
THE ARCHITECTURE OF DEMOCRACY: A COMPREHENSIVE ANALYSIS OF ELECTORAL LAWS IN INDIA

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ABSTRACT

This paper undertakes a critical and multifaceted examination of India's electoral jurisprudence, exploring the legal frameworks that serve as the foundational architecture of the world's largest democracy. Moving beyond a mere descriptive analysis of the statutory guidelines provided by the Representation of the People Acts of 1950 and 1951, this study deeply interrogates the functional autonomy of the Election Commission of India (ECI) as envisioned under Article 324 of the Constitution. To contextualize the evolving nature of institutional independence, the research traces a trajectory from landmark historical precedents most notably *Mohinder Singh Gill v. Chief Election Commissioner*¹, which cemented the ECI's plenary powers to a series of highly consequential recent legal developments. Specifically, the paper analyses the Supreme Court's historic invalidation of the opaque Electoral Bonds scheme, the systemic implications of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, and the recent judicial endorsement upholding the ECI's authority to conduct a Special Intensive Revision (SIR) of electoral rolls. By juxtaposing these historic and contemporary inflection points, the paper systematically evaluates whether the current constitutional and statutory legal frameworks provide an adequate shield to insulate the electoral process from creeping executive overreach and partisan interference. Ultimately, this comprehensive analysis highlights structural vulnerabilities within the existing institutional design, emphasizing the ongoing necessity to safeguard the integrity of India's electoral machinery against modern political pressures.

Keywords: Election, Democracy, Rule of Law, Representation, Fairness

¹ (1978) 1 SCC 405.

Introduction

India, the world's largest democracy, owes much of its stability and legitimacy to the sanctity of its electoral processes. Free and fair elections are the bedrock of representative government and a cornerstone of the democratic ethos enshrined in the Constitution of India. The framers of the Constitution envisioned a political structure wherein periodic elections would not only allow citizens to express their political will but also act as a mechanism of accountability for those in power. This vision is embedded in the constitutional scheme under Part XV, particularly Articles 324 to 329, which establish the foundation for the regulation, supervision, and conduct of elections in India. The Election Commission of India (ECI), a constitutionally mandated body under Article 324, is entrusted with the responsibility to ensure that elections are conducted in a manner that is free, fair, and devoid of malpractices.

The sanctity of electoral laws is more than a procedural formality; it is a democratic imperative. Sanctity in this context refers to the integrity, impartiality, transparency, and credibility of the legal and institutional mechanisms that govern elections. A breach of electoral sanctity undermines not only the legitimacy of the elected representatives but also the faith of the electorate in the democratic process. Contemporary electoral realities expose several challenges that raise serious concerns about the adequacy of current laws and the robustness of enforcement mechanisms.

Foremost among these challenges is the criminalization of politics, a phenomenon that persists despite widespread public condemnation and judicial recognition of its dangers. According to data from the Association for Democratic Reforms (ADR), a significant percentage of legislators in both state and central legislatures face serious criminal charges.² This not only corrupts the electoral process but also diminishes the moral authority of governance. Although the Supreme Court in *Public Interest Foundation v. Union of India*³ acknowledged this issue and directed political parties to publicize the criminal antecedents of their candidates, such measures remain insufficient in deterring political parties from fielding such candidates. Another deeply entrenched issue is electoral financing, especially the opacity introduced by the electoral bonds scheme. While ostensibly introduced to cleanse political funding, the scheme has been criticized for its lack of transparency, bypassing the fundamental principles of

² Association for Democratic Reforms, *Analysis of Criminal Background, Financial, and Other Details of MPs*, 2023.

³ (2019) 3 SCC 224.

informed voting.⁴ The Supreme Court itself has expressed concerns over the anonymity and lack of public scrutiny inherent in this system.⁵ The electoral bonds mechanism has the potential to facilitate unaccounted wealth in elections, thereby tilting the balance in favour of wealthier parties and candidates, consequently eroding the level playing field guaranteed by electoral law.

The Model Code of Conduct (MCC), though not legally binding, serves as a moral compass for political behaviour during elections. However, the selective enforcement of the MCC has invited criticism of the Election Commission's impartiality. Moreover, the Representation of the People Act, 1951 (RPA), the primary legislation governing elections, contains several outdated provisions that fail to address modern threats such as digital misinformation, deepfakes, and algorithmically targeted propaganda, all of which can significantly influence voter behaviour.

Judicial pronouncements have played a crucial role in expanding the scope of electoral rights. In *People's Union for Civil Liberties (PUCL) v. Union of India*, the Supreme Court held that the right to know the antecedents of candidates is a part of the fundamental right under Article 19(1)(a).⁶ Similarly, in *Union of India v. Association for Democratic Reforms*, the Court mandated that candidates disclose their criminal records, assets, and educational qualifications, thereby affirming the principle that informed choice is vital for the sanctity of elections.⁷

The role of technology in elections, particularly the use of Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trails (VVPATs), has sparked both appreciation and scepticism. While these tools are meant to enhance accuracy and reduce electoral fraud, concerns about the verifiability and reliability of these machines persist.⁸ Allegations of tampering, though not proven, have shaken public confidence in the electoral process. The reluctance of authorities to conduct full-scale VVPAT audits in all constituencies further exacerbates this trust deficit.

