



# **LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH**

**[ISSN: 2583-7753]**

**Volume 3 | Issue 4**

**2025**

*DOI: <https://doi.org/10.70183/lijdlr.2025.v03.218>*

© 2025 *LawFoyer International Journal of Doctrinal Legal Research*

Follow this and additional research works at: [www.lijdlr.com](http://www.lijdlr.com)

Under the Platform of LawFoyer – [www.lawfoyer.in](http://www.lawfoyer.in)

---

After careful consideration, the editorial board of *LawFoyer International Journal of Doctrinal Legal Research* has decided to publish this submission as part of the publication.

---

In case of any suggestions or complaints, kindly contact ([info.lijdlr@gmail.com](mailto:info.lijdlr@gmail.com))

To submit your Manuscript for Publication in the *LawFoyer International Journal of Doctrinal Legal Research*, To submit your Manuscript [Click here](#)

---

# ROLE OF INDIAN JUDICIARY IN ELECTORAL REFORMS: THE PENDING CHAPTER IN THE HISTORY OF INDIA

---

Dr. Bhavana Dhoundiyal<sup>1</sup> & Ms. Babita Rawat<sup>2</sup>

## I. ABSTRACT

*A robust democracy requires more than just regular elections; it must be fair, transparent, and institutionally credible. Money power, politicizing crime and finance are among the issues plaguing India's election system. While there are constitutional provisions to ensure Parliament and Election Commission of India (ECI) to ensure free and fair elections, political inaction has left loopholes. Consequently, the Supreme Court has played the role of a guardian of electoral integrity through its landmark decisions like ADR, PUCL and Lily Thomas, enhancing transparency and accountability. The recent striking down of the Electoral Bonds Scheme gave another financial openness ahead. Despite the worries about judicial overreach, the proactive role of the judiciary has ensured the sanctity of democracy. This paper argues that lasting reform necessitates joint efforts of the synergy of Parliament, ECI and the judiciary towards securing and protecting the electoral process as the lifeline of Indian democracy.*

## II. KEYWORDS

Indian Judiciary, Electoral Reforms, Xth Schedule, Baranwal Case, Judicial Review, Election Commission, Political Funding, Criminalization of Politics.

## III. INTRODUCTION

India is the only country which can compete with its electoral democracy which is in the scale of sheer magnitude but also one of the most difficult processes in governance. The Indian electoral system is considered to have a festival of democracy as it has more than 900 million registered voters, more than one million polling stations and is conducted in

---

<sup>1</sup> Assistant Professor, IILM University, Greater Noida (India). Email: bhavana.dhoundiyal@iilm.edu

<sup>2</sup> LLM (IPR), IILM University, Greater Noida (India). Email: babitarawat@tag@gmail.com

several phases. The mere magnitude of the exercise is witness to the fact that India is determined to practice representative government.

Articles 324 -329 (Part XV of the Constitution) provide the backbone of India's voting system by entrusting the conduct of presidential, vice presidential, state legislative, and parliamentary elections to the Election Commission of India. The Constitution's authors established ECI as a separate entity. that is not subject to the executive authority and whose responsibility is to ensure transparency and just elections which are indispensable to democracy.

Nevertheless, the honesty of the voting procedure has always been called into question by institutionalized flaws and problems like:

1. Politics being tainted by criminalization with candidates charged with grave offences still contesting and winning elections.
2. Money power, where elections are increasingly influenced by unregulated and opaque funding.
3. Political defections, which destabilize governments and subvert voter mandates.
4. Identity-based appeals, where religion, caste, and community are misused for electoral gain.

In response to these challenges, the judicial system has taken on the role of protecting democracy's sacredness. The highest court in India, the Supreme Court, and the lower courts have contributed massively to the electoral jurisprudence through their interpretation of the constitution, filling legislative gaps, and issue of binding directives. The interventions of the judiciary indicate that the health of a democracy cannot solely lie in the electoral laws, but it involves judicial vigilance. The present paper will look at the constitutional and statutory provisions of elections, the operation of anti-defection law in the Xth Schedule, the judicial interpretation of the case of Baranwal (2015), and the overall range of historic judicial intervention into electoral reforms. It also shows the

hurdles that still exist, and the path to be taken to finish the incomplete book of electoral reforms in India.

#### IV. CONSTITUTIONAL AND STATUTORY FRAMEWORK

The Indian Constitution contains a detailed and clear guideline for conducting elections in Part XV (Articles 324-329). These articles describe how elections will be held and run throughout the nation.:

1. **Article 324:** Ensures fair and open elections across the country by giving the Election Commission of India (ECI) control of the electoral process in India.
2. **Article 325:** Demands a unified electoral roll for all eligible voters, prohibiting bias due to race, religion, caste, or gender.
3. **Article 326:** Assures that all adults are able to cast a ballot ensuring that every citizen can exercise their electoral rights upon turning 18.
4. **Sections 327 and 328:** Parliament as well as the legislatures of the states hold the power to enact laws that regulate elections.
5. **Article 329:** Prohibits court involvement in electoral issues, except via the resolution of election petitions.

