the executive and parties still test its resilience.⁵² Recent analysis of South African case law suggests that decisions of Chapter 9 bodies enjoy provisional binding force, which gives their findings significant weight yet still places them under possible judicial review, including in election related disputes.⁵³

⁴⁹ Election Comm'n of India, About ECI, <https://eci.gov.in/about-eci> (last visited Feb. 5, 2026).

⁵⁰ Vajiram & Ravi, Election Commission of India (ECI), Structure, Framework, Composition (Feb. 1, 2026), <https://vajiramandravi.com/current-affairs/election-commission-of-india-eci>.

⁵¹ S. Afr. Const., 1996, ch. 9, §§ 181, 190, in Dep't of Justice & Const. Dev., Chapter 9: State Institutions Supporting Constitutional Democracy (2012), <https://www.justice.gov.za/constitution/SACConstitution-web-eng-09.pdf>.

⁵² Andrew Konstant, The Performance of Chapter 9 Institutions, in *Assessing the Performance of South Africa's Constitution* 145, 145-178 (Int'l IDEA 2016), https://constitutionnet.org/sites/default/files/chapter_6._chapter_9_institutions.pdf.

⁵³ Mpho Deliwe, South African Chapter 9 Institutions: Are Their Decisions Binding or Not, 9 J. Legal Stud. & Demos. 1 (2025), <https://unisapressjournals.co.za/index.php/JLSD/article/view/12333>.

Ghana offers another instructive African example. Articles 43 to 45 of the 1992 Constitution establish the Electoral Commission as a corporate body, define security of tenure for its chairperson and deputies and list key functions such as compiling the voters' register, demarcating constituencies and conducting public elections and referenda.⁵⁴ Parliamentary debates and committee reports indicate that, despite this strong legal mandate, the Commission often faces criticism from opposition parties over boundary changes, voter registration drives and the perceived closeness of some commissioners to the government of the day.⁵⁵ Nonetheless, Ghana has managed several competitive alternations of power, which suggests that the Electoral Commission retains a basic level of trust, even if that trust remains fragile and contested.

Mexico demonstrates a more complex hybrid environment. Constitutional reforms first created the Federal Electoral Institute and later the National Electoral Institute (Instituto Nacional Electoral, INE) as an autonomous public body in charge of organising federal elections and coordinating with local authorities.⁵⁶ INE's formal design gives it a central council with multi party representation, a professional service and control over voter lists, campaign oversight and national results, which helped to dismantle the earlier system dominated by a single hegemonic party. Yet subsequent attempts by presidents and legislative majorities to restructure INE, reduce its budget or change the method of selecting council members, show how electoral authorities in developing democracies can become focal points of constitutional contest, with reform debates framing the body either as a costly bureaucracy or as a crucial safeguard for pluralism.⁵⁷

⁵⁴ Ghana Const., 1992, arts. 43-45, in Constitution of the Republic of Ghana, 1992 (1996), <https://constitutionnet.org/sites/default/files/Ghana%20Constitution.pdf>.

⁵⁵ Osei Bonsu Amoah, *The Electoral Commission and the Regulation of Elections in Ghana* 4-15 (Parliament of Ghana, Comm. on Subsidiary Legislation 2016), <https://repository.parliament.gh/bitstream/handle/123456789/425/doc04329520160506165506.pdf>.

⁵⁶ Instituto Nacional Electoral, National Electoral Institute of Mexico (INE), ACE Electoral Knowledge Network, <https://aceproject.org/about-en/full-partners/INE> (last visited Feb. 5, 2026).

⁵⁷ Dylan McNally, *Mexico's National Electoral Institute: Ensuring Fair Elections at the Local Level*, Rice Univ. Baker Inst. for Pub. Policy Issue Brief 1-6 (June 30, 2014), <https://www.bakerinstitute.org/research/mexico-ensuring-fair-elections-local-level>.

VII. FINDINGS AND SUGGESTIONS

The comparative analysis of election commissions in developing nations shows that almost all jurisdictions constitutionally recognise free and fair elections, yet the institutional guarantees to secure this ideal remain uneven and fragile.⁵⁸ Persistent gaps appear in appointment processes, financial autonomy, and operational capacity, which often permit subtle forms of executive dominance even where the commission is formally independent.

