

Rebuilding the Republic: Navigating towards Electoral Reforms in India

India's republican Constitution is preserved through constant revivification of power in electoral procedures. Elections have taken root in the very constitution of the nation such that voters become masters of a responsive state. Thereafter, however—vulnerable to financial invisibility and institutional weakness—voters' confidence in electoral results has been lost. Electoral reform is thus not governance imperative per se, but a constitutional imperative.

The framers of the Constitution had conceived the Election Commission of India to be an autonomous, independent constitutional body apart from the executive, with under Article 324 the task of "superintendence, direction and control" of elections¹. But non-existence of statute that provides life to the powers of the ECI and appointments has kept it vulnerable to the risk of being subjected to manipulative actions by the executive.

The Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner* upheld the plenary authority of the ECI but emphasized the limitation of the same in a politically competing climate². In the recent *Anoop Baranwal v. Union of India*, the Court instructed appointments to the Commission by the Prime Minister's committee, the Leader of Opposition, and the Chief Justice of India, hence injecting a sense of institutional equilibrium³. Independence in reality, however, necessitates Parliament to pass a constitutional amendment securing security of tenure, financial freedom, and a scheme of appointment independent of executive discretion⁴. The electoral legitimacy crisis, however, transcends institutional framework.

Injection of unreported money into electoral politics has discredited the political ideal of equal opportunity. Electoral Bond Scheme, established in 2017, was to purify political finance and had the reverse effect of encouraging secrecy in the name of anonymous corporate donations⁵. In *Association for Democratic Reforms v. Union of India*, the Supreme Court upheld the freedom of information under Article 19(1) (a) and thereby upheld the

¹*Constitution of India*, art. 324.

²*Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

³*Anoop Baranwal v. Union of India*, (2023) 6 SCC 1.

⁴Second Administrative Reforms Commission, *Ethics in Governance* (2007).

⁵Ministry of Finance, *Electoral Bond Scheme Notification*, S.O. 29(E) (2 Jan. 2018).

imperative of transparency of finance⁶. State funding of elections in part to make up for cutback in relying on private capital and electoral maths equilibrium was suggested in the 1998 Indrajit Gupta Committee Report⁷. Reviving that option and simultaneous contemporary public disclosure of donations under the Representation of the People Act, 1951 (RPA) would put India's practice on par with international democratic standards of integrity⁸. Criminalisation of politics is yet another centuries-old tradition.

Figures from Association for Democratic Reforms inform us that nearly 43 per cent of the present Members of Parliament have pending criminal cases registered against them⁹. The Supreme Court verdict in the Public Interest Foundation v. Union of India complained of legislative failure on the topic short of judicial disqualification of charge-vulnerable candidates¹⁰. Legislative reform now has to get beyond automatic disqualification of charge-vulnerable candidates and violence- or corruption-type charges, and swift trials by special courts¹¹. Party internal processes also need to be monitored. Party internal democracy and transparency were put on the agenda in the 2016 ECI Transparency Guidelines and it was a call to pass binding legislation that has long lain in Parliament's hands¹². Electronic campaigning under a second pillar of India's electoral process is the Model Code of Conduct (MCC), the ethics code of conduct in campaigning, diluted by the lack of statutory status and thereby reliant on voluntary adherence. Incorporating inclusion of the RPA into the MCC would place it in the locus of rule of law influence and not moral teaching such that the ECI could penalize without the court's sanction¹³. It would also have to address party electoral campaigning electronically, which has been a prime and yet presently unregulated player in electioneering. With algorithmic campaigning advertising, deep fakes, and data mining-profiling of voters, the elections are at risk of being manipulated contrary to informed consent¹⁴. There ought to be a compulsory Digital Election Oversight Division in the ECI with data professionals and legal experts such that digital campaigns could be monitored in

⁶*Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

⁷Indrajit Gupta Committee Report on State Funding of Elections (1998).

⁸Law Commission of India, *Reform of Electoral Laws*, Report No. 255 (2015).

⁹Association for Democratic Reforms, *Analysis of Criminal Background of MPs and MLAs* (2023).

¹⁰*Public Interest Foundation v. Union of India*, (2019) 3 SCC 224.

¹¹Law Commission of India, *Electoral Disqualifications*, Report No. 244 (2014).

¹²Election Commission of India, *Transparency Guidelines for Political Parties* (2016).

¹³Ministry of Law and Justice *Proposed Amendments to the Representation of the People Act* (2022).

¹⁴Internet Freedom Foundation, *Democracy and Digital Campaigning Report* (2023).

real time and electoral integrity in the virtual space could be attained¹⁵. Greater necessity exists to empower increased participation of the people.

Despite possessing one of the world's biggest electorates, representational representation and the turnout of the people are still not equated. Restrictions like internal migration, logistical limitations, and political disenfranchisement continue to disenfranchise the majority¹⁶. The ECI SVEEP program has travelled a significant distance, yet there has to be civic literacy as part of school education in the long run to enjoy the fruit of an educated citizenry¹⁷. Postal and distant voting facilities, if pursued diligently, would be able to further democratize. The process in disabled and immigrant citizens¹⁸. Besides election, structural disproportions of representation have to be settled dialectically. First-past-the-post electoral process, if administrative convenience, always leads to disproportions. Scholars such as P.B. Mehta and M.P. Singh have contended that hybrid electoral systems—ranked-choice or run-off voting, for instance—can perhaps guarantee representational justice to be equitable without infringing on the federal frame¹⁹. The Women's Reservation Bill pending in Parliament also needs to become operational to ensure meaningful gender representation at all governmental levels²⁰.

If this is done only then it becomes possible to have a good reform agenda, if this is ensured institutionally by review mechanisms. Establishing a permanent Parliamentary Committee on Electoral Affairs would make it possible to continuously track the election acts so that judicial interpretation, legislative amendment, and administrative implementation become congruent with each other²¹. Constitutional guarantee of financial autonomy of the ECI by making its expenditure refundable to the Consolidated Fund of India, as with the Comptroller and Auditor General²²,

¹⁵NITI Aayog, *Artificial Intelligence and Electoral Integrity Discussion Paper* (2024).

¹⁶Election Commission of India, *Handbook for Returning Officers* (2022).

¹⁷Election Commission of India, *SVEEP Handbook* (2022).

¹⁸Law Commission of India, *Voting Rights for Non-Resident Indians*, Report No. 239 (2011).

¹⁹Pratap Bhanu Mehta, "Institutions and Democratic Accountability in India," *Economic and Political Weekly* (2019); M.P. Singh, *Constitutional Government and Democracy in India* (Oxford Univ. Press, 2011).

²⁰The Constitution (One Hundred and Sixth Amendment) Bill, 2023.

²¹Law Commission of India, *Reform of Electoral Laws*, Report No. 170 (1999).

²²Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971, § 11.

These modifications act in accordance with the theory of constitutional morality, theory put forth while Dr B.R. Ambedkar delivered his exposition as the moral constraint that keeps institutions and citizens under its control²³. Electoral reform under such a situation ceases to be a process of propriety; it becomes the republic's duty to morality, equality, accountability, and justice.

As the nation rushes toward its centennial year of liberty, the challenge of reinvigorating its electoral process is that of maintaining democratic legitimacy yet even restoring confidence in the Constitution itself.

²³Granville Austin, *the Indian Constitution: Cornerstone of a Nation* (Oxford Univ. Press, 1966).