Parliament passed two monumental pieces of legislation, the Representation of the People Act, 1950 and the Representation of the People Act, 1951 to put into effect the provisions of the constitution pertaining to elections. To make sure that all eligible residents may take part and make a difference in the political process, the RPA of 1950 mainly handles seat distribution, constituency delimitation, and the production of electoral rolls. Conversely, the Election Commission is vested with the powers of supervision, guidance, and control over electoral administration by the RPA of 1951, which oversees the actual conduct of elections. It states who may and cannot serve in the legislature, identifies corrupt behaviors such as bribery and undue influence, as well as the exploitation of religion or community for political gain, and sets the legal foundation

for appealing election results by petition. These Acts ensure the substantive and procedural integrity of democratic government in India, and they combined constitute the electoral system.

## **V. THE XTH SCHEDULE: ANTI-DEFECTION LAW**

The implementation of the Xth Schedule's anti-defection laws marks a significant shift in India's constitutional structure. The Constitution (Fifty-Second Amendment) Act of 1985 was enacted in reaction to prevailing political turmoil, as seen by frequent party changes and defections. Prior to its adoption, India's democratic system was plagued by high levels of political horsetrading and overall instability. To address this issue, the Anti-Defection Law was established, with the goal of clarifying grounds for disqualifying parliamentarians who quit their respective political parties.

### **A. HISTORICAL CONTEXT**

The Xth Schedule is set against the backdrop of political upheaval in the 1960s and 1970s. This era was characterized by a phenomenon colloquially referred to as "*Aaya Ram, Gaya Ram*" a term that became commonplace in Indian politics following the work of Haryana lawmaker Gaya Lal, who, on one day in 1967, changed sides three times.

Between 1967 and 1971, more than half of State Assembly members switched parties. Many of these defections were motivated not by ideological differences or real disputes with party programs, but by offers of ministerial posts, financial incentives, or pure political opportunism. Governments in several states collapsed with alarming regularity, eroding the stability and subverting the people's mandate in elections and threatening India's parliamentary democracy.

Support for democracy among the general population began to weaken as voters felt betrayed when their chosen lawmakers abandoned the parties under the manifestos and platforms they earned them the people's mandate. In this environment of cynicism and disillusionment, there was increasing demand for a legislative mechanism to curb the "culture of defections." In reaction to this crisis, this amendment of 1985 was the answer

by the parliament, and it was one of the greatest interferences in the Indian democratic system.

To prevent political defections and keep the legislative system stable, the Anti-Defection Law commonly referred to as the Tenth Schedule of the Indian Constitution was enacted. Exceptions and processes for adjudication are spelt out, and there are explicit grounds for disqualification as well. If a lawmaker willingly resigns from the political party that elected them, they will be disqualified from further service in that capacity. This does not necessarily require formal resignation and conduct that clearly indicates abandonment of party loyalty can amount to voluntary relinquishment. Additionally, failure to comply with the party's official whip or voting directive, including abstaining from voting without prior permission, can also lead to disqualification. These provisions apply to members of both State Legislatures and Parliament.

However, the law recognizes certain legitimate political realignments. A merger between political parties is not treated as defection if A legislative party's merger must have the support of at least 2/3 of its members. This exception distinguishes collective ideological or organizational shifts from opportunistic individual defections.

The Presiding Officer, who is either the Speaker or the Chairman of the relevant House, has the power to decide on matters pertaining to disqualification under the Tenth Schedule. Although these rulings can be challenged in higher courts, for the time being they are final and enforceable. The Tenth Schedule aims to maintain the integrity of the political system through these procedures, which strike a balance between democratic responsibility and party discipline.

## **B. CRITICISM AND WEAKNESSES**

At first, Many saw the anti-defection law as a solution that would make everything better to make Indian political system more stable., it has over the years been a subject of a lot of criticism and debatable controversies.

### **1. EROSION OF LEGISLATIVE INDEPENDENCE**

- The law has successfully transformed the legislators into mere puppets of their party leadership by requiring them to follow their party whip even when it comes to ordinary policy issues. Rather than bargaining on matters at will and acting on behalf of their constituencies, legislators remain as mere proxies of party leaders. This goes against the deliberative aspect of parliamentary democracy.

## **2. CONCENTRATION OF POWER IN THE SPEAKER**

- The Speaker is given by the law the capacity to hear disqualification petitions. Critics claim that this is a bad thing because the Speaker is a political party figure, most of which are usually of the ruling party hence does not possess the required neutrality in such a judicial capacity. Several cases have demonstrated partisan conduct on the part of Speakers, procrastination or acceleration of proceedings on political convenience.