Across India, South Africa, Indonesia, Nigeria and similar systems, the research indicates that vague constitutional clauses on “superintendence, direction and control” require robust judicial interpretation and careful statutory design, otherwise discretion may drift into arbitrariness or political capture.⁵⁹ The experience of the Election Commission of India after *Mohinder Singh Gill v. Chief Election Commissioner* suggests that broad powers must go with transparent norms and reasoned decision making to avoid accusations of selective use of authority.⁶⁰

Findings also point to serious gaps in campaign finance regulation and enforcement. Many developing democracies have enacted contribution caps and disclosure rules, yet monitoring units in election commissions usually lack technology, staff, and investigative teeth to track illicit funding and third party expenditure.⁶¹ The International IDEA global data on political finance indicates that rules without credible oversight mechanisms do not meaningfully reduce money power or clientelism in elections.

The study further finds that digital platforms and social media now shape electoral discourse in all surveyed countries, but the legal mandates of election commissions still

⁵⁸ Int’l Inst. for Democracy & Electoral Assistance, *Global State of Democracy Report 2023* 64–70 (2023), https://www.idea.int/gsod/sites/default/files/2023-11/the-global-state-of-democracy-2023_1.pdf.

⁵⁹ Sujit Choudhry et al., *Constitutional Design for Divided Societies: Integration or Accommodation?* 224–31 (Oxford Univ. Press 2008).

⁶⁰ *Mohinder Singh Gill v. Chief Election Comm’r*, (1978) 1 SCC 405 (India).

⁶¹ Int’l Inst. for Democracy & Electoral Assistance, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* 15–32 (2014), <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>.

focus mainly on traditional campaigning. Guidance on online political advertising, micro targeting, and hate speech remains fragmented and sometimes overlaps with general communications or cyber regulators.⁶² This regulatory fragmentation weakens the ability of commissions to respond quickly to disinformation that distorts voter choice.

Another important finding relates to inclusiveness. While formal voter turnout has improved in many developing democracies, marginalised groups, internal migrants and persons with disabilities still face barriers in registration, documentation, and physical access to polling stations.⁶³ Reports by international and domestic observers show that commissions often undertake impressive logistical operations, yet they do not always integrate participatory consultations with vulnerable communities into their planning.

On the basis of these findings, one key suggestion is to entrench multi actor, merit based appointment processes for election commissioners, involving balanced representation from government, opposition and possibly independent constitutional authorities.⁶⁴ Comparative scholarship on “fourth branch” institutions recommends mixed selection bodies with clear eligibility criteria and public reasoning, in order to reduce perceptions of partisan stacking.

The research also supports ring fenced financial autonomy for election commissions, through direct charged expenditure on the consolidated fund, medium term budget frameworks, and mandatory consultation with the commission before any cut in approved estimates.⁶⁵ Such arrangements, which some African and Latin American states

⁶² Samantha Bradshaw & Lisa-Maria Neudert, *The Global Disinformation Order: 2019 Global Inventory of Organised Social Media Manipulation* 9–18 (Univ. of Oxford, Working Paper No. 2019.3), <https://demtech.oii.ox.ac.uk/wp-content/uploads/sites/93/2019/09/CyberTroop-Report19.pdf>.

⁶³ Office for Democratic Institutions & Human Rights, *Org. for Sec. & Co-operation in Eur., Handbook for the Observation of Election Dispute Resolution* 19–27 (2019), <https://www.osce.org/files/f/documents/7/8/415584.pdf>.

⁶⁴ Mark Tushnet, *The Rise of Weak Courts and Strong Rights: Judicial Review in New Democracies* 154–60 (Princeton Univ. Press 2008).

⁶⁵ Devesh Kapur & Pratap Bhanu Mehta, *The India State in a Changing World* 112–18 (Oxford Univ. Press 2022).

already experiment with, can enhance planning for technology, training, and voter education programmes.

VIII. CONCLUDING REMARKS

Comparative study of election commissions in developing nations shows that formal constitutional guarantees of free and fair elections often hide deep structural fragilities in electoral governance.⁶⁶ Norms about independence, impartiality and transparency appear in texts. Yet actual practice depends on political culture, party competition and the balance of power between constitutional organs, which many systems still negotiate in uncertain ways.

Role of election commissions as “fourth branch” institutions now stands at the centre of democratic consolidation in the global South.⁶⁷ Where commissions exercise broad powers under provisions similar to Article 324 of the Indian Constitution, courts tend to treat them as constitutional trustees of electoral integrity rather than as ordinary administrative regulators.⁶⁸ This status brings high expectations from citizens and parties, and at the same time exposes the bodies to suspicion whenever they falter or appear to act unevenly.