⁴ Supreme Court Observer, —Electoral Bonds and Transparency, II (2023),

⁵ *Association for Democratic Reforms v. Union of India*, W.P.(C) No. 880 of 2017.

⁶ AIR 2003 SC 2363.

⁷ AIR 2002 SC 2112

⁸ S.Y. Quraishi, *An Undocumented Wonder: The Making of the Great Indian Election*, (Rupa, 2014), p. 176

Research Objectives:

The specific objectives of this research are:

1. To critically examine the constitutional framework regulating elections in India, with a focus on Articles 324 to 329.
2. To evaluate the effectiveness of statutory provisions, primarily the Representation of the People Acts of 1950 and 1951, in preserving electoral sanctity.
3. To investigate emerging challenges such as digital manipulation, voter inducement, and the opaque use of electoral bonds.

Legislative Framework**Constitutional Basis for Elections (Articles 324–329)**

The Constitution of India lays the foundation for the democratic process by guaranteeing the conduct of free and fair elections. This constitutional imperative is enshrined in Part XV (Articles 324 to 329), which deals exclusively with the conduct of elections to Parliament, State Legislatures, and the offices of the President and Vice President.

Article 324 vests the superintendence, direction, and control of elections in the hands of the Election Commission of India (ECI). It not only empowers the Commission to conduct elections but also grants it wide-ranging powers to ensure that elections are conducted in a free and fair manner. Over time, judicial interpretations have expanded the scope of Article 324 to include residual powers that the Commission may exercise in the absence of specific laws. In *Mohinder Singh Gill v. Chief Election Commissioner*, the Supreme Court held that Article 324 is a plenary provision that enables the Commission to take all necessary steps to ensure the proper conduct of elections.⁹

Article 325 safeguards non-discrimination in electoral rolls, ensuring that no individual shall be ineligible for inclusion on grounds of religion, race, caste, or sex thereby ensures inclusiveness and democratic equality, fundamental to the sanctity of the electoral process.

⁹ (1978) 1 SCC 405.

Article 326 gives effect to the principle of universal adult suffrage by stipulating that elections to the House of the People and to the State Legislative Assemblies shall be on the basis of adult suffrage. It provides that every person who is a citizen of India, not less than eighteen years of age, and not otherwise disqualified under the Constitution or any law, shall be entitled to vote, thereby, empowering every adult citizen with equal voice in the political process.

Article 327 empowers Parliament to make laws with respect to elections to the Union and State legislatures, subject to the provisions of the Constitution. This provision forms the legal basis for enactments like the Representation of the People Act, 1950 and 1951, which are the primary statutes governing the mechanics of elections, such as preparation of electoral rolls, delimitation of constituencies, qualifications and disqualifications for membership, corrupt practices, and disputes.

Article 328 confers a similar power on State Legislatures in relation to their own legislative assemblies, permitting them to legislate on elections to their respective bodies, again subject to the overarching provisions of the Constitution. While rarely invoked independently of Parliament's enactments, this provision affirms the federal balance in electoral regulation, particularly in areas such as panchayat and municipal elections, where State Election Commissions (established under Articles 243K and 243ZA) play a role.

Article 329 creates a bar on judicial interference in electoral matters, stating that no election to Parliament or State Legislatures shall be questioned except by an election petition as provided by law. This non-obstante clause is designed to preserve the autonomy and uninterrupted progression of the electoral process. However, it has not prevented courts from intervening in pre-election matters where fundamental rights or procedural safeguards are violated. For example, in *N.P. Ponnuswami v. Returning Officer*, the Supreme Court held that judicial review is barred only after the election process has commenced and until it concludes.¹⁰ However, the Court also maintained that challenges to constitutional validity of election laws or fundamental rights violations remain open to scrutiny.¹¹

Together, Articles 324 to 329 articulate a multi-tiered constitutional scheme for conducting elections that combines independent supervision (through the Election Commission), legislative competence (through Parliament and States), and procedural insulation (through

¹⁰ AIR 1952 SC 64.

¹¹ *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216

judicial non-interference during electoral cycles). The framework is purposefully designed to ensure institutional independence, non-discrimination, and procedural integrity. Yet, while the constitutional text provides a solid foundation, the effective realization of these principles depends on robust implementation and faithful interpretation.

