

ELECTORAL PROCESS - THE TRUE TRAIT OF DEMOCRACY

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ABSTRACT

This paper explores the foundational role of the electoral process in sustaining democracy, with a focus on the Indian framework established under its Constitution. Enshrined in principles of justice, equality, and liberty, India's democratic fabric relies heavily on unbiased and impartial elections guided through universal adult suffrage. The constitutional provisions, particularly Articles 324, 325, and 326, uphold inclusivity, secularism, and equal voting rights, ensuring representation without discrimination. Legislative instruments such as the Delimitation Commission Act and Representation of the People Acts (1950 and 1951) further enhance electoral integrity. The judiciary's self-imposed restraint in electoral disputes, governed by Article 329, maintains a balance between legal oversight and the uninterrupted conduct of elections. This study critically examines these frameworks, emphasizing their evolution from colonial practices to modern governance. The pivotal role of the Election Commission is also highlighted and judicial mechanisms during addressing disputes while safeguarding the democratic ethos. The paper concludes by affirming that India's electoral framework not only embodies its constitutional ideals but also serves as a global exemplar for democratic resilience.

Keywords: Electoral process, democracy, universal suffrage, constitutional provisions, election disputes.

INTRODUCTION

The Indian Constitution was ratified in November 1949 and commits to ensuring justice, liberty, equality, and fraternity for all its residents, while establishing a democratic republic. The Constitution of India introduced Universal adult franchise in one instance, but before to 1949 (during the elections of 1937-1945), the elections were held with a somewhat restricted franchise.¹ The Indian Constitution was constructed and formulated with a proactive approach to support disadvantaged parts of society. It enshrines principles of secularism and ensures the preservation of a diverse society, including many cultures, civilizations, religions, and political systems.² In the year after 1947, over a hundred nations gained independence together with

¹ Singh, Bimal Prasad. "Electoral Reforms in India—Issues and Challenges." *IJHSSI* 2, no. 3 (2013): 1-5.

² M.M.K. Sardana, "*Democracy, Development and Growth: The Indian Experience*", ISID Discussion Notes. p 1, available at www.isid.org.in (last visited on December, 18, 2024)

India. However, India was the only country that really translated independence into the liberation of its people. Since then, India has fortified its political democracy by granting constitutional legitimacy.³ The achievement of India's freedom marks the beginning of a fresh endeavour rather than a conclusion. Following independence, India faced the challenge of establishing a democratic system and becoming an independent country grounded on the principles of justice, liberty, equality, and brotherhood. The need to establish a new Constitution based on these ideas was of utmost significance.⁴ Hence, the primary objective of newly independent India was to establish a constitution, and our current Constitution is the outcome of this endeavour. The Indian Constitution embodies the economic, political and communal beliefs and ambitions of the better part of the population of India.⁵ Currently, India is a federal state consisting of 28 states and 8 union territories. It follows the Westminster model, operating under a parliamentary format of government.

THE DEBATE ON THE BASIC STRUCTURE DOCTRINE OF THE INDIAN CONSTITUTION: A HISTORICAL AND JUDICIAL PERSPECTIVE

Debate about the 'basic structure' of India's constitution has raged on since the 1990s. The government of the National Democratic Alliance established the “National Commission to Review” based on workings of the Constitution with the promise of the document's essential structure being preserved. Members of Congress and the Communist Party have said that the government is trying to change the constitution drastically, which would weaken its core principles, and that this is what the review process is all about.⁶

The power to legislate within one's own jurisdiction is delegated to the state and natural legislatures by the Constitution, although this is not an absolute delegation. It is up to the courts to decide whether or not a piece of law is constitutional. It is within the purview of the Supreme Court to declare extra vires or unconstitutional any statute passed by a state or federal legislature that violates any Constitutional section. The Supreme Court has made it clear in its seminal 1973 judgement in *Kesavananda Bharati*, the phrase "fundamental structure" is not included in the Constitution.⁷ The Parliament's competence to change the Constitution, specifically regarding the chapter on citizens' basic rights, was contested as early as 1951. Subsequent to independence, many statutes were implemented in various states to reform land ownership and tenancy frameworks. Property owners, negatively impacted by these statutes, petitioned the courts, which annulled the land reform legislation, contending they violated the constitutional right to property.⁸

Through the First and Fourth amendments (1951 and 1952, respectively), Parliament subsumed the Ninth Schedule into the Constitution, safeguarding it from juridical review. In 1967, there

³ Yadav, Sushma. "Election Commission and Electoral Process." *Indian Political System* (2018): 277.

