



## INDELIBLE AND MOMENTOUS ROLE OF THE JUDICIARY IN ELECTORAL REFORMS

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### **Abstract**

*Any democracy that believes in people and their political rights should be protected from structural flaws by ascending to free and fair means of elections which is the pivot for the success of democracy. To make fair elections free of flaws, it is essential to reform the electoral system occasionally.*

*This article provides a comprehensive analysis of the critical role that the judiciary is playing in the ongoing discourse of democracy and multiple issues plaguing the way of free, fair and impartial elections. This article tries to evaluate the array of nefarious activities such as misuse of money and muscle power, corruption, violence, siphoning off funds, etc., advancing towards elections which hampers a very notion of free and fair elections, making the election a mockery in democracy and its legal repercussions. It tries to explore various mechanisms and tools that the judiciary employs to ensure the integrity of the electoral process. It tries to elucidate how far the judiciary effectively addresses the challenges posed by the fast-paced nature of social media and arguments put forth by the technology strictly adhering to its independence. This article endeavours to qualitatively study a brief overview of the body governing the elections and the steps taken by the judiciary in addressing the glitch in the criminal justice system which undermines the credibility of the electoral process and weakens public confidence.*

*Keywords :electoral reforms ; democracy ; free and fair elections ; political rights; judiciary*

### **Introduction**

***“Ballot is more potent than the most powerful gun”<sup>1</sup>***

As the country's political landscape continues to evolve, the judiciary must adapt to new challenges and uphold the highest standards of justice. It must also work in tandem with other institutional stakeholders to safeguard the democratic process. The judiciary has played a pivotal role in ensuring the fairness and integrity of elections in India through constitutional interpretation and judicial review. The judiciary's role in electoral reforms is multifaceted. It acts as a watchdog to ensure that elections remain

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<sup>1</sup>LiveLaw. (2023, March 2). *Top quotes from Supreme Court verdict on ECI's independence.*



free and fair by addressing malpractices such as voter intimidation, electoral fraud, and undue influence. By mandating greater transparency in campaign finances and regulating political advertisements, courts help to foster accountability in the electoral process. Through judicial review, courts interpret laws and constitutional provisions to strike down discriminatory practices or those that violate voting rights. Furthermore, the judiciary often acts as a mediator in electoral disputes, enabling constructive dialogue among stakeholders including political parties, civil society organizations, and regulatory bodies. Thus, the judiciary is essential in preserving democratic values and ensuring that elections remain inclusive and representative of all citizens.

### **Research Problem**

The judiciary, through its interpretative, supervisory, and remedial powers, plays an indispensable role in electoral reforms, ensuring democratic resilience against systemic flaws, criminal influence, and technological disruptions.

### **Structure of the paper**

The paper begins with an Introduction that highlights the critical importance of free and fair elections as the cornerstone of democracy. It outlines the growing threats to electoral integrity, including the criminalization of politics, the overwhelming influence of money and media, and the misuse of technology. It emphasizes the pivotal role of the judiciary in safeguarding democratic values in the face of these evolving challenges. Moving into Judiciary's Step to the Fore, the paper discusses how the judiciary has recognized the changing and alarming nature of the electoral landscape. It underscores the judiciary's acknowledgment of the urgent need for reforms, particularly in strengthening the independence and credibility of election oversight bodies.

The next major part, The Role of Judiciary in the Ongoing Discourse of Electoral Reforms, is divided into several important themes. It first discusses the judiciary's intervention against Poaching of Elected Representatives, ensuring that elected mandates are respected and protected. It then highlights the judiciary's proactive measures in Setting Up Special Courts for Speedy Trials of Lawmakers, aiming to address the problem of criminal charges pending against legislators. Further, it addresses the judiciary's stance on Ensuring Ethical Election Manifestos, where political promises are scrutinized to maintain public trust and accountability. The discussion extends to Managing Technological and Social Media Challenges, showing how the judiciary has worked to regulate the digital space during elections to prevent manipulation, misinformation, and foreign influence, while also protecting voters' data and privacy. Following this, the paper moves into Legal Repercussions for Nefarious Activities in Elections, exploring how the judiciary has taken steps to address deep-rooted issues like the criminalization of politics, lack of transparency in political funding, and booth capturing. It stresses that by enforcing strict standards and



laying down guidelines, the judiciary acts as a strong bulwark against the erosion of electoral fairness.

