

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

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Ensuring Independence of ECI and Need for Electoral Reforms in the Light of the Challenges Faced by ECI in Ensuring Free and Fair Elections

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ABSTRACT

This research aims to articulate the pressing need for electoral reforms in India, with specific reference to the challenges faced by Election Commission of India (ECI) in ensuring that elections remain free and fair. It explores various aspects related to electoral reforms. The research begins with an opening part highlighting the significance of democratic systems based on free and fair election scenarios, then moves on to advocate a centralised independent ECI, examines existing composition of ECI, responsibilities or duties of ECI as well as some other major issues in election process such as funding of election and criminalization in politics. After examining the independence of ECI in the light of appointment process of election commissioners and discussing the Supreme court verdict on the appointment process it concludes with an evaluation of the controversial scheme for electoral bonds designed by government and viewed as unconstitutional by Supreme Court. Throughout this, the paper aims to provide a comprehensive understanding of why there is a dire need for electoral reforms in India through extensive analysis of these subject matters. This will enable it absorb information that can help strengthen its electoral system and preserve democracy's key attribute which is holding free & fair elections.

Keywords: Electoral Reforms, Free & Fair Elections, Transparency.

I. INTRODUCTION

India holds the singular honor of being the world's biggest democracy. Elections are the most consequential and essential in any democratic government. Election is referred to as a method of gaining power over others, while politics is considered as an art of persuading people to do what you want them to do. Democracy can only be sustained by the belief that elections are fair, free, and unaffected by outside forces; that is, that they are useful tools for determining

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the true and expressed will of the people, and not just ceremonial events designed to create the appearance of a public opinion. Democracy cannot hold without freedom and fairness during elections. Elections are conducted under less than ideal circumstances due to high costs associated with contesting for a post and use of muscle power in order to win. We need electoral reforms urgently in this country so that at least democracy may continue even if not perfect in its entirety².

One way of describing democracy is “a form of government in which supreme power is vested in the people and exercised by them or by their elected agents under a free electoral system”. The common people in India do not seem to feel that they are really exercising their authority either directly or through their elected representatives given the level of disillusionment, apathy, and cynicism about politics and electoral processes in the country. The graveness and spread of these negative and unhealthy emotions as well as need to protect functional democracy of a nation underline two major reasons for “why we need electoral reforms³”.

(A) Election commission of India: A case for an independent and centralised election commission of India.

There cannot be election integrity and freedom until such time when the cornerstone of democracy- the election administration – gets isolated from “party Government.” It was necessary for the framers of Indian Constitution to create an autonomous apparatus for conducting elections. For this purpose, an independent Election Commission had to be established in the country, complete with its vast paraphernalia. Free and fair elections of peoples’ representatives at all levels would be ensured by such a election commission. To achieve this cherished goal was the main motivation behind the establishment of the Election Commission of India under Article 324⁴.

The commission is an all-India organization that supervises the parliamentary, president and vice-presidential elections as well as those to states’ legislatures. For instance, if there are mixed populations within some states such as those comprising indigenous communities alongside others coming from outsides and of different races or languages or cultures, then it would be possible that the others coming from outside may be discriminated by the state governments. The right to vote, which is the very essence of democracy can be denied to them

² Kaur, Amandeep. “ISSUES OF REFORM IN ELECTORAL POLITICS OF INDIA: An Analytical.” *The Indian Journal of Political Science*, vol. 73, no. 1, 2012, pp. 167–74. JSTOR.

³ Jagdeep S. Chhokar. “Electoral Reforms: Need for Citizens’ Involvement.” *Economic and Political Weekly*, vol. 36, no. 42, 2001, pp. 3977–80. JSTOR.

⁴ FADIA, B. L. “REFORMING THE ELECTION COMMISSION.” *The Indian Journal of Political Science*, vol. 53, no. 1, 1992, pp. 78–88. JSTOR.

by keeping non-residents off voters' roll through manipulation of the election process by a government at the state level. Therefore, it was decided that a single, central institution in charge of the whole electoral process would handle all aspects of voting during elections as this could prevent discrimination from happening to any group. This kind of institution cannot be influenced by local demands.