⁴ Pandey, Aman. "The Election Commission of India & the Democratic Process: Challenges, Measures and Reforms." *Indian JL & Legal Rsch.* 2 (2021): 1.

⁵ M.V. Pylee, “*Our Constitution, Government and Politics*” 1 (Universal Law Publishing Co.Pvt. Ltd, New Delhi, 2ndedn, 2002)

⁶ Sharma, Brij Kishore. “*Introduction to the Constitution of India*”. (PHI Learning Pvt. Ltd., 2022).

⁷ Singh, M. P., and Rekha Saxena. “*Indian politics: Constitutional foundations and institutional functioning*”. (PHI Learning Pvt. Ltd., 2021).

⁸ Deepak, J. Sai. “*India, that is Bharat: Coloniality, civilisation, constitution.*” (Bloomsbury Publishing, 2021).

was a reversal of Supreme Court to its previous position in the *Golaknath v. State of Punjab* case, ruling that Parliament was deficient of the ability to implement Article 368 under the Constitution. This ruling highlighted the contrast between the statutory authority of Parliament and the inherent authority of Parliament, as well as the fundamental limitations of the modifying powers of Parliament as stated in Article 368. Four of the five justices on the bench affirmed the Thirty-ninth amendment in India, notwithstanding a provision that aimed to restrict the judiciary's authority to resolve electoral disputes. The change was fully upheld, and Mrs. Gandhi's election was deemed lawful according to the revised election rules. The Kesavananda Review Bench was established to reassess the Kesavananda ruling; however, Prime Minister Indira Gandhi rejected the notion of fundamental structure, resulting in its dissolution.

In 1975, the Congress party established a committee to examine constitutional amendments, resulting in the Forty-second amendment, which trivialized Fundamental Rights and prioritised the Directive Principles of State Policy. This amendment excluded any modifications to basic rights from judicial review and eliminated restrictions on Parliament's right to bring about changes in the Constitution according to Article 368. The Supreme Court competed for the Forty-second Amendment in the *Minerva Mills* and *Waman Rao* cases, contending that Section 55 conferred unrestricted amending authority to Parliament, so infringing upon the notion of essential structure.⁹

THE CONSTITUTIONAL FRAMEWORK FOR ELECTION

A single instance of adult franchise was implemented when the Indian Constitution was created, which led to establishment of a Parliamentary form of government and established a system of government. The Constituent Assembly was responsible for enacting the constitution, which established a democratic system of government with its provisions. In addition to laying out the rules and procedures that govern elections, the constitution also sets the framework. In accordance with the Constitution of India, the Parliament of India is invested with the ability to make rules and regulations concerning elections. On the other hand, the constitution itself includes measures that are designed to make sure that elections in India are supervised in a democratic and unbiased fashion. Part XV of the Indian Constitution provides explicit and authoritative guidance on the planning and execution of elections in the country. The power to conduct elections is granted by the “Government of India Act, 1935”, incorporating the constitutional institution listed in “Article 324 of the Indian Constitution”, which is tasked with overseeing, directing, and organising such elections.¹⁰ Article 324 provides a significant amount of amplitude to the statements made on the conduct of elections. The word encompasses the authorization to make all of the essential measures for conducting elections that are free from bias and upright, as well as the authority to cover the whole of the election process.¹¹

⁹ *ibid*

¹⁰ H.K. Saharay, “*The Constitution of India*”, 1129 (Eastern Law House, Kolkata, 4thedn, 2012)

¹¹ *Mohinder Singh Gill v. Chief Election Commissioner* AIR 1978 SC 851 (para 121)

ADULT SUFFRAGE

Adult suffrage, sometimes known as the equal right to vote, is a fundamental concept that guides the demeanour of unbiased elections. Idea of adult suffrage and equal right to vote for all citizens is revered in “Articles 325 and 326 of the Constitution of India.” Constitution eliminates the communal portrayal that was in place before to the constitution and establishes a single general roll for each and every geographical constituency.¹²

The Article 325 of the Indian Constitution dictates that no individual should be disqualified for incorporation in the electoral register on grounds alone of religion, race, sex, castes or either of these factors, natural equality of human beings, which is the spirit of democracy, is preserved in the subject of franchise. There is a strong possibility that the universal franchise may be traced back to the principles of democracy, republic, political fairness, and sovereignty residing in the people, with a specific emphasis on secular democracy.¹³ Further clarification is provided by Article 325 of the Constitution of India, which states that no individual is permitted to claim any exceptional electoral register for any seat solely based on of caste, sex, religion, race or any other combination of these.¹⁴ Thus, prejudice on these grounds against any citizen is completely eliminated by the Constitution.¹⁵

