
PETALS OF JUSTICE, THORNS OF REFORM: RECASTING INDIAN ELECTION LAW FOR A FRAGRANT DEMOCRACY

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ABSTRACT

In India's democracy, a mystical electoral framework unfolds like a lotus flower, woven from constitutional magic. Dark clouds of systemic challenges threaten its beauty. This treatise vanquishes shadows, harnessing wisdom to conjure reform. With a wave of the wand, Election Commissioner appointments become transparent, proportional representation's gentle breeze rustles leaves, and voter awareness's radiant light illuminates the path. Guided by H.M. Seervai's prophetic staff, this essay orchestrates second-generation reforms. The result is a democratic paradise where participatory justice flows like a river of life, and India's constitutional democracy blooms like a garden of wonder. Leveraging EVM-VVPAT's mystical powers, India's democracy flourishes, harmonized by One Nation, One Election's ancient mantra.

Keywords: democracy, election, Constitution, Government, Parliament

I. INTRODUCTION: A BEACON OF INDIAN CONSTITUTIONAL DEMOCRACY

“In the twilight realm of democracy's dreamscape, Indian Election Law must unfurl like a lotus, its petals whispering secrets of transparency, inclusivity and accountability to the winds of change... every voice a whispered promise, every vote a celestial note in the mystic symphony of justice and equality”

The Indian constitutional democracy is often hailed as one of the most resilient experiments in representative governance. Born from the shared vision of equality, liberty, and fraternity, it stands tall amidst diverse challenges. It's a framework that guarantees not just rights, but responsibilities, a promise to the people of India that they hold the reins to shape their collective destiny. Central to this assurance is the cornerstone of democracy: free and fair elections¹. Starting from the core concept of 'State', it connotes the pillars of existing democratic arena and the main one is political power and the threads continue to hold the norms of welfare society and justice. From the baby stage of evolving the society man likes to join in a group and generated discussions and thus forming certain groups with a leader delivered the concept of political landscapes, the one man representing the group became the face of all other people in that particular group, this is what can be called as the “pebbles of democracy”. The systematic approach of anything will leads to the just and fair mansions of administration and in the State governance a well-structured electoral system will provide the same. In order to cherish the ideals of Constitution of India the electoral system should be reformed in a timely manner.

These elections are not merely procedural events; they uphold the basic structure of constitutional system of governance, ensuring the integrity of the democratic fabric. This doctrine, solidified by landmark judicial interpretations, safeguards against deviations from the constitution's foundational principles. It is here that the electoral process takes centre stage, serving as both the lifeblood and moral compass of India's governance². In *Janasena Party v. The State Election Commissioner*³ the court stated that, free and fair elections are the bedrock of every democratic set up, the concept can be ornamented by saying that the people are

¹ Kesavananda Bharati v State of Kerala (1973) 4 SCC 225, Smt. Indira Nehru Gandhi vs. Shri Raj Narain AIR 1975 SC 2299 & Joginder Singh and Ors. V. Punjab State Election Commission and Ors. AIR 1963 P & H 280.

² Representation of the People Act 1951 (Bare Act). 1950 deals with elections, 51 conduct of elections.

³ Janasena Party v. The State Election Commissioner, W. P. No. 7847 of 2021.

choosing the representatives as per their minds by secret ballot in an equal opportunity way and the conscious of the fact that each state has the sovereign right, in accordance with the will of its people, free to choose and develop its own political, social, economic and cultural systems without interference by other states in strict conformity with the present legal system. The longing to spread the establishment of democratic, pluralist systems of representative government throughout the world recognises the free and fair elections and it is the basis for democracy. The main doctrine of election system that is 'free and fair election' can be based on vote and election rights which means the adult suffrage, eligibility, candidature, party and campaign rights and responsibilities. That connotes everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election also. The norms for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's obligations internationally. Everyone has the right to join, or together with others to establish, a political party or organisation for the purpose of competing in an election.

Articles 324–329 of the Indian Constitution meticulously codify the electoral mechanism, empowering institutions like the Election Commission of India to operate independently and shield the process from undue influences. Complementing these constitutional provisions are legislative acts such as the Representation of the People Acts, which further elaborate on the conduct, qualifications and disqualifications for electoral participation. Together, they form a formidable shield against systemic vulnerabilities that may threaten the sanctity of the ballot box. Article 326 is one of the core articles here which puts the seeds of election to stand alone that state about qualification for being a voter that is known as Universal Adult Suffrage. In international perspective also Article 21 of Universal Declaration of Human Rights, 1948 states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, its last part mentions 'the will of the people shall be the basis of the authority of government'. This 'will' shall be emanated in periodic and genuine elections which shall by universal and adult suffrage shall be held by secret vote or by the similar process of free voting procedures.

