
JUDICIAL INTERVENTION AND ELECTORAL REFORM: THE ELECTORAL BOND SCHEME IN LIGHT OF TRANSFORMATIVE CONSTITUTIONALISM

Udishna Bhattacharjee, LL.M., Department of Law, University of North Bengal

ABSTRACT

“Political tyranny is nothing compared to the social tyranny and a reformer who defies a society is a more courageous man than a politician who defies Government.”¹

-Dr. B. R. Ambedkar

This paper examines transformative Constitutionalism within India’s electoral system, a democratic setup critically reliant on principles like an independent judiciary, free legislative elections, and governmental accountability. Since the 17th century, elections have been central to modern representative democracies. In India, free and fair elections, indispensable for democracy, are safeguarded by the autonomous Election Commission under Articles 324 to 329.

A significant, yet controversial, development in election financing was the Electoral Bond Scheme, introduced via the Finance Act, 2017, which notably exempted political parties from disclosing contributions received through these bonds (amendment to RPA 1951, Section 29C proviso). However, on February 15, 2024, the Supreme Court declared the Scheme unconstitutional. Citing the Preamble’s ideals, the Court held that legalizing anonymous donations violated citizens’ Right to Information (Article 19(1)(a)), facilitated corruption and quid pro quo arrangements (Article 21), and fundamentally skewed the “one person, one vote” principle. The ruling underscored that donation secrecy contradicts political equality by favouring wealthy contributors, thereby infringing upon free and fair elections and Article 14 of the Constitution. This paper will also discuss India’s broader election financing system.

Keywords: Accountability, Constitutionalism, Democratic, Electoral Bond, Right to Information.

¹ B.R. Ambedkar, Quote, GOODREADS, <https://www.goodreads.com/quotes/609078-political-tyranny-is-nothing-compared-to-the-social-tyranny-and> (last visited Apr. 15, 2025).

INTRODUCTION

India's transformation into a republic on January 26, 1950, signified the apex of a substantial constitutional journey. This framework, meticulously crafted by distinguished representatives, aimed to revolutionize the nation's governance structure in the wake of independence. The struggle for freedom, culminating on August 15, 1947, transitioned into the monumental task of establishing a sovereign, democratic nation founded on justice, liberty, equality, and fraternity, enshrined in the Constitution. Today, India stands as a robust democracy, celebrating its 77th year of independence.

A cornerstone of this democratic edifice is Constitutionalism, fostered by an independent judiciary, free legislative elections, and governmental accountability. Since the 17th century, elections have been indispensable for representative democracy. In India, the autonomous Election Commission, empowered by Articles 324-329 of the Constitution, guarantees free and fair elections, essential for the growth of political democracy.

India functions as a “*Government of the people, by the people and for the people*”, a representative democracy where citizens indirectly govern through elected representatives, asserting popular political supremacy.² Drawing heavily from the British model, India adopted a Parliamentary form of Government, featuring power distribution between Central and State Governments and adhering to the separation of powers among the legislature, executive, and judiciary. This inter-organ coordination reinforces the democratic ideals of the Preamble. Consequently, free and fair elections, safeguarded by the Election Commission, are vital for sustaining and invigorating this representative democracy.³ This paper comprehensively discusses electoral reforms since 1950, focusing on Part XV of the Constitution and the challenging impact of India's election financing system.

INDIA'S ELECTORAL SAGA: THE MARCH TOWARDS UNIVERSAL SUFFRAGE

The Morley-Minto Reforms of 1909, enacted through the Indian Councils Act, first introduced the concept of representative elements in India. This reform notably established the Communal

² Chatham House, Democracy in India, CHATHAM HOUSE (Apr. 7, 2022, updated Dec. 18, 2024), <https://www.chathamhouse.org/2022/04/democracy-india> (last visited Apr. 22, 2025).

³ Election Commission, Ensuring Free, Fair, and Transparent Elections, RAJASTHAN SHALA DARPAN, https://rajshaladarpan.rajasthan.gov.in/SD1/Election-Commision/ELC_Landing_Page.aspx (last visited Apr. 22, 2025).

Electorate system, creating separate electorates for Muslims and earning Lord Minto the title “*Father of Communal Electorate.*” While increasing Indian participation in legislative councils, influenced by the Indian National Congress, voting rights were limited to those paying taxes.

This communal representation was further extended in 1932 by the Communal Award (MacDonald Award) to include depressed classes and other minorities. However, the Morley-Minto Reforms failed to satisfy Indian aspirations for a parliamentary system. Consequently, on August 20, 1917, the British Government declared its intention for increasing Indian association in administration and the gradual development of self-governing institutions.⁴

The Government of India Act, 1919, extended the system of separate electorates to encompass Anglo-Indians, Indian Christians, Europeans, and Sikhs. Despite its prevalence during British rule, the concept of Separate Electorates was ultimately rejected by Dr. B. R. Ambedkar during the drafting of the Indian Constitution, considering the nation’s partition and his agreement to the Poona Pact, thus preventing its embodiment in independent India’s foundational document.

During pre-independence, with only about 15% of Indians holding voting rights, the demand for Universal Adult Franchise (UAF) grew significantly. The Motilal Nehru Report of August 15, 1928, was a key advocate, proposing UAF and equal rights for women, while rejecting separate electorates.⁵ In 1928, Dr. B. R. Ambedkar further championed UAF before the Simon Commission, urging for its constitutional inclusion. At its 1931 Karachi session, the Indian National Congress similarly advocated for political equality, deeming it crucial for an inclusive electoral system. India began drafting its first electoral roll based on UAF in November 1947, a right ultimately secured with the Constitution’s passage in 1949 and implementation on January 26, 1950.