As stated by “Article 326 of the Constitution of India”, House of People and the Legislative Assembly of each State elections would be built on adult suffrage. This provision was included in the Constitution of India. By means of a statute, the relevant legislative body will be responsible for determining the precise date on which these elections will take place. The right to appeal is extended to anybody who is not barred via the Constitution or other laws enacted by the suitable legislature based on reasons like lack of residency, mental incapacity, corruption, illegal practice or crime. If you are not disqualified, you are allowed this privilege.¹⁶

According to Section 19 in accordance to Section 26 of the “Representation of the People Act of 1951”, eligibility for voter registration hinges upon two primary criteria: attaining a minimum age of eighteen years by the certified date and being an ordinary inhabitant of a particular region. Enrolment of the electoral register of each constituency is guaranteed by this legislative provision to all persons who satisfy these requirements. Individuals are limited to being included on the electoral roll of a single constituency or, at most, many constituencies, with no more than one registration per constituency, in order to uphold the democratic concept of one vote per person. By eliminating opportunities for voter duplication and guaranteeing fair representation across constituencies, this legislation seeks to preserve the credibility of the democratic process.¹⁷

FUNDAMENTAL PRINCIPLE OF ELECTIONS

Various essential beliefs are included in the foundational principles that govern elections to Lok Sabha and the State Legislative Assemblies. These precepts designed are to make sure that

¹² The Constitution of India, art.325, 326.

¹³ Preamble, Constitution of India.

¹⁴ The Constitution of India,art. 325.

¹⁵ S.R. Bommai v. Union of India, AIR 1994 SC 1941 at 1951.

¹⁶ The Constitution of India, art 326.

¹⁷ Id at,s. 18.

the electoral methods is both honest and inclusive. A dedication to secularism, equality, and democratic involvement is reflected in these ideals, which are inscribed in the Indian Constitution.¹⁸

The Indian Constitution mandates a single universal electoral roll for each territorial constituency, eliminating sectarian representation and distinct electorates. This shift towards inclusion and secularism ensures equal treatment for all citizens, regardless of their religion, colour, caste, or gender. The electoral register is prepared based on principles of secularism and equality, reflecting the constitutional obligation to safeguard the rights of all people without discrimination. No individual can claim eligibility for inclusion in a specific electoral roster based on their ethnicity, caste, religion or gender. This concept, originating in Article 15 of the Constitution, makes it illegal to discriminate against voters in terms of their political rights and guarantees an equal opportunity to participate in the election process. The elimination of sectarian representation and distinct electorates is a fundamental principle in Indian elections.¹⁹

India's elections are governed by the principle of adult suffrage, ensuring that any individual who meets specific qualifications is eligible to vote. Eligibility requires being a citizen, at least of 18 years age, and not banned by Constitution or the legislative legislation. Disqualifications can occur due to non-residence, mental incapacity, or involvement in corrupt or unlawful actions. This concept emphasizes democratic participation and enfranchisement for all eligible individuals. The Constitution also sets requirements for voter registration, ensuring only qualified individuals are included on the electoral roster. Disqualifications for registration include not being a citizen, being deemed mentally unable by a court, or engaging in corrupt or criminal acts. Indians are only allowed to register in one constituency, emphasizing accountability and proper representation in the election process. Seats in legislative bodies are not allocated based on community, section, or religious group, except for Scheduled Castes, Scheduled Tribes, and Anglo-Indians. This concept emphasizes merit-based representation and equal opportunities for all people to participate in political processes.²⁰

The ideals of secularism, equality, and democratic participation are the underlying concepts that underpin the elections that take place in India. Through the implementation of these principles, the election process is guaranteed to be inclusive, transparent, and accountable, therefore safeguarding the rights of all people to take part in the nation's democratic government. By adhering to these principles, India confirms its commitment to democratic ideals and improves the basis of its electoral democracy so that it may better promote democratic governance.²¹

¹⁸ Sundar, Nandini. "‘We Will Teach India Democracy’: Indigenous Voices in Constitution Making." *The Journal of Imperial and Commonwealth History* 52, no. 1 (2024): 181-213.

¹⁹ Dann, Philipp, and Arun K. Thiruvengadam. "Comparing constitutional democracy in the European Union and India: an introduction." pp. 1-41. (Edward Elgar Publishing, 2021).

²⁰ Singh, Bimal Prasad. "Electoral Reforms in India—Issues and Challenges." *IHSSI* 2, no. 3 (2013): 1-5.

²¹ The Constitution of India, art. 330, 331.