Dr. B.R. Ambedkar eloquently articulated the essence of democracy, stating: "*The lifeblood of democracy lies in the ballot box*⁴." This assertion underscores the profound responsibility

⁴ B.R. Ambedkar, Writings and Speeches: A Ready Reference Manual (Hein Online).

entrusted to every voter and institution within the electoral system.

However, beneath this robust framework lie visible and invisible fractures, requiring urgent constitutional healing. From issues of transparency and political funding to the influence of money and muscle power, these challenges gnaw at the core of democratic integrity. It is imperative to explore these fissures not just as flaws, but as opportunities to strengthen and reaffirm the essence of electoral democracy.

II. ORIGIN AND DEVELOPMENT OF INDIAN ELECTION LAW

The journey of Indian election law is an evolving tapestry, reflecting the nation's transition from a colonial past to a vibrant democracy. Its roots lie in the Government of India Acts of 1919 and 1935, which laid the groundwork for modern electoral frameworks.

1. Evolution since the Government of India Acts (1919 & 1935)

The Government of India Act, 1919, introduced the concept of limited franchise and a bicameral legislature, marking a foundational attempt at engaging Indians in governance through direct elections, albeit restricted to property owners and taxpayers⁵. The Government of India Act, 1935, expanded electoral participation and established provincial autonomy, laying a significant foundation for the adoption of electoral principles in independent India by delineating constituencies and creating a more structured electoral framework⁶.

2. Role of the Constituent Assembly

The Constituent Assembly played a pivotal role in shaping the democratic ethos of India. Comprising visionaries like Dr. B.R. Ambedkar, Jawaharlal Nehru, and others, the Assembly deliberated extensively on the importance of free and fair elections as a cornerstone of democracy⁷. The speeches and inputs of leaders like Dr. Ambedkar underscore their commitment to making elections inclusive, independent, and fair⁸.

3. Incorporation of Articles 324–329

⁵ Government of India Act 1919 (9 & 10 Geo 5 c 101).

⁶ Government of India Act 1935 (25 & 26 Geo 5 c 42).

⁷ Constituent Assembly Debates, vol 1 (Lok Sabha Secretariat 1989).

⁸ B R Ambedkar, *The Making of the Constitution: Select Speeches* (Penguin Classics 2022).

These Articles form the backbone of India's electoral system:

- Article 324 empowers the Election Commission of India (ECI) to oversee and regulate elections.
- Articles 325–327 ensure universal suffrage, prevent discriminatory practices and empower Parliament and state legislatures to enact election laws.
- Article 329 protects electoral matters from judicial interference during the electoral process, ensuring procedural sanctity⁹.

These provisions, solidified through landmark judicial interpretations like *Kesavananda Bharati v State of Kerala*¹⁰, illustrate the resilience of India's electoral framework.

4. Formation and Evolution of the Election Commission of India (ECI)

Everyone individually and may be jointly with others has the right to express political opinions without interference, to seek, receive and impart information and to make an informed choice, to move freely within the country in order to campaign for election, to campaign on an equal basis with other political parties, including the party forming the existing government. The preamble of our constitutions beautifully pronounces that our Country is democratic republic. Democracy consists of public representatives who were elected in free and fair elections; otherwise, it cannot be called as democracy, as it is very evident that the doctrine of free and fair election is the soul of democracy. As democracy is the basic feature of our constitutional framework, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a pure democracy in the country. In order to ensure the purity and serenity of the election process it was thought by our makers of Constitution that the responsibility to hold free and fair elections in the country should be entrusted to an independent body which would be insulated from political or any other executive interference. It is inherent in a democratic prism that the agency which is entrusted the task of holding elections to the legislatures should be fully insulated so that it can function as a sole agency free from any external pressures from the party in power or executive of that present day. This aim has been constructively achieved by setting up an Election Commission, a permanent body

⁹Constitution of India 1950, Art 324–329.

¹⁰*Kesavananda Bharati v State of Kerala* (n 1).

under Article 324(1) of the constitution. The superintendence, direction and control of the entire election process in the country has been vested under the said provision in a commission to be named as the Election Commission, as held by the constitutional Bench of the Supreme Court in *T N Seshan v Union of India*¹¹, in this case it was authentically stated that free and fair election is the basic foundation to democracy in India and if free and fair elections were not conducted properly, those elections are nothing but mockery of compliance of rituals envisaged in the constitution.

The Election Commission of India, established in 1950, is an autonomous constitutional authority tasked with ensuring free and fair elections¹². Over the decades, the ECI has evolved to become a global exemplar of electoral integrity, pioneering practices like the Electronic Voting Machines (EVMs) and the Model Code of Conduct. Reforms introduced during T.N. Seshan's tenure as Chief Election Commissioner in the 1990s brought increased accountability and enforcement of the Model Code of Conduct¹³.