## **3. DELAYS IN ADJUDICATION**

- Petitions to disqualify are not only perpetually delayed inordinately, which is an abuse of process, and this allows defectors to undermine the electoral mandate by remaining in office as a legislator and in some instances even grabbing the ministerial offices. These delays offer dilution to the deterrent effect of the law and encourage lawmakers to disregard the way the law is intended to be followed.

## **4. DISTORTION OF THE EXCEPTION OF THE MERGER**

- Mass withdrawals have frequently made manipulative and conspiratorially cunning use of the merger exception, which is supposed to shield real political realignments. As a result of this loophole, political parties can circumvent the rule by organizing legislators to work in block shifts.

### C. JUDICIAL INTERPRETATION

The Xth Schedule's characteristics and limits were defined in large part by the judiciary, and some of its landmark decisions are the standards of authority, such as.

1. **Kihoto Hollohan v. Zachillhu** 1992 Supp (2) SCC 651<sup>3</sup>: The Supreme Court supported the constitutionality of the Xth Schedule underlining the idea that the actions of the Speaker could be reviewed by the judicial authority. Such review is, however, restricted, and it only concerns the case of bad faith, evident arbitrariness, or breach of constitutional principles.
2. **Rajendra Singh Rana v. Swami Prasad Maurya** (2007) 4 SCC 270<sup>4</sup>: According to the court's ruling, although the legislature has not actually resigned, that he has engaged in acts suggesting deprivation of party membership may constitute defection.
3. **Recent Developments (2019 onwards)**: In defection cases in Karnataka and Madhya Pradesh, the Court has pointed out the requirements that the Speakers must consider the disqualification petitions as per the reasonable time-period, and that the resolution of the problem was mandatory and expedited under the constitution.

### D. CONTEMPORARY RELEVANCE

Nevertheless, these shortcomings notwithstanding, the Xth Schedule has certainly helped to decrease the rates of personal defections and gave a certain degree of stability to the Indian parliament. Nonetheless, it has fallen short, especially through oppression of dissent amongst parties and abuses of merger terms, which has remained a challenge to the democratic process.

---

<sup>3</sup> 1992 Supp (2) SCC 651

<sup>4</sup> (2007) 4 SCC 270

### **E. REFORM PROPOSALS INCLUDE**

1. Limiting the scope of the whip to only confidence motions and money bills, allowing legislators more freedom on policy matters.
2. Transfer the decision-making authority from the Speaker before an impartial judiciary or the Election Commission to minimize partisan influence and ensure fair judgment
3. Mandating strict timelines for disqualification proceedings to prevent undue delays.

Although the Xth Schedule was intended to protect against political opportunism, concerns have been raised regarding whether it has achieved the ideal balance between stability and representative democracy due to its strict structure and flaws. The law is a crucial yet contentious part of the Indian constitution.

### **VI. THE BARANWAL CASE (2023): JUDICIAL SCRUTINY OF THE TENTH SCHEDULE**

The Tenth Schedule, concerning the disqualification of legislators on grounds of defection, has been extensively examined by the judiciary. One of the most significant rulings in this regard came in *Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others*<sup>5</sup>, is also known as the Baranwal case. This case exposed a chronic flaw in the anti-defection framework: undue delays by the Speaker in resolving disqualification petitions. According to the Supreme Court, it is now clear that the Speaker's authority under the Tenth Schedule is not unlimited, and constitutional morality requires such issues to be settled quickly and equitably.

#### **A. FACTS OF THE CASE:**

The controversy occurred after many Bahujan Samaj Party (BSP) MPs in Uttar Pradesh defected to create their own party in the State Assembly. Under the Tenth Schedule, such

---

<sup>5</sup> (2007) 4 SCC 270

defections result in disqualification unless they qualify as a legal merger. The BSP leadership swiftly filed disqualification petitions, which were delivered to the Speaker, who took no action on them for an extended period of time. Legislators who had deserted remained to serve, vote in the Assembly, and enjoy all privileges during this period, rendering the anti-defection statute ineffective. The Tenth Schedule's principal purpose was harmed as a result of this idleness to deter political opportunism while maintaining legislative stability.

### **B. ISSUES RAISED:**

1. Whether the Speaker has unlimited power to delay adjudication under the Tenth Schedule, rendering the statute ineffectual.
2. Whether the judiciary has the authority to review the Speaker's actions or decisions under the Tenth Schedule.

These worries focused on whether the anti-defection mechanism would continue to be a genuine protection or if it would become a mere formality, impotent to resist political manipulation.