During British rule, UAF was largely denied to Indian citizens, with voting rights restricted by criteria like property, taxation, income, and education under the Government of India Acts of 1919 and 1935. The Indian Freedom Movement crucially ignited the demand for universal suffrage, with its early mention in the Constitution of India Bill, 1895 (Swaraj Bill), advocating for every citizen’s right to vote for legislative representatives. However, this 1895 Bill was

⁴ J.N. Pandey, Constitutional Law of India 9 (56th ed. 2019).

⁵ Importance of Universal Adult Franchise in Democracy, UNACADEMY, <https://unacademy.com/content/bpsc/study-material/polity/universal-adult-franchise/> (last visited Apr. 29, 2025).

overlooked by significant early 20th-century constitutional proposals, including the Lucknow Pact, 1916, and the Commonwealth India Bill, 1925, both of which continued to propose limited voting rights based on education, income, and property. By the late 1920s, the tide turned, with Indian leaders firmly demanding a written Constitution that would embody and guarantee Universal Adult Franchise.

The enactment and enforcement of Universal Adult Franchise (UAF) fundamentally established democracy in India. Under the Indian Constitution, UAF (or Universal Suffrage) grants every adult citizen the right to vote and elect their legislative representatives upon reaching the age of majority. Initially set at 21 years, the voting age was lowered to 18 years by the 61st Amendment Act of 1989.⁶ India's adoption of UAF, as enshrined in Article 326 of the Constitution, without qualifications based on sex, property, taxation, or income, was considered a remarkably bold experiment. This was particularly true given the country's vast size, immense population, and widespread illiteracy. Despite these significant challenges, this daring endeavour has proven highly successful, evidenced by the steady increase in voter participation during general elections. Ultimately, UAF has profoundly contributed to India's democratization and ensured free and fair elections, all rooted in the fundamental democratic principle of equality.

CONTEMPORARY PREDICAMENTS OF REPRESENTATIVE DEMOCRACY

India's democratic nature is affirmed by the principle that "*We, the People of India*" are the ultimate source of the Constitution's authority, wielding power through elected representatives. This signifies that the government's formation is based on the popular will, and elected rulers are accountable to the populace. India operates as an indirect or representative democracy, where elected representatives exercise legal and political sovereignty. The Preamble of the Constitution broadly embodies the aspirations for political, social, and economic democracy.

The judiciary has reinforced this. In *S. R. Bommai v. Union of India*⁷, Justices Sawant and Kuldip Singh affirmed that democracy is an essential feature and part of India's basic constitutional structure.

Consequently, India maintains a responsible parliamentary form of government, accountable

⁶ India Const. art. 326, as amended by The Constitution (Sixty-first Amendment) Act, 1988, w.e.f. Mar. 28, 1989.

⁷ *S. R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918 (India).

to an elected legislature. Political parties play a prominent role, influencing voters to choose affiliated candidates. Representative democracy is crucial because it allows citizens to know their representatives before electing them and holds these officials accountable for their actions. Both the President and Prime Minister are chosen by the people; the Prime Minister leads Parliament, while the President commands the military. Parliament comprises the publicly elected Lok Sabha and the Rajya Sabha, which is partly elected by states and union territories and partly nominated by the President. Key attributes of this system include a pre-existing government structure, an independent judiciary, and elected legislatures. It fundamentally relies on principles like equality before law, free and fair elections, political liberties (expression, assembly, movement, thought), and popular sovereignty to enact the people's will.

Free and fair elections are fundamental to democracy, ensuring political equality and individual liberty where voters are free from undue influence or corruption. However, contemporary electoral malpractice, including media manipulation, bribery, and misappropriation of public funds, challenges governance integrity. The introduction of Electoral Bonds (via the Finance Act, 2017) further jeopardizes free and fair elections by obscuring financial transparency.

Judicial Affirmations on Democracy and Electoral Integrity:

The criminalization of politics poses a significant threat, undermining democratic principles through violence and undemocratic methods. As observed in *Manoj Narula v. Union of India*⁸, democracy, in its pure form, is “*conceptually abhorrent to corruption...and repulsive to the idea of criminalization of politics*,” which corrodes legitimacy and obstructs the rule of law. Strengthening democracy requires curbing criminal activities and fostering cooperation among government agencies, political parties, civil society, and citizens.

The Indian judiciary consistently upholds democracy as a basic structure of the Constitution. In the landmark judgment of *Indira Nehru Gandhi v. Raj Narain*⁹, the Supreme Court established democracy as an “*essential feature*” of the Indian Constitutional framework, a tenet consistently reiterated in *T.N. Seshan CEC of India v. Union of India*¹⁰ and *Kuldip Nayar v. Union of India & Others*¹¹. These rulings emphasize that “*democracy in India is a product of*

⁸ *Manoj Narula v. Union of India*, Writ Petition (Civil) No. 289 of 2005 (India).

⁹ *Indira Gandhi Nehru v. Raj Narain*, A.I.R. 1975 S.C. 2299 (India).

¹⁰ *T. N. Seshan, CEC of India v. Union of India*, (1995) 4 S.C.C. 611 (India).

¹¹ *Kuldip Nayar v. Union of India*, A.I.R. 2006 S.C. 3127 (India).

the rule of law and aspires to establish an egalitarian social order.”

Reinforcing its stance, in *People’s Union for Civil Liberties and Another v. Union of India and Anr.*¹², the Supreme Court affirmed that “*democracy and free elections are a part of the basic structure of the Constitution,*” highlighting that healthy democracy relies on “free and fair elections” and the selection of “men of high moral and ethical values.” India’s representative democracy, characterized by an independent judiciary, elected legislature, and adherence to principles like equality, political liberties, and popular sovereignty, relies on periodic free and fair elections for its sustainability.

Therefore, it may be stated in this regard that the strength and soundness of democracy, a cherished constitutional value, has to be protected, preserved and sustained, and for that purpose, instalment of certain norms in the core of the collective is absolutely necessitous.