5. Landmark Events and Legislative History

The Representation of the People Acts (1950 & 1951) were milestones in Indian electoral history, providing a comprehensive framework for electoral processes, eligibility and dispute resolution¹⁴. Judicial interventions like *Union of India v Association for Democratic Reforms*¹⁵ further expanded transparency, mandating disclosures of candidates' backgrounds to empower voters with critical information.

III. PRESENT LEGAL FRAMEWORK & INSTITUTIONAL SETUP

A robust legal framework and institutional setup underpin the Indian electoral system, ensuring its functionality, fairness and adaptability to a dynamic democracy.

A. Election Commission of India (ECI)

1. Powers under Article 324:

¹¹ T.N. Seshan v. Union of India [1995] SC 14 July.

¹² Election Commission of India, Handbook for Returning Officers (ECI Publications 2021).

¹³ T N Seshan, My Journey with the Election Commission (Rupa Publications 2005).

¹⁴ Representation of the People Act 1950 (Bare Act)

Representation of the People Act 1951 (Bare Act).

¹⁵ Union of India v Association for Democratic Reforms (2002) 5 SCC 294.

Article 324 of the constitution vests the superintendence, direction, and control of elections to Lok Sabha, state legislatures and the offices of the president and vice president in the hands of the Election Commission of India (ECI). This constitutional provision empowers the ECI with extensive authority over electoral processes¹⁶. It is responsible for managing electoral rolls, regulating political parties, enforcing the Model Code of Conduct and ensuring the conduct of free and fair elections across the nation¹⁷.

2. Independence vs. Accountability Dilemma:

The ECI operates as an autonomous constitutional body, but its independence often faces challenges such as potential external influences and questions regarding transparency in its decision-making processes. While the Chief Election Commissioner and Election Commissioners enjoy constitutional protection against arbitrary removal¹⁸, concerns persist about the selection process. Striking a balance between autonomy and accountability is essential to uphold institutional integrity.

In H. M. Seervai's *Constitutional Law of India: A Critical Commentary*, the principle that the President is bound to act on the advice of the Election Commission in matters of disqualification of members of Parliament or State Legislatures is discussed. This is particularly in the context of Article 103 of the Indian Constitution, which mandates that the President shall obtain the opinion of the Election Commission and act according to such opinion when deciding on disqualifications¹⁹.

In *A.C. Jose v. Sivan Pillai*²⁰, the Supreme Court held that it is true that Article 324 does authorise the commission to exercise powers of superintendence, direction and control of preparation of electoral rolls and the conduct of elections to parliament and state legislatures but then the Article has to be read harmoniously with the Articles that follow and the powers that are given to the legislatures under entry No. 72 in the union list and entry No. 37 of the state list of the seventh schedule to the constitution. The commission in the garb of regulating the conduct of elections cannot take upon itself a purely legislative activity which has been

¹⁶ Constitution of India 1950, art 324 (Bare Act).

¹⁷ Mohinder Singh Gill v Chief Election Commissioner (1978) 1 SCC 405.

¹⁸ Anoop Baranwal v Union of India (2023) SCC Online SC 213.

¹⁹ H M Seervai, *Constitutional Law of India: A Critical Commentary*, vol [III] (4th edn, Universal Law Publishing [2013])

²⁰ A.C. Jose v. Sivan Pillai [1984] AIR 921 (SC).

reserved under the scheme of the constitution only to parliament and the state legislatures. By no standards can it be said that the commission is a third chamber in the legislative process within the scheme of the constitution. Merely being a creature of the constitution will not give it plenary and absolute power to legislate as it likes without reference to the law enacted by the legislatures.

The Supreme Court in the same judgment proceeded to hold that the intention of the founding fathers of our constitution was to make the commission a separate and independent body so that the election machinery may be outside the control of the executive government, but the intention was not to make the commission a Supreme body in respect of matters relating to elections, conferring on it the legislative powers ignoring the parliament altogether. In the same judgment it is stated that no one is an *imperium in imperio* in our constitutional order. The commissioner cannot defy the law armed by Article 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system.

In *Election Commission of India v. Ashok Kumar*²¹ the Supreme Court held as follows:

- (1) Any decision sought and rendered will not amount to "calling in question an election" if it sub-serves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.
- (2) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.
- (3) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

²¹ Election Commission of India v. Ashok Kumar [2000] SC 30 August.

3. Role During Elections: From Notification to Result Declaration;

- The ECI oversees every stage of the electoral process:
 - Notification of elections: Setting dates, delineating constituencies and scheduling elections.
 - Electoral rolls: Ensuring their accuracy, inclusivity and accessibility through initiatives such as EPIC (voter ID) and systematic voter education campaigns.
 - Polling process: Deploying security, monitoring expenditure and enforcing laws to prevent electoral malpractice.
 - Counting and declaration: Maintaining transparency and credibility throughout the declaration of results²².