In its decision on the functioning of the Tenth Schedule, the Supreme Court made some interesting statements. That the Speaker's choices can be reviewed by courts was the first thing it confirmed, relying on the precedent set in *Kihoto Hollohan v. Zachillhu*<sup>6</sup>. The Speaker serves as the adjudicating authority under the Tenth Schedule, but the Court underlined that this authority is not without examination. Judicial review is appropriate in circumstances involving mala fides, constitutional infractions, apparent perversity, or excessive delay. The Speaker, despite holding a high constitutional post, is not infallible or immune to the rule of law.

Second, the Court emphasized the need of timely determinations on disqualification applications. It emphasized that needless procedural delays undermine the goal of the anti-defection statute, which is to prevent political desertion. Allowing defectors to

---

<sup>6</sup> 1992 Supp (2) SCC 651

continue serving as lawmakers or even ministers while disqualification proceedings are ongoing undermines public faith in democratic institutions. This means that the Speaker must act quickly on these matters in conformity with the constitution to avoid the democratic mandate from being eroded.

Finally, the Court stated that the Speaker's jurisdiction is restricted and subject to constitutional limits. Despite their important position under the constitution, the Speaker is required to preserve neutrality and follow the constitution's moral foundations. Decisions made under the Tenth Schedule should be driven by justice, impartiality, and commitment to democratic values rather than partisan reasons.

## **VII. SIGNIFICANCE OF THE JUDGMENT**

### **A. THE CASE OF BARANWAL HAS A LONG-TERM SIGNIFICANCE DUE TO A FEW REASONS**

- 1. Judicial Checkpoint on Partisan Speakers:** By holding the actions (and inactions) of the Speaker subject to judicial reviews, the Court made certain that the anti-defection law cannot be avoided with conscious stalling features.
- 2. Strengthening the Purpose of the Xth Schedule:** The court has stressed that the Tenth Schedule is an instrument of substance, and its role is to maintain stability and integrity of representative democracy within India, not the symbolic one.
- 3. Responsibility among Constitutional Functionaries:** The case reiterated that constitutional authorities had to be fair, quick and unbiased in their decisions particularly where their move directly influenced the welfare of parliamentary democracy.
- 4. Enhancing Voter Trust:** By limiting the abuse of delay the Court indirectly guaranteed the inviolability of voter mandates so that the decision of the electorate is not sold off by a contrived defection.

## B. BROADER IMPLICATIONS

The ruling can be placed into a broader trend of judicial activism to sew up gaps in the defection law. It was an indication that the judicial could easily step in where the constitutional values were being compromised by partisan politics. Yet, the similar controversies that arose in the following years including the cases of defection in Karnataka (2019) and the Madhya Pradesh (2020) indicate that the systemic reform might be required.

A common reform proposed based on the experience of Baranwal is relocation of the adjudicatory power by redistributing adjudicatory power before an independent panel or the Election Commission so as to protect the process by the partisan influence and establish impartiality.

## VIII. LANDMARK JUDICIAL INTERVENTIONS IN ELECTORAL REFORMS

Electoral reforms in India have been not always pursued legislatively but by judicial activism. The judiciary has been experiencing the trend of judicial activism through countless instances of cases concerning the purity of voting, protecting citizens' freedom to cast ballots, and in defending the democratic texture of Constitution. These actions are very extensive, including candidate disclosure to political funding control and they have transformed the way the election process is conducted in India.

### A. CANDIDATE DISCLOSURES

#### 1. CASE: UNION OF INDIA V. ASSOCIATION FOR DEMOCRATIC REFORMS (2002)<sup>7</sup>

- **Background:** In a move that they call a "public interest petition," ADR (the Association for Democratic Reforms) took legal action, asking it to be ordered to disclose full information on electoral contestants, due to its

---

<sup>7</sup> Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294

apprehension that no transparency existed in the way elections are conducted.

- **Decision:** The Election Commission was directed by the Supreme Court to require all candidates to submit their nomination papers with a thorough disclosure of their criminal history, financial assets and liabilities, and educational background.
- **Significance:** The decision included valuable information to educate electorate on important information. It also introduced some kind of responsibility in the selection of the candidate, and this forced the political parties to re-evaluate their support of suspicious candidates.

## B. VOTER'S RIGHT TO KNOW

### 1. Case: PUCL V. UNION OF INDIA (2003)<sup>8</sup>

- **Facts:** Parliament reduced disclosure requirements after ADR by amending the Representation of the People Act (RPA). One group that took issue with this was the People's Union for Civil Liberties (PUCL).
- **Ruling:** Voters' right to know about candidates' histories was deemed important to the right to free speech guaranteed by Article 19(1) (a) by the Supreme Court, which rendered the amendment null and void.
- **Significance:** The case that was decided changed the electoral transparency as a mere procedural defense to a constitutional right, making it durable.