A significant issue that arises is whether the autonomy of the Election Commission under Article 324 is merely notional or genuinely enforceable. Despite being a constitutional body, the appointment and removal procedure for Election Commissioners (other than the Chief Election Commissioner) are not constitutionally safeguarded. This structural vulnerability has raised concerns about the partisan capture of the commission. The Supreme Court recently in *Anoop Baranwal v. Union of India* observed the urgent need to reform the appointment process, recommending a collegium-style structure to enhance independence.¹²

Moreover, while article 325 and 326 uphold non-discriminatory participation, emerging practices such as voter suppression, deletion of names from electoral rolls, and the disenfranchisement of marginalized communities (like migrant workers, prisoners and the homeless) present real-world contradictions.¹³ Additionally, while Article 327 and 328 empower legislatures to legislate electoral law, legislative inaction or selective reform (such as the introduction of the Electoral Bonds Scheme without adequate debate) has sometimes weakened transparency and tilted the electoral playing field.¹⁴ These developments underline that constitutional competence must be exercised with democratic responsibility, else it risks legitimizing structures that undermine electoral sanctity.

Representation of the People Act, 1950 & 1951

The constitutional framework laid out under Articles 324 to 329 of the Indian Constitution is operationalized through two pivotal legislative instruments: the Representation of the People Act, 1950 and the Representation of the People Act, 1951. These Acts together form the backbone of India's statutory electoral regime. The representation of People's act 1950 primarily deals with the pre-electoral architecture including the allocation of seats, delimitation of constituencies and the preparation and revision of electoral rolls. In contrast, the Representation of the People Act, 1951 (RPA 1951) is the more expansive and dynamic statute,

¹² *Anoop Baranwal v. Union of India*, (2023) 2 SCC 380.

¹³ Centre for Policy Research, —Electoral Exclusion and the Urban Poor, | CPR Working Paper Series, 2020.

¹⁴ Supreme Court Observer, —Electoral Bonds Case Analysis.

dealing with actual conduct of elections, qualifications and disqualifications of candidates, corrupt practices, election disputes, and penal provisions. Collectively, these Acts ensure the procedural sanctity of elections in India, translating constitutional norms into enforceable legal provisions. However, they also present significant limitations in areas such as criminalization of politics, campaign finance, voter protection, and the regulation of digital interference, which have increasingly compromised the integrity of elections in recent decades.

The Representation of the People Act, 1950 (RPA 1950) focuses on the structural groundwork for elections. It authorizes the Election Commission to supervise the preparation and revision of electoral rolls and provides for the allocation of seats in the House of the People and Legislative Assemblies. It also empowers the President and Governors to delimit constituencies through official orders, which are executed by the Election Commission. The Act's core objective is to ensure that every eligible citizen is registered as a voter and that constituencies are demarcated to ensure proportionate representation based on population. The 61st Constitutional Amendment lowered the voting age from 21 to 18 years, and subsequent amendments to the RPA 1950 incorporated this change. However, the Act has often come under scrutiny for enabling exclusionary practices in the form of arbitrary deletions, non-inclusion of marginalized groups, and technical irregularities in voter registration.

The Representation of the People Act, 1951 (RPA 1951) is far more detailed and expansive in its scope. It is the principal legislation that regulates the conduct of elections to the Parliament and State Legislatures and contains substantive provisions relating to qualifications and disqualifications of candidates, corrupt practices, election offences, and the mechanism for adjudicating election disputes. Section 8 of the Act outlines various grounds for disqualification of candidates, including conviction for specified offences such as bribery, undue influence, and criminal misconduct. While this provision is critical for maintaining electoral purity, the law permits convicted candidates to return to electoral politics after a prescribed period, which has led to repeated instances of tainted individuals contesting elections. The Law Commission of India in its 244th Report recommended immediate disqualification upon framing of charges in heinous offences, but this has not yet been incorporated into law.¹⁵

Section 123 of the RPA 1951 defines corrupt practices, which include bribery, undue influence, impersonation, the use of religious or caste-based appeals, and character assassination of

¹⁵ Law Commission of India, *244th Report on Electoral Disqualifications*, 2014

opponents. These provisions are central to protecting the sanctity of elections. However, enforcement remains weak, with very few convictions under these sections. Moreover, hate speech and divisive campaign rhetoric have largely escaped legal scrutiny, often under the pretext of freedom of speech, despite being squarely addressed under Section 123(3).¹⁶ The Election Commission, while empowered to censure and advise political parties, lacks the statutory power to disqualify candidates or de-register parties for repeated violations, thereby limiting the Act's deterrent potential.

An important addition to the Act was the insertion of Section 33A and 33B following the Supreme Court's decisions in *Union of India v. Association for Democratic Reforms*¹⁷ and *PUCL v. Union of India*.¹⁸ Section 33A mandates the disclosure of a candidate's criminal antecedents, educational qualifications, and assets/liabilities. These amendments were aimed at enhancing transparency and informed voting, and the judiciary has interpreted them as being part of the fundamental right to information under Article 19(1)(a). However, the implementation is often ceremonial, as many candidates furnish vague or incomplete affidavits without facing penalties, and voters often lack the means to scrutinize them critically.