As Dr. Ambedkar stated, Article 324 "proposed to centralise the election machinery in the hands of a single commission, to be assisted by regional Commissioners, working under the supervision, direction and control of the Election Commission and not under the control of the state governor as envisaged earlier." Undoubtedly, it was a significant development. The centralization of election administration was done "to prevent injustice being done by the provincial Governments to people other than those who belonged to the provinces racially, linguistically, and culturally."⁵

II. THE COMPOSITION OF THE ELECTION COMMISSION

The Election Commission of India is comprised of the Chief Election Commissioner and other elected persons appointed by president under parliamentary system. The CEC serves as the chairman of the commission and has no relation with executive. They cannot be removed until they have same grounds like a judge of Supreme Court⁶. Electoral machinery is maintained at various levels by electoral Commission. The state level functionary is the Chief Electoral Officer, appointed by the Election Commission after consulting with State/UT government. His task is supported by junior, assistant or deputy chief electoral officers alongside other employees.⁷ Responsibilities for election matters at district level lies with either District Officer or Executive Officer who was given that formal position in 1966 through an amendment to Representation of People's Act 1950. In compiling and updating voters' registers, Electoral Registration Officer is helped by Assistant Electoral Registration Officers.

Election Commission appoints Returning Officer for every constituency after consulting with state government. The Returning Officer may be nominated for more than one constituency and may have assistant Returning Officers. After receiving a list of officials from the State government together with their titles, the Election Commission so designates them as to their respective seats in the assembly as well as parliament. Presiding Officer for each polling station who is responsible for actually conducting the poll is nominated by the District Election

⁵ Ibid.

⁶ M. P. Jain, *Indian Constitutional Law*, Bombay, 1987, p. 451.

⁷ J. K. Chopra, *Politics of Election Reforms in India*, New Delhi, 1989, p. 3.

Officer. The presiding officer is responsible for overseeing fair conduct and maintaining order at the voting place.

III. THE ELECTION COMMISSION'S FUNCTIONS AND POWERS

1. Demarcation of Constituencies

In 1951, during the first general elections the President was given the authority for delimiting assembly and parliamentary constituencies. The Election Commission assigned seats to each state's districts after referring to the Parliamentary Advisory Committees, and sent instructions to Chief Electoral Officers on how to make physical demarcation of boundaries. In this way, the ruling party has vested in itself virtual monopoly over the delimitation of constituencies. What mattered most was the affinity of the delimitation Commission to parliamentary advisory committees and political calculations.

This power was argued to be taken away from Parliament by Election Commission that paved the way for Delimitation Act, 1952. Therefore, Delimitation Commission comprises three members i.e. two judges appointed by the president either from Supreme Court or High Court and one ex-officio member who is Chief Election Commissioner.

2. Preparing Electoral Rolls:

Another crucial but onerous responsibility that the Election Commission has is preparing and keeping an updated list containing names of all persons entitled to vote.

3. Recognising Political Parties and Allotment of Symbols:

The Election Commission largely determines which symbols candidates and parties will use or if it recognizes a political party at all. Some symbols are reserved by commission while others are left free. For instance, only candidates supported by political parties use the reserved symbols while the rest can use the unreserved ones.

When it comes to recognizing political parties and competing claims on certain symbol for electoral purposes, that is the province of decision making by The Election Commission. In *A.P.H.L. Conference Shillong Vs. W. A. Sangma* the Supreme Court held that in resolving a dispute of this nature, for the purposes of Article 136, the Commission functions as a tribunal.

4. Scrutiny of the Nomination Papers:

All nomination documents are summarily but judicially examined by the Returning Officer, who also resolves any objections filed. Additionally, he is accountable for ensuring that all essential requirements, such as those pertaining to the election symbol, security deposit,

election agent, etc., have been fulfilled. He has the authority to reject the nomination papers if he agrees with the objection expressed by a competing candidate, or if he himself identifies any of the following reasons:

- (a) that as per Articles 84, 102, 173, and 191, the candidate is disqualified or is ineligible to hold the office;
- (b) that the Sections 33 and 34 of the Representation of the People Act, 1951 have not been followed; and
- (c) that the proposer's or candidate's signature on the nomination papers is not authentic and genuine.