## C. NONE OF THE ABOVE (NOTA)

### 1. Case: PUCL v. UNION OF INDIA (2013)<sup>9</sup>

---

<sup>8</sup> PUCL v. Union of India, (2003) 4 SCC 399

<sup>9</sup> PUCL v. Union of India, (2013) 10 SCC 1

- **Background:** Before 2013, voters that were not satisfied with any candidate were only allowed to abstain, but this was not to be reflected during the course of the election.
- **Decision:** The Supreme Court ordered the Electronic Voting Machines (EVM) to be equipped with the so-called None of the Above (NOTA) option that would improve voter choice and strengthen electoral accountability.
- **Significance:** Not-for-profit organizations' (NOTA) gave voters the opportunity to voice their displeasure of all candidates, which gives the right to vote a democratic touch. Although in current state, electoral impact (such as requiring re-election) is non-existent, NOTA serves as an electoral compass in the political party.

#### **D. DISQUALIFICATION ON CONVICTION**

1. **Background:** Convicted legislators could also appeal within a period of three months prior to disqualification under the RPA.
2. **Ruling:** The provision was invalidated by the Supreme Court, saying that once a legislator is convicted of a crime the provision automatically disqualifies him, and no grace period can be granted.
3. **Significance:** This decision greatly limited the capacity of convicted offenders to remain as legislators, thus enhancing the integrity of the legislatures.

In *Association for Democratic Reforms (ADR) v. Union of India* (2024)<sup>10</sup>, Transparency in political financing was a major problem that the Supreme Court tackled. This lawsuit aimed to dismantle the 2017 Electoral Bond Scheme, which let businesses and people provide money to political parties in an anonymous manner. Voters' right to know was eroded, corporate control over politics was questioned, and accountability was questioned due to this anonymity. In a historic decision, the Court ruled that the plan infringed upon the right of individuals to obtain information as guaranteed by Article

---

<sup>10</sup> 2024 SCC OnLine SC 150

19(1)(a) of the Constitution. Due to their lack of transparency and the unfettered flow of money into politics, it determined that covert political donations were unconstitutional. The decision effectively dismantled one of the most controversial forms of political funding in India. Transparency and openness are fundamental components of democratic integrity and political accountability. The Court forced electoral bond data into the public domain so voters can see who funded which party and when.

#### **E. SBI DIRECTIONS**

1. Stop issuing electoral bonds immediately.
2. Give ECI full details of all bonds: who bought them, value, date of purchase, which party encashed them, date of encashment, plus unique bond numbers so donors can be matched to parties.
3. Do this within a short, fixed timeline (days, not months), with no extension.

#### **F. ECI DIRECTIONS**

1. Take the entire data set from SBI and publish it on the ECI website within one week of receiving it.
2. Also upload earlier bond data that had been filed in sealed cover, after it is digitized.

#### **G. NET PRACTICAL EFFECT**

1. Previously secret bank data became a public record linking donors, amounts, and beneficiary parties.
2. The ruling immediately strengthened transparency in political funding making the right to know about party finances practically enforceable.

#### **H. STRENGTHENING THE ELECTION COMMISSION OF INDIA (ECI)**

##### **1. Case: ANOOP BARANWAL V. UNION OF INDIA (2023)<sup>11</sup>**

---

<sup>11</sup> Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161

In *Anoop Baranwal v. Union of India* (2023), the Supreme Court of India gave a landmark judgment that gave a boost to the independence of Election Commission of India (ECI). The case contested the present practice where Chief Election Commissioner (CEC) and Election Commissioners (ECs) were appointed by the President of India on the recommendation of the Prime Minister, stating that it amounted to interference in the independence and neutrality of the ECI.

The Court gave close attention to Article 324(2) of the Indian Constitution which has provided for the appointment of the CEC and ECs by the President, "subject to any law made by Parliament." The Court noted that no law had ever been passed by Parliament regulating these appointments and it left unfettered discretion in the hands of the Executive. This, the Court held contravening the Constitutional principles of equality, free and fair elections and the rule of law.

Recognizing where the Election Commission plays a critical role in the functioning of democracy, the Supreme Court highlighted that the independence of the Election Commission must be safeguarded against the political or executive influence on it. To fulfill the constitutional vacuum the Court said that till a proper law is made by the Parliament the selection of the CEC and ECs would be made as per the recommendation of a committee consisting of:

- **THE PRIME MINISTER**

The Leader of the Opposition in the Lok Sabha (or leader of the largest opposition party if no formal LoP exists), and

- **THE CHIEF JUSTICE OF INDIA (CJI)**

This interim three-member collegium system was developed by the Court to ensure transparency, fairness and independence of the institution in the appointment process. The judgment effectively restrained executive control, which was a major step towards strengthening the independence and credibility of the Election Commission.