Section 77 of the Act addresses expenditure limits, which are intended to prevent undue influence through financial means. However, unofficial spending, use of surrogate advertising, and third-party promotions often go unmonitored, making these limits practically ineffective.¹⁹ The Electoral Bonds Scheme, introduced in 2018, further eroded financial transparency by allowing anonymous donations to political parties, thereby undermining both the RPA's intent and voter trust.²⁰ Although the Supreme Court is currently examining the constitutional validity of this scheme, its continued operation raises urgent concerns about whether the RPA 1951 has been effectively hollowed out by executive policy instruments.

Another critical aspect of the RPA 1951 is its mechanism for adjudicating electoral disputes. Under Section 80 and 81, the Act provides for the filing of election petitions in High Courts. While this judicial remedy is fundamental to ensuring electoral justice, the absence of fixed timelines and the protracted nature of litigation often defeat its purpose. Election petitions

¹⁶ ADR v. Union of India, WP(C) No. 536/2011; see also Supreme Court Observer analysis (2022).

¹⁷ AIR 2002 SC 2112.

¹⁸ AIR 2003 SC 2363.

¹⁹ Election Commission of India, —Compendium of Instructions on Election Expenditure Monitoring, ¶ 2019.

²⁰ Supreme Court Observer, —Electoral Bonds Challenge.

frequently remain pending for years, sometimes even beyond the term of the legislature.²¹ Despite judicial acknowledgment of this delay, legislative reforms have not followed. The Law Commission in its 170th and 255th Reports has recommended setting up special fast-track election tribunals, but such reforms remain unrealized.

Moreover, there is no statutory provision in the RPA to regulate the use of digital platforms and social media campaigning, despite their growing influence on voter behaviour. The Model Code of Conduct issued by the Election Commission attempts to fill this gap through advisories, but these lack legal enforceability.²² This regulatory vacuum is especially alarming given the proliferation of misinformation, deepfakes, and algorithmically targeted political propaganda.

Another issue that often escapes attention is the limited accountability of political parties under the RPA 1951. While candidates are required to follow stringent disclosure norms, political parties enjoy far more leeway, particularly in matters of funding, campaign methods, and candidate selection.²³ The Supreme Court has, in recent years, mandated that political parties give reasons for selecting candidates with criminal backgrounds, but enforcement mechanisms remain fragile.

The Acts also fail to address voter disenfranchisement issues concerning migrant labourers, internally displaced persons, and citizens abroad (despite the 2010 amendment allowing NRIs to vote). Moreover, there is insufficient attention to gender representation, as the Acts contain no provisions to ensure political participation of women, unlike the 33% reservation provided at the panchayat level under the 73rd Amendment.

The Representation of the People Acts of 1950 and 1951 form the legal edifice of India's electoral democracy. While the RPA 1950 ensures administrative fairness in the creation of constituencies and electoral rolls, the RPA 1951 aims to ensure democratic integrity during and after the electoral process. However, both Acts reveal structural and operational limitations when confronted with contemporary electoral challenges such as criminalization, unregulated finance, hate speech, digital propaganda, and judicial delay. Despite multiple Supreme Court directives and Law Commission recommendations, the inertia in amending these statutes

²¹ J. Jacob, —Why Election Petitions Are Rarely Resolved in Time, | *The Hindu*, June 2023

²² Election Commission of India, —Social Media Guidelines under MCC, | 2019

²³ ADR, —Funding Patterns of National Parties| Report 2024

reflects a deeper political reluctance to reform. Hence, while the Acts embody the legal commitment to electoral sanctity, their effectiveness depends on consistent political will, robust implementation, and constitutional fidelity.

Conduct of Election Rules and Legal Procedures

The Conduct of Elections Rules, 1961 form an integral part of India's electoral legal framework by operationalizing the statutory provisions of the Representation of the People Act, 1951 particularly concerning the procedural conduct of elections. While the Constitution and the RPA establish the substantive and structural dimensions of elections, it is these Rules that provide the practical guidelines and operational mechanisms for administering elections on the ground. Framed under the authority of Section 169 of the RPA, 1951, the Conduct of Elections Rules, 1961 were notified by the Central Government in consultation with the Election Commission of India (ECI), and they have since been amended several times to incorporate electoral reforms and technological innovations. The Rules cover a wide array of procedures including nomination of candidates, allotment of symbols, use of voting machines, postal ballots, counting of votes, declaration of results, and maintenance of secrecy of voting. As elections in India involve an enormous electorate spread across diverse geographies, the precision and clarity of these rules are critical in ensuring electoral integrity, procedural uniformity, and voter confidence.

In recent years, reforms have been proposed to enhance the legal robustness of these Rules. The ECI has suggested that violations of the Model Code of Conduct be incorporated into the legal framework through amendments to the Conduct Rules or the RPA. Additionally, legal scholars and civil society organizations have called for the codification of election observers' powers, greater transparency in randomization of polling staff, and real-time disclosure of voter turnout data. These procedural reforms are vital for ensuring not just the technical conduct of elections, but the perception of fairness among the electorate.