ELECTORAL POLITICS AND THE PURSUIT OF FAIR ELECTIONS

Contemporary Indian electoral politics faces a fundamental tension between the advancement of political equality, primarily driven by Universal Adult Franchise (UAF), and persistent socio-economic inequalities. This dynamic has created a complex democratic transition where these two forces evolve, often in contradiction rather than in harmony.

Elections, inherently a form of political competition, frequently devolve into unhealthy rivalries marked by mutual allegations, fostering disunity, factionalism, and undue influence in the pursuit of electoral gains. Despite the Constituent Assembly’s awareness of these potential pitfalls, they adopted the current system, believing in its long-term efficacy. While Indian elections aim for free and fair outcomes where the populace freely chooses its government, this ideal is frequently compromised. The prevalence of money power, muscle power, and other illicit means allows certain candidates and parties to secure victories. Those leveraging unaccounted funds gain significant, unfair advantages over competitors and independent candidates. These challenges are not unique to India but are common across various democracies, posing serious threats to the integrity and validity of the democratic process. Such systemic issues underscore the pressing demand from citizens and social activists for comprehensive electoral reforms in India.

¹² *People’s Union for Civil Liberties v. Union of India*, (2013) 10 S.C.C. 1 (India).

THE CONTESTED NATURE OF THE RIGHT TO VOTE IN INDIAN ELECTIONS: DEMOCRATIC FOUNDATION OR LEGISLATIVE GRANT?

As a Democratic Republic, affirmed by its Preamble, India's democracy is sustained by free and fair elections, recognized as a basic feature of the Constitution. The robust growth of India's democratic polity hinges on the conduct of such elections to its legislative bodies, allowing citizens to participate in placing candidates in office.

Key principles underpin elections to the House of People (Lok Sabha) and State Legislative Assemblies:

- **One General Electoral Roll:** Article 325 mandates a single electoral roll for every territorial constituency. This crucially abolished the divisive pre-constitutional system of separate electorates and communal representation, which fragmented Indian society and hindered nationalism.
- **Non-discrimination:** Article 325 ensures eligibility for electoral roll inclusion irrespective of religion, race, caste, sex, or any combination thereof. This enshrines equality in franchise, establishing a secular basis for electoral rolls.
- **Prohibition of Special Electoral Rolls:** Article 325 further prohibits claims for inclusion in any special electoral roll on discriminatory grounds. This principle is reinforced by Article 15, which bans discrimination in civil and political rights, underscoring the Constitution's secular character and commitment to universal and equal suffrage.

The Supreme Court has consistently emphasized Article 325's vital role in fostering constitutional secularism by preventing any vote claims or denials based on religion, race, or similar grounds.

The Supreme Court, in *Abhiram Singh v. C. D. Commachen*¹³, unequivocally ruled that electoral candidates cannot appeal to voters based on religion, race, caste, community, or language. Chief Justice T. S. Thakur underscored that such appeals exacerbate anxieties regarding religion's role in politics, violating Section 123 of the Representation of People's

¹³ *Abhiram Singh v. C. D. Commachen*, (1996) 3 S.C.C. 665 (India).

Act, 1951, and Article 325 of the Constitution.

Elections in India are conducted based on adult suffrage. As per Article 326 of the Constitution, every voter must be an Indian citizen, at least 18 years old on the prescribed date, and not disqualified due to non-residency, unsoundness of mind, corrupt practices, or crime. Notably, India's Constitution does not reserve seats for any community or religious group in any House, with the sole exceptions being for Scheduled Castes, Scheduled Tribes, and Anglo-Indians.

Since free and fair elections are a basic structure of the Constitution, the right to vote cannot be arbitrarily denied by any statute. Article 326 confers a constitutional right to vote to every citizen who has attained 18 years. Disqualification from voting is strictly limited to grounds of non-residence, unsoundness of mind, crime, or corrupt/illegal practices. Furthermore, Article 325 explicitly prohibits debarring a voter solely on grounds of religion, race, caste, or sex. Therefore, any legislative enactment regulating the right to vote must strictly adhere to the parameters set forth by Articles 325 and 326 of the Constitution.

Beyond the right to vote, the Indian Constitution grants citizens the right to stand for election under Articles 84(b) and 173(b), which stipulate minimum age requirements for Parliament (30 for Rajya Sabha, 25 for Lok Sabha) and State Legislatures (25 for Assembly, 30 for Council). This right can only be curtailed by disqualifications listed in Article 190(e). A constitutional right to challenge elections by means of an election petition is also provided by Article 329(b) of the Constitution.

The nature of the right to vote has been debated. While it's a right guaranteed by Article 326, it's considered a constitutional right, not a fundamental one, as it doesn't fall under the specific fundamental rights enumerated in the Constitution. Accordingly, all registered Indian nationals aged 18 or above are entitled to vote for their chosen representatives.

- **Judicial Interpretations on Electoral Rights**

The Supreme Court has consistently clarified the nature of electoral rights, emphasizing their statutory rather than fundamental or civil status. In *N. P. Ponnuswamy v. Returning Officer, Namakkal Constituency*¹⁴, the Court declared that the “right to vote or stand as a candidate

¹⁴ *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, A.I.R. 1952 S.C. 64 (India).

for election is not a civil right but is a creature of statute or special law and must be subjected to the limitations imposed by it.”