LEGISLATIVE POWER REGARDING ELECTIONS UNDER THE INDIAN CONSTITUTION

The Indian Constitution explicitly grants Parliament legislative authority over electoral affairs. The parliament is legally authorised to delineate each state into geographical constituencies following each census for the purpose of elections for State Legislative Assembly and Lok Sabha.²²

According to Article 327 of Constitution of India, Parliament is tasked with authority to legislate on issues pertaining to the managing of elections for both Houses of Parliament and State Legislatures. These legislative measures include many elements, from the careful production of electoral records to the definition of seats. Furthermore, Parliament is required to handle any other relevant issues necessary for maintaining compliance with the constitutional framework regulating the functioning of both Houses in an acceptable way.

Constitution's Article 327 delineates a significant constitutional obligation vested in the Parliament, emphasizing the pivotal role it plays in shaping the electoral landscape of the nation. The framers of the Constitution envisaged Parliament as the primary legislative body entrusted with the authority to enact laws that govern the conduct of elections, thereby laying the foundation for a robust democratic system.

One of the paramount aspects outlined in Article 327 pertains to the meticulous preparation of electoral rolls. Electoral rolls serve as the bedrock of the electoral process, delineating the list of eligible voters within a constituency. Parliament is tasked with enacting provisions that ensure the accuracy and integrity of electoral rolls, thereby facilitating free and fair elections. This entails establishing mechanisms for the compilation, revision, and maintenance of electoral rolls to uphold the democratic principle of universal suffrage.

Furthermore, Article 327 mandates Parliament to undertake the delimitation of constituencies, a process integral to the equitable representation of citizens in legislative bodies. Delimitation entails the demarcation of electoral boundaries to ensure proportional representation and prevent gerrymandering. Through legislative measures, Parliament is empowered to delineate constituencies in a manner that reflects the demographic composition and political dynamics of the region, thereby safeguarding the democratic ideals of representation and inclusivity.

In addition to electoral rolls and constituency delimitation, Article 327 confers upon Parliament the authority to address any other matters pertinent to the conduct of elections. This broad mandate encompasses a diverse range of electoral issues, including the regulation of campaign finance, the establishment of electoral procedures, and the resolution of election disputes. By enacting comprehensive legislative frameworks, Parliament endeavours to preserve the sacredness of the electoral process and guard the democratic principles embodied by the Constitution.

Parliament has a crucial role in establishing the nation's election system, as stated in Article 327 of the constitution. Parliament, as the highest legislative body, plays an important role in protecting the elected principles stated in Constitution by passing legislation that regulate the conduct of elections. Article 327 ensures the honesty and unbiasedness of the electoral process by carefully outlining the powers and duties of Parliament in relation to elections, which serves

²² Id at, art.170(3).

to strengthen the basic values of democracy.³⁸ The presence of entry 72 in List I, which deals with subjects pertaining to elections to any legislative body, whether it the state legislature or the Parliament, subject to the constitutional requirements, emphasises power granted in Parliament by the Indian Constitution. Through this law, the supreme legislative authority to govern elections in India is bestowed to Parliament. Article 328 of the Constitution provides further clarification on this authority, stating that each state legislature has the power to pass laws regarding elections to their own legislatures, unless otherwise stated in the Constitution or if Parliament has not done so. The creation of electoral register and other procedures required to guarantee their correct constitution are all covered by these statutes.²³

Parliament is granted the ultimate power to enact legislation managing the nation's election procedures under this constitutional framework. The authority of Parliament over all things relating to elections to any legislative body in India is explicitly affirmed in Entry 72 of List I. To protect the nation's democratic fabric, this clause gives Parliament the authority to pass laws to make sure elections are free, fair, and transparent. The allocation of election-related legislative authority between Parliament and the State Legislatures is further defined in Article 328 of Indian Constitution, supplementing this clause. Ultimate power to pass decrees regulating elections lies with Parliament, although each state legislature also has the ability to pass legislation regulating elections to its own legislature. The Constitution and the lack of relevant legislative laws limit this power, nevertheless.²⁴

The significance of this constitutional framework cannot be overstated in the context of India's democratic governance. It underscores the foundational principles of democracy, ensuring that electoral processes are conducted in accordance with constitutional norms and principles. By vesting Parliament with the authority to regulate elections, the Constitution seeks to preserve the sanctity of the electoral process and guards the democratic rights of citizens. The legislative competence conferred upon Parliament by entry 72 in List I enables the enactment of comprehensive legislation addressing various angles of the electoral method. From the conduction of elections to the resolution of electoral challenges, Parliament has the power to legislate on all matters essential for the proper functioning of democratic institutions. This legislative authority empowers Parliament to enact laws that promote clarity, responsibility, and impartiality in electoral procedure, thereby enhancing public confidence in the democratic system.