The Court also acknowledged India's complicated social and political environment, where caste, religion, and geography frequently influence election results. The goal of the verdict was to uphold the idea of free and fair elections, improve democratic government, and retain public confidence in the electoral process by establishing the system of neutral and balanced appointments.

*Anoop Baranwal v. Union of India* essentially reiterated that the Election Commission's independence is a crucial component of the Constitution's commitment to democracy, and that elections need to be held free from administrative intervention and accurately represent the will of the people.

## **2. Case: Abhiram Singh v. C.D. Commachen (2017)<sup>12</sup>**

Section 123(3) of the Representation of People Act (RPA), 1951 forbids candidates or their representatives from appealing to voters on the basis of religion, race, caste, community, or language during election campaigns. This law forbids using personal information to sway elections in order to guarantee that every voter is treated equally. In a sweeping reading of Section 123(3) by a seven-judge Constitutional Bench, the Supreme Court decided that any use of racial, ethnic, religious, or linguistic identifiers by candidates whether directed at voters or opponents is a corrupt election practice. By rejecting divisive appeals and promoting inclusive, issue-based political politics, the ruling protects the secular spirit of Indian democracy by limiting identity-based mobilization.

## **IX. CHALLENGES AND LIMITATIONS**

Although judicial interventions have enhanced the Indian democracy in various aspects, the path to the real free, fair, fair and open elections is still fraught with challenges. Despite the historical decisions, reforms in the electoral system are impeded by structural flaws, political inertia and loopholes. Among the most burning problems are:

---

<sup>12</sup> *Abhiram Singh v. C.D. Commachen*, (2017) 2 SCC 629

## **A. DELAYS IN ADJUDICATION**

The excessive time taken to decide on election petitions and disqualification is one of the most endemic problems with electoral integrity that has weakened it.

1. Petitions that are filed following the Representation of the People Act, 1951, oftentimes go through protracted litigation, oftentimes well beyond the term of the legislature in question. The remedy is therefore quite illusory because by the time the legislator makes a judicial decision, he/she can be well over term.
2. Equally, in the Xth Schedule, defectors often serve in office and power with disqualification proceedings that are prolonged.

These delays undermine the credibility that people have to the judicial system and weaken the deterrent effect of the election laws. Even though expeditious adjudication has always been urged by the Supreme Court, there are systemic inefficiencies that persist, and the politics of the issue still favor an unsolved solution.

## **B. PARTISANSHIP OF THE SPEAKER**

Side-whiskers of the role in the Xth Schedule, where the Speaker serves as the adjudicating authority have been subject to severe criticism.

1. The Speaker is also a constitutional institution and political player who often represents the ruling party. Such a dual position poses a conflict of interest, as it will be difficult to be unbiased when deciding to disqualify.
2. In a few cases, Speakers have been charged with either willfully obstructing proceedings or giving decisions on the side of their party fellows.

The existence of judicial review is a protection on the other hand, structural bias in the office of the Speaker is a grave weakness despite the protection. Many scholars and commissions have suggested that this authority be delegated to a separate court of the Election Authority pending enactment of legislation by Parliament.

### C. JUDICIAL LIMITATIONS

The judiciary has also been exceedingly active, but it is not above its mandate.

1. Courts can interpret existing laws and enforce constitutional principles, but they cannot legislate reforms.
2. In the absence of parliamentary action, judicial rulings often remain piecemeal and incomplete, unable to tackle the systemic nature of electoral problems.

For example, Although the judiciary has required disclosure of candidates and transparency in financing, it is powerless to require state financement of elections or to prohibit candidates with pending charges provided this must be a will of the legislature.

### D. CRIMINALIZATION OF POLITICS

The criminalization of politics, perhaps, is the most important challenge.

1. Data compiled by the Association of Democratic Reforms (ADR) reveals that more than 40 per cent of Members of Parliament in the incumbent Lok Sabha are facing criminal charges and some of them are charged with heinous crimes such as murder, rape, and corruption.
2. Although there have been repeated legal instructions that call on Parliament to make disqualifications of those under serious criminal charges, there is still a noticeably missing political will as parties on both ends of the spectrum have been utilizing such candidates to win electoral contests.

This issue gets to the core of representative democracy where legislatures are at risk of becoming sanctuaries of criminal elements instead of protecting the interest of people.

### E. RECENT REALITY: ADR'S 2024 LOK SABHA DATA

The latest analysis from ADR, based on affidavits submitted for the 2024 Lok Sabha elections, shows how much work remains:

1. 251 out of 543 newly elected MPs, that's about 46% have criminal cases pending against them.
2. Among those, 170 MPs (31%) face serious criminal charges, including murder, attempt to murder, rape, kidnapping and crimes against women.
3. A number of these MPs have already been convicted in criminal cases.

