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EDITORIAL ANALYSIS

# ECI Transfer Controversy — Article 324 and the Limits of Constitutional Power

 THE HINDU

3 April 2026 · POLITY · GS2

CURATED &amp; WRITTEN BY

**Bharat Choudhary**

UPSC Educator &amp; Content Creator

 [linkedin.com/in/epicbharat](https://www.linkedin.com/in/epicbharat)

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# ECI Transfer Controversy — Article 324 and the Limits of Constitutional Power

 The Hindu

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GS2

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3 tags



## INTERVIEW ANGLE

*"Does the Election Commission of India's broad constitutional mandate under Article 324 require corresponding accountability mechanisms to prevent institutional overreach?"*

## THE CORE ARGUMENT

The Election Commission of India (ECI) has broad constitutional powers under **Article 324** — “superintendence, direction and control” over elections. But a recent controversy over opaque transfer orders of senior IAS/IPS officers in election-bound states has prompted the Supreme Court to clarify the **limits of this power**. The Hindu argues that while the ECI’s transfer authority is a necessary tool for ensuring free and fair elections, it must be exercised with procedural transparency and bounded by service rules — particularly the All India Services Act and principles of **natural justice**. Constitutional power without accountability undermines the very democratic process it is meant to protect.

## ARTICLE 324 — THE ELECTORAL CONSTITUTION

PROVISION	CONTENT
<b>Article 324(1)</b>	ECI has “superintendence, direction and control” of elections to Parliament, State Legislatures, Presidency, Vice Presidency
<b>Article 324(2)</b>	ECI consists of CEC + such number of ECs as President may fix
<b>Article 324(5)</b>	CEC cannot be removed except like a Supreme Court judge; ECs can be removed on CEC’s recommendation
<b>Article 324(6)</b>	President/Governors must make available to ECI such staff as it may need

## THE TRANSFER POWER — HOW IT WORKS

The ECI’s authority to transfer senior officials stems from **Article 324** read with the **Model Code of Conduct (MCC)** and the Government’s acknowledged obligation to assist the ECI:

- ❶ Before elections, ECI can order state governments to transfer officers it considers non-neutral
- ❷ This power is backed by the Supreme Court’s ruling in **T.N. Seshan v. Union of India (1995)** — affirming ECI’s plenary powers
- ❸ **Problem:** Transfers ordered without recorded reasons, without hearing the affected officer, and without clear criteria create both due process violations and political controversy

## KEY CONSTITUTIONAL PRINCIPLES AT STAKE

PRINCIPLE	APPLICATION TO ECI TRANSFERS
<b>Natural Justice</b>	Officers being transferred should have notice and opportunity to respond
<b>Reasoned Orders</b>	ECI must record reasons — not just invoke Article 324 as a blanket justification
<b>Proportionality</b>	Transfers should be necessary and proportionate to the electoral concern, not punitive
<b>Federalism</b>	State cadre officers are under joint Centre-State jurisdiction; ECI cannot bypass All India Services Act

## THE SUPREME COURT’S ROLE

The SC has historically been the guardian of ECI’s independence:

- **T.N. Seshan (1995):** Affirmed ECI’s plenary powers; ECI doesn’t need government concurrence
- **Mohinder Singh Gill (1978):** Broad reading of Article 324; ECI can fill gaps in electoral law
- **Recent clarification (2026):** SC noted that Article 324 does not make ECI a law unto itself — it must comply with service rules and constitutional propriety

## STRUCTURAL CONCERNS

The editorial raises broader concerns about ECI’s institutional design:

- ❶ **Appointment:** The Chief Election Commissioner Appointment Act, 2023 replaced SC judges with a government-dominated panel — raising questions about independence

- ② **Accountability gap:** ECI has no external audit mechanism; internal deliberations are secret
- ③ **Model Code of Conduct:** Legally unenforceable; relies on moral suasion and political compliance
- ④ **EVM controversy:** Persistent questions about Electronic Voting Machine security — not independently audited by international bodies

## UPSC RELEVANCE

### GS Paper 2 — Polity and Governance:

- Article 324 — ECI's constitutional powers; composition; removal of CEC vs. ECs
- Election Commission's role in free and fair elections
- Model Code of Conduct — scope, enforceability, limitations
- Key SC cases: T.N. Seshan (1995), S. Subramaniam Balaji (2013), Mohinder Singh Gill (1978)
- CEC Appointment Act 2023 — controversy over executive role in appointments

## UPSC RELEVANCE

“The Election Commission's constitutional mandate is strongest when it exercises its powers with procedural transparency. An institution tasked with protecting democratic integrity cannot itself operate without accountability.”

## FACTS CORNER

- **T.N. Seshan:** India's most transformative CEC (1990–96); enforced Model Code of Conduct strictly; introduced photo ID cards for voters
- **Model Code of Conduct:** Comes into force from date of election announcement; not legally binding per se but ECI enforces it via its Article 324 powers
- **EVM:** India uses Electronic Voting Machines since 1982 (partial) and fully since 2004; VVPAT (Voter Verifiable Paper Audit Trail) added from 2019
- **Rajya Sabha vs. Lok Sabha:** ECI conducts both; also Presidential and VP elections
- **State Election Commissions:** Conduct elections to Panchayats and Municipalities — separate from ECI; Article 243K and 243ZA
- **Representation of the People Act, 1950 and 1951:** Statutory framework for elections; ECI derives operational powers from these Acts alongside Article 324

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## Bharat Choudhary

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[linkedin.com/in/epicbharat](https://www.linkedin.com/in/epicbharat)[Read Full Article on Ujyari →](#)<https://ujyari.com/editorials/2026/04/eci-transfer-authority-constitutional-powers/>

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