Although the Conduct of Election Rules provide detailed mechanisms for procedural fairness, they are often undermined by poor enforcement, lack of uniformity across states, and absence of accountability for violations. For instance, while Rule 11A allows for the use of alternate documents in place of EPICs, field officers often lack training to implement this uniformly, leading to exclusion or confusion. Similarly, while the ECI issues handbooks and manuals to guide polling personnel, the sheer scale of India's electoral apparatus results in logistical lapses,

inconsistencies, and misinterpretations that compromise electoral integrity.

The Conduct of Election Rules, 1961 serve as the operational blueprint for implementing the substantive provisions of the Constitution and the Representation of the People Act. Their meticulous detailing of each stage of the election process from nominations to counting ensures procedural rigor and administrative uniformity. However, the Rules must evolve in response to technological advancement, electoral innovation, and democratic expectations. Reforms must focus on closing loopholes, strengthening accountability mechanisms, and empowering electoral officers through better training and clearer legal backing. Above all, the integrity of electoral procedures must be matched by the political will and institutional independence of the Election Commission to implement them consistently and without bias. The sanctity of elections, ultimately, lies not just in the letter of the law, but in its honest and equal application.

Model Code of Conduct: Nature and Legal Status

The Model Code of Conduct (MCC) represents one of the most significant non-statutory instruments in India's electoral framework, functioning as a moral and ethical guide for political parties and candidates during elections. Though not enacted by Parliament nor possessing the binding force of law, the MCC has emerged as a powerful regulatory tool under the oversight of the Election Commission of India (ECI). Its relevance lies in ensuring a level playing field for all contestants, maintaining decorum in political campaigns, and upholding the sanctity and integrity of the electoral process. The origins of the MCC can be traced back to the Kerala Assembly elections of 1960, but it gained nationwide application and prominence during the 1971 general elections. Since then, the MCC has evolved both in scope and authority, covering a wide range of electoral conduct from campaign speeches, processions, and advertisements to the conduct of ruling parties and public officials. The MCC comes into effect from the announcement of the election schedule by the ECI and remains in force until the completion of the electoral process. Its purpose is preventive rather than punitive, aiming to deter potential misconduct through swift administrative action rather than prosecution.

The MCC comprises several key provisions designed to curb abuse of power, prevent electoral malpractices, and ensure that the ruling party does not use its official position for electoral gain. It prohibits the announcement of new schemes, transfers of officials likely to influence the election, and the use of public funds or government vehicles for campaign purposes. It also restricts the use of religious symbols, inflammatory rhetoric, and personal attacks in campaign

speeches. However, a fundamental issue with the MCC is its non-legal character. It is not a law passed by Parliament but a voluntary code agreed upon by political parties under the supervision of the ECI. As a result, it does not carry statutory enforceability, and violations of the MCC do not automatically lead to criminal prosecution unless they also breach specific provisions of the Indian Penal Code (IPC), Representation of the People Act, 1951, or other statutory laws.

Despite lacking statutory backing, the MCC has acquired quasi-legal status due to consistent application by the ECI and its recognition by the Supreme Court. In the case of *S. Subramaniam Balaji v. State of Tamil Nadu*, the Court noted that although the MCC is not legally enforceable, the Election Commission is competent to issue directions under Article 324 of the Constitution to ensure free and fair elections.²⁴ Similarly, in *Union of India v. Harbans Sial*, the Punjab and Haryana High Court held that violation of the MCC may not be legally punishable, but it constitutes a breach of electoral discipline that warrants immediate corrective measures.

Despite its limitations, the MCC has played a constructive role in Indian elections. It has enabled the ECI to act as a proactive regulator rather than a passive observer. The Code has been especially effective in areas such as the prevention of vote-buying through cash seizures, the randomization of polling staff, and the curbing of state-sponsored advertisements during the election period. Moreover, the very anticipation of MCC enforcement often acts as a deterrent, pushing political parties to exercise caution during public campaigns. The ECI has also modernized the Code's enforcement through the cVIGIL mobile application, allowing citizens to report MCC violations in real-time, thus democratizing electoral monitoring.

In recent elections, the MCC has also been adapted to include guidelines on social media usage, requiring political parties and candidates to pre-certify political advertisements and refrain from hate speech and misinformation. However, the speed and anonymity of digital content continue to challenge traditional enforcement methods. The ECI's advisory powers are not always effective in compelling global tech platforms to comply with Indian electoral norms. The growing digitalization of politics thus presents a new frontier for the MCC, which needs to evolve in both scope and statutory strength.