This is the highest number of MPs with criminal cases in any Lok Sabha so far, and the increase is stark when compared to previous years for instance, 43% of MPs had criminal cases in 2019 and 34% in 2014.

#### **F. WHAT THIS MEANS?**

Despite strong judicial push and greater transparency, nearly half of our Parliamentarians continue to have pended criminal cases, and nearly one-third face serious charges. This strengthens the case that meaningful reform would probably require legislative action that directly addresses eligibility requirements and enforces quicker justice; merely releasing criminal records is insufficient.

#### **G. MONEY POWER**

The role played by money in elections is still virulent.

1. Indian elections are the costliest election in the world with campaign spending usually going beyond the legal limit by a very large margin.
2. The Electoral Bonds Scheme, which was to introduce transparency, provided an opportunity to provide corporate funding, anonymity, and, therefore, weakened the rights of the voters. The lack of a strong substitute that would mitigate the impact of unregulated and illegal funding makes it possible that even without a strong option, because of the 2024 Supreme Court ruling that invalidated it, the electoral process will continue to be biased.
3. Lack of effective legal and institutional frameworks of political finance checks and audits enables money power to dominate voter power.

## **H. IMPLEMENTATION GAPS**

Lastly, another interesting aspect of the Indian electoral reform is the discrepancy between recommendations and implementation.

1. The reports of successive Law Commissions and Election Commission proposals have put down comprehensive blueprints of reforms such as funding of elections by state or tighter regulation of paid news and misuse of social media.
2. Equally, the courts have on occasion given directions and observations calling out to change the system. However, most of these reforms were not implemented as there are no political consensus and self-interest of legislators who are not willing to legislate against their own benefit making practices.

The outcome is a series of reform half measures, judicial activism and electoral manipulations.

## **I. THE PENDING CHAPTER: THE WAY FORWARD**

The electoral democracy of India even though well-endowed with resilience is plagued with structural distortions that cannot be corrected by judicial interventions no matter how incisive such interventions are. The incomplete agenda on electoral reform needs a concerted effort on the part of Parliament, courts, Election Commission of India (ECI) and political parties and civil society. Until the reforms are institutionalized, the disparity between the ideals of the constitution and the electoral reality is going to become even greater. There are some action steps that are urgent including:

### **1. Independent Adjudicatory Authority**

The adjudicatory prerogative in cases of defection of the Xth Schedule is one of the most striking defects in the present system, by the partisan adjudicatory prerogative of The Speaker. The practice has proved that neutrality is jeopardized by the fact that the Speaker is a party member.

- The solution is to entrust this adjudicatory power to an autonomous institution, a group of impartial, non-partisan individuals who have served as judges on the Supreme Court or High Court, to ensure objectivity and independence.
- This would guarantee objectivity, expediency and validity in decision to disqualify. The reform would also lead to fewer cases under the jurisdiction of the judiciary, as there would be fewer decisions of the Speaker.

## 2. TIME-BOUND DISPOSAL OF CASES

Electoral law has been brought to its knees by delays in adjudication of election disputes and disqualification petitions.

- There should be statutory deadlines (such as three months in cases of disqualification petition and 6 months in cases of election petition).
- The Supreme Court has constantly stressed the need to have expeditious adjudication but with no binding time restrictions, delays are yet to be seen.
- The need to have a legislative requirement of fast-track mechanisms would ensure the sanctity of the electoral mandates is not misused in the name of time.

## 3. STRENGTHENING ECI AUTONOMY

For democracy to work, the Election Commission of India must be trustworthy and impartial. The Anoop Baranwal order and other judicial reforms have made the appointment procedures stronger, though there remains more to be done:

- **Financial independence:** The Election Commission of India should be financed through the Consolidated Fund of India just as is done to the Comptroller and Auditor General (CAG), this would guard it against any executive control and would also ensure financial and operational independence.

- **Security of tenure:** Continuity and independence would be ensured by dealing with arbitrary removal of Election Commissioners.
- **Improved powers:** It is more than a supervisory body because the ECI should be able to pass enforceable directives and punish offenders.

#### 4. TRANSPARENT POLITICAL FUNDING

This was a turning point by the striking down of the Electoral Bonds Scheme in 2024, though it was just the beginning.

- The anonymous contributions should be fully banned, and the sources of political financing should be disclosed fully.
- Capping corporate contributions and putting limits on total expenditure on elections would help to reduce the imbalance of huge financial contributions in the political sphere.
- The necessary instantaneous online reporting of contributions and expenditures would make the voters more transparent.

Electoral competition will persist towards favoring the rich and the powerful without dealing with the power of money.