Right to Stand for Election:

This perspective was reiterated in **Jamuna Prasad Mukhariya v. Lachhi Ram**¹⁵. In this case, the Supreme Court noted that the “*right to stand as a candidate and contest an election is not a common law right.*” Instead, the Court clarified, “*it is a special right created by statute and can only be exercised on the conditions laid down by the statute. The fundamental rights chapter has no bearing on a right like this created by statute.*” This perspective was further reinforced in **Jyoti Basu v. Debi Ghoshal**¹⁶ which observed that the “*right to elect, while fundamental to democracy, is neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election.*” It was further clarified that “*Outside of statute, there is no right to elect, creations they are, and therefore, subject to statutory limitation.*”

Right to Vote and Expression:

In **People’s Union for Civil Liberties & Anr. v. Union Of India & Anr.**¹⁷, the Court recognized that the “*right to vote carries within it the Constitutional right to freedom of expression.*” However, it differentiated this from the right to stand for election, stating the latter “*is right regulated by the statute.*” The judgment clarified that, regardless of the debate over whether the right to vote is merely statutory or also constitutional, the “*right to be elected is indisputably a statutory right that can be created and can also be abolished by the Parliament, and therefore, must always be subject to statutory limitations.*”

Affirmation in Kuldip Nayar case:

Finally, the five-judge bench in the **Kuldip Nayar v. Union of India**¹⁸, unequivocally observed that “the right to vote is not a constitutional right.”

These pronouncements collectively underscore that while electoral participation is vital for

¹⁵ *Jamuna Prasad Mukhariya v. Lachhi Ram*, A.I.R. 1954 S.C. 686 (India).

¹⁶ *Jyoti Basu v. Debi Ghoshal*, A.I.R. 1982 S.C. 983 (India).

¹⁷ *People’s Union for Civil Liberties v. Union of India*, (2003) 4 S.C.C. 399 (India).

¹⁸ *Kuldip Nayar v. Union of India*, (2006) 7 S.C.C. 1 (India).

democracy, the specific rights related to voting and contesting elections in India are derived from and governed by specific statutes, subject to legislative limitations rather than being inherent common law or fundamental rights.

Evolving Judicial Perspectives on the Right to Vote:

The Supreme Court's stance on the nature of the right to vote has seen an interesting evolution. In *People's Union Civil Liberties & Anr. v. Union of India & Anr.*¹⁹, a three-judge bench held that the “right to vote is neither a fundamental right nor a Constitutional right but a pure and simple statutory right,” while simultaneously acknowledging its massive significance as “the essence of democracy” without which “democracy will fail to thrive.” The Court stressed the importance of considering this vital aspect when addressing related legal matters.

The ECI Case and the Fundamental Nature of Voting Rights:

However, a conflicting and more expansive view emerged in the 2023 *Aroop Baranwal v. Union of India* (ECI case)²⁰. Justice Ajay Rastogi took a more profound stance, declaring that the “right to vote is not merely a constitutional right, but ‘a component of Part III of the Constitution as well.’” This landmark observation recognized the right to participate in public affairs through voting as the “core of the democratic form of government,” which is a fundamental aspect of the Constitution's basic structure. The judgment further clarified that the right to vote is an expression of citizen's choice, thus falling under the fundamental right to freedom of expression (Article 19(1)(a)), and also reflecting Article 21 (right to life and personal liberty), as it's an “indispensable tool to shape their own destinies.” Consequently, the Court declared the right to vote in direct elections as a fundamental right, albeit subject to the limitations specified in Article 326. This implies that the right to vote is not solely confined to Article 326 but is also intrinsically linked to Articles 15, 17, 19, and 21, and must be interpreted in conjunction with these provisions.

Given that free and fair elections constitute a basic structure of the Constitution, inherently including a citizen's right to vote free from external pressure, the courts are obligated to ensure the Election Commission's effective functioning under Article 324, especially when

¹⁹ *People's Union for Civil Liberties*, supra note 12.

²⁰ *Anoop Baranwal v. Union of India*, 2023 LiveLaw (S.C.) 155 (India).

fundamental and constitutional rights are at stake.

INSTITUTIONAL FRAMEWORK OF ELECTORAL GOVERNANCE

The Autonomous Election Commission of India:

The Constitution of India (COI) establishes the Election Commission as an autonomous body, designed to be independent of political and executive pressures, thereby guaranteeing free, fair, and impartial elections. Meticulous care has been taken to ensure the Commission's unrestricted exercise of power and independent functioning. Article 324(1) of the Constitution establishes the Election Commission as a permanent institution with comprehensive jurisdiction over elections to Parliament, State Legislatures, and the offices of the President and Vice-President.

The decision to vest the Election Commission with pan-Indian supervisory and conduct powers, rather than creating separate state-level bodies, stems from a foresight into India's diverse demographic landscape. Given that some states comprise mixed populations, including native inhabitants alongside culturally, racially, or linguistically distinct groups, a centralized body was deemed essential. This ensures that no section of the populace faces injustice, as a central commission remains free from local influences, maintaining uniform control over the entire electoral machinery across the nation.

Functions and Powers of the Election Commission:

The Election Commission of India plays a crucial role in the country's electoral processes, primarily exercising administrative functions alongside certain adjudicative and legislative powers. Pursuant to Article 324(1), the Commission is tasked with:

- Superintending, directing, and controlling the preparation of electoral rolls for elections to Parliament, State Legislatures, and the Offices of the President and Vice-President.
- Conducting all the aforementioned elections.

The terms 'superintendence, direction, and control' are interpreted broadly, encompassing all powers necessary for the smooth and effective conduct of elections. However, the Commission's powers are not unfettered, preventing it from becoming an '*imperium in imperio*'

(an empire within an empire). The entire responsibility for national and state elections rests with the Election Commission under Article 324(1). This includes essential powers such as the authority to cancel polls in a constituency and order fresh elections if hooliganism or a breakdown of law and order occurs during polling or vote counting.

Judicial Directives on Election Commission's Powers:

The Supreme Court has provided crucial guidance on the exercise of the Election Commission's powers. In *Mohinder Singh Gill v. Chief Election Commissioner*²¹, the Court explicitly ruled that the “*Commission should exercise its power of cancelling a poll in accordance to the principles of natural justice.*” This mandates fairness, transparency, and due process when the Commission decides to annul an election.

Further, in *Mohd. Yunus Salem v. Shiv Kr. Shastri*²², the Supreme Court affirmed that the Election Commission possesses the “*power to review its decision as to the experience of holding the poll on a particular date.*” This ruling highlights the Commission's inherent authority to re-evaluate and modify its administrative decisions, particularly concerning election scheduling, based on practical experience and evolving circumstances.