The Model Code of Conduct is a unique innovation in India's electoral democracy. Though not

²⁴ (2013) 9 SCC 659.

backed by statute, it derives its strength from institutional practice, judicial acknowledgment, and public expectation. It represents an evolving consensus on electoral ethics and fair play. However, its moral authority is insufficient in an increasingly combative and polarized political environment. For the MCC to fulfil its constitutional purpose, it must be supported by a clear legal framework, objective enforcement protocols, and institutional safeguards that protect both impartiality and procedural fairness. Ultimately, a free and fair election is not only a matter of infrastructure or technology but of normative commitment to democratic conduct, a commitment that the MCC seeks to uphold but cannot enforce alone.

Statutory Gaps and Regulatory Challenges:

Despite the detailed constitutional provisions and comprehensive electoral laws like the Representation of the People Acts, 1950 and 1951, India's electoral legal framework continues to face serious statutory gaps and regulatory challenges that undermine the sanctity of elections. These gaps manifest not only in areas of legal silence but also in outdated provisions, inadequate enforcement mechanisms, and limited jurisdictional clarity. The rapidly evolving nature of electoral politics driven by criminalization, technology, social media influence, opaque campaign financing, and identity-based mobilization has significantly outpaced the current legal and institutional capacities to regulate elections in a robust and impartial manner. Consequently, the electoral process, while structurally sound, remains vulnerable to manipulation, eroding public confidence and distorting the democratic mandate.

One of the most glaring statutory gaps is the inadequate regulation of political financing. The Representation of the People Act, 1951, and its supporting rules set limits on individual candidates' expenditure but place no meaningful restrictions or transparency requirements on the finances of political parties. This omission has allowed enormous sums of unaccounted money to enter the electoral arena, especially through anonymous contributions and underreported sources. The introduction of the Electoral Bonds Scheme in 2018, rather than improving transparency, has worsened this problem by allowing corporate entities and individuals to make unlimited and anonymous donations to political parties.²⁵ The Election Commission itself, in its official submissions to the Supreme Court, has criticized the scheme for undermining transparency and favouring ruling parties, yet it lacks the legal authority to

²⁵ Finance Act, 2017; Electoral Bond Scheme Notification No. 20/2018

reverse or regulate it.²⁶ The absence of legal ceilings on party spending and the lack of public disclosure of donor identities have led to the institutionalization of opacity, enabling money power to distort voter choice, marginalize smaller parties, and compromise electoral fairness.

Closely tied to financial opacity is the criminalization of politics, another domain where existing laws fall short. While Section 8 of the RPA, 1951 provides for disqualification upon conviction, there is no legal bar on candidates with pending serious criminal charges from contesting elections. This legal lacuna has allowed a growing number of candidates with grave charges, including murder, rape, and extortion, to enter legislatures. According to data published by the Association for Democratic Reforms (ADR), over 46% (251 out of 543) of MPs elected in the 2024 Lok Sabha elections had declared criminal cases against them, a 3% increase from previous Lok Sabha.²⁷ The Law Commission of India, in its 244th Report, and the Supreme Court in *Public Interest Foundation v. Union of India*, have both recommended that disqualification should attach at the stage of framing of charges in heinous offences, subject to safeguards.²⁸ However, successive governments have failed to legislate on this issue, citing the presumption of innocence and the possibility of misuse through false cases. This legislative inaction has created a moral and legal paradox where individuals facing serious criminal trials are legally allowed to shape laws in Parliament.

A third critical gap relates to the inadequate regulation of digital and social media in electoral campaigns. The RPA and the Conduct of Election Rules were enacted in a pre-digital era and do not address challenges such as fake news, algorithmic voter targeting, deepfakes, bot-generated propaganda, and paid news on social platforms.²⁹ Although the Election Commission has issued advisories and voluntary codes of ethics for digital platforms, these measures lack statutory backing and enforcement teeth. With political parties increasingly relying on data-driven microtargeting and misinformation to influence voter behaviour, the absence of a comprehensive law to regulate digital campaigning represents a significant blind spot. The current framework neither mandates disclosure of online campaign spending nor requires transparency in sponsored content or social media advertisements. In an era where electoral outcomes are increasingly shaped by perception and narrative warfare, this regulatory vacuum

²⁶ Election Commission of India, Affidavit in *ADR v. Union of India*, WP(C) No. 880/2017

²⁷ ADR Report on Lok Sabha 2024 Candidates.

²⁸ (2019) 3 SCC 224

²⁹ Law Commission of India, *Report No. 255: Electoral Reforms*, 2015.

has allowed manipulation to flourish unchecked.

Another longstanding regulatory concern is the ineffectiveness of the Model Code of Conduct (MCC) due to its non-statutory nature. While the MCC plays a vital role in maintaining decorum and ethical standards during elections, its violation does not lead to legal consequences unless accompanied by an offence under a separate statute.³⁰ The Election Commission's authority under Article 324 to enforce the MCC is largely administrative, meaning it can issue notices, advisories, and censures but cannot disqualify candidates or deregister parties for repeated or serious violations. This has led to a perception of selective enforcement, especially when action is swift against opposition leaders but delayed or absent when ruling party leaders violate the code. The Law Commission, civil society organizations, and retired election commissioners have repeatedly recommended giving the MCC statutory status by incorporating it into the RPA with clear penalties for violations. Yet, such reforms have not been undertaken, leaving the MCC's authority contingent on political cooperation and public pressure rather than legal obligation.