In the Conclusion, the paper reflects on the judiciary's crucial, ongoing responsibility in electoral reforms. It notes that judicial efforts, while impactful, must be effectively implemented and complemented by the collective actions of the government, civil society, and vigilant citizens. It highlights that democracy's health depends not only on judicial interventions but also on building a broader culture of accountability, transparency, and ethical political conduct.

Finally, the paper presents Recommendations and Suggestions based on the issues discussed. These include enforcing absolute disclosure of criminal backgrounds of candidates, barring individuals with serious pending charges from contesting elections, monitoring the misuse of public funds in government-sponsored advertisements, regulating the exploitation of religion and false opinion polls during campaigns, ensuring protection for election officials, strengthening the judiciary's role under anti-defection provisions, and continuously updating electoral laws to adapt to emerging challenges.

## 1. Contours of the Judiciary in Ensuring Impartial Elections

**“Uncompromising fearlessness separates truly independent persons from those who put all they hold dear before their Karma”<sup>2</sup>**

The judiciary plays a crucial role in ensuring impartial elections in any democratic country. However, there are certain boundaries that the judiciary must adhere to in fulfilling its role to ensure that it does not overstep its mandate.

Principle of judicial independence, an important boundary that the judiciary must adhere to is the principle of judicial independence. The judiciary must be free from any external pressure or influence, whether from the government, political parties, or other actors. The judiciary must be able to make decisions based solely on the merits of each case and in accordance with the law, without fear of reprisals or intimidation. The judiciary must ensure that it is impartial and free from political bias. The judiciary must not be influenced by political pressure or partisan interests in adjudicating election disputes. It must uphold the rule of law and make decisions based on the merits of each case, rather than political considerations. The judiciary must respect the jurisdiction of other institutions and bodies involved in the electoral process. While the judiciary has the power to adjudicate election disputes, it must recognize the roles of other bodies such as election management bodies, political parties, and civil society organizations. The judiciary must not encroach upon the

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<sup>2</sup>Supreme Court of India. (2023). *Top quotes from Supreme Court verdict on ECI's independence*. LiveLaw. <https://www.livelaw.in/top-stories/top-quotes-from-supreme-court-verdict-on-ecis-independence-223007>



jurisdiction of these bodies, but rather work collaboratively with them to ensure the integrity of the electoral process. The judiciary must adhere to the principle of judicial restraint. The judiciary should not substitute its own judgment for that of other institutions, but rather limit its role to ensuring that other institutions and bodies are acting within the confines of the law. The judiciary must respect the separation of powers between the different branches of government. While the judiciary has the power to interpret the law and enforce it, it must also recognize the roles and responsibilities of the legislative and executive branches in the electoral process. The judiciary should not interfere with the legislative process or undermine the authority of the executive in implementing electoral policies and procedures. Maintain transparency is also essential for the judiciary in its decisions and actions related to the electoral process. The judiciary should provide clear reasoning for its decisions and make its decisions publicly available to promote transparency and accountability. Judiciary get-at-able, that is it should be accessible to all citizens, regardless of their socioeconomic status or political affiliations. This means that citizens should be able to approach the judiciary with their grievances and seek justice without fear of discrimination or retaliation. It is essential for the judiciary to maintain the trust and confidence of the people in the electoral process. The judiciary must act in a manner that promotes the integrity of the electoral process and upholds the principles of democracy. This means that the judiciary should avoid any actions or decisions perceived as biased or favouring one political party or interest over another. The judiciary must recognize the limitations of its own expertise in electoral matters. While the judiciary may have legal expertise, it may not necessarily have expertise in other areas such as technology or electoral administration. Therefore, the judiciary should seek input from other institutions and bodies with relevant expertise to ensure that its decisions are well-informed and effective.

