

## IN PURSUIT OF JUSTICE: STRENGTHENING DEMOCRACIES THROUGH ELECTORAL REFORM

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### ABSTRACT

*India, the biggest democracy in the world, has dedicated itself to democratic principles ever since it became independent in 1947. Its electoral system has changed as a result of this dedication, driven by both historical insights and current issues. India's electoral reform path is a reflection of the visionary leadership of individuals such as Dr. B.R. Ambedkar and significant decisions made by the Supreme Court. India has received praise from across the world for its commitment to holding free and fair elections, but it still has to deal with concerns like political criminalisation, voting infrastructure problems, and intimidation of election officials. This article examines a number of issues pertaining to India's electoral system, such as the need for changes to the process of choosing candidates, the financing of campaigns, and the handling of political criminals. It also looks at proposals such as the "Right to Reject" and discussions about public sponsorship of elections. India aims to create an election system that is more transparent, inclusive, and participatory by learning from the past and addressing contemporary issues.*

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### INTRODUCTION

India has been adamantly committed to democratic values since gaining independence in 1947, and the Indian Constitution's framers laid the foundation for a strong election system. Dr. B.R. Ambedkar and other visionaries led the way as the 1930s Round Table Conferences discussed self-governance and marked the beginning of the path towards democracy. Important turning points were reached when Dr Ambedkar supported separate electorates for the untouchables and other minorities despite conflicts like Gandhi's opposition to communal prizes<sup>1</sup>. Thanks to its dedication to free and fair elections, India's democratic model is now seen as a worldwide role model. However, to fully realise the nation's democratic potential, significant

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<sup>1</sup> B. N. Ghosh, *Gandhian Political Economy: Principles, Practice and Policy* 46 (Ashgate 2007).

modifications to the voting process are necessary. This is notwithstanding national pride. To establish a more transparent, equal, and just electoral system, fundamental adjustments are required in everything from candidate selection to campaign funding. India's story of electoral reform is a continuous one, entwining the visionary founder's legacy with the demands of modern difficulties as the country sculpts its democratic framework.

## **LEARNING FROM HISTORY FOR FUTURE ELECTORAL REFORMS IN INDIA**

Niccol Machiavelli's ageless wisdom is relevant to India's current democratic reform path. India, the world's largest democracy, has seen changes in its election system throughout history and in the present. Political events have always been driven by human passions, which have reflected patterns across time and produced similar results. India's election reforms, which are essential to the democratic process, learn a great deal from history. The significance of the phrase comes from realising that the problems and solutions facing the current voting system are reminiscent of those seen in earlier times. History provides valuable guidance for the future, spanning from the establishment of free and fair elections in 1947 under the auspices of the Election Commission and the Constitution to the ongoing development of laws such as the Representation of the People Act. The pursuit of electoral reform is motivated by both historical reflection and current issues, reflecting the never-ending cycle of human emotions impacting political outcomes. Echoing the ideal of a thriving democracy for the future, India is attempting to navigate towards a more robust, transparent, and participatory election system by paying attention to the lessons learned from the past.

## **FREE AND FAIR ELECTIONS IN INDIA**

Since gaining independence in 1947, India, which is regarded as the greatest democracy in the world, has assiduously maintained the tradition of free and fair elections. These elections, which take place on a regular basis, rigorously follow the rules set down in the Constitution and are monitored by the ECI. The EC has the constitutional authority to oversee, direct, and control all aspects of the electoral process<sup>2</sup>, including state and parliamentary elections, as well as elections for India's most important offices: the president and vice president. The fundamental aspect of these elections is that they are in compliance with both the laws passed by Parliament and the stipulations of the Constitution. The Representation of the People Act of 1950 is a significant piece of legislation that regulates the creation and updating of electoral

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<sup>2</sup> INDIA CONST. art. 324

rolls, as well as the thorough control of all aspects of election behaviour and the settlement of disputes that arise after the election<sup>3</sup>.

### **CRIMINALISATION IN ELECTORAL SYSTEM**

Criminalisation in politics has continued to cloud the election process and raise questions about the objectivity of representatives and the effects on public policy. It's an ugly fact that a lot of politicians who are charged with crimes frequently use illegal activity to support their political careers, which damages the confidence of the people who elect them. Although the reports from the Law Commission of India offer valuable insights into the histories of politicians and any allegations against them, the efficient utilisation of this material is impeded by the general public's lack of understanding<sup>4</sup>.

The People's Representation Act of 1951's Section 8<sup>5</sup>, which disqualifies candidates upon conviction, is dubious because of its shoddy execution and the impact of money in politics. In 2003, the Election Commission of India required candidates to file affidavits outlining their holdings and liabilities; nevertheless, there have been claims that information disclosed during the disclosure process was devalued. The credibility of elections and representative government is still being impacted by the criminalisation of politics. Nearly 45% of candidates in the most recent Karnataka elections had criminal complaints brought against them, and 30% of them were accused of heinous offences, including rape and murder. According to Professor Sastry, India is the only country that permits people with criminal histories to actively participate in elections, which poses a serious risk to the democratic process. A democracy that accepts people with criminal histories is not a strong and stable one.