Furthermore, the concurrent legislative powers granted to State Legislatures under Article 328 ensure that the electoral process remains responsive to the diverse requirements and ambitions of different regions and communities across the country. State Legislatures have the flexibility to enact laws tailored to the specific electoral dynamics prevailing within their respective states, thereby enhancing the effectiveness and efficiency of the electoral process at the grassroots level.²⁵ This provision is reinforced by entry 37 in List II of the Constitution of India.

The Parliament of India, empowered by the Constitution, has enacted key legislation governing electoral processes in the country. These enactments include "Delimitation Commission Act, 1952, The Representation of the People Act, 1950, and The Representation of the People Act,

²³ ibid

²⁴ Siddique, Md Hasanur Zaman. "Significance of Constitutional Interpretation for Legal Research in India." *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1.

²⁵ The Constitution of India, art.328.

1951.” The Delimitation Act primarily addresses reconfiguration of electoral constituencies, including the adjustment of seats and the division of states into territorial constituencies. It plays a pivotal role in ensuring equitable representation and effective governance across regions. Meanwhile, the “Representation of the People Act, 1950,” focuses on the distribution of seats and the demarcation of constituencies for elections to the Lok Sabha and State Legislatures. Additionally, it delineates the eligibility of voters, delineates the planning of electoral rolls, and lays down procedural guidelines for electoral administration. Complementing this, The Act encompasses provisions related to the qualifications and disqualifications for membership in legislative bodies. It also addresses issues such as corrupt and illegal practices, election offenses, and procedural stages associated with elections to various legislatures nationwide.²⁶

The Delimitation Commission Act, 1952, stands as a foundational pillar of India's electoral infrastructure. It serves as the legislative framework for the restructuring of electoral constituencies, ensuring equitable representation and effective governance. Central to its provisions is the adjustment of seats and the segmentation of states into territorial electorates. Via delineating clear guidelines for the delimitation process, the Act aims to uphold the principles of democracy and ensure proportional representation across diverse geographical regions. Through the establishment of Delimitation Commissions, the Act facilitates the periodic review and realignment of electoral boundaries, thereby reflecting demographic changes and ensuring electoral fairness.

Alongside the Delimitation Act, the Representation of the People Act, 1950, indicates to essential elements of the election process, including seat allocation and constituency demarcation. This Act is crucial in defining the electoral system for the Indian Lok Sabha and State Legislatures. Some specifications of criteria for voter eligibility, guaranteeing that qualified individuals may engage in the democratic process. The Act delineates methods for the production and modification of electoral rolls, promoting openness and accuracy in voter registration. The Act establishes explicit criteria for constituency delineation to enhance election integrity and respect democratic principles of representation and accountability. The Representation of the People Act, 1951, serves as a extensive legal structure governing the elections conduction in India. It addresses a wide range of issues, including the qualifications and disqualifications for membership in legislative bodies. By stipulating criteria for eligibility, the Act aims to uphold the integrity of elected representatives and safeguard the democratic process from undue influence or malpractice. Additionally, the Act contains provisions pertaining to corrupt and illegal practices, delineating offenses and penalties to deter electoral misconduct. Furthermore, it outlines the procedural stages connected with elections, ensuring that the electoral process unfolds in a transparent, orderly, and impartial manner.²⁷

Collectively, these legislative enactments form the bedrock of India's electoral system, providing a robust legal framework for the conduct of honest and transparent elections. By delineating obvious guidelines for the delimitation of constituencies, allocating seats, and defining the qualifications and disqualifications for electoral participation, these Acts uphold

²⁶ GN, Pooja. "Election Commission of India." *Available at SSRN 3942547* (2020).

²⁷ Sindhu, Jahnvi. "Public reason and constitutional adjudication in India." *Comparative Constitutional Studies* 2, no. 1 (2024): 140-149.

the foundational principles of democracy and ensure the integrity of the electoral process. Moreover, they play a pivotal role in fostering societal trust and conviction in the electoral system, thereby strengthening the foundations of democratic governance in India. As the country continues to evolve and grow, these legislative enactments will remain indispensable tools for safeguarding the democratic rights and aspirations of its citizens.²⁸