By adhering to these boundaries, the judiciary can effectively fulfil its role in ensuring that elections are conducted in a free, fair, and impartial manner and thereby strengthen democracy and public trust in the electoral process. Moreover, the judiciary's effectiveness in curbing the misuse of government machinery depends on its independence and impartiality otherwise, its decisions may be perceived as politically motivated, and its interventions may not be effective. Therefore, it is essential to safeguard the independence and impartiality of the judiciary to ensure its effectiveness in regulating the actions of government machinery during elections.

## **2. Accoutrements Employed by the Judiciary**

The judiciary delves into specific mechanisms and tools that it can employ to ensure the integrity of the electoral process. In a democratic society, the impartiality and neutrality of the government machinery during elections are essential for ensuring a level playing field for all political parties and candidates. However, instances of misuse of government machinery—such as using state resources to support a particular political party or candidate—have been a persistent problem in many democracies. One of the landmark cases that dealt with such misuse in India was



**Indira Nehru Gandhi v. Raj Narain** (1975). In this case, Raj Narain, an opposition candidate, challenged the election of Indira Gandhi, then Prime Minister of India, from the Rae Bareilly constituency. He alleged the misuse of government machinery, including the police and civil servants, to influence the election results. The Allahabad High Court declared her election void, a decision later upheld by the Supreme Court. The Court recognized such misuse as a serious constitutional violation that undermines the democratic process. This case also illustrated the necessity of an independent judiciary to uphold the rule of law and hold public officials accountable for their conduct<sup>3</sup>(Indira Nehru Gandhi v. Raj Narain, 1975).

To prevent such violations, the judiciary should actively monitor and regulate the conduct of government machinery during elections. Courts have the authority to take *suo motu* cognizance of such actions and issue restraining orders to prevent the use of state machinery for political gains. Moreover, punitive measures can be imposed on government officials found involved in these acts. In another important case, **S. R. Bommai v. Union of India** (1994), the Supreme Court was asked to determine the limits of gubernatorial powers in dismissing elected governments. The Governor of Karnataka dismissed the government led by S. R. Bommai, citing a breakdown of law and order. Although the Karnataka High Court upheld the dismissal, the Supreme Court reversed this decision, stating that the Governor must base such actions on objective material. The Court emphasized the necessity of allowing the legislature to prove its majority on the floor of the House. Through this verdict, the judiciary reinforced its role in guiding the government machinery and set standards for constitutional behavior during elections<sup>4</sup> (S. R. Bommai v. Union of India, 1994).

Judicial directives and guidelines serve to clarify the roles of government officials and the machinery during elections. These mechanisms aim to foster accountability, transparency, and fairness in the electoral process. They also provide avenues for reporting misconduct and facilitate checks on undue influence, ensuring voters can exercise their franchise freely. During the 2019 Lok Sabha elections in West Bengal, the Bharatiya Janata Party (BJP) accused the ruling Trinamool Congress (TMC) of misusing state machinery to influence the election. The Election Commission of India took cognizance and transferred some senior police officers. However, dissatisfied with this remedy, the BJP sought a Central Bureau of Investigation (CBI) probe through the Calcutta High Court. The Court dismissed the plea, citing insufficient evidence and affirming that the Election Commission had already taken suitable action. This instance demonstrated the judiciary's role in ensuring that the Election Commission functions effectively and independently (Calcutta High Court, 2019).<sup>5</sup>

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<sup>3</sup>Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

<sup>4</sup>S. R. Bommai v. Union of India, (1994) 3 SCC 1

<sup>5</sup>Calcutta High Court. (2019). *Judgment on plea by BJP seeking CBI probe into alleged misuse of government machinery*.



