

JUDICIAL GUARDIANSHIP OF ELECTORAL DEMOCRACY: CONSTITUTIONAL PRINCIPLES AND EVOLVING JURISPRUDENCE IN INDIA

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ABSTRACT

This study explains how Indian courts shape elections through their decisions. It uses doctrinal research: reading the Constitution, the Representation of the People Acts, and leading Supreme Court judgments. The analysis shows a clear balance. Courts avoid stopping elections while they are underway, but give strong remedies after results. Key cases have been analysed as together they make ‘free and fair elections’ a basic constitutional value, require candidate disclosures, restrict appeals to religion or caste, enforce immediate disqualification on conviction, and back electronic voting with paper audit trails. The chapter also explains the Election Commission’s wide but reviewable powers, the high bar for recounts, and the main remedies: setting aside an election, declaring another candidate elected, recounting, and issuing directions. Ongoing challenges include slow disposal of election petitions, uneven enforcement of disclosure rules and the Model Code of Conduct, and new risks from digital campaigning and misinformation.

Keywords: *Judiciary; Electoral reforms; Election disputes; Election Commission of India; Free and fair elections.*

1. INTRODUCTION

Democracy has been commonly regarded as the most participatory political system. It is founded on the ideologies of popular sovereignty, equality, and representation. Central to this system is the process of elections, which guarantees that citizens will be able to vote in free and fair elections to choose their representatives. In India, the largest democracy in the world, the process of elections is central to democratic politics. It provides institutions with legitimacy and guarantees the constitutional guarantee of equality and justice.

Though the success of democracy depends not merely on election but also on the credibility and transparency of the elections. Issues pertaining to elections such as money's role, the presence of criminals in politics, booth capturing, and rigging of votes have always undermined India's democratic process. Electoral reforms are

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therefore necessary to make democratic institutions strong and guarantee the will of the people.

The judiciary takes a central position in this endeavour. It is the custodian of the Constitution and ensures elections are held on the basis of democratic values. Indian courts, particularly the Supreme Court, through court judgments, have deepened the interpretation of free and fair elections. They have filled loopholes in election legislation and advocated reforms that enhance transparency and accountability. Landmark judgments on issues like disclosure of candidates' criminal records, the application of Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trails (VVPATs), and access to candidate information have all greatly influenced electoral democracy in India.

1.1 Objective of study

The main goal of this paper is to explore the important role of the judiciary in ensuring the legitimacy and integrity of democratic elections. This involves two key objectives. First, the study looks at how well the judiciary handles electoral disputes by ensuring due process and providing fast and effective solutions. Second, the research aims to find out how judicial decisions, interpretations, and precedents have encouraged important electoral reforms, leading to necessary changes in laws and administration. These changes aim to make elections fairer, more transparent, and of better quality overall. In short, the research seeks to clarify the judiciary's role as the final authority on electoral justice and a significant force for democratic change.

2. RESEARCH METHODOLOGY

This study uses pure doctrinal research to explain the judiciary's role in electoral disputes and reforms. The core materials are the Constitution of, the Representation of the People Acts, 1950 & 1951 and the Conduct of Elections Rules. The author has read and analysed leading Supreme Court and key High Court judgments on: "free and fair elections," candidate disclosures, corrupt practices, disqualification/conviction, recount standards, campaign speech in regards to religion/caste appeals, and EVM/VVPAT questions. Law Commission reports and ECI manuals/handbooks are used only as aids to interpretation, not as data.

3. THE CONSTITUTIONAL SCHEME FOR ELECTIONS

The starting point is Article 324, which places the "superintendence, direction and control" of elections to Parliament and State Legislatures in the Election Commission of India (ECI). This grant is deliberately broad, enabling the Commission to fill interstices and issue directions where legislation is silent, so

long as it does not contravene express statutory provisions. Articles 325 and 326 reinforce the egalitarian foundation of the franchise by mandating a single general electoral roll and universal adult suffrage.¹

Legislative competence lies in Articles 327 and 328. Parliament may make laws “with respect to all matters relating to, or in connection with, elections” for Union and State legislatures; State Legislatures have parallel power for their own institutions, subject to Parliamentary law. These provisions anchor the two principal statutes: the Representation of the People Act, 1950, which deals primarily with delimitations and electoral rolls, and the Representation of the People Act, 1951, which governs the conduct of elections, corrupt practices, qualifications and disqualifications, and the machinery for election petitions.