5. The Conducting of the Poll:

India's election commission supervises elections with returning officer arranging polls with consent of commission; sometimes it may order re-polls. In case if during the polling or vote-counting process there is hooliganism or breakdown of law and order The commission can countermand any poll under article 324.

6. Election expenses:

The Election Commission checks the submitted election expense reports of the candidates in India. As soon as the results are announced, candidates must maintain and submit these accounts within a stipulated period. Within ten days, the Returning Officer delivers the returns and a list of candidates and their representatives to the Election Commission. It is upon candidates to ensure that the accounts are received in good time and have been properly compiled. If a candidate fails to submit their return; his name will be published in an official gazette declaring him ineligible.

IV. CRITICAL ISSUES IN ELECTORAL PROCESS

1. Election Financing:

Electioneering is a costly endeavour in any democratic government, but it is especially noteworthy in India because of the significant role it plays. Our electoral system is plagued by the destructive role that money power plays, which has a significant impact on the functioning of periodic elections. It leads to corruption in every aspect of society and is primarily responsible for the creation of the black money economy that operates in our nation at the current time. A prospective candidate in each constituency is required to spend millions of dollars on necessary election campaign expenses like as transportation, media, and other vital goods included in the campaign. During the last several years, the expenditures associated with

elections have skyrocketed beyond any reasonable boundaries. This is a direct result of the ambition of every political party to spend more money than their competitors in the race. At the time of the elections in 1952, the costs were not quite as high as they are now. Working with the intention of obtaining any kind of reward was seen as immoral by both political leaders and labourers. Now, however, the situation is different. The elections that take place in the Indian political system are getting more costly, and the gap between the costs that are expended and those that are legally authorised is growing over the course of various years. The watchers are keeping a close eye on the system that necessitates the collection of a staggeringly vast amount of money by political parties and their candidates via improper ways. The implementation of planned and mixed economies in free India, together with a massive armoury of control, regulation, licences, permits, and quotas, resulted in an immoral relationship between the electoral politics and the business community of the nation. This had the effect of providing disastrous consequences for political corruption. Despite the liberalisation of the economy that has been induced to the political system of the nation, this seems to be taking place even in the present day, with even more terrible repercussions of an overflow of black money into the corridors of political parties taking place. Elections in India are so far removed from the average citizen that only those individuals who have a significant amount of money may participate in elections as a candidate. Thus votes are no longer a representation of popular opinion.

Section 77 of The Representation of The People Act, 1951 governs Indian electoral laws and according to it every candidate shall give an account of all expenses incurred by him or on his behalf on elections. This is compliant with Section 123(6) of the Act, which establishes a cap on election expenditure and characterises excessive spending as a corrupt practice. According to Rule 90 of the Conduct of Elections Rules, 1961, a candidate may spend a maximum amount of money on elections in different States.

The President of India, after consulting the Election Commission, has the authority to revoke membership in the Parliament or State Legislatures for failure to provide an accounting of election expenses within the time frame specified by Section 77(6) of the Act, 1951. But in accordance with Section 10A of this Act, the Election Commission itself may disqualify a candidate if it determines that the candidate has not filed an account of the expenses expended in the manner and within the time frame mandated by this Act⁸.

The Supreme Court in various instances has dealt with the question of whether or not to include

⁸ Kumar, B. Venkatesh. "Critical Issues in Electoral Reforms." *The Indian Journal of Political Science*, vol. 63, no. 1, 2002, pp. 73–88. *JSTOR*.

expenses, within Section 123 clause (6) read with Section 77 of the RP Act, 1951, incurred by a candidate for his election or by a political party on behalf of its candidate. The Supreme Court in the famous case *Kanwarlal Gupta v. Amarnath Chawla* (1975 (3) SCC 646) held that expenditure of a political party must be added to the accounts of the candidate. Consequently, Representation of People Act, 1951 was amended to make the decision made in 1975 invalid. A new Explanation I was added to Section 77 of the Representation of the People Act, 1951 to provide that where such unauthorised expenditure is incurred by any party or supporter in favour of any candidate contesting an election it will not be deemed as part of the total amount referred to in sub-clause (a) but shall be disregarded while determining whether there has been such contravention.⁹

There was no special provision in the Indian Companies Act regarding corporate financing for company donations prior to 1969. In 1969, it became law that businesses could not give money to political campaigns. Afterwards, Section 293 was amended in 1985 to allow companies to make donation up to a maximum of 5% of average profits made during the preceding three years to charitable and other such funds. Instead, this has resulted in nepotism and loss of transparency. It aimed at curbing parallel black marketing in the business-politics connectivities. The Election Commission does not support a complete ban on corporate contributions to political parties.