B. Parliamentary Elections & System

1. Outline of the Current System (FPTP):

India follows the First Past the Post (FPTP) system for parliamentary and state legislative assembly elections. Single-member plurality, or first past the post (FPTP), elections elect one representative per district according to which candidate receives the most votes. In this system, the candidate receiving the highest number of votes in a constituency wins, regardless of whether they achieve an absolute majority²³. While FPTP ensures simplicity and efficiency, it raises concerns about its fairness in terms of representation. The winner-take-all aspect of such elections makes the drawing of district boundaries extremely important in determining the overall outcome and thus there is much concern over the fairness of proposed maps. The most natural condition would seem to be proportionality, the requirement that a party's proportion of seats equal its proportion of the vote.

The proportionality of an electoral system refers to the similarity between a party's vote share in the election and their seat share in the legislature. In a highly proportional system, vote and seat shares are closely aligned; meaning a party that wins 10% of the vote would hold 10% of

²² Election Commission of India Through Secretary v Ashok Kumar (2000) 8 SCC 216.

²³ Representation of the People Act 1951, S. 53 (Bare Act).

seats in parliament. The main constraint on the proportionality of an electoral system comes from how many seats are elected in each district, known as the District Magnitude (DM). Because parties cannot earn a fraction of a seat, higher district magnitudes allow for greater proportionality because there are more granular ways to assign seats. Electoral systems have a significant impact party behaviour, platforms and even what parties exist within a country. FPTP encourages a strategic deployment of campaign resources based on how likely a candidate is to win or lose in a given constituency there is little value from time and money spent in areas where a party's candidate is virtually guaranteed to win nor those where they will certainly lose. Instead, parties focus on constituencies with more uncertain outcomes, where persuading a relatively small number of voters to either change or not change their vote can significantly alter the chances of victory.

The negative threads of FPTP:

1. The loops of disproportionality: Can lead to a significant mismatch between the percentage of votes received and the percentage of seats won. Smaller parties may be underrepresented, while larger parties may receive a disproportionate number of seats.
2. Votes in the Recycle bin: Votes for losing candidates do not contribute to the overall election result, which can discourage voter participation. Can lead to strategic voting, where voters choose not their preferred candidate, but the one they think has the best chance of winning.
3. The Doctrine of Minority Governance: A candidate can win with a minority of the votes if the opposition is divided among multiple candidates. This can result in a government that does not reflect the majority preference of the electorate.
4. Winning with Geographical Significance: Parties with geographically concentrated support can win more seats than parties with evenly distributed support, even if they receive fewer overall votes.
5. Flourishing Gerrymandering: Gerrymandering is the deliberate manipulation of electoral districts to gain an unfair advantage in

elections by favouring one's own side and disadvantaging the opposing side, whether it is a political party, a racial or ethnic group, or specific types of territory. This manipulation aims to secure a higher number of seats than the proportion of votes received. Various techniques, such as splitting, dilution, cracking, and packing, are used to achieve gerrymandering. While there is no consensus on invalidating manipulation against a political party or recognized place, reducing gerrymandering can be achieved through bipartisan or independent districting commissions.

From the vantage point of electoral reform, India's First Past the Post (FPTP) system is a ripening fruit of democracy that conceals seeds of discontent. Beneath its surface-level simplicity lies a complex web of structural flaws that distort the democratic harvest. The system's tendency to yield disproportionate results is akin to a tree that bears fruit unevenly, where dominant parties reap a bounty of seats while smaller parties struggle to gather scraps. The FPTP paradigm's Achilles' heel lies in its treatment of votes for losing candidates as so much fallen fruit, left to wither away without contributing to the larger harvest. Furthermore, the system's vulnerability to minority governance is like a fruit tree that bears fruit out of season, where parties ascend to power without the nourishing support of a genuine majority. The geographical bias inherent in FPTP is a pruning shear that skews representation, allowing parties with regional strongholds to gather a disproportionate harvest. Most critically, the system's susceptibility to gerrymandering is a blight that threatens to rot the fruit of democracy. In contrast, a proportional representation system may offer a more succulent solution, but its complexity demands careful cultivation, accompanied by public education and sensitization. Ultimately, India's vibrant democracy deserves an electoral system that yields a rich harvest of representation, reflecting the diversity and inclusivity of its people.

2. Legal Basis Under RPA, 1951:

- The Representation of the People Act, 1951 lays the legal foundation for elections in India. It outlines provisions regarding:
 - Qualification and disqualification of candidates.

- Conduct of elections, nomination procedures and adjudication of disputes²⁴.
- Monitoring election expenditure and addressing corrupt practices²⁵.