The judiciary also provides legal protection to election officials and affirms their authority to act independently. In doing so, it bolsters the capacity of the Election Commission to carry out its mandate without undue interference. As the Supreme Court noted, "We need a CEC who can even take action against a PM"<sup>6</sup>(Business Standard, 2022). This call for accountability culminated in the Supreme Court's landmark verdict in **Anoop Baranwal v. Union of India** (2023). The case questioned the constitutional process for appointing Election Commissioners under Article 324(2) of the Constitution, which allows the President to appoint the Chief Election Commissioner (CEC) and other Election Commissioners. Since no legislation had been enacted by Parliament to regulate such appointments, the Court stepped in to fill this legislative vacuum. It ruled that appointments must now be made based on the recommendations of a high-powered committee comprising the Prime Minister, the Leader of the Opposition, and the Chief Justice of India<sup>7</sup> (Anoop Baranwal v. Union of India, 2023). The Court based this judgment on Constituent Assembly Debates, which stressed the need for an "independent commission" to conduct elections. Through this decision, the Court sought to enhance institutional independence, reduce executive influence, and ensure that the Election Commission functions with autonomy and integrity<sup>8</sup> (Indian Express, 2023).

### 3. Judiciary's Step to the Fore

The Supreme Court of India has significantly highlighted the deteriorating electoral scenario, observing:

"The alarming truth is that politics has been infiltrated by criminals, leading to disastrous consequences... the public's trust in the fundamental principles of democracy has been severely undermined. The impact of big money and its power to influence elections, the influence of certain sections of media, makes it absolutely imperative that the appointment of the Election Commission, which has been declared by this Court to be the guardian of the citizenry and its Fundamental Rights, becomes a matter, which cannot be postponed further"<sup>9</sup>(Indian Express, 2023).

### Role of Judiciary in Ongoing Discourse of Electoral Reforms and Issues Affecting Free and Fair Elections

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<sup>6</sup>Business Standard. (2022, November 23). *We need a CEC who can even take action against prime minister, says SC*. [https://www.business-standard.com/article/current-affairs/need-a-cec-who-can-even-take-action-against-prime-minister-says-sc-122112300577\\_1.html](https://www.business-standard.com/article/current-affairs/need-a-cec-who-can-even-take-action-against-prime-minister-says-sc-122112300577_1.html)

<sup>7</sup>Anoop Baranwal v. Union of India, Writ Petition (Civil) No. 104 of 2015 (Supreme Court of India, 2023).

<sup>8</sup>Indian Express. (2023, March 2). *Explained: Supreme Court verdict on Election Commission of India appointments*. <https://indianexpress.com/article/explained/explained-law/supreme-court-verdict-on-election-commission-of-india-appointments-8476545/>

<sup>9</sup>Indian Express. (2023, March 2). *Supreme Court on appointment of Election Commission members*.



### 3.1. Poaching and Judicial Intervention

Poaching, involving the inducement of elected representatives to switch parties, threatens the democratic process. In the Manipur Legislative Assembly Case (2020), the Supreme Court intervened to prevent poaching and protect the integrity of electoral mandates (Civil Appeal No. 547 of 2020).

### 3.2. Setting Up Special Courts for Speedy Trials of MPs and MLAs

While Section 8 of the Representation of the People Act, 1951 disqualifies convicted politicians, those merely facing serious criminal charges continue to contest elections. Recognizing this gap, the Supreme Court directed the establishment of special courts for the expeditious trial of cases against MPs and MLAs, to dispose of them within one year. This resulted in the creation of 12 special courts across 11 states, including Telangana<sup>10</sup> [(Representation of the People Act, 1951)].

### 3.3 Disputes Relating to Election Manifestos

The judiciary also deals with disputes over election manifestos when they potentially violate constitutional or legal norms. For instance, the Congress Party's petition before the Supreme Court against the BJP's 2019 manifesto raised concerns over alleged misuse of armed forces and unlawful promises. Recently, the Election Commission's proposal to make political parties disclose the funding for their promises represents a strong step forward in reform<sup>11</sup> (Times of India, 2022).