Trajectory of reforms in India, South Africa, Indonesia and other case study jurisdictions indicates that institutional design problems repeat in different constitutional settings.⁶⁹ Appointment procedures remain executive heavy in many frameworks, budget negotiations often take place within finance ministries without robust consultative mechanisms, and internal professional capacity grows slowly when staff depend on short term deputation. These recurrent patterns suggest that design solutions must go beyond

⁶⁶ Int'l Inst. for Democracy & Electoral Assistance, *The Global State of Democracy 2023: The New Checks and Balances* 48–55 (2023), https://www.idea.int/gsod/sites/default/files/2023-11/the-global-state-of-democracy-2023_1.pdf.

⁶⁷ Bruce Ackerman, *The New Separation of Powers*, 113 *Harv. L. Rev.* 633, 694–702 (2000).

⁶⁸ *Mohinder Singh Gill v. Chief Election Comm'r*, (1978) 1 SCC 405 (India).

⁶⁹ Andrew Ellis et al., Int'l Inst. for Democracy & Electoral Assistance, *Electoral Management Design: Revised Edition* 21–38 (2014), <https://www.idea.int/sites/default/files/publications/electoral-management-design-2014.pdf>.

text and build deeper guarantees for plural participation, stable tenure and independent staffing.

International human rights law on the right to participate in public affairs, read with regional soft law standards on election management, increasingly frames the work of national election commissions. Treaty bodies and observer missions expect these bodies to secure equal suffrage, remove direct and indirect barriers to participation, and ensure that voters can form and express political preferences free from coercion or misinformation.⁷⁰ Alignment between domestic electoral law and this emerging transnational standard remains partial in many developing democracies, especially in areas such as campaign finance, access for persons with disabilities, and regulation of digital platforms.

Judicial interventions have played an ambivalent role. In India, courts have expanded the informational and procedural rights of voters through decisions on candidate disclosures, secrecy of ballot and neutral administration.⁷¹ However, in several systems, frequent recourse to litigation over delimitation, nomination and counting also shifts responsibility away from commissions and encourages strategic behaviour by parties.⁷² A sustainable equilibrium requires courts to respect the specialised role of commissions while still enforcing constitutional limits with clarity and speed.

Future of election commissions in developing democracies will likely depend on their capacity to act as learning organisations that adapt to technological change and new forms of political mobilisation. Evidence from recent election cycles shows growing use of data analytics, social media operations and cross border information flows in campaigns, which traditional legal frameworks did not anticipate. Commissions that

⁷⁰ Human Rights Comm., General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996), <https://www.refworld.org/legal/general/hrc/1996/en/28176>.

⁷¹ *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294 (India); *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).

⁷² Office for Democratic Institutions & Human Rights, Org. for Sec. & Co-operation in Eur., Handbook for the Observation of Election Dispute Resolution 11–20 (2019), <https://www.osce.org/files/f/documents/7/8/415584.pdf>.

invest in research, professional training, and structured dialogue with civil society and academic experts can respond more effectively to these challenges than those which confine themselves to narrow administrative routines.

Cooperation among election management bodies across regions now acquires special value. Networks and platforms that facilitate peer review, observation and exchange of good practices help smaller or newer commissions to avoid design pitfalls and to persuade domestic actors about the need for reform.⁷³ Such cooperative arrangements also give developing nations a stronger collective voice in shaping global norms on digital regulation and election security, instead of merely importing models from established Western democracies.

Overall trajectory that emerges from this research points towards a demanding but clear normative horizon. Election commissions in developing nations must move from a primarily event management role to a broader constitutional guardianship of electoral democracy, grounded in law, supported by resources, and monitored by an informed citizenry.⁷⁴ This shift does not occur in a single reform moment; it grows through gradual but deliberate choices in institutional design, judicial doctrine, political practice and civic engagement over time.

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⁷⁴ Devesh Kapur & Madhav Khosla, *The Indian Parliament as an Institution of Accountability*, 23 *Democracy in Dev.* 1, 15–21 (Ctr. for Global Dev. Working Paper No. 234, 2010), https://www.cgdev.org/sites/default/files/1425899_file_Kapur_Khosla_Parliament_FINAL.pdf.

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