Additionally, the adjudication of election disputes remains a serious structural bottleneck. Under current law, election petitions must be filed before the High Courts and are often decided years after the election rendering the relief meaningless. The RPA contains no fixed timeline for disposal of these petitions, and as a result, many challenges are resolved only after the term of the winning candidate has ended. The Supreme Court has acknowledged the need for fast-track courts or election tribunals, and the Law Commission in its 255th Report has recommended the creation of special judicial mechanisms to handle electoral litigation. Despite such proposals, no legislative progress has been made, allowing procedural delays to persist and deny justice. This delay undermines the deterrent effect of legal remedies and emboldens electoral violations.

There are also gaps in voter protection and inclusion. For instance, the law does not sufficiently address the disenfranchisement of migrant workers, the homeless, or persons with disabilities who face significant barriers to registration and voting. Similarly, the system of proxy and postal voting, though expanded to senior citizens and service voters, remains underutilized due to poor outreach and bureaucratic hurdles. Furthermore, although the Constitution provides for universal adult suffrage, the legal framework does little to address voter suppression tactics,

³⁰ Election Commission of India, MCC Handbook (2019), p. 5.

booth-level intimidation, or the improper deletion of names from electoral rolls. While the ECI has tried to innovate through tech-based solutions like cVIGIL and digital EPICs, these measures do not replace the need for a legally codified voter protection regime.

Finally, there is a deficiency in regulating internal party democracy and candidate selection. The RPA does not mandate political parties to follow democratic norms in leadership selection, candidate nomination, or financial disclosures. There is no statutory requirement for parties to justify the selection of candidates with criminal antecedents, although the Supreme Court has attempted to fill this gap through judgments directing parties to explain their decisions.³¹ However, in the absence of statutory enforcement, compliance remains cosmetic. This void contributes to the concentration of power within party elites and promotes the selection of candidates based on winnability, money power, or dynastic affiliations rather than merit, clean record, or public service.

The Indian electoral legal framework, while constitutionally grounded and administratively sophisticated, suffers from critical statutory gaps and regulatory inertia that significantly compromise electoral integrity. These gaps ranging from campaign finance opacity, criminal candidate impunity, digital propaganda regulation, weak enforcement of ethical conduct, delayed dispute resolution and voter exclusion are not merely administrative oversights but systemic vulnerabilities that demand urgent reform. Addressing these challenges requires comprehensive legislative overhauls, empowerment of the Election Commission, and political consensus on democratic accountability. Without plugging these loopholes, the legal sanctity of India's elections will remain a formal promise, repeatedly undermined by political expediency and institutional weakness.

Conclusion:

The sanctity of electoral laws in India is not merely a legal concern. It is the cornerstone of democratic legitimacy, institutional trust, and constitutional governance. The electoral process is the very mechanism through which the sovereign will of the people is periodically exercised, making it the most visible expression of democracy in action. Over the decades, India has evolved a complex electoral machinery administratively robust, legally expansive, and technologically innovative. However, this outward robustness conceals deep structural

³¹ *Brijesh Singh v. Sunil Arora*, (2020) SCC Online SC 1142

fragilities. While the Constitution provides a sound framework under Articles 324 to 329 and entrusts the Election Commission of India with a critical mandate, the actual implementation of electoral laws has often failed to keep pace with the evolving challenges of criminalization, financial opacity, misinformation, and executive interference. This disconnect between constitutional ideals and electoral realities lies at the heart of the concerns surrounding the sanctity of India's electoral laws.

Through the above analysis, it becomes evident that while India's electoral system has achieved significant milestones such as universal adult franchise, large-scale voter participation, and peaceful transitions of power, it remains riddled with legal ambiguities, regulatory limitations, and procedural delays. Laws such as the Representation of the People Act, 1950 and 1951, though foundational, are increasingly inadequate in addressing contemporary issues like digital misinformation, electoral bonds, and cross-border political funding. The Election Commission, despite being constitutionally empowered, remains institutionally constrained lacking both punitive authority and financial independence. It can issue notices and guidelines, but its capacity to enforce compliance, penalize violators, or audit party accounts in real time is severely restricted. As a result, serious violations ranging from hate speech to financial fraud go unpunished, eroding public faith in electoral integrity.