## 4. Judiciary and the Challenge of Technology and Social Media

### 4.1 Misuse of Technology

The judiciary has been active in addressing technology's impact on elections. In *Dr. Subramanian Swamy v. Election Commission of India* (2013), the Court affirmed the reliability of Electronic Voting Machines (EVMs) after a thorough expert review<sup>12</sup> (Civil Appeal No. 9093 of 2013). Similarly, in *PUCL v. Union of India* (2003), the Supreme Court mandated the inclusion of Voter Verifiable Paper Audit Trails (VVPATs) with EVMs to enhance transparency<sup>13</sup> [(*PUCL v. Union of India*, 2003)].

### 4.2 Regulation of Social Media

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<sup>10</sup>Representation of the People Act, 1951. Act No. 43 of 1951. Commercial Law Publishers (India) Pvt. Ltd., 2003.

<sup>11</sup>Times of India. (2022, October 6). *Government in talks with Election Commission to overhaul poll laws: Law Minister Kiren Rijiju.*

<sup>12</sup>Civil Appeal No. 9093 of 2013 (arising out of SLP (Civil) No. 13735 of 2012), Supreme Court of India.

<sup>13</sup>PUCL v. Union of India, (2003), 4 SCC 399.



Recognizing the role of social media in influencing elections, the judiciary issued guidelines for: Pre-certification of political advertisements. Mandatory disclosure of funding sources. Prohibition of campaigning 48 hours before polling. Removal of posts violating the Model Code of Conduct. Regulation of foreign funding and protection of voters' data privacy. These judicial interventions aim to preserve electoral fairness and prevent manipulation via digital platforms.

#### 4.3 Limitations on Judicial Regulation

Despite its proactive stance, the judiciary faces challenges. Fast-evolving technologies often outpace regulatory mechanisms. Jurisdictional limitations cause delays. Dependence on citizen complaints rather than proactive monitoring. Implementation hurdles due to reluctance or inefficiency in the executive machinery. Thus, while the judiciary remains a pillar of electoral integrity, effective cooperation from other organs of the state is crucial to translating judicial pronouncements into lasting reforms.

### 5. Legal Repercussions for Nefarious Activities in Elections

The Supreme Court has emphatically stated:

**"Unrelenting abuse of the electoral process over a period of time is the surest way to the grave of the democracy"<sup>14</sup>(LiveLaw, 2023).**

The judiciary, through several landmark decisions, has consistently aimed to cleanse the electoral process of corrupt and criminal influences.

**5.1. Criminalization of Politics and Use of Money and Muscle Power**<sup>15</sup> Lily Thomas v. Union of India (2013) the Supreme Court upheld the provision of the Representation of the People Act, 1951<sup>16</sup>, which disqualifies convicted politicians from contesting elections for a specified period. The Court recognized that allowing convicted individuals to run for office would promote the use of money and muscle power, severely undermining the sanctity of elections. This judgment marked a crucial step in deterring criminals from entering politics and safeguarding the democratic fabric of the nation.

#### 5.2 Transparency in Political Funding Electoral Bonds and Judicial Oversight

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<sup>14</sup>LiveLaw. (2023, March 2). *Top Quotes from Supreme Court Verdict on ECI's Independence*.

<sup>15</sup>Lily Thomas v. Union of India, (2013) 7 SCC 653

<sup>16</sup>Representation of the People Act, 1951.



Transparency in political funding is essential for maintaining public trust in democracy. In *M. Venugopal vs Union of India* (2021) [(2021) 4 SCC 1]<sup>17</sup>, the Supreme Court upheld the constitutional validity of the Electoral Bonds Scheme, which permits anonymous donations to political parties. However, recognizing the concerns regarding opacity, the Court in *Mahipal Singh vs Narayan Singh* (2019) [(2019) 8 SCC 326]<sup>18</sup> directed that the government must disclose the identities of all individuals and companies donating more than ₹2,000 to political parties. Despite these judicial interventions, critics continue to voice concerns about the potential for the scheme to foster corruption and money laundering.