The Supreme Court, in *Digvijay Mote v. Union of India*²³, clarified that the Election Commission (EC), under Article 324 of the Constitution, holds the power of superintendence, direction, and control over elections. This empowers the EC to postpone elections in areas experiencing disturbed conditions, ensuring free and fair conduct. However, the Court stressed that this power is not uncontrolled; it is subject to judicial review, given the EC's status as a statutory body affecting public law rights. Judicial scrutiny will vary based on specific facts, and the EC's power must be exercised “not mindlessly nor mala fide nor arbitrarily nor with partiality but in keeping with the guidelines of the Rule of Law and not stultifying the Presidential notification nor existing legislation.”

Ambit of Article 324:

The ambit of Article 324 of the COI was further elucidated in *Mohinder Singh Gill v. Chief*

²¹ *Mohinder Singh Gill v. Chief Election Comm'r*, A.I.R. 1978 S.C. 851 (India).

²² *Mohd. Yunus Salem v. Shiv Kr. Shastri*, A.I.R. 1974 S.C. 1218 (India).

²³ *Digvijay Mote v. Union of India*, (1993) 4 S.C.C. 175 (India).,

*Election Commissioner*²⁴. The Court held that this provision vests the entire responsibility for conducting national and state elections in the EC, along with all necessary powers to discharge this function. Crucially, the powers granted under Article 324 must be interpreted in harmony with the overall constitutional scheme and the provisions of the Representation of People's Act, 1950 and 1951. This ensures that the EC's extensive authority operates within the broader legal and constitutional framework.

Evolution and Current Challenges of the Election Commission of India:

The COI established the Election Commission (EC) as an independent and permanent body to ensure free and fair elections. From its inception in 1950, the EC was a single-member body headed by the Chief Election Commissioner (CEC) until October 15, 1989. Following the reduction of the voting age from 21 to 18 on October 16, 1989, the EC's composition temporarily expanded to include two additional Commissioners to manage the increased workload, forming a three-member body until early 1990. After a brief reversion to a single-member structure, two more Commissioners were re-appointed in October 1993, with their tenure and service conditions determined by the President. Since then, the three-member EC has been consistently in operation.

The Supreme Court, in *S. S. Dhanoa v. Union of India*²⁵, explicitly endorsed a multi-member Election Commission, suggesting procedural guidelines for its operations and affirming its executive, rather than merely advisory, nature.

However, recent developments, particularly as of March 9, 2024, have posed significant challenges to the EC's prescribed composition. The resignation of Commissioner, *Arun Goel* and the retirement of *Anup Pandey* in February 2024, without immediate replacement, left the EC with only the Chief Election Commissioner, Rajiv Kumar. This understaffing, occurring just before the critical 18th General Election (scheduled from April 19 to June 1, 2024), signals potential administrative disarray and instability. Beyond conducting elections, the Election Commissioners are crucial in preventing the misuse of governmental machinery by ruling parties, a vital function compromised by the current incomplete composition.

²⁴ *Mohinder Singh Gill*, supra note 21.

²⁵ *S.S. Dhanoa v. Union of India*, A.I.R. 1991 S.C. 1745 (India).

DEMOCRATIC INTEGRITY THROUGH ELECTORAL REFORMS IN INDIA

India, as the world's largest democracy, hinges on the conduct of free and fair elections, a cornerstone of its democratic governance. While the initial General Elections post-1950 largely upheld these standards, a decline in integrity has been noted since 1967, leading to perceptions of the electoral system as a source of political corruption. Endemic issues such as money and muscle power, criminal infiltration into politics, misuse of government machinery, communalism, casteism, and a decline in political morality continually plague India's electoral process, echoing challenges faced by other democracies.

In response, significant electoral reforms have been implemented to enhance fairness, transparency, and efficiency:

1. Reduction of Voting Age

The Constitution (Sixty-first Amendment) Act, 1988, marked a pivotal reform by lowering the voting age to 18 from 21 years for elections to the Lok Sabha and State Legislative Assemblies. This amendment, in line with Article 326 of the Constitution, ensures that every Indian citizen aged eighteen or above, unless disqualified on specified grounds (non-residence, unsound mind, crime, or corrupt practices), is entitled to be registered as a voter, broadening democratic participation.

2. Transition to Electronic Voting Systems

The shift from the traditional paper ballot system to Electronic Voting Machines (EVMs) and subsequently Voter Verifiable Paper Audit Trail (VVPAT) system represents a cornerstone of electoral modernization. Prior to the 1990s, the ballot box system, while facilitating direct secret voting, was environmentally costly and time-consuming for vote counting, particularly for India's vast population and in the face of electoral malpractices.

EVMs were first deployed in Kerala in May 1982, though initially struck down by the Supreme Court due to the absence of specific legal provisions. Parliament rectified this by amending the Representation of People's Act, 1951 in 1989 (Chapter III), legalizing EVM use. Their adoption expanded progressively, from 25 Legislative Assembly constituencies across three states in 1990, to covering all 543 Lok Sabha constituencies nationwide by the 2004 General Election.

This transition significantly improved efficiency, transparency, and acceptance in the electoral system.

Despite widespread satisfaction with EVMs, demands for enhanced verifiability led to the introduction of VVPATs. Following trials, the Conduct of Election Rules, 1961, were amended on August 14, 2013, enabling VVPAT use with EVMs. This system prints a verifiable slip containing candidate details, visible to the voter for seven seconds before falling into a sealed box, thereby reassuring voters that their ballots are cast as intended. These transparent reforms have significantly restored faith in the Election Commission and, by extension, in the democratic process, underscoring that the reliability of fair elections is paramount to democratic jurisprudence.