### **THE SUPREME COURT ALLOWS VOTERS TO DISQUALIFY CANDIDATES**

The People's Union for Civil Liberties v. Union of India case from 2013<sup>6</sup> was a landmark decision in which the Supreme Court of India gave voters the ability to reject any candidate by using the "None of the Above" (NOTA) option. In a landmark decision, the Supreme Court recognised the importance of the "right to dissent" as an essential component of the democratic process by holding that voters had the freedom to reject any and all candidates running for

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<sup>3</sup> The Representation of the People Act, 1950, No. 43, Acts of Parliament, 1950 (India).

<sup>4</sup> Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics* 352 (Yale University Press, 2017).

<sup>5</sup> The Representation of the People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

<sup>6</sup> People's Union for Civil Liberties & Anr. v. Union of India & Anr., 2013

office. In order to provide voters with the clear option to reject all candidates if they think none of them is appropriate, the court ordered the Election Commission to include a NOTA button on ballot papers and (EVMs)<sup>7</sup>.

The People's Union for Civil Liberties (PUCL) initiated a petition that sought to include a "Negative Voting" option and questioned the legitimacy of the election process. This petition gave rise to the current case. In this decision, the Supreme Court upheld voters' freedom to voice disapproval and reject any candidate, arguing that this would force political parties to choose individuals with a more respectable reputation and a greater track record. This decision was a major turning point in Indian democracy, as it gave people a way to express their displeasure with the candidates that were put out and encouraged accountability and openness in the electoral process<sup>8</sup>.

### **RIGHT TO RECALL**

The phrase 'Right to Recall' describes a method that has been suggested that would enable voters to remove an elected politician from office before the conclusion of their term. Despite having been considered during the constitution's drafting, this clause was not specifically included in the Indian election system. Dr. B.R. Ambedkar and other Indian Constitution framers intended to provide people with the ability to recall their elected representatives if they were unhappy with their performance. This was known as the Right to Recall. The proposal would enable voters to register complaints with the electoral commission, which would force new elections and the recall of an elected individual. However, possible abuse, logistical difficulties, and the fine balance between citizen involvement and representative democracy presented hurdles for the execution. The Right to Recall is put into practice through complex procedural frameworks and safeguards against misuse. These difficulties and the requirement for an all-encompassing mechanism to guarantee equitable and prudent use are the reasons why the electoral system does not include this option.

### **STATE FUNDING OF ELECTIONS**

Elections are expensive, which makes it difficult for candidates and parties with little resources to take part in the process. This is a major cause for worry. Concerns concerning policy decisions made by elected officials are raised by their reliance on a variety of funding sources,

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<sup>7</sup> People's Union for Civil Liberties & Anr. v. Union of India & Anr., SC 2004

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which may benefit those who are financially assisting their campaigns. State sponsorship of elections has come up as a suggested remedy to these problems. This strategy includes giving political parties or candidates a variety of financial help from the government, including direct financial assistance, the provision of resources for campaigning, or reimbursement of campaign expenditures. The goal is to create a more equal playing field so that candidates from different socioeconomic backgrounds may engage in the political process more fairly.

In 1998, the Indrajit Gupta Committee recommended two major limits on state funding for elections: first, only national and state parties bearing a symbol could receive funding from the government, and second, recognised political parties and their candidates could only receive temporary state funding in the form of specialised infrastructure. While the National Commission to Review the Workings of the Constitution did not support public sponsorship of elections, the Law Commission did see the necessity for a framework governing political parties. When implementing state funding for elections, there are a number of factors to take into account, such as establishing allocation criteria, guaranteeing money distribution transparency, and avoiding waste or inefficiency in resource usage. The notion, which strikes a balance between the requirement for an open, transparent, and equitable democratic process and the goal of minimising the impact of money in politics, is still up for dispute.

In order to secure their right to vote, Indian nationals living abroad were granted the opportunity by the Election Commission to register their names in their parliamentary constituency in 2010. Voter selections are verified by the Voter Verifiable Paper Audit Trail (VVPAT), which was established by the Election Commission in 2013. The upper ceiling of expenditure for Lok Sabha elections was increased by the government in 2014 from Rs. 40,00,000 to Rs. 70,00,000. The spending cap for assembly seats in bigger states was raised from Rs. 16,00,000 to Rs. 28,00,000.

In order to avoid voter misunderstandings, the Election Commission mandated in 2015 that candidate photographs, names, and party insignia be shown on electronic voting machines (EVMs). In 2017, alterations were made to the finance bill that was presented in the Lok Sabha regarding donations to political parties. Companies that made contributions to political parties were formerly obligated to reveal the total amount of their contributions. Subsequent to the modification, there was no longer any requirement to provide the name of the political party. However, on February 15, 2024, the Union's 2018 Electoral Bonds (EB) Scheme was

unanimously overturned by the Apex Court<sup>9</sup>. The Bench determined that the Scheme infringed upon the voters' constitutionally guaranteed right to information as stated in Article 19(1)(a)<sup>10</sup>.