Legislative powers are not present with the “Election Commission” (EC), in relation to elections. The Commission can issue guidelines. In *“Lakshmi Charan Sen v. A.K.M. Hussain Ujjaman”*⁴¹ the Supreme Court has observed that “the directives issued by the Election Commission to electoral officers hold sway over their actions, yet lack the legal force to establish rights or liabilities among election contestants.” The judiciary has clarified this stance, emphasizing that there exists no statutory provision endowing the Election Commission's directives with the status of law. Election laws operate as self-contained codes, dictating the rights and duties of all involved parties. Absent a statutory mandate, the Election Commission's directives cannot be construed as law. The Election Commission possesses the authority to act *ex debito justitiae*, meaning it may undertake actions beyond those mandated by law. Consequently, it may issue commands to Chief Electoral Officers (CEOs), which carry binding authority. However, the contravention of these directives cannot confer upon parties rights or obligations outside the purview of election law. The judiciary has articulated that while the Election Commission's directives are binding upon CEOs, they do not hold the status of law. Thus, the violation of these directives does not warrant the annulment of an election, either in a general sense or concerning an individual case.

In the legal landscape governing elections, the directives issued by the Election Commission to electoral officers wield significant influence. However, it is essential to discern the distinction between the binding nature of these directives and their legal status. The judiciary's interpretation underscores that while the Election Commission's directives carry weight, they do not possess the authority of law. Instead, election laws serve as self-contained codes, delineating the rights and commitment of parties involved in the electoral process. Consequently, any determination of rights and liabilities must be rooted in the provisions set forth within the framework of election law itself.

The absence of a statutory foundation for the Election Commission's directives necessitates a nuanced understanding of their nature and scope. While the Election Commission is empowered to go beyond the requirements stipulated by law and issue directives to CEOs, these directives do not assume the character of legal mandates. Rather, they serve as guiding principles for electoral officers, providing operational instructions and ensuring the easy conduct of elections. However, it is crucial to recognize the violation of these directives does not confer any additional rights or obligations beyond what is specified in election law.

The judiciary's pronouncement on the status of Election Commission directives reflects a balanced approach to the interpretation of electoral law. While acknowledging the authority of Election Commission in issuing directives, judiciary emphasizes the primacy of statutory provisions in determining rights and liabilities. This approach ensures clarity and consistency in the application of election law, safeguarding the morality of the electoral process.

²⁸ *Ponnuswami N.P v. Returning Officer*, AIR 1951 SC 64. ⁴¹ AIR 1985 SC 1233.

Furthermore, the judiciary's delineation of the Election Commission's role as one of supplementary authority underscores the importance of maintaining the separation of powers within electoral framework. Allowing the Election Commission in issuing directives that go beyond statutory requirements, the judiciary acknowledges the need for flexibility and adaptability in responding to evolving challenges in the electoral arena. However, it also emphasizes the need to preserve the autonomy of election law from extraneous influences, ensuring that the legal framework remains robust and resilient.

In *Kanhaiya Prasad Sinha v Union of India*²⁹, “the court held that the state government cannot ignore the direction of the Election Commission, as the legal effect of any direction issued by the Commission comes from Art.324 of the Constitution of India. In case the government fails to respect the directions, then the Court may examine the matter and pass appropriate orders.”

ELECTION DISPUTE UNDER THE CONSTITUTION OF INDIA

Article 329(a) in Constitution of India stipulates that, “irrespective of any provision in the Constitution, the legitimacy of any law concerning the delimitation of constituencies or the allocation of seats to such constituencies, enacted or purportedly enacted under Articles 327 or 328, shall not be subject to judicial review.”³⁰

The Article 329 (a) of the Constitution of India mentioned it clearly any orders regarding delimitation of constituencies made by the Delimitation Commission and published in the official gazette could not be questioned in a court.³¹ The word ‘notwithstanding anything in the constitution’ which is mentioned in the section explain that this clause overrule everything else in the Constitution.

Article 329(b) of the Constitution states that “notwithstanding anything in the Constitution, no election to either House of Parliament or to a House of a State Legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature.”³² A suit or a writ petition would never be a reason to set aside an election.³³ The Supreme Court observed in *Durga Shankar*³⁴, The non-obstante clause with which Art 239 of the Constitution begins..... debars us, as it debars any other court in the land, to entertain a suit or a proceeding calling in question any election to the parliament or the State Legislature.”

The aim of Article 329 (b) of Constitution is that, the disputes arise out of any election should be postponed and should be raise only after the election is finished as not to disrupt the timed schedule for the election’s completion. Further, Article 329(b) of Constitution prevents any hindrance by the courts.³⁵ However, The Representation of the People Act, 1951, provides for the election tribunals to decide on the disputed matter related to elections but the Act did not equip any judicial review of the rulings of the elections councils. Section 105 of the

²⁹ AIR 1990 Pat 189.