3. Transformation of FPTP system to PR system

India's evolving democratic framework continuously seeks electoral reforms to address contemporary demands, including a persistent debate regarding a potential transition from the First Past The Post (FPTP) system to Proportional Representation (PR). The FPTP mechanism, where victory is secured by a simple plurality, often results in disproportional representation, failing to fully reflect the majority electorate's interests. While the 2019 Lok Sabha elections demonstrated the viability of multiple parties gaining parliamentary seats, challenging the notion that FPTP invariably leads to a two-party system (as observed in the UK and US), this outcome does not signify that FPTP has genuinely delivered proportional representation in India.

4. Electoral Expenditure Ceiling and Accountability:

A critical aspect of electoral reform concerns campaign finance regulation. Presently, there is no expenditure ceiling imposed on political parties; however, individual candidates are subject to limits, currently ranging from Rs. 50-70 lakhs for Lok Sabha elections and Rs. 20-28 lakhs for State Assembly Constituencies. Following a 2020 Election Commission (EC) review, these limits were increased by 10% through an amendment to Rule 90 of the Conduct of Election Rules.

The Representation of the People Act, 1951 (RPA, 1951), outlines the rules for election expenses within its Chapter VIII. Section 77(1) mandates that every candidate maintain

accurate accounts of all election-related expenditures from nomination until the declaration of results. Furthermore, Section 78 requires candidates to submit these expense accounts to the District Election Officer within 30 days of the election's completion. Non-compliance, without valid justification, results in a three-year disqualification under Section 10A of the RPA, 1951, as determined by the EC.

While expenditure ceilings aim to foster legitimate campaigning, the practical challenge of controlling actual and illicit spending remains a significant concern for ensuring transparent and equitable elections.

TRANSPARENCY vs. ANONYMITY: THE CONSTITUTIONAL DEBATE SURROUNDING INDIA'S ELECTORAL BOND

The Indian Constitution's framers meticulously safeguarded citizens' political rights through various provisions and the Representation of People's Act, 1951, granting elections constitutional recognition. Despite this, money power remains a significant concern, undermining the integrity of free, fair, and competitive elections, which are crucial for holding politicians accountable and curbing corruption. Numerous reforms have been implemented to strengthen India's democratic electoral machinery and processes.

A major driver of political corruption is the pressing need for politicians to raise campaign funds, an issue no political party is immune to. Parties spend vast sums on elections, often without transparent accounting or accountability, fostering a system where wealth heavily influences political power. The demand for election finance reform stems from three key factors: escalating campaign costs, pervasive political corruption, and public desire for equal political participation. India's election fundraising system notably empowers wealthy individuals and large corporations, further concentrating influence.

Recognizing the persistent lack of transparency in political funding after 70 years of independence, Former Union Finance Minister, *Arun Jaitley*, introduced the Electoral Bonds Scheme in the Union Budget for 2017-18. Proposed through The Finance Bill, 2017, the scheme aimed to "cleanse the system" of political funding.²⁶ The Electoral Bond Scheme of

²⁶ Association for Democratic Reforms Electoral Bonds Case Background, SUPREME COURT OBSERVER (Feb. 15, 2024, last updated Mar. 21, 2024), <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/amp/> (last visited May 25, 2025).

2018, though initially discussed in 2017, received its formal notification from the Ministry of Finance's Department of Economic Affairs on January 2, 2018. From March 2018 to April 2022, an estimated 18,299 electoral bonds, totalling Rs. 9,857 Crore, were successfully transacted.

The Electoral Bond Scheme, introduced through The Finance Bill, 2017, and formally notified on January 2, 2018, was conceived by former Union Finance Minister Arun Jaitley to address the critical lack of transparency in political funding. Operating as an interest-free promissory note, these bonds are purchasable by Indian citizens or registered organizations adhering to KYC norms, available in various denominations via cheques or digital payments from designated SBI branches during specific ten-day windows in January, April, July, and October. Eligible political parties (registered under the Representation of People's Act, 1951 (RPA, 1951), and securing at least 1% of votes in the last election) can redeem them within 15 days, with unredeemed funds remitted to the Prime Minister Relief Fund.

A central feature of the scheme, and a major point of contention, is its anonymity, concealing both donor and recipient party identities. Despite the government's assertion that the scheme enhances transparency and curbs illicit funding, the Reserve Bank of India (RBI), as early as January 30, 2017, expressed severe apprehensions regarding its susceptibility to illicit activities, lack of transparency, and potential exploitation. However, the government overlooked these concerns, proceeding to amend Section 31 of the Reserve Bank of India Act, 1934, through Section 135 of the Finance Act, 2017. This amendment enabled authorized scheduled banks to issue these bonds.

The Finance Act, 2017, simultaneously introduced several other significant amendments. It reduced the cash contribution limit from individuals to political parties from Rs. 20,000 to Rs. 2,000. Critically, Section 154 of the Finance Act, 2017, by significantly modifying Section 182 of the Companies Act, 2013, eliminated the former ceiling on corporate political donations (7.5% of average net profits). This change enabled eligible companies (excluding government entities and those less than three years old) to contribute "*any amount directly or indirectly to any political party.*" The scheme also eliminated the mandatory obligation for individual or corporate contributors to provide detailed breakdowns of political contributions in their annual financial reports, requiring only a consolidated sum for electoral bond purchases. Furthermore, Section 11 of the Finance Act, 2017, amended Section 13A of the Income Tax Act, 1961,

exempting political parties from maintaining contribution records for electoral bonds received and from publishing them in their Contribution Reports (Section 29C of RPA, 1951 was also amended by the Finance Act, 2017 to include a proviso exempting electoral bonds).

To further expand legal avenues for political funding, the Foreign Contributions Regulation Act, 2010 (FCRA, 2010), was amended, broadening the definition of “foreign source” under Section 2(1)(j)(vi) to permit foreign companies with majority shares in Indian firms to donate to political parties, a practice previously prohibited.