3. Observations on Representation Imbalance:

While FPTP provides a straightforward mechanism, it often results in representation imbalance. For example, parties with concentrated regional support may secure more seats than nationally dispersed parties, leading to disproportionate outcomes. Minorities and smaller parties struggle to achieve fair representation, raising critical questions about inclusivity in Parliament²⁶.

The system of Proportional Representation (PR) model will ensure more fair representation of diverse political ideologies and will help to reduce the monopoly of powerful and dominant parties which makes the elections more inclusive. In PR large geographical areas are classified as constituencies, the whole country may be a single constituency. The constituency is being represented by more than one representative and the voters votes for the party. Every party gets seats or representation in the legislature in proportion to the percentage of votes it receives, this system is invariably flourishing in Israel and Netherlands. It ensures representation of all parties based on their share of votes and fairer treatment of minority parties is also in the coin which includes independent candidates also. The phenomenon of votes in the recycle bin can be reduced which takes preference to the words of more people. No system or humans are fallible, everything is infallible, likewise the dark shades of PR include fragmented legislatures with multiple small parties and may produce coalition government which can be less stable in parliamentary democracy.

IV. EMERGING DEFECTS AND SYSTEMATIC FLAWS

India's electoral system, though grounded in robust constitutional principles, is not without its Achilles' heel. Certain systemic flaws have emerged, threatening the core ethos of constitutional democracy, or what we might term its *salus populi suprema lex esto* - the welfare of the people is the supreme law. These issues necessitate an *ex abundanti cautela* (abundance

²⁴ Representation of the People Act 1951, S. 8–10 (Bare Act).

²⁵ Representation of the People Act 1951, S. 123–126 (Bare Act).

²⁶ ADR Report, Representation Imbalance in Elections (2023).

of caution) to preserve the sanctity of free and fair elections.

A. Mode of Appointment of Election Commissioners

A critical issue within India's electoral framework has been the appointment process of Election Commissioners. In the landmark case *Anoop Baranwal v Union of India*²⁷, the Supreme Court mandated a three-member collegium comprising the Prime Minister, Leader of Opposition (LoP), and Chief Justice of India (CJI) for appointing the Chief Election Commissioner (CEC) and Election Commissioners²⁸. This judgment reinforced institutional independence and applied the maxim *nemo iudex in causa sua* (no one should be a judge in their own cause). The continuing silks of this judgment is still glazing in the apex court and recently it points out by Advocate Prashant Bhushan that, '*the case goes to the very roots of democracy*'. The crux of the contention is basically roaming round the validity of Section 7(1) of the statute²⁹, which mandates that the President would appoint the CECs and ECs on the recommendation of a selection committee of the Prime Minister, the leader of opposition in the Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister. The statute in short had replaced the Chief Justice of India on the selection panel with a Union Minister, giving the government an upper hand in appointment to the Election Commission of India.

Prior to this judgment, the appointment process was solely at the discretion of the executive, leading to fears of *lacuna* (gap) in transparency. To ensure this safeguard permanently, a constitutional amendment would be essential to transform this judicial directive into *de jure* (by law) authority. Without codification, the Election Commission risks falling prey to undue influence.

B. Criminal Antecedents of Candidates

The prevalence of legislators with criminal antecedents continues to tarnish India's democratic process. According to reports by Association for Democratic Reforms (ADR), nearly half of the current MPs and MLAs face criminal charges³⁰. This scenario is akin to placing a *lupus in fabula* (the wolf in the story) within democratic institutions. The criminalization of politics can

²⁷ *Anoop Baranwal v. Union of India* (n 18)

²⁸ *Ibid.*

²⁹ Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023

³⁰ ADR Report, Analysis of MPs and MLAs with Criminal Cases (2023).

have negative effects on democracy and the rule of law. It creates an environment where politicians and political parties engage in corrupt practices and undermines the trust of citizens in the political system and can act as an impediment to development, as politicians with criminal backgrounds may prioritize their own interests over the welfare of the people. The presence of criminals in politics can also weaken democratic institutions, as they may try to manipulate the system to their advantage. Criminalization of Politics goes against the principles of a free and fair election by limiting the options for voters to choose a deserving candidate. The issue of criminal elements becoming elected officials undermines the democratic process and hampers the delivery of good governance. It also leads to increased circulation of black money during and after elections, which in turn increases corruption in society and affects the working of public servants. It introduces a culture of violence in society and sets a bad precedent for the youth to follow and reduces people's faith in democracy as a system of governance. Criminalization of politics erodes the public confidence in elected politicians who indulge in criminal activities.