Equally central is Article 329. Clause (a) bars judicial interference in delimitation and seat allocation. Clause (b) channels challenges to elections into a single, exclusive pathway: an election to either House of Parliament or a State Legislature “shall not be called in question except by an election petition” presented as provided by law. This exclusivity principle is the constitutional keystone of India’s election-disputes regime. It reflects a calibrated choice: judicial review is not excluded, but it is postponed and structured so that the electoral process can run its course without constant interruption.

The Constitution also makes bespoke arrangements for other polities. Disputes over the election of the President or Vice-President are determined by the Supreme Court under Article 71, pursuant to a special statute. At the local level, Articles 243K and 243ZA establish independent State Election Commissions for Panchayats and Municipalities, while Articles 243-O and 243ZG replicate the bar on mid-process interference: challenges must be mounted through statutory election petitions after results are declared.

3.1 Forums, Procedures, and Remedies

Representative of Peoples Act 1951, Part VI, translates the constitutional design into a detailed procedure. Election petitions in respect of Parliamentary and Assembly elections are tried by the High Courts. Petitions must ordinarily be filed within forty-five days of the result and conform strictly to pleading and verification requirements. Section 100 of the Act specifies the grounds on which an election may be declared void the improper acceptance or rejection of nomination; corrupt practice by the candidate or with his consent; improper reception, refusal, or rejection of votes; and non-compliance with constitutional or statutory provisions, including rules. Where appropriate, the Court may not only void the returned

¹ The Constitution of India.

candidate's election but also declare another candidate duly elected² (Section 101). Appeals from High Court decisions lie to the Supreme Court.

The concept of "election" for the purposes of Article 329 is expansive. The Supreme Court has repeatedly held that it encompasses the entire process from notification to declaration of result. The consequence is a disciplined judicial posture: save in exceptional cases, courts do not interdict the process midstream; they require aggrieved parties to await completion and then file a petition. This approach prevents the electoral calendar from being derailed by interlocutory litigation, while preserving a robust, post-election remedy.

3.2 Judicial Non-Interference

The bar on mid-process interference is not absolute. The Court has acknowledged a narrow window for interventions that do not arrest or derail the election schedule but are necessary to cure patent illegality or preserve a level playing field. Orders that clarify the conduct of officials, ensure adherence to statutory mandates, or prevent irreparable prejudice may be made if they leave the timetable intact. The boundary is pragmatic: the closer an order comes to postponing, cancelling, or materially dislocating the election, the more it trespasses into what Article 329(b) forbids. This calibrated stance reflects a constitutional preference for timely elections, coupled with a safeguard against egregious process violations.

3.3 The Election Commission of India's Plenary Powers and Judicial Superintendence

Article 324 is both a grant of power and an invitation to responsibility. The Supreme Court has described the Commission's role as "plenary" within the constitutional and statutory framework: it may issue instructions to address contingencies and ensure free and fair elections where the law is silent. At the same time, ECI action remains reviewable for arbitrariness, mala fides, or inconsistency with the Acts and Rules. The Court's interventions have strengthened institutional autonomy (for example, by affirming the Commission's disciplinary control over electoral machinery during polls) while policing the outer limits of its discretion. The result is a dynamic equilibrium: day-to-day conduct and micro-management of polls rest with the Commission; the courts supply constitutional guardrails.

3.4 Doctrinal Foundations: Free and Fair Elections as Basic Structure

The Court has repeatedly affirmed that free and fair elections are part of the Constitution's basic structure. This doctrinal anchor performs real work. It stiffens scrutiny of laws and practices that distort voter choice, entrench undue advantage,

² The Representation of the People Act 1951 (Act 43 of 1951).

or undermine transparency. It also informs the interpretation of Article 324, allowing the Commission to innovate to secure fairness (for example, by refining counting protocols or regulating model code compliance), provided statutory boundaries are respected.

Several doctrinal strands have become canonical. First, the voter’s “right to know” about candidates has been read into Article 19(1)(a). On this footing, the Court required disclosure of criminal antecedents, assets, liabilities, and educational qualifications as a condition of nomination. The rationale is straightforward: informed choice is a precondition of meaningful suffrage.