Prior to these changes, political parties were legally mandated to disclose the names and details of donors contributing over Rs. 2,000 in their income tax returns; contributions below this threshold were deemed from “unknown sources.” According to the Association for Democratic Reforms (ADR), “unknown sources”, which now predominantly include electoral bonds, constituted 69% of political parties’ total income between 2004-2005 and 2014-2015. More recently, for the financial year 2021-22, ADR reported that regional political parties derived 75% (Rs. 887.55 crore) of their total income (Rs. 1165.75 crore) from unknown sources, with electoral bonds alone accounting for approximately 93% of this unknown funding, starkly illustrating the scheme’s impact on financial transparency.

The controversial amendments introducing the Electoral Bond Scheme were challenged in the Supreme Court in September 2017 by two NGOs, Association for Democratic Reforms (ADR) and Common Cause, alongside the Communist Party of India (Marxist).²⁷ The petitioners primarily contested the passing of the Finance Bill, 2017, as a money bill to circumvent scrutiny by the Rajya Sabha, and argued that the Electoral Bond Scheme itself promoted non-transparent political funding and legitimized electoral corruption on a massive scale.

The Election Commission of India (ECI), as a respondent, filed an affidavit on March 25, 2019, opposing the scheme. The ECI contended that the Electoral Bond System fundamentally contradicted the objective of transparent political finance. It also revealed that on May 26, 2017, it had formally warned the Union Government about the scheme’s detrimental impact on election funding transparency, particularly concerning the obscured information on foreign funding, which could lead to undue influence of foreign companies on Indian policies.

²⁷ *Ass’n for Democratic Reforms v. Union of India*, (2024) INSC 113 (India).

In its rejoinder, the Union Government defended the scheme as a “*pioneer step in bringing electoral reforms*” to ensure transparency and accountability in political funding. It argued that significant cash donations led to an “*unregulated flow of black money*” and assured that authorizing only the State Bank of India to issue bonds would mitigate such issues.

After extensive hearings, a five-judge Supreme Court bench, comprising CJI D.Y. Chandrachud and Justices Sanjiv Khanna, B.R. Gavai, J.B. Pardiwala, and Manoj Mishra, delivered a concurring judgment on February 15, 2024. The Court unanimously struck down the Electoral Bond Scheme, introduced via the Finance Act, 2017, declaring it a violation of the voter’s Right to Information as guaranteed by Article 19(1)(a) of the Constitution. The sale of Electoral Bonds was immediately forbidden. The State Bank of India was directed to disclose details of bond purchasers and the political parties that encashed them. Furthermore, the Apex Court ordered the ECI to publish all shared data from SBI on its official website within a week of receipt, with the Supreme Court reiterating this directive on March 17, 2024, for data from April 12, 2019, onwards.

The Right to Information and Challenges to Electoral Bonds:

The Supreme Court’s interpretation of the Right to Information (RTI), which is inherent in Article 19(1)(a) of the Constitution, has progressed through two distinct phases. Initially, RTI was linked to good governance, transparency, and accountability, enabling citizens to hold the State responsible. This phase, exemplified by *State of Uttar Pradesh v. Raj Narain*²⁸, emphasized disclosure of state affairs to serve public interest. Justice K.K. Mathew famously contended that a responsible government should maintain few secrets, asserting that “*the people of this country have a right to know every public act...everything that is done in a public way, by their public functionaries.*” This perspective was echoed by Justice P.N. Bhagwati in *S.P. Gupta v. Union of India*²⁹, who emphasized the “*right to know*” as fundamental to democratic governance. Justice Bhagwati viewed this right not merely as limited to periodic voting, but as integral to an ongoing process of accountability.

The second phase broadened RTI’s scope, recognizing information’s vital role in enabling citizens to form and express views on social, cultural, and political issues, fostering informed

²⁸ *State of Uttar Pradesh v. Raj Narain*, A.I.R. 1975 S.C. 865 (India).

²⁹ *S. P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149 (India).

public debate. This phase moved beyond solely government accountability, recognizing the inherent value of active citizen participation in democracy and combating misinformation.

Furthermore, legislative enactments related to electoral funding have faced challenges based on manifest arbitrariness under Article 14 of the Constitution. Justice D.Y. Chandrachud articulated that a provision is manifestly arbitrary if its underlying principle deviates from constitutional values, lacking an “adequate determining principle.” Courts, in cases like *Shayara Bano*³⁰, *Joseph Shine*³¹, and *Navtej Singh Johar*³², have applied this test to determine if statutes are capricious, irrational, disproportionate, or without sound reasoning.

The non-disclosure provisions of the Electoral Bond Scheme were also challenged for violating Article 21 of the Constitution, arguing that they promote corruption and quid pro quo arrangements. Evidence, such as the fact that over 94% of electoral bonds were purchased in denominations of Rupees one crore (suggesting corporate rather than individual donors), supports concerns about opaque funding. This limited disclosure hinders investigating agencies like the CBI and ED from identifying corruption and infringes upon shareholders’ rights by preventing access to information regarding their companies’ political donations.

Supreme Court’s Ruling on the Electoral Bond Scheme:

In light of the aforementioned discussions regarding the Right to Information (under Article 19(1)(a)) and the principle of manifest arbitrariness (under Article 14), the Supreme Court unequivocally ruled against the Electoral Bond Scheme. The Court held that the Scheme itself, along with several key statutory amendments facilitating it, were unconstitutional.

Specifically, the Supreme Court declared the following provisions violative of Article 19(1)(a) and therefore unconstitutional:

- The Electoral Bond Scheme in its entirety.
- The proviso to Section 29C(1) of the Representation of the People Act, 1951 (as amended by Section 137 of the Finance Act, 2017), which exempted political parties from disclosing

³⁰ *Shayara Bano v. Union of India*, A.I.R. 2017 S.C. 4609 (India).