In *Union of India v Association for Democratic Reforms*³¹ and *PUCL v Union of India*³², the Supreme Court recognized the voter's "right to know" as intrinsic to freedom of expression under Article 19(1)(a). However, enforcement remains weak, rendering these rulings *inter arma silent leges* (in times of conflict, the law falls silent). The Supreme Court, in *Lily Thomas case* in 2013³³, held that charge-sheeted Members of Parliament and MLAs, on conviction for offenses, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before. In 2019 *Public Interest Foundation v. Union of India*³⁴, the Supreme Court of India ordered political parties to publish the criminal records of their candidates on their websites, social media handles and newspapers. Recommendations from the Madhava Menon Committee advocate barring candidates with charges of heinous crimes unless acquitted by a competent court³⁵.

The election commission endorsed the call for a lifetime ban in the apex court. It had argued that such a move would "champion the cause of decriminalization of politics. Given the reluctance by the political parties to curb the criminalization of politics and its growing

³¹ *Union of India v Association for Democratic Reforms* (2002) 5 SCC 294.

³² *PUCL v Union of India* (2003) 4 SCC 399.

³³ *Lily Thomas v. Union of India* [2000] 6 SCC 224.

³⁴ *Public Interest Foundation v. Union of India* [2018] 3 SCC 224.

³⁵ Law Commission of India, 2015.

detrimental effects on Indian democracy, Indian courts must now seriously consider banning people accused of serious criminal charges from contesting elections. Various committees, such as Dinesh Goswami (1990) and Inderjeet Committee (1988), on the electoral reforms, have recommended state funding of elections which will curb the use of black money to a large extent and thereby will have a significant impact on limiting criminalization of politics. Regulating the affairs of a political party is essential for a cleaner electoral process. Moreover, voter awareness campaigns would play a pivotal role in strengthening democracy through informed decision-making, reinforcing the maxim *caveat emptor* (let the buyer beware).

C. Corrupt Practices and Electoral Offences

Despite statutory safeguards, corrupt practices such as bribery, undue influence and communal appeals continue to plague Indian elections. Sections 123 and 125 of the Representation of the People Act (RPA) define these offences, yet enforcement remains challenging³⁶.

Landmark cases like *Mohinder Singh Gill v Chief Election Commissioner*³⁷, have emphasized the ECI's responsibility to uphold integrity in electoral practices. However, emerging issues such as paid news, freebies and electoral violence highlight the need for more robust mechanisms. Proposals for fast-track courts and stricter penalties could instil accountability, acting as a *machina robusta* (a robust machine) for justice.

D. Right to Information of Electors

As established in *Association for Democratic Reforms v Union of India*³⁸, the right to information is indispensable to a functional democracy. The Supreme Court underscored that *ignorantia juris non excusat* (ignorance of the law is no excuse), mandating disclosures of candidates' criminal backgrounds, assets and educational qualifications.

Expanding this mandate to include performance metrics, fulfilled election promises and public debates could further elevate accountability. Such measures echo the principles of a forum *Romanum* (Roman forum), where transparency fosters informed decision-making.

³⁶ Representation of the People Act 1951, ss 123, 125 (Bare Act).

³⁷ *Mohinder Singh Gill v Chief Election Commissioner* (n 17).

³⁸ *Association for Democratic Reforms v Union of India* (2002) 5 SCC 294.

E. Delimitation Issues and Suggestions

The constitutional freeze on delimitation, extended until 2026, aimed at balancing representation, has led to stark disparities. While northern states benefit from higher population growth, southern states, despite controlling population levels, face underrepresentation³⁹. This creates a *hic sunt dracones* (here be dragons) situation, where demographic realities clash with equitable representation.

A hybrid model incorporating population metrics and developmental indices (such as literacy, healthcare and economic progress) would reconcile these challenges. Additionally, establishing a Permanent Delimitation Commission, operating with *nullum tempus occurrit regi* (time does not run against the king) authority, would ensure dynamic adjustments to representation.

F. Crooking the Technologies

The EVM consists of three units, namely, the ballot unit, the control unit and the VVPAT. The ballot unit acts as a keyboard or a keypad. The ballot unit consists of 16 keys/buttons one of which the voter has to press when he exercises his choice to vote for any candidate. The keys are political party and candidate agnostic. The serial numbers, names of the candidates and the symbols of the political parties/candidates are physically pasted on the ballot unit so as to enable the voter to identify the corresponding key/button against the respective candidate and the symbol. The control unit, which is also called the master unit, remains with the polling/presiding officer. Before the ballot unit can be used by a voter, the polling/presiding officer is required to press the 'BALLOT' button on the control unit, thereby enabling the voter to cast his vote on the ballot unit. As soon as the voter presses the 'blue button' and casts his/her vote on the ballot unit, an LED against the candidate button glows red and the control unit sends the command to the VVPAT. The VVPAT then prints the VVPAT slip comprising of the serial number, candidate name and the symbol. The VVPAT slip, after being printed, is displayed through the glass window which is illuminated for 7 seconds to enable the voter to know and verify the serial number, the candidate and the symbol for whom they have voted. The VVPAT slip then gets cut from the roll and falls into the box/compartment attached to the VVPAT. The fall sensor in the VVPAT then sends a confirmation to the control unit. The