#### 5. DECRIMINALIZATION OF POLITICS

The fact that legislators with grave criminal charges still exist is a very serious threat to Indian democracy.

- There is a dire need to enact a law that would not allow candidate with heinous offences (murder, rape, terrorism, corruption) to run in elections until they are proven innocent.
- Protective measures can be established to stop abuse like ensuring the bar is restricted to charges that are initiated by a court and not FIRs.
- The political parties should be called to task in terms of nominating candidates who have criminal antecedents with sanctions or limitations on party recognition/ban imposed in case of repetitive breach.

This would help to curb the institutionalization of criminal aspects in legislatures.

## 6. IMPLEMENTING JUDICIAL RECOMMENDATIONS

Reforms have been repeatedly recommended over the years by the Supreme Court, High Courts and other commissions including the Law Commission and even the ECI itself. However, most of them are not implemented.

- The judicial pronouncements and the recommendations of the commission should be codified into statutory law by parliament.
- To illustrate, the judicial suggestions to limit the scope of the party whip, provide state financing of elections and impose stricter disclosure standards ought to be binding and not just consultative.

These reforms would lend permanence and predictability to the electoral law that would not need to be subjected to judicial adjudications.

## 7. CIVIC ENGAGEMENT AND PUBLIC PRESSURE

Lastly, electoral reform can never be successful unless it involves the efforts of the citizens, civil society organizations, academia and the media.

- The watchdogs in civil society such as ADR have already been transformative in uncovering the campaign financing and the background of the candidates.
- Universities, research centers, and think-tanks can strengthen the general knowledge on the electoral processes.
- Media must change the personality-based coverage to fact-based electoral coverage which entails issues of governance, funding and accountability.

There is no stronger power of reform than an informed and alert electorate.

## X. CONCLUSION

India's experience with electoral reforms shows that when political will weakens, the judiciary steps in to protect democracy. The Hon'ble Supreme Court has served as a

constitutional guardian, guaranteeing that elections continue to be free, fair, and transparent through significant rulings on transparency, criminality, political fundraising, anti-defection, and the independence of the Election Commission. These interventions have enhanced voter awareness and institutional responsibility, but they also reveal a larger problem: courts can correct distortions, not heal the system. Judicial watchfulness is insufficient for long-term election change. It calls for the Election Commission to operate with true autonomy, Parliament to translate legal rulings and constitutional principles into binding legislation, and citizens to stay informed and involved. Election reform in India will remain an incomplete chapter, supported by judicial intervention rather than democratic agreement, until this shared responsibility is accomplished.

## **XI. BIBLIOGRAPHY**

### **A. CONSTITUTIONAL PROVISIONS**

1. INDIA CONST. arts. 19(1)(a), 324–329, 102, 191, sch. X.

### **B. STATUTES**

1. Representation of the People Act, 1950, No. 43 of 1950, INDIA CODE.
2. Representation of the People Act, 1951, No. 43 of 1951, INDIA CODE.
3. The Constitution (Fifty-Second Amendment) Act, 1985, No. 1 of 1985, INDIA CODE.

### **C. CASES**

1. Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) S.C.C. 651 (India).
2. Union of India v. Ass'n for Democratic Reforms, (2002) 5 S.C.C. 294 (India).
3. People's Union for Civil Liberties v. Union of India, (2003) 4 S.C.C. 399 (India).
4. People's Union for Civil Liberties v. Union of India, (2013) 10 S.C.C. 1 (India).
5. Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 S.C.C. 270 (India).
6. Lily Thomas v. Union of India, (2013) 7 S.C.C. 653 (India).

7. Abhiram Singh v. C.D. Commachen, (2017) 2 S.C.C. 629 (India).
8. Anoop Baranwal v. Union of India, (2023) 8 S.C.C. 1 (India).

#### **D. REPORTS & OFFICIAL DOCUMENTS**

1. Election Commission of India, *Handbook for Returning Officers* (ECI 2023).
2. Law Commission of India, *170th Report on Reform of the Electoral Laws* (1999).
3. Law Commission of India, *255th Report on Electoral Reforms* (2015).
4. Association for Democratic Reforms, *Analysis of Criminal Background, Financial and Educational Details of MPs of Lok Sabha 2024* (ADR 2024).

#### **E. BOOKS & SECONDARY SOURCES**

1. D.D. Basu, *Introduction to the Constitution of India* (26th ed. LexisNexis 2021).
2. Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford Univ. Press 1999).
3. M.P. Jain, *Indian Constitutional Law* (9th ed. LexisNexis 2020).
4. S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford Univ. Press 2002).

#### **F. JOURNAL ARTICLES**

1. Bhavana Dhoundiyal & Babita Rawat, *Role of Indian Judiciary in Electoral Reforms: The Pending Chapter in the History of India* (manuscript on file with author).