The judicial role, too, though proactive in landmark cases, is marred by procedural inertia. The tendency of courts to delay adjudication of election petitions renders the legal remedy ineffective, as justice often arrives after the candidate has served their full term. Even where courts have shown constitutional creativity such as in upholding the right to know about a candidate's criminal antecedents or in interpreting corrupt practices expansively these decisions frequently face implementation bottlenecks. The lack of binding timelines for disposal, insufficient judicial capacity, and absence of fast-track benches compound the problem. Consequently, the courts' transformative potential remains underutilized, leaving many electoral violations unaddressed in real time.

Recommendations

The sanctity of electoral laws in India is a multidimensional issue that cannot be resolved through isolated legal amendments or administrative tinkering. It requires a comprehensive rethinking of the electoral ecosystem. India must recognize that democratic legitimacy flows not just from holding elections, but from holding them in a manner that is genuinely free, fair,

transparent, and inclusive. The constitutional promise of equality, dignity, and accountability must reflect in the way elections are conducted, contested, and corrected. For this to happen, electoral law must become a living instrument of democratic renewal, constantly evolving to meet new threats and rising to higher standards of integrity. Only then can India truly uphold the sanctity of its elections and fulfil the democratic aspirations of its people. It may begin with taking following steps:

- Strengthen the statutory authority of the Election Commission of India (ECI) by enacting a dedicated legislation defining its powers, functions, and enforcement mechanisms, including the ability to audit party finances, disqualify candidates, and penalize violations.
- Convert the Model Code of Conduct (MCC) into a legally binding electoral code, enforceable under statute, with clear penalties for violations related to hate speech, abuse of state machinery, and inducement of voters.
- Introduce state funding of elections in a phased manner, accompanied by strict expenditure audits and limits, to reduce reliance on private donations and the associated influence of wealth on policy and candidatures.
- Establish Election Benches in High Courts with a mandatory six-month deadline for disposal of election petitions. These benches should have exclusive jurisdiction to ensure timely resolution of disputes and restore public confidence in legal remedies.
- Empower the Election Commission to regulate and monitor digital campaigning and political advertising, including social media platforms. All online political content should be subject to disclaimers, financial disclosure, and fact-checking.
- Create an independent Campaign Finance Regulatory Authority to monitor party accounts, investigate violations, and publish quarterly reports on political financing and expenditure.
- Strengthen whistleblower protections and provide institutional mechanisms for citizens and officials to report electoral malpractices, voter coercion, and misuse of state funds without fear of retaliation

- Enhance inter-agency coordination among the ECI, judiciary, income tax authorities, enforcement directorates, and cybercrime units to ensure an integrated approach to tackling election-related violations.
- Encourage adoption of best practices from global democracies, such as Canada's real-time donation databases, South Africa's binding electoral codes, and the UK's independent campaign finance audits, while adapting them to India's federal and socio-political context.
- Institutionalize periodic review and reform of electoral laws through a permanent Electoral Reforms Commission, comprising retired judges, election commissioners, academics, and civil society representatives.

REFERENCES

Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1999

Khosla, Madhav, *India's Founding Moment: The Constitution of a Most Surprising Democracy*, Harvard University Press, 2020.

Khanna, H.R., *Making of India's Constitution*, Eastern Book Company, 2008.

Noorani, A.G., *Constitutional Questions in India: The President, Parliament and the States*, Oxford University Press, 2000

ARTICLES

Jaffrelot, Christophe & Verniers, Gilles, "India's Electoral Dominance and Institutional Decline," *Seminar*, Issue 731, 2020.

Khosla, Madhav, "The Indian Constitution and the Limits of Judicial Review," *Law & Social Inquiry*, Vol. 44, No. 3, 2019, pp. 561–584.

Mitra, Subrata K., "Effects of Electoral Laws on Party Systems in India," *Asian Survey*, Vol. 34, No. 4, 1994.

Mehta, Pratap Bhanu, "The Rise of Judicial Sovereignty," *Journal of Democracy*, Vol. 18, No. 2, 2007.

Saxena, Rekha, "Electoral Reforms in India: Issues and Challenges," *Indian Journal of Public Administration*, Vol. 63, No. 1, 2017.

LEGISLATIONS

The Constitution of India, 1950

Representation of Peoples Act, 1951

Representation of Peoples Act 1950

Bharatiya Nyaya Sanhita, 2023

Indian Penal Code, 1860

Bharatiya Nagarik Suraksha Sanhita, 2023

Code of Criminal Procedure, 1973

Reports and Government Documents

Law Commission of India, *255th Report on Electoral Reforms*, Government of India, 2015.

Election Commission of India, *Model Code of Conduct – Guidelines and Handbooks*, 2019.

Association for Democratic Reforms, *Analysis of Criminal Background, Financial and Educational Details of Candidates*, 2024.

JUDICIAL DECISIONS

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

Public Interest Foundation v. Union of India, (2019) 3 SCC 224

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

Brijesh Singh v. Sunil Arora, (2020) SCC Online SC 1142

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

Abhiram Singh v. C.D. Commachen & Ors, (2017) 2 SCC 629

N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Salem, 1952 SCR 218

Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299

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