Democracy in contemporary India requires the existence of an institutionalized election financing system, which will help to improve budgetary monitoring and implementation. This should be provided in kind whenever practical for better monitoring and implementation. It should also be enough because otherwise it would negate its purpose. Regardless of whether what little money comes from the state, it will certainly ensure that parties have funds to support their democratic operations.

2. Criminalization of Politics:

The parliament has to immediately act in order to respond to the urgent concern of political criminalization. The Election Commission revealed, in August 1997, that about forty members of parliament were being charged and tried for criminal offenses at that time. To counter this, the Commission proposed several steps including that political parties should have oaths assuring them not to nominate anyone who has been convicted before in regards to crimes where the punishment is less than five years in prison even though it is a bailable offence. The Commission also recommended denying recognition and registration of such political parties

⁹ Ibid.

which after according them an opportunity for being heard field candidates with convicts serving jail terms of five years and above as contestants in parliamentary or assembly elections. On a nomination form there will be a section asking about whether this candidate had ever been sentenced into any imprisonment before, whether he/she possesses any current pending criminal cases against him/her or her or whether he/she has ever face any charges on his/her own part. A false statement would annul an election; the offender can be imprisoned for up to five years, fined or both¹⁰.

The Election Commission issued an order on 28th August, 1997, inspite of an appeal being filed in the higher court, barring convicted persons from contesting. The Commission referred to judgments of High Courts in regard to Section 8 of the Representation of People's Act as well as Article 324 of the Constitution. It directed Chief Electoral Officers, States and Union Territories to disqualify candidates under Section 8 of Representation of People's Act beginning on the day conviction was done. The Commission recommended changes in election regulations following its findings to reduce criminalization. In particular, it proposed that any person convicted for more than half a year wouldn't be eligible for election for six years or more. By combining Sections 8(1), 8(2), and 8(3) of the Act, it would be required that anybody found guilty by a court of law and given a sentence of six months or more in jail be prohibited from running for office for a length of time equal to the term plus an extra six years¹¹.

(A) Supreme Court's Constitution Bench Verdict on ECI Appointments : A Judicial Intervention for ensuring Independence of Election Commission of India.

Background: In a public interest lawsuit (PIL) filed in 2015, Anoop Baranwal argued that previous administrations had failed to establish a "fair, just, and transparent process" for the selection of Election Commissioners.

The petitioner argued that appointments by the president were to be made only on the advice of the Executive, giving the party in power a considerable discretion to choose a candidate whose loyalty is assured. As a result, the selection process is vulnerable to prejudice and manipulation.

Opposing the appeal, the Centre said that there had been no instances of the Chief Election Commissioner (CEC) abusing their authority up to this point. The Centre claims that Election Commissioners are appointed to the highest election body "consciously and purposefully" by the State's executive branch¹².

¹⁰ Ibid.

¹¹ Ibid.

¹² ClearIAS Team, "Supreme Court Verdict on ECI Appointments - ClearIAS" (ClearIAS, October 6, 2023).

This discontent prompted the bench, which was then chaired by India's Chief Justice, Ranjan Gogoi, to send the case in October 2018 to a five-judge Constitution Bench for a comprehensive review¹³.

(B) Issue raised before the Constitution Bench and the prayer thereof :

The current procedure for appointing members of the ECI was contested on the grounds that it is manifestly arbitrary and in conflict with Article 324(2). An independent Election Commission is essential for a democracy to function properly since it upholds the Rule of Law and conducts free and fair elections.¹⁴

The following prayers were made:

The Prime minister, Speaker of the Lok Sabha, the leader of the opposition, the Chief Justice of India, and a distinguished jurist should form the composition of the Election Commission Committee for appointing members of ECI. The requirements should include Indian citizenship, having completed between 45 and 61 years of age, having perfect honesty, having a high moral standard, and not being a member of any political party. An independent Secretariat should be formed, and the Election Commissioners must be unchangeable. The Election Commission should levy non-votable expenses to the Consolidated Fund of India, with its expenses being equal to those of the UPSC, Supreme Court, and CAG¹⁵.