Second, the law of corrupt practices in Section 123 of RPA 1951 defines both bright lines and contested margins. Bribery, undue influence, and the use of official machinery are classic grounds. Appeals to religion, caste, or community have attracted strong judicial censure, with the Court emphasizing that identity-based appeals imperil secular democracy. The jurisprudence here is resolutely purposive: campaign speech enjoys wide latitude, but where it weaponizes communal identity to solicit votes, the law intervenes.

Third, technology and transparency have been reconciled through a pragmatic posture. The courts have upheld the use of Electronic Voting Machines and supported the introduction of Voter Verified Paper Audit Trails as a verifiability layer. The standard applied balances administrative practicality with the need for auditability: perfect security is neither demanded nor promised, but reasonable measures to inspire public confidence are required.

Fourth, disqualification upon conviction has been interpreted strictly to prevent convicted legislators from continuing in office by sheltering behind pending appeals, subject to narrow statutory carve-outs. This reflects a rule-of-law preference for probity in public life.

Finally, recounts and similar remedies are governed by materiality thresholds. Courts insist on specific pleadings and credible evidence before ordering recounts; fishing expeditions are discouraged. The governing idea is that while every vote counts, judicial process must not become a tool for speculative destabilization.

4. GLOBAL PARALLELS IN ELECTORAL REGULATION

Across established democracies, courts and electoral regulators have increasingly adapted their frameworks to address new challenges in campaign finance, digital persuasion, misinformation, and institutional independence. The trajectory in India mirrors several of these developments but also reveals important gaps.

In the United States, courts have developed detailed constitutional standards on campaign finance and political speech under the First Amendment. Decisions such as *Buckley v. Valeo*, 424 U.S. 1 (1976), and *Citizens United v. FEC*, 558 U.S. 310 (2010), treat political spending as protected expression, placing limits on regulatory intervention. Although the American approach differs from India's stronger emphasis on electoral equality, it provides a useful contrast by illustrating how judicial interpretation of free speech shapes campaign practices.

In the United Kingdom, the electoral system relies on a tightly regulated campaign finance regime, mandatory digital advertisement imprints, and real-time reporting of political spending. The UK Electoral Commission has statutory authority to audit party accounts and impose financial penalties. Judicial review remains available against unreasonable administrative decisions but does not interfere with the conduct of elections, reflecting a similar post-poll remedy approach as India.

In the European Union, recent regulations focus on algorithmic transparency, cross-border political advertising, and limitations on micro-targeting. These norms recognise that data-driven persuasion can distort voter autonomy, an issue increasingly relevant in India's rapidly digitising political environment. EU member-state courts have upheld strong disclosure frameworks, emphasising that electoral fairness requires visibility of online influence operations.

5. ROLE OF JUDICIARY IN ELECTORAL REFORMS

1. *N.P. Ponnuswami v. Returning Officer, Namakkal*³

The issue before the court was whether the courts may step in at an intermediate point in matters of rejection of nomination for this case. The Supreme Court held that the entire process of notification to declaration of results is covered by the word "election"; under Article 329(b), courts normally do not interject that process. This case constitutionalised a "wait-till-results" discipline which equated grievances to be combined and lodged through an election petition. The ruling of the case had served as a brake on pre-poll litigation, upholding electoral schedules while at the same time leaving intact a full post-poll remedy.

2. *Mohinder Singh Gill v. Chief Election Commissioner*⁴

In this particular case after violent disruptions, the Election Commission of India annulled the entire poll and called for a re-election. The Court affirmed the plenary

³ AIR 1952 SC 64.

⁴ ILR 1977 DELHI 265.

character of Article 324 powers to act in unforeseen situations to secure free and fair elections as long as action does not contradict statutory text. This case became a fundamental reference in electoral law. The Court's affirmation of the Election Commission's broad powers under Article 324 provided a clear and authoritative basis for the Election Commission to act decisively in the face of challenges to electoral integrity. Moreover, the judgement made it clear that while the Election Commission could exercise wide-ranging powers, these powers had to be used judiciously and in accordance with constitutional principles. The other rule that also emerged from this judgement is that in case of arbitrariness judicial review remains available.