³⁹ Election Commission of India Through Secretary v Ashok Kumar (2000) 8 SCC 216.

control unit records the vote. The control unit, as explained below in some detail, has burnt memory, which is agnostic and does not have the names of the candidates and symbols allotted to the candidates or political parties. As noted earlier, the polling/presiding officer has to activate the EVM by pressing the 'BALLOT' button on the control unit. The data stored in the control unit, upon the vote being cast, records and counts the button or the key pressed on the ballot unit. The data, therefore, records the total number of votes as cast by the voters and the key or the button number on the ballot unit pressed by the voters for casting their vote. After the vote is cast and the control unit has recorded the vote, a loud beep sound confirms the registration of the vote. The EVMs are manufactured and supplied to the ECI by two public sector undertakings, namely, Bharat Electronics Limited (which functions under the Ministry of Defence) and Electronic Corporation of India Limited (which functions under the Department of Atomic Energy). The EVMs in use after 2013 are referred to as 'M3' EVMs. The EVM setup is designed in a rudimentary fashion and the EVM units are standalone and non-networked, that is, they are unconnectable to any other third-party machine or input source. In case any unauthorised attempt is made to access the microcontroller or memory of the EVM, the Unauthorised Access Detection Mechanism (UADM) disables it permanently. The advanced encryption techniques and strong mutual authentication or reception capability rules out the deciphering of communication between the EVM units and any unauthorised interaction with the EVM.

The EVMs, after they are put in the strong room, are subjected to First Level Check (FLC) by engineers of the manufacturers in the presence of the representatives of the recognised political parties. The FLC is carried out at the district level under the supervision of the District Election Officer. Part IV, Chapter II of the 1961 Rules, which relates to voting by EVMs, lays down details of preparation of the voting machine by the returning officer, arrangements at the polling station, admission to the polling stations and preparation of voting machine for poll. The three units of the EVM have to bear the serial number of the unit, name of the constituency, serial number and name of the polling stations and the date of poll.

The test for determining the scope of unenumerated rights is based on tracing them to specific provision of Part III of the Constitution or to the core values which the Constitution espouses. While we acknowledge the fundamental right of voters to ensure their vote is accurately recorded and counted, the same cannot be equated with the right to 100% counting of VVPAT slips, or a right to physical access to the VVPAT slips, which the voter should be permitted to

put in the drop box. These are two separate aspects, the former is the right itself and the latter is a plea to protect or how to secure the right. The voters' right can be protected and safeguarded by adopting several measures. The introduction of VVPATs to guarantee utmost transparency and integrity in the system. This direction was made to safeguard the right of the voters to know that the vote has been correctly recorded in the EVM. The direction has been implemented. The voter can see the VVPAT slip through the glass window and this assures the voter that his vote as cast has been recorded and will be counted.

The present security concerns of VVPATs can be cured by introducing more verification procedures without infringing the privacy and identity concerns of the voter that will be in accordance with Rule 93(2) (a) of Conduct of Election Rules, 1961.

G. One Nation, One Election (ONOE)

The constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024, recently tabled in the Lok-Sabha, lower-house of the Parliament, proposes an overhaul of the Indian electoral system through introduction of simultaneous elections for the LS and state/union-territory legislative assemblies, encapsulated in the proposed insertion of Article 82(A). This reform aims to synchronize election cycles, establish fixed tenures for the LS and align them with State Assembly elections. According to this amendment, if the LS or any State Assembly is dissolved prematurely, any ensuing mid-term elections would only be for the remainder of the original five-year term. This heavy move has tickled debates about its constitutionality, raising questions about Parliament's authority to enact such changes and whether they align with or undermine the constitution's foundational principles, especially regarding federalism and parliamentary democracy⁴⁰.

As a matter of fact, while the Bill proposes to synchronize the state-legislative elections and the LS elections throughout the country to cut on costs – the bill still assumes a situation where an election to an assembly cannot be conducted at the time of general-elections. Here, a power under proposed Article 82A (5) is given to the Election Commission of India [ECI], that if it is of the opinion that elections to any Assembly cannot be conducted at the time of General-Elections, it may make a recommendation to the President, who may then declare by an Order

⁴⁰ H M Seervai, *Constitutional Law of India: A Critical Commentary*, vol 1 (4th edn, Universal Law Publishing 2013).

that election to that Assembly may be conducted at a later date.