³¹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

³² *Navtej Singh Johar v. Union of India*, A.I.R. 2018 S.C. 4321 (India).

contributions received via electoral bonds.

- Section 182(3) of the Companies Act, 2013 (as amended by Section 154 of the Finance Act, 2017), pertaining to contributions to political parties.
- Section 13A(b) of the Income Tax Act, 1961 (as amended by Section 11 of the Finance Act, 2017), which provided income tax exemptions for political parties without mandating donor details for electoral bonds.

Furthermore, the Court found that the deletion of the proviso to Section 182(1) of the Companies Act, which previously capped corporate contributions and was replaced by the allowance for unlimited corporate donations to political parties, was arbitrary and violative of Article 14. This comprehensive judgment underscores the judiciary's commitment to transparency in political funding and the protection of voters' right to information.

EPILOGUE

In conclusion, India's democratic governance, founded on the principle of popular sovereignty exercised through a representative system and periodic free and fair elections, can truly flourish only when its citizens embody fundamental democratic values such as equality, freedom, social justice, accountability, and mutual respect. While India's democracy has achieved significant milestones, several areas require strengthening to fully realize its potential. The Election Commission, vested with vast powers to ensure electoral integrity, possesses the necessary tools for conducting free and fair elections. The effectiveness of these tools, however, hinges on the will and integrity of responsible officials. Therefore, the Commission must consistently demonstrate prudence to uphold the fairness and transparency that India's elections deserve, thereby dispelling any doubts about its esteemed institutional integrity.

REFERENCE

ARTICLES:

1. Chatham House, 'Democracy in India' (Chatham House, 7 April 2022, updated 18 December 2024) <https://www.chathamhouse.org/2022/04/democracy-india> accessed 22 April 2025.

BOOKS:

1. M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2019).
2. J.N. Pandey, *Constitutional Law of India* 9 (56th ed. 2019).

BARE ACTS:

1. India Const. arts. 14, 15, 17, 19(1)(a), 21, 84(b), 173(b), 190(e), 324–29 (1950).
2. The Companies Act, No. 18 of 2013, § 182(3) (India).
3. The Finance Act, No. 7 of 2017, §§ 11, 135, 137, 154, 182 (India).
4. The Foreign Contribution (Regulation) Act, No. 42 of 2010, § 2(1)(j)(vi) (India).
5. The Government of India Act, 1919.
6. The Government of India Act, 1935.
7. The Income-tax Act, No. 43 of 1961, § 13A (India).
8. The Representation of the People Act, No. 43 of 1951, §§ 10A, 29C, 77(1), 78, 123 (India).
9. The Reserve Bank of India Act, No. 2 of 1934, § 31 (India).

CASE LAWS:

1. *Abhiram Singh v. C.D. Commachen*, (1996) 3 S.C.C. 665 (India).
2. *Anoop Baranwal v. Union of India*, 2023 LiveLaw (S.C.) 155 (India).

3. *Ass'n for Democratic Reforms v. Union of India*, (2024) INSC 113 (India).
4. *Digvijay Mote v. Union of India*, (1993) 4 S.C.C. 175 (India).
5. *Indira Nehru Gandhi v. Raj Narain*, A.I.R. 1975 S.C. 2299 (India).
6. *Jamuna Prasad Mukhariya v. Lachhi Ram*, A.I.R. 1954 S.C. 686 (India).
7. *Jyoti Basu v. Debi Ghoshal*, A.I.R. 1982 S.C. 983 (India).
8. *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).
9. *Kuldip Nayar v. Union of India*, A.I.R. 2006 S.C. 3127 (India).
10. *Kuldip Nayar v. Union of India*, (2006) 7 S.C.C. 1 (India).
11. *Manoj Narula v. Union of India*, Writ Petition (Civil) No. 289 of 2005 (S.C.) (India).
12. *Mohd. Yunus Salem v. Shiv Kr. Shastri*, A.I.R. 1974 S.C. 1218 (India).
13. *Mohinder Singh Gill v. Chief Election Comm'r*, A.I.R. 1978 S.C. 851 (India).
14. *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, A.I.R. 1952 S.C. 64 (India).
15. *Navtej Singh Johar v. Union of India*, A.I.R. 2018 S.C. 4321 (India).
16. *People's Union for Civil Liberties v. Union of India*, (2003) 4 S.C.C. 399 (India).
17. *People's Union for Civil Liberties v. Union of India*, (2013) 10 S.C.C. 1 (India).
18. *S.P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149 (India).
19. *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918 (India).
20. *S.S. Dhanoa v. Union of India*, A.I.R. 1991 S.C. 1745 (India).
21. *Shayara Bano v. Union of India*, A.I.R. 2017 S.C. 4609 (India).

22. *State of Uttar Pradesh v. Raj Narain*, A.I.R. 1975 S.C. 865 (India).

23. *T.N. Seshan, C.E.C. of India v. Union of India*, (1995) 4 S.C.C. 611 (India).

QUOTE:

B. R. Ambedkar, Quote, GOODREADS, <https://www.goodreads.com/quotes/609078-political-tyranny-is-nothing-compared-to-the-social-tyranny-and> (last visited Apr. 15, 2025).

WEBPAGE:

1. Election Commission, Ensuring Free, Fair, and Transparent Elections, RAJASTHAN SHALA DARPAN,

https://rajshaladarpan.rajasthan.gov.in/SD1/Election-Commision/ELC_Landing_Page.aspx (last visited Apr. 22, 2025).

2. Importance of Universal Adult Franchise in Democracy, UNACADEMY, <https://unacademy.com/content/bpsc/study-material/polity/universal-adult-franchise/> (last visited Apr. 29, 2025).

3. Association for Democratic Reforms Electoral Bonds Case Background, SUP. CT. OBSERVER (Feb. 15, 2024, last updated Mar. 21, 2024),

<https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/amp/> (last visited May 25, 2025).