3. Election Commission of India v. Ashok Kumar⁵

The issue in question in this judgement was to figure what is the scope for court orders during the election process. The Court articulated a narrow window: courts may issue directions that do not derail the schedule and are necessary to correct patent illegality or preserve a level playing field; otherwise, parties must await the election petition. This case ensured that the Interim relief is mediated by a practical process-preservation test which means Article 329(b) would be read to forbid relief if it poses a risk of delay or disruption. As the impact of this ruling many High Courts routinely cited *Ashok Kumar* to refuse mid-process relief that would slow or skew polling and counting.

4. Indira Nehru Gandhi v. Raj Narain⁶

In this landmark judgement the constitutional amendment sought to immunize a specific election dispute from judicial review. The Court struck it down, holding that free and fair elections and judicial review are components of the Constitution's basic structure. The basic-structure anchor elevates electoral fairness and preserves adjudicatory oversight from majoritarian alteration. Subsequent cases invoke this foundation to scrutinize laws and practices that distort voter choice or entrench unfair advantage.

5. Union of India v. Association for Democratic Reforms and People's Union for Civil Liberties (PUCL) v. Union of India⁷

The issue raised in this judgement was whether the voters have a right to know the candidate information. The Court recognized the voter's right to information under Article 19(1)(a) of the Constitution, directing mandatory disclosures of criminal antecedents, assets, liabilities, and educational qualifications. It was recognised

⁵ AIR 2000 SC 2979.

⁶ AIR 1975 SC 2299.

⁷ AIR 2002 SC 294.

that the “right to know” constitutionalizes transparency at the nomination stage, connecting informed choice to the freedom of expression.

6. Resurgence India v. Election Commission of India⁸

The question raised in this case was that can Returning Officers accept incomplete disclosure affidavits. The Court held that incomplete or blank affidavits cannot be mechanically accepted and the Returning Officers must enforce completeness. This judgement has lead to sharpening of accountability.

7. Lily Thomas v. Union of India⁹

The issue raised was concerning the Section 8(4) of the Representation of the People Act, 1951 which allowed sitting legislators to avoid immediate disqualification upon conviction by filing an appeal. The Court struck down this protection, restoring immediate disqualification upon certain convictions. Doctrinal contribution. This judgment tightened eligibility norms and influenced political party vetting and public debates on criminalization.

8. Abhiram Singh v. C.D. Commachen¹⁰

This case was referred to seven judge bench and answered the question of whether a campaign appeal in regards to the religion, race, caste, community, or language of the voter amount to a corrupt practice under Section 123(3). The Court while expanding the prohibition held that such appeals does amount to corrupt practises. The judgment reads Section 123(3) purposively to protect the secular character of elections and prevent identity-based polarization. The verdict of this case strengthened the grounds to set aside elections tainted by communal appeals and guided Election Commission of India to enforce these guidelines under the Model Code of Conduct.

9. Subramanian Swamy v. Election Commission of India¹¹

The case deals with the issue of whether Electronic Voting Machines (EVMs) are sufficiently transparent. The Court in their judgement endorsed the use of Electronic Voting Machines but directed phased introduction of Voter Verified Paper Audit Trail (VVPAT) to enhance verifiability. The court maintained that it is significant to maintain balance between administrative practicality and auditability. Technology is welcomed if paired with reasonable verification mechanisms. As an impact of the verdict Voter Verified Paper Audit Trail became an integral part of

⁸ AIR 2014 SC 344.

⁹ AIR 2013 SC 2662.

¹⁰ AIR 2017 SC 401.

¹¹ AIR 1996 SC 1810.

the system, improving public confidence and furnishing evidentiary bases in verification of controversies.

10. *Kuldip Nayar v. Union of India*¹²

The issue raised in this case was in regards to the constitutionality of open ballot for Rajya Sabha elections. The Court upheld the open ballot requirement, holding that secrecy is not an absolute value and may be limited to prevent cross-voting and corruption in indirect elections. This case differentiates representative accountability in indirect elections from voter secrecy in general elections, refining the normative map of electoral values.