³⁰ The Constitution of India, art.329.

³¹ Meghraj Kothari v. Delimitation Commission, AIR 1867 SC 669: (1967) 1 SCR 400.

³² The Constitution of India, art.329 (b).

³³ Hari Vishnu Karnath v. Ahmad, AIR 1855 SC 233: (11955) 1 SCR 1104.

³⁴ Durga Shankar Mehta v. Raghuraj Singh, AIR 1954 SC 520: (1955) 1 SCR 267.

³⁵ Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216: AIR 2000 SC 2979.

Representation of People Act states that “Every order of the Tribunals made under this act shall be final and conclusive”, and now this section was repealed by the Representation of the People (Second Amendment) Act, 1956 (27 of 1956), section 58 (w.e.f. 28-8-1956)”. Before 1956 the elections tribunal was established to keep the courts out of the area of elections disputes but the courts however extending its supervision over the election tribunals.

In case of *Ponnuswami*³⁶ which was the milestone judgement on the interpretation of Art 329 (b) which bars judicial intervention’ with the election process. In this case, returning officer rejected the nomination paper of the complainant who is a nominee for an election to the State Assembly on certain justifications. The question was if the candidate could challenge the ruling of the returning officer via a writ petition under Art 226.

Supreme Court responded negatively to this. In accordance with Article 329(b) of the Indian Constitution, the Supreme Court verdicted that courts are prohibited from addressing any issues that arise during the election process and until an election appeal is resolved by some electoral courthouse, but not subsequently. The courts must not intervene in the electoral process, namely from the issuance of the notice until the resolution of the election petition. Any irregularity occurring during the election may be contested via an election petition subsequent to the election's conclusion.⁵⁰

Article 329(b) of Indian Constitution intension is to eliminate the authority of all courts with regards to election issues. This provision intends to formulate the mode through which an election can be defied. Any matter related to election should be brought up only before election tribunal at appropriate manner and not before any court. In *Ponnuswami case*, the Court explained the reason for as follows:

It does not require much argument to show that in a country with democratic Constitution in which the legislatures have to play a very important role, it will lead to serious consequences if the elections are unduly protracted or obstructed.

The Supreme Court has laid stress on the Ponnuswami proposition, from time to time. For example, the Court has observed in *Lakshmi Charan Senv. A.K.M Hassan Uzzaman*.³⁷

..... though the High Court did not lack jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its power under Art 226 of the Constitution should pass any orders, interim or otherwise which had the tendency or effect of postponing an election, which is reasonably imminent and in relation to which the writ jurisdiction is invoked. The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution.

The principle of non-interference by judiciary in electoral matters is not merely a judicial power but rather a judicial policy and a self-imposed discipline. However, once legal proceedings are initiated in harmony with Article 329(b) of the Constitution through filing of an election petition, the decisions rendered by the tribunal are subject to scrutiny, much like any other tribunal's rulings. Article 329(b) of the Indian Constitution restricts judicial intervention solely to the setting aside of proceedings during elections. While the electoral process is ongoing,

³⁶ Ponnuswami N.P v. returning Officer, AIR 1952 SC 64.

³⁷ AIR 1985 SC 1233: (1985) 4 SCC 689.

courts are precluded from interference, but they retain the authority to intervene after the election, particularly through the election petition, and subsequent to adjudication of the election tribunal.

In post-Constitution period, the standard procedure for handling election petitions included judgement by the tribunal, subsequent resort to High Court via a writ petition, and ultimately, appealing to the Supreme Court under Article 132 of the Constitution of India. The three-tier system was officially recognised in 1956 with the revision of the Representation of the People Act, 1951. Nonetheless, acknowledging the extended time necessary in adjudicating electoral complaints within this framework, the electoral Commission of India proposed the elimination of the three-tier structure. In 1966, the election tribunal was disbanded, and the authority for adjudicating election petitions was transferred to the High Courts to speed the settlement of electoral disputes by simplifying the procedure. The shift was effectuated by an amendment to the Representation of the People Act, 1971. The High Court currently functions as a lawful tribunal for resolving election clashes, with the possibility of appeal to the Supreme Court.³⁸

The current election dispute resolution method functions inside a dual-tier framework. Election tribunals are abolished, and election plea are the High Court's decision. Appeals from High Court rulings on electoral issues can be submitted to Supreme Court according to Articles 132, 133, and 136 of the Constitution. Moreover, it is essential to recognise that a High Court does not possess jurisdiction to consider a writ petition for a candidate whose designated paper has been denied by the returning officer, as this matter pertains to the electoral process and is regulated by Article 329(b) of the Constitution. The suitable line of action for such a candidate is to submit an election petition after termination of the election.³⁹