Here, the fundamental problem is that the proposed Article currently lacks specificity regarding the basis of the ECI's opinions and under what circumstances it can advise the president to postpone elections. This ambiguity opens the door to subjective interpretations and potential bias and abuse. Given that the ECI's composition is determined by an executive-dominated committee including the Prime Minister, a Cabinet Minister and the Leader of the Opposition, there is a heightened risk of partisan influence. This is particularly concerning in situations where the Union government may not feel confident about electoral outcomes in state assemblies controlled by opposition parties, potentially leading to unfair treatment or decisions to delay elections without clear, objective criteria.

V. THE CONCERNS CLARIFIED

The Supreme Court of India in *Kesavananda Bharati* case (para 482) firmly established that free and fair elections are a fundamental component of the basic structure of the Indian Constitution. This doctrine of the basic structure is pivotal as it stipulates that certain core principles are so fundamental to the constitution that they cannot be altered or destroyed through amendments by the Parliament. For a German audience: India's basic structure doctrine is similar to Article 79(3) of the German Constitution, which safeguards key principles like federalism, state participation in legislation and fundamental human rights against amendments.

In this context, it has been clarified that the proposed constitutional amendment enabling ONOE undermines the basic structure by potentially compromising the fairness of the electoral process. Although Senior Advocate Salve, a member of the panel led by Mr. Ram Nath Kovind which advocated for ONOE, expressed confidence in electorate's wisdom and maturity, research suggests a contrary scenario. This amendment risks influencing voter behaviour in ways that could degrade the integrity of elections, highlighting a significant misalignment with the foundational tenets of our democracy.

India's constitution creates a federal system where power is shared between the national government and state governments. This division is meant to protect both national unity and regional independence. However, when elections for both levels of government are synchronized, the focus often shifts to national issues, overshadowing local concerns. This can

make all regions seem politically similar and might benefit the main national party, weakening the variety and relevance of local political choices. By elevating national issues, this practice can dilute the importance of regional matters in elections, leading to less political diversity and a stronger central government.

Conducting separate elections involves significant expenditures. The Election Commission of India (ECI) spends billions on conducting national and state elections, including costs for security, polling staff and infrastructure. A single election could drastically reduce these expenses. Frequent elections force governments to prioritize populist policies over long-term governance due to the "model code of conduct," which restricts new policy implementation during elections. ONOE would provide governments with uninterrupted time to implement developmental programs. Repeated elections can lead to voter fatigue, reducing turnout rates. A consolidated election schedule might encourage higher participation. For political parties, ONOE would simplify campaigning and resource allocation. Parties could focus on a single, cohesive strategy instead of shifting gears for different elections. Simultaneous elections may foster a sense of collective decision-making, encouraging citizens to think beyond regional biases.

VI. CLOSING PASSAGE

Initially, the legal framework governing political parties was limited to the Election Commission's symbol allotment order, a gentle guidance for their existence. However, with the introduction of the Constitution's 10th Schedule, aimed at curbing the evil of defections, political parties found a place within the constitutional framework, bringing a sense of structure and stability. The subsequent insertion of Section 29A in the Representation of the People Act, 1951, provided for party registration, further clarifying their role. Despite these statutory provisions, the organizational and functional aspects of political parties remain inadequately addressed, creating a need for a more comprehensive approach. A dedicated legislation can provide soothing clarity and promote transparency in party functioning. By incorporating provisions for statutory recognition of party constitutions, deregistration of parties, regulation of party funding, and ensuring transparency in their operations, such a law can foster an environment of trust, accountability and harmony. This, in turn, can allow democracy to flourish with serenity, ensuring the well-being of the people and the integrity of the electoral process.

The soul of India's constitutional democracy breathes through the ballot. Yet, this sacred rhythm falters under the weight of criminalized candidatures, flawed representations and partisan intrusions. The criminalization of politics is not merely a legal infirmity; it is a moral contagion. To purge this malaise, we must invoke the spirit of *Salus Populi Suprema Lex Esto* - let the welfare of the people be the supreme law, through stringent disqualifications, judicial activism and transparent disclosures.

Delimitation, long silenced beneath constitutional freeze, must awaken, guided not solely by census, but by justice. Proportional representation may offer symphonic diversity, but a reckless embrace may dissolve clarity into cacophony; its application must be thoughtful, not total.

"One Nation, One Election" sings of harmony and efficiency, yet its orchestration demands constitutional precision lest it drown the federal choir. The Anoop Baranwal verdict, still in judicial gestation, echoed anew on April 16th, with a piercing reminder that the method of appointing Election Commissioners affects "the very roots of democracy."

Thus, as sentinels of the Constitution, we must not merely reform, but resurrect. For in the garden of democracy, only when every thorn is accounted for, can the rose truly bloom.