### **RIGGING THROUGH MUSCLE POWER AND INTIMIDATION**

Election tampering is not the only kind of manipulation in elections. The fairness and integrity of elections are seriously threatened by intimidation and the use of muscle force during the voting process. The use of physical force, coercion, or intimidation by organisations or people to prevent voters from exercising their democratic rights is known as muscle power. Subtle pressure and overt threats are examples of intimidation methods that undermine the idea of free and fair elections and restrict voters' freedom of choice. In order to execute its authority under Section 58A of the Representation of the People Act, 1951<sup>11</sup>, and discourage the use of force, the Election Commission should utilise electronic surveillance equipment.

### **VICTIMISATION OF OFFICERS DRAFTED FOR ELECTION DUTIES**

Election-related victimisation of government employees is a serious problem, as these individuals are essential to the efficient running of elections. Nevertheless, the government subjects a lot of policemen to humiliation and harsh disciplinary measures following their election-related tasks. The Election Commission has brought to light incidents in which personnel were the targets of reprisals or unjustified consequences, including disciplinary proceedings, transfers, or reprimands. In order to address this issue, a coordinated effort must be made to protect these officers from potential consequences, such as the development of special rules or regulations to shield them from unjustified actions.

### **ISSUES AND CHALLENGES BEFORE THE ELECTION COMMISSION**

Significant flaws in India's electoral system include the use of illicit methods, corruption, and unreported funds in elections. Political parties frequently get funding from corporations, which supports unethical activities, including bribery and intimidation of voters. There have been cases of politicians buying news coverage, distributing alcohol to voters, and buying elections in the past. The 'vote for note' controversy draws attention to the excessive influence of money in politics. Election-related violence has grown, especially in smaller towns. Political parties

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<sup>9</sup> State Bank of India v. Association for Democratic Reforms and Others, 2024

<sup>10</sup> INDIA CONST. art. 19(1)(a)

<sup>11</sup> The Representation of the People Act, 1951, § 58A, No. 43, Acts of Parliament, 1951 (India).



choose their candidates according to how well they can mobilise support from bigger groups or castes, which feeds the tendency of voters to make decisions based on communal and caste affiliations. New laws and amendments are required to solve these problems, including stronger controls on unexplained funds, requirements for campaign finance transparency, and prohibitions against voter manipulation.

## **SAFEGUARDING THE ELECTION INFRASTRUCTURE OF INDIA**

In order to maintain the credibility of India's election process, the Election Commission (EC) has taken a number of steps to protect the technological infrastructure, including voting software, IT systems, voter databases, and electronic voting machines (EVMs).

### **EVM Reliability**

Although EVMs have been effectively implemented, some political circles have unjustifiably expressed scepticism about their legitimacy. The devices, which are made by public sector companies Bharat Electronics Limited and Electronics Corporation of India Limited, are well-known for producing sensitive equipment for the space and defence industries. They are stand-alone devices without any network connectivity, including radar and electronic warfare systems<sup>12</sup>. The software has been validated by a group made up of defence scientists and technological specialists, increasing the EVM's resistance to attack<sup>13</sup>. Although there are theoretically isolated cases of possible manipulation, this assertion is unsupported by any hard data. Doubts regarding tampering are further addressed with the mandated installation of Voter Verifiable audit Audit Trail equipment.

### **Specialised Cyber Security Initiatives**

The Election Commission created the post of Chief Information Security Officer in 2017, whose duties include supervising a range of actions, such as conducting frequent cyber security exercises and guaranteeing adherence to cyber security guidelines throughout EC offices. The EC has taught its employees cyber hygiene techniques through seminars held in six cities<sup>14</sup>,

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<sup>12</sup> Bharat Electronics limited, 'about us', <<http://www.bel-india.in/ContentPage.aspx?MIId=5&CIId=1226&LIId=1&link=1226>>

<sup>13</sup> Election Commission of India, 'Manual on Risk Management', 20 September 2018, <<https://eci.gov.in/files/file/6929-manual-on-risk-management>>

<sup>14</sup> Election Commission of India, 'Cyber Security Newsletter', May 2018, <<https://eci.gov.in/files/file/5685/cyber-security-newsletter-may2018>>

stressing the value of refraining from responding to phishing emails that can jeopardise the EC's computer network<sup>15</sup>.

## CONCLUSION

India's election system has seen constant development and strengthening since its independence, which is a reflection of its dedication to democratic values. The story of electoral reform is intricately linked to both the historical background of India and the current issues facing the country, starting with the visionary leadership of Dr B.R. Ambedkar and ending with the Supreme Court's momentous rulings. Despite being praised internationally for its dedication to free and fair elections, India's democratic model confronts several obstacles, including political criminalisation, difficulties with the electoral infrastructure, and victimisation and intimidation problems. Election reform is still an important goal that must be pursued, informed by historical lessons as well as the demands of justice, accountability, and openness. India is committed to achieving the goal of a vibrant and inclusive democracy, as seen by the current electoral reform story, in which the country is navigating towards a more robust and participatory election system.

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<sup>15</sup> Election Commission of India, 'ECI Cyber Bulletin', November 2018 <<https://eci.gov.in/files/file/9089-eci-cyber-bulletin>>