(C) Vacuum in the Constitution's Article 324:

After assessing the Constituent Assembly's deliberations, the Court concludes that they strongly oppose giving the government exclusive authority over appointments. Through its several subcommittees, the Assembly addressed the possibility of political appointments arising from this approach and thoroughly discussed the institutional means of maintaining the appointments based independence of the Commission. In light of their inability to reach a consensus on a specific plan of action, they implemented the executive-centric appointment system as a temporary measure and urged Parliament to enact laws on appointments in the future.

Nonetheless, Parliament has not yet passed a legislation pertaining to appointments, therefore they are being made under an interim procedure¹⁶.

¹³ Ibid.

¹⁴ Prachi Bhardwaj, "An Independent Election Commission of India as Envisioned by Supreme Court's Constitution Bench: Breakdown of the 378-Pages Long Verdict | SCC Times" (SCC Times, July 10, 2023).

¹⁵ Ibid.

¹⁶ Kartik Kalra | National Law School of India U., IN. "Explainer: How India's Supreme Court Is Moving to Increase the Election Commission's Independence." Jurist, - JURIST - Features - Legal News & Commentary, 13 Mar. 2023.

The Court finds a vacuum in this situation: “...*The vacuum in the case of Article 324 (2) is the absence of the law which Parliament was contemplated to enact.*¹⁷”

Citing other instances when it exercised authority over the appointment of a Director for a prominent investigative body, the Court asserts its competence to intervene and impose regulations in situations where there is a vacuum in the constitutional scheme. The Court notes that there is a structural vacuum in the present case since neither party in power wants to cede its monopoly on nominations to an body that supposed to oversee them.

The Court also provides a close-knit legal rationale for its intervention in addition to its moral reasons. It was noted that the Commission protects citizens' freedom of expression, right to vote, and equitable treatment. It undermines people' rights to equality and free expression if its structural inadequacy prevents it from upholding electoral integrity. Not only is this failing the Commission's responsibility, but it also goes against core constitutional principles like equality, secularism, and the rule of law. Thus, the Court found that this judgement satisfies the constitutional obligation to ensure the Election Commission's independence.¹⁸

The question of whether election commissioners should have the same protections as the chief election commissioner:

The Supreme Court dismissed a proposal of extending the same protection from dismissal that is given to Chief Election Commissioner to Election Commissioners arguing that it would afford them an additional safeguards as in cases of removal of other election commissioners there is already a requirement of the Chief Election Commissioner's recommendation.¹⁹

The Court suggested that Parliament, in its role as a constituent body, should assess the feasibility of extending the same protection to other Election Commissioners. This would help in safeguarding their independence and ensuring their effectiveness, taking into account the volume of work and the necessity of having a multi-Member team²⁰.

The question of charging expenses on the Consolidated Fund of India and maintaining an independent secretariat:

The Court noted that the difficult and admirable duty of preventing any kind of subordination or interference from the Executive is to be ensured by the Election Commission of India. However, because it is in the realm of policy, the Court declined to issue directives but made

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Supra note 11.

²⁰ Supra note 11.

an appeal to the Union of India that she should give the much-needed changes a serious consideration. It is imperative to establish a permanent Secretariat and to charge the associated expenses to the Consolidated Fund of India²¹.

Thus the 5-judge Constitution Bench has resolved the dispute regarding the selection of Election Commission of India (ECI) members. The court held that the Chief Election Commissioner and Election Commissioners will be appointed by the President on the recommendation of a committee comprised of the following three members:

1. the Prime Minister of India;
2. the leader of the opposition in the Lok Sabha, or in case where there can not be any such leader, the leader of the biggest party in the opposition, and
3. The Chief Justice of India.

However, the Supreme court unequivocally said that this standard would apply until Parliament passes a new statute.

(D) The Importance of the Judgement :

It highlights that the Chief Election Commissioner's (CEC) independence is essential to a fair and impartial election process. In order to guarantee that elections are free, fair, and transparent, the CEC is in charge of monitoring how elections are conducted in