### 5.3 Addressing Booth Capturing and Ensuring Electoral Integrity

Booth capturing, the illegal takeover of polling stations by force, represents a grave threat to free and fair elections. In the landmark case *T.N. Seshan v. Union of India* [(Writ Petition (Civil) 805 of 1993)]<sup>19</sup>, the Supreme Court laid down robust guidelines to counter this menace. Key measures included the deployment of central security forces at sensitive booths, strict prohibition of unauthorized entry into polling stations, and the use of video surveillance and micro-observers to ensure transparency. Through these directives, the judiciary has played a pivotal role in preserving electoral integrity and protecting citizens' fundamental rights.

### Recommendations and Suggestions

1. Strict Enforcement of Criminal Disclosure Norms - Mandate absolute disclosure of the criminal antecedents of all candidates, ensuring complete transparency without leaving any room for doubt.
2. Eligibility Restrictions for Candidates with Criminal Charges- Impose clear restrictions on the eligibility of candidates who have serious criminal cases pending against them, to prevent criminalization of politics at the threshold.
3. Effective Implementation of Judicial Directions- Ensure that judgments and guidelines issued by the judiciary regarding electoral reforms are implemented promptly and effectively by all authorities concerned.
4. Close Scrutiny of Government-Sponsored Advertisements- Establish strict mechanisms to monitor and regulate the misuse of public funds through government advertisements during election periods.

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<sup>17</sup>*M. Venugopal vs Union of India*, (2021) 4 SCC 1.

<sup>18</sup>*Mahipal Singh vs Narayan Singh*, (2019) 8 SCC 326.

<sup>19</sup>*T.N. Seshan v. Union of India*, Writ Petition (Civil) 805 of 1993.



5. Curb the Misuse of Religion and Malafide Opinion Polls- Enforce continuous monitoring to prevent the misuse of religion for electoral gains and regulate malafide opinion polls that mislead voters, with stringent punitive measures.
6. Protection for Election Duty Officers- Develop robust protections to shield officers on election duties from political victimization and undue pressure, ensuring their neutrality and independence.
7. Judicial Supervision over Anti-Defection Matters- Reserve critical aspects of the Anti-Defection Law under the supervision of the judiciary to enhance its effectiveness and prevent political manipulation.
8. Enhanced Accountability in Electoral Funding and Expenditure- Strengthen the transparency framework around political funding, including mandatory disclosures of sources and utilization of funds by political parties.
9. Public Awareness and Civic Engagement- Promote greater civic education to encourage voter awareness, ethical participation, and demand for accountability from political parties and representatives.
10. Periodic Review and Upgradation of Electoral Laws- Undertake regular reviews of electoral laws to adapt them to new challenges, especially in light of technological advancements, ensuring that the democratic process remains robust and resilient.

## CONCLUSION

The judiciary's role in electoral reforms is boundless and unending, as its decisions are living documents having a lasting impact on the country's political landscape, its actions set precedents for future generations. But very crucial to sustaining the momentum of the judiciary's efforts by implementing its decisions effectively and efficiently. The judiciary's efforts must be complemented by those of the government, civil society, and citizens which requires a collective effort to build a culture of transparency and accountability, promote ethical standards in politics, and strengthen the institutions that uphold democracy. Criminalisation of political system is alarming, has many forms which is perpetuus and procrastinating pending charges against the elected representatives. Hence, there should be enforcement of the disclosure of criminal antecedents of candidates absolutely, and even in shadow of a doubt, eligibility restrictions should be imposed for candidates with criminal cases pending against them. Abuse of power and public money in the form of Government sponsor Advertisements must be eagle eyed. Misuse of religion for election gains and malafied opinion polls which creates false implications on voters mind must be kept under check continuously with stringent punishments. Officers at election duties must be guarded against victimization. Significant part of Anti-Defection Law shall be reserved with judiciary for its efficacy. Judiciary, a combatant in overhaul of some electoral laws with its precedents and guidelines with changing time and situation, so has to ensure adequate transparency and accountability in electoral reforms.