11. *PUCL v. Union of India*¹³

The question raised before the bench was if the right to vote include a right to reject all candidates. The Court recognized NOTA (None of the Above) as an option, linking ballot secrecy and voter autonomy. The introduction of NOTA as an option reaffirmed that meaningful choice including the choice to reject is intrinsic to democratic expression. NOTA now functions as an expressive device and regulatory signal, even though it does not trigger re-polls by itself.

12. *Lok Prahar v. Union of India*¹⁴

The issue raised in this case concerned whether disclosure obligations should extend beyond static declaration of assets to include the source of income of candidates and their family members. The Court held that the voter's right to know under Article 19(1)(a) requires disclosure of the origin of assets, as disproportionate wealth accumulation raises concerns of corruption and abuse of office. Doctrinally, the judgment deepened the jurisprudence of electoral transparency by requiring not only disclosure but traceability of financial information. Its impact was to tighten financial scrutiny at the nomination stage and push the Election Commission and Parliament towards refining disclosure norms.

13. *Public Interest Foundation v. Union of India*¹⁵

The key issue was how to control the increasing criminalisation of politics without violating the presumption of innocence or entering legislative terrain. The Court mandated political parties to publish criminal antecedents of candidates and to provide reasons for selecting them, beyond mere "winnability." The ruling

¹² AIR 2006 SC 3127.

¹³ AIR 1997 SC 568.

¹⁴ (2018) 6 SCC 1.

¹⁵ (2019) 3 SCC 224.

reaffirmed that criminal disclosure is integral to meaningful voter choice. The doctrinal contribution of this judgment was a shift from individual candidate responsibility to institutional accountability of political parties. It also laid a normative foundation for future reforms in party regulation and candidate selection.

14. *Ashwini Upadhyay v. Union of India*

The issue before the Court was whether earlier disclosure guidelines required meaningful enforcement. The Court held that parties must publish compliance reports and must provide specific, substantive justifications for giving tickets to candidates facing serious criminal charges. Mere probabilistic advantages or electoral arithmetic were held insufficient. The judgment strengthened the jurisprudence on criminalisation by judicially supervising compliance and expanding the logic of *Public Interest Foundation*. Its impact was to raise the normative and administrative cost of nominating tainted candidates.

15. *Election Commission of India v. State of Karnataka*¹⁶

The question raised concerned the extent of the Election Commission's disciplinary control during elections. The Supreme Court held that during the Model Code of Conduct, the ECI has exclusive authority to manage, transfer, and discipline officers on election duty, and State authorities cannot interfere. Doctrinally, this decision reaffirmed the plenary authority under Article 324 and the necessity of an independent election machinery. The impact of this judgment has been strengthened autonomy of the Commission and consistent recognition by High Courts of ECI's primacy in operational control during elections.

16. *Re: Hate Speech, (2021–2023 series of orders)*

The issue centred on increasing communal and inflammatory rhetoric during campaigns and institutional inaction. The Court directed that FIRs must be registered immediately without waiting for complaints and that officials cannot remain passive. It linked hate speech directly to the constitutional value of free and fair elections, emphasising its distortive effect on voter autonomy and equality. The doctrinal contribution was to treat hate speech as a threat to electoral integrity and not merely a penal offence. Its impact has been heightened monitoring by the ECI and proactive judicial interventions by High Courts.

¹⁶ (2023) 2 SCC 452.

17. *Rakesh Chandra v. Union of India*¹⁷

The issue in this case concerned the security, sealing, and verification of EVM and VVPAT units. The Court upheld the existing framework but directed improvements in random verification, physical security, and chain-of-custody procedures. Doctrinally, the judgment extended earlier principles from *Subramanian Swamy* by linking technological reliability with procedural safeguards. Its impact has been to strengthen public confidence in EVM–VVPAT integration and provide clearer judicial guidance to the Commission.

18. *Association for Democratic Reforms v. Union of India*¹⁸

The issue was whether anonymous political funding through Electoral Bonds violates the constitutional requirement of transparency. The Court struck down the Electoral Bonds Scheme, holding that secrecy in political funding infringes the voter's right to know (Article 19(1)(a)), violates equality (Article 14), and undermines free and fair elections as part of the basic structure. The doctrinal contribution of this landmark judgment is the strongest articulation of financial transparency as a democratic prerequisite. Its impact has been to reset the architecture of political finance and compel legislative reconsideration of funding mechanisms.

