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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**ISSUES AND CHALLENGES BEFORE ELECTION COMMISSION OF INDIA**- Raghav Sharma<sup>1</sup>**INTRODUCTION**

The absence of free and fair elections has long been one of the most important issues that has plagued the biggest democracy in the world. Because of this, there is now a crisis in competitive and healthy political competition, which has produced a breeding ground for a variety of unethical practises including corruption, manipulation of voting rights, and a crisis in healthy political competition. Instead, the public exhibition of force is given the primary focus of attention in this scenario. In spite of the judgements of the Supreme Court and the severe standards of the Election Commission, the only option that would protect the dwindling state of democracy in India is for there to be revisions<sup>2</sup>. The premise of "Equal Political Rights," which is elevated to a substantially higher tier than social and economic rights, enshrines the idea that free and fair justice is an inalienable human right and should be protected as such. As a result of having the same access to voting as everyone else, citizens will be more motivated to work toward achieving economic and social equality, which will be a byproduct of good governance itself. In order to gain the right to be referred to as great, every great nation has first empowered its own people through the use of the Universal Adult Franchise system. This is because the principle of

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<sup>2</sup> CHAKRAVARTY, NIKHIL. "Indian Democracy: REFLECTIONS AND CHALLENGES." *World Affairs: The Journal of International Issues*, vol. 1, no. 2, 1997, pp. 80–90. JSTOR, <http://www.jstor.org/stable/45063705>. Accessed 2 Jan. 2023.

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one man, one vote describes how a worldwide mature licence is the source of a healthy democracy.

## ISSUES AND CHALLENGES

The Election Commission of India convened a meeting of the Multi-Department Committee on Election Intelligence on March 15, 2019, in New Delhi. The committee is comprised of representatives of the heads of tax boards, regulation implementation organisations, Central paramilitary forces, and economic organisations. The purpose of the meeting was to review the measures that are being taken to check abuse of money power for the purpose of influencing voters. In the course of the discussion, the Chief Election Commissioner made the following statement: "Conducting clean elections is currently one of the largest difficulties in our democracy given the common abuse of money power, particularly when it manifests in inducement of voters." According to the Commission's statement, "The spending monitoring mechanism with its two thrust areas of maintaining pathway of the legal expenses paid by candidates and political parties for movements guaranteeing that there was no illicit use of cash and other items for purchasing of votes was crucial to ensuring clean elections." The two primary focuses are on ensuring that there was no illegal use of cash or other items for the purpose of purchasing votes and maintaining a trail of the legal costs that candidates and political parties paid in the process of moving their campaigns<sup>3</sup>.

When it comes to running fair and impartial elections, the Election Commission faces a wide variety of obstacles and difficulties. Both the Indian Penal Code of 1860 and the Representation of the People Act of 1951 detail the electoral offences that might be committed in their respective years. All of these are connected to the stage of actually running the elections. In addition, there is the possibility of committing a few felonies throughout the process of planning, reconsidering, or altering the voter registration list.

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<sup>3</sup> Kumar, Sunil. "IMPACT OF 2014 LOK-SABHA ELECTION RESULTS ON THE COALITION POLITICS IN INDIA." *The Indian Journal of Political Science*, vol. 76, no. 4, 2015, pp. 938–43. JSTOR, <https://www.jstor.org/stable/26575633>. Accessed 2 Jan. 2023.

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Under the Representation of the People Act from 1950, each one of them must comply with certain requirements. Chapter IXA of the Indian Penal Code has a section titled "Offences Relating to Elections," which is where the election-related offences that are punishable by the IPC are detailed. This chapter was added to that Code more than 85 years ago, in 1920, by the Indian Elections Offences and Inquiries, Act 1920. At the time, the concept of elections was being introduced in a limited way in some of the statutory organisations that fell under the purview of the Government of India Act 1919. The severity of the punishment, particularly the amount of the fine, that is required under certain of the provisions of the chapter may be deemed exceedingly low in the perspective of the current scenario; however, the same severity of punishment was regarded as quite an effective deterrent during that time period<sup>4</sup>. It is generally agreed upon that the punitive provisions for these electoral offences require a new look in order to match the expectations of the current electorate, and that certain of these offences require a harsher punishment than is currently in place.

### **The challenge of accountability**

There is a fierce debate on the advantages and limitations of the extra-legal regulations I have discussed until now. This debate has focused on regulations that alter choice architecture based on the principles of behavioural economics. Its substance though applies broadly to any ANN regulation. The advocates of ANN regulations have insisted that they are attractive because they involve considerably lesser coercion compared to ordinary legal measures. The absence of legal sanctions leaves open more space for individual choice. Scholars like Thaler and Sunstein have defended ANN as forms of soft paternalism, which display greater appreciations for freedom while steering the subjects of regulation towards a better consideration and deliberation of their choices. Others have argued that ANN regulations, especially architectural regulations, are more effective. They are 'self executing' since they do not depend on the constant intervention of the implementing

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<sup>4</sup> Arumugam, T. "INDIAN ELECTORAL POLITICS A CRITICAL ANALYSIS." *The Indian Journal of Political Science*, vol. 76, no. 3, 2015, pp. 389–91. JSTOR, <https://www.jstor.org/stable/26534852>. Accessed 2 Jan. 2023.

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authorities. Consequently, they are less susceptible to implementation-related blockages. Such regulations may arguably be more uniform and effective.

The critics of ANN, on the other hand, have pointed out the severe limitations of such regulations. First, just because behaviour is not penalized does not mean that the state is not exercising control over its citizens. The contention is that ANN regulations may reduce coercion in some cases, but it is coercion nevertheless. The effectiveness of these regulations may further heighten this concern. This makes ANN regulations normatively risky, and costly for individual freedom. While direct legal regulation makes compliance a choice, architecture may make compliance automatic. In some cases, such regulations may pose a more serious challenge for privacy interests. ANN can quite easily amount to unacceptable forms of manipulation, thereby undermining autonomy. And since ANN regulations are cost efficient, the regulators may adopt them more pervasively than legal sanctions. The reduced costs for government control may further heighten the risks of such regulation.

The third concern with ANN regulations is most relevant to my argument. Regulators using ANN often regulate without the knowledge of the subjects of regulation. One of the immediate consequences of this is that since state control is hidden, it may escape public and political oversight. Glaser, a prominent critic of soft paternalism notes,

Hard paternalism generally involves measurable instruments. The public can observe the size of sin taxes and voters can tell that certain activities have been outlawed. Rules can be set in advance about how far governments can go in pursuing their policies of hard paternalism. Effective soft paternalism must be situation specific and creative in the language of its message. This fact makes soft paternalism intrinsically difficult to control and means that it is, at least on these grounds, more subject to abuse than hard paternalism. It is hard to limit soft paternalism because it is so difficult to determine whether a politician or public statement violated linguistic boundaries.

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The concern here is that the ANN regulations are both pervasive and potentially insidious. Regulators can influence far-reaching behavioural changes, without resorting to ordinary legal procedures or parliamentary debate. Thus, there is a lack of deliberative input in framing and implementing ANN regulations. Regulators at various levels of government can adopt, alter and proliferate such regulations with little costs, considerably strengthening them. Since ANN regulations are flexible, regulators can easily introduce subtle or dramatic changes that may considerably shape behaviour. And there is always a possibility of regulators making errors. All these factors indicate a serious deficit of transparency and accountability. These concerns are further aggravated by the fact that ANN regulations can be and have often been used to undermine the substantive goals of law. For instance, as Lessig points out, local government in the United States managed to upstage the ruling against discriminatory covenants in *Shelley v Kramer* through architectural means. So-called informal mechanisms of building highways and railroads, and demarcating zoning indirectly maintained segregation.

The proponents of ANN regulations have often conceded this challenge. Sunstein for instance accepts that nudges do “raise special concerns” even when they are not “secret or covert.” He advocates that since choice architecture is inevitable, democratic governments – through transparent means – are best authorized to regulate in this manner. The regulators according to him must face “a burden of justification.” ANN regulations must be subject to public scrutiny. But their scale, complexity and subtlety – in terms of framing and consequences – are inherent practical constraints on transparency and deliberation. The fact that such regulations are hidden may make it difficult for individuals to identify manipulation and challenge it legally and politically. It is difficult for law to circumscribe legal boundaries for ANN, as they are informal, adaptive, flexible and personalized. Operational accountability – through judicial review, for instance – is also difficult. Courts cannot treat ANN as ordinary coercive laws. Hence, as Alemanno and Spina point out, “unless there is a full understanding of the social context and of their de facto consequences, they tend to escape the formal judicial scrutiny applicable to the binding

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acts of the executive power.” For this reason, they advocate that courts develop “an evidence-based judicial reflex, by promoting a culture proof, evidence and rationality in adjudicating...” This is not an easy task because the legal effects of ANN are disguised. The opacity of ANN regulations appears to be endemic to their very nature.

Perhaps because of this, ANN advocates have defended the legitimacy of such regulations not on operational accountability but to the merit of their outcomes. Thaler and Sunstein’s main response to the objections is that “the evaluation of nudges depends on their effects—on whether they hurt people or help them.” It follows that the legitimacy of ANN depends on the regulator’s level of expertise. By extension, it would depend on the regulator’s ability – competence and independence – to shape behaviour through extra-legal modalities.

This discussion has important consequences for our evaluation of powerful EMBs like the ECI. It reframes and brings precision to the concerns raised by numerous scholars of Indian elections that the ECI expanding functions threaten its credibility. As I have attempted to argue, the issue is not as much about the repertoire of functions, but the character of the exercise of power. The ECI has expanded its functions not merely in the domain of ordinary administrative action.<sup>121</sup> It has increasingly come to play a profound role in determining the behaviour of voters and political actors through extra-legal regulations. By their very nature, such regulations are susceptible to accountability deficit. The extent, depth and quality of the ECI’s architectural regulation places practical limits to political or legal operational accountability. This may also partly explain why worries about the ECI’s fair-handedness – especially among India’s political opposition – have been perennial. The political and often high-pitched debate about the ECI’s fairness is very much part of the institution’s history. More recently, political actors have criticized the ECI’s implementation of the Code and scheduling of elections. Political critics have suggested that the ECI is under government’s pressure. My account suggests that these concerns are bound to arise because the ECI exercises functions that are granular, discretionary, subtle, and constitutive as forms of regulations.

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## FUNCTIONS AND POWERS OF ECI

The following is a list of the primary responsibilities of the ECI:

- It is generally agreed that the Election Commission of India is responsible for ensuring that elections are conducted fairly.
- Every time there is an election, it distributes the Model Code of Conduct to political parties and candidates so that the integrity of democratic processes can be preserved.
- It is responsible for the regulation of political parties as well as the registration of those parties so that they are eligible to compete in elections.
- It monitors the allowed limits of campaign expenditures per candidate and publishes those limits for all of the political parties.
- In order to qualify for tax breaks on contributions, political parties are required to provide the ECI with annual reports detailing their activities.
- It is a requirement that all political parties submit their audited financial reports on a consistent basis.

The following is a list of some of the powers that are held by the ECI:

- If the Commission believes that hiding the results of public opinion polls would be beneficial to the cause of democracy, it has the authority to do so.
- After the elections, the Commission has the ability to make recommendations for the disqualification of members if it believes that those members have violated certain guidelines.
- The Supreme Court and the High Courts will consult with the Commission in the event that it is determined that a candidate engaged in corrupt practises during the election.
- Candidates who miss the deadline to submit their election expense accounts face the possibility of being suspended by the Commission.

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## CRITICISM OF ELECTION COMMISSION OF INDIA

It has been questioned whether or not the Election Commission is effective, and it has frequently been subjected to intense criticism for failing to take action against political parties that violated poll code and misused official machinery. Despite this, there have been questions raised about the effectiveness of the Election Commission. The "financial LakshmanRekha" is not strictly followed by political parties, despite the fact that the polling panel places a cap on the amount that can be spent on polling. Corruption on a massive scale was a direct result, which did poison the political environment<sup>5</sup>.

In many instances, the Commission may not have the power to effectively impose discipline throughout the election processes. Because the model code of behaviour is not supported by any legislation, it is not subject to stringent enforcement. The Commission has been criticised for its inability to put an end to corruption in the electoral process, which has led to the criticism.

## CONCLUSION

The Election Commission has, over the course of many years, successfully implemented a wide range of commendable electoral reforms, with the goals of bolstering democracy and increasing the independence of elections. These reforms square measure quite adequate and admirable. Despite this, our system is still riddled with a variety of corrupting influences. In order to secure voters' support, political parties will resort to dishonest tactics and practises. These kinds of ills encourage the anti-social elements to participate in the electoral competition.

While the Election Commission has issued multiple studies highlighting the election system's shortcomings and numerous formal and informal group talks have attempted to come up with helpful suggestions, the problems that persist are just as important and tough as they were before.

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<sup>5</sup> Saikia, Sanjib, and Ankita Baruah. "DEEPENING DEMOCRACY IN INDIA BY BUILDING GENDER EQUALITY IN POLITICS." *The Indian Journal of Political Science*, vol. 73, no. 2, 2012, pp. 273–82. JSTOR, <http://www.jstor.org/stable/41856590>. Accessed 2 Jan. 2023.

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There are a great number of factors that contribute to the widespread prevalence of corrupt practises in the electoral process in India. First, the development of elections that are based on the universal adult franchise is something that occurred after independence. As a result, democracy in India has not yet reached the same level of maturity as it has in countries like the United Kingdom and the United States, which both have a fairly long history of democratic government and where the democratic process has reached maturity through the use of tried-and-true methods that have been practised for centuries.