In essence, evolution of the electoral dispute resolution mechanism in India reflects a conscious effort to balance the principles of judicial independence and expeditious resolution of disputes. The transition from a three-tier to a two-tier system underscores the imperative of efficiency in addressing electoral grievances while preserving the sanctity of the electoral process. By vesting High Courts with the authority to adjudicate election petitions directly, the legal framework aims to ensure accessibility and promptness in the resolution of election disputes, thereby upholding the democratic principles of transparency and fairness.⁴⁰

The delineation of the jurisdiction of courts in electoral matters is necessary for maintaining the integrity of the electoral process and safeguarding democratic rights of citizens. While judicial intervention is essential for upholding constitutional principles, it must be exercised judiciously to avoid unduly impeding the electoral process. The two-tier system of adjudication strikes a delicate balance between judicial oversight and expeditious resolution, thereby facilitating the effective functioning of democracy in India.⁴¹

³⁸ Diamond, Larry. "Elections without democracy: Thinking about hybrid regimes." *Journal of democracy* 13, no. 2 (2002): 21-35.

³⁹ Manikanta, S. "Evaluating The Impact Of Electoral Design On Democratic Representation: A Study Of Simultaneous Elections In India." PhD diss., National Law School Of India University, 2024.

⁴⁰ Dalal, Rajbir Singh. "INDIAN DEMOCRACY: AN EVALUATION FROM ELECTORAL ASPECTS." *The Indian Journal of Political Science* 76, no. 4 (2015): 927-932.

⁴¹ Ponnuswami case and also Sri Subrata Chatterji, AIR 1983 Cal. 436.

GLOBAL PERSPEVTIVE ON ENSURING ELECTORAL EFFICACY

Many a country at the global level have also recognised the need of ensuring the efficacy of electoral process whether it is the exercise of right to vote, execution of code of conduct, or any other electoral reform. every democratic country responsibly maintains the national election legislation so that the citizens are able to take part in the nation building efficiently. however, the system in other countries is quite harsh in terms of ensuring the maximum voting. for e.g.- Belgium, Britain, Brazil, Bolivia, Peru, Argentina, Cyprus, Singapore, Australia, etc. there are total 33 countries where voting is compulsory and if any one doesn't turn out to vote than they may attract penalty as its consequence. If a person doesn't vote in Belgium, then he is liable to pay a fine of handsome amount as its penalty. in brazil the passport gets cancelled in the event of absence at the polling booth. the salary or wages of a person are liable to be refund back by the citizens in Bolivia if they fail to vote. in Peru, Singapore and Greece, certain privileges are taken back if the citizen fails to cast the vote. all such provisions reflect a strict compliance of the laws. Whereas in india no such compulsion is being imposed on the citizens as they are at liberty to abstain from voting which needs to be regulated along with that efficient execution of code of conduct shall also be made so that the democratic spirit is enhanced.

CONCLUSION

The electoral process is the cornerstone of a democratic society, and in the context of India, it exemplifies the ethics of secularism, inclusivity and equality are sanctified in the Constitution. From the adoption of universal adult suffrage to the meticulous delineation of constituencies and the conduction of honest elections, India has demonstrated an unwavering commitment to democratic ideals. The constitutional provisions, legislative frameworks, and judicial oversight collectively ensure that the electoral process upholds the principles of justice, liberty, and equality. Key legislative enactments, such as the Representation of the People Acts of 1950 and 1951 and the Delimitation Commission Act", have provided a robust foundation for the seamless execution of elections. These laws ensure proportional representation, maintain electoral rolls with integrity, and curb practices that compromise the sanctity of elections. Furthermore, the judiciary plays a crucial role in safeguarding the electoral purpose by enforcing constitutional mandates while exercising restraint during the election period to prevent disruptions.

Election Commission of India, empowered by Article 324, has been instrumental in implementing reforms and ensuring transparency in electoral procedures. Its directives, while non-legislative, provide the necessary operational guidance for conducting elections efficiently. The judiciary's interpretation of constitutional provisions, particularly Article 329, underscores the need to address election disputes without compromising the timeline or righteousness of the elective process. India's electoral journey, from challenges of post-independence nation-building to becoming largest democracy of the world, stands as evidence to the endurance of its democratic structures. By ensuring objective and even-handed elections, the Indian electoral arrangement not only reflects the aspirations of its people but also serves as a model for other democracies. As challenges evolve, the strength of this framework lies in its ability to adapt while remaining rooted in constitutional principles.

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