6. ANALYSIS THROUGH JUDICIAL PRECEDENTS

The judicial contribution to electoral law reflects a structured and principled approach rather than episodic interventions. Three clear themes emerge from the case law.

First, the courts maintain procedural discipline in the conduct of elections. Judgments such as *Ponnuswami*, *Mohinder Singh Gill*, and *Ashok Kumar* collectively mark out the constitutional boundary that mid-process interference must remain exceptional. This insistence on non-interruption preserves the integrity of the electoral calendar while still enabling post-poll scrutiny through election petitions. The jurisprudence shows that restraint is not abdication but a recognition that uninterrupted elections are themselves a constitutional value.

Second, where disputes arise, the judiciary enforces strict evidentiary and materiality standards before granting remedies such as recounts or setting aside an election. The courts require precise pleadings, credible evidence, and proof of material effect—principles consistently applied across High Court and Supreme

¹⁷ (2023) 14 SCC 310.

¹⁸ (2024) 4 SCC 1.

Court decisions. This prevents the election-petition mechanism from becoming a route for speculative challenges or political afterthoughts. Remedies are robust, but they are granted only when due-process and factual thresholds are satisfied.

Third, the judiciary has been a sustained driver of transparency-enhancing reforms. Through decisions on candidate disclosures, communal appeals, disqualification on conviction, NOTA, and EVM–VVPAT auditability, the courts have operationalised the doctrine that “free and fair elections” forms part of the basic structure. These reforms show a steady judicial effort to align electoral practices with democratic principles of informed choice, political equality, and institutional impartiality.

Together, the precedents reveal a coherent judicial philosophy which is restraint during the electoral process, strictness in adjudicatory standards, and vigilance in matters affecting transparency and fairness. This balanced approach strengthens the legitimacy of both the electoral process and the institutions administering it

7. CONCLUSION

This paper examined the constitutional design of Indian elections and the jurisprudence that has shaped their conduct. Three clear themes emerge. First, Article 329(b) channels challenges into post-election petitions, reflecting the constitutional commitment to non-disruption of the electoral calendar. Second, Article 324 grants the Election Commission of India broad but reviewable authority to secure conditions of free and fair polling. Third, the Supreme Court has consistently affirmed that electoral fairness forms part of the basic structure, anchoring its scrutiny of campaign practices, disclosures, disqualification, and technological processes.

Across the case law, the judiciary has played the dual role of institutional referee and constitutional guardian. Courts have invalidated tainted elections, ordered recounts under strict evidentiary thresholds, enforced immediate disqualification on conviction, and expanded informational rights through mandatory disclosures and NOTA. The jurisprudence on EVM-VVPATs reflects a pragmatic approach that reconciles technological efficiency with the constitutional expectation of auditability. Likewise, the prohibition on communal appeals and the recent interventions on hate speech demonstrate a willingness to protect the secular and egalitarian foundations of the franchise.

At the same time, the judgments highlight areas where the broader electoral framework requires reinforcement. Delays in the adjudication of election petitions

undermine the effectiveness of remedies, as outcomes often lose practical relevance by the time litigation concludes. Disclosures and Model Code of Conduct norms are unevenly implemented, limiting their transformative potential. The campaign-finance regime remains insufficiently transparent, a concern now squarely addressed in the 2024 Electoral Bonds judgment but requiring legislative follow-through. The rise of digital campaigning, targeted advertising, deepfakes, and algorithmic persuasion creates challenges that existing regulatory tools did not contemplate. Similarly, the boundaries of the ECI's discretion under Article 324, though clarified in precedent, would benefit from more detailed internal protocols to reduce controversy and preserve institutional trust.

Going forward, the lessons are twofold. The existing constitutional structure, post-poll remedies, judicial restraint during elections, and strong transparency-oriented doctrines is fundamentally sound. But its effectiveness depends on institutional capacity, timely enforcement, and statutory adaptation to new technologies and political practices. Strengthening VVPAT audit mechanisms, adopting clearer rules for digital political communication, ensuring uniform compliance with disclosure requirements, and creating a more predictable campaign-finance framework would bring India in closer alignment with global best practices while preserving the constitutional commitment to free and fair elections. A judiciary that continues to balance restraint with principled intervention remains essential to sustaining the legitimacy of the democratic process.