Second, a major barrier to political awareness in India is the widespread prevalence of both illiteracy and ignorance.

Thirdly, because India is not yet free from the hangover of the caste-based closed society, communal and religious factors have a tendency to dominate over social and political issues. This is because caste is still a factor in Indian society. There is a possibility that linguistic and local concerns are also influencing the voter's choice of political affiliation, which is another factor that is significant.

The level of poverty that people live in and the underdeveloped nature of the villages themselves make up the fourth factor that contributes to the increased likelihood of electoral fraud.

Fifthly, because remnants of feudalism can still be found in Indian society today.

Sixthly, the nexus between the political leadership and the bureaucracy, especially the police and official on election duty, may result in the exploitation of the official apparatus for the interest of a certain political party or a candidate.

It is obvious that the electoral process, which is the foundation of a democratic system, will soon lose its legitimacy if stringent corrective measures are not taken in the form of electoral law reform. The corrupt practises at issue here primarily involve the abuse of state power, money power, and muscle power.

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It is essential to provide the Election Commission with more power in order to put an end to the unfair practises that have been observed. The committee is doing everything in its power to eradicate the epidemic of unethical practises. It is hopeful that the functioning of democracy would be strengthened through the use of elections that are free and honest. For the purpose of preserving the excellent reputation of Indian elections, the government has consistently developed more effective procedures and is making use of cutting-edge scientific technologies.

Nevertheless, the extent to which political parties are willing to adhere to and carry out such reforms will largely determine whether or not the reforms are successful. This is the one issue, above all others, that will be decisive in determining the success of the changes. The only way to successfully drive through reforms is to have a free and informed press and public. Corruption will disappear when citizens cast ballots in accordance with their moral principles and lawbreakers face consequences. In addition, this will go a long way toward making it possible for democracy to prosper and develop to its full potential.

The Election Code of Conduct Model Code of Conduct has now been proposed for incorporation into the election law as a component of it by the Law Commission of India. The Law Commission of India has provided us with one of their most insightful recommendations here. The model code of conduct has not been included into the election law in India as of yet; once this is done, the Election Commission will be able to efficiently run the election<sup>6</sup>.

**The following are the electoral reforms suggested to Election Commission of India:**

- There is a pressing need to raise the candidates' refundable security deposit.
- The criminalization of political activity ought to be eradicated.

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<sup>6</sup> Devanesan, V. Vijay, and P. Kingsley Alfred Chandrasekaran. "E-DEMOCRACY IN INDIA: IMPLICATIONS AND IMPERATIVES." *The Indian Journal of Political Science*, vol. 72, no. 2, 2011, pp. 395–401. JSTOR, <http://www.jstor.org/stable/42761424>. Accessed 2 Jan. 2023.

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- There will be a limit placed on the number of seats from which an individual can run.
- A restriction on the use of exit polls and opinion surveys at the appropriate time.
- The appointment of appellate authorities in districts to hear challenges to decisions made by Electoral Registration Officers It is imperative that expedited courts and tribunals be established so that issues can be resolved as quickly as possible.
- The obligatory keeping of financial records by political parties, as well as the auditing of such records by organisations designated by the electoral commission.
- The broadcasting of political commercials and advertisements supported by the government on television and cable networks should be subject to regulation. Additionally, advertisements for surrogate children in print media ought to be banned.
- The make-up of the election commission, as well as the establishment of an impartial secretariat for the commission.
- The costs of the electoral commission will be regarded as fees and assessed accordingly.
- On the eve of elections, there should be a blanket ban on transferring election officials.
- There should be direct elections for the positions of president, prime minister, and cabinet minister.
- A post-entry training programme ought to be planned for those who are successful in the competition.
- If a person is facing criminal accusations, they should not be permitted to run for office in that capacity.
- NOTA votes ought to be counted.

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- There is potential for the incorporation of both mandatory voting and voting conducted online.

It is crucial that the Parliament and those in charge of the country's planning implement the study's key recommendations as soon as possible in order to advance and enhance the operation of our democratic system through free and fair elections.

As a consequence, it is accurate to assert that "the existing Election regulations and amendments made are not sufficient to maintain the core of democratic process."

Therefore, the aforementioned proposals will significantly modify the voting process in India toward the betterment, but India being a big country with a multi-religious, multi-cultural, multi-lingual, and multi-ethnic makeup, there is always a continuing need for newer and newer electoral reforms so as to meet its dynamic character and match the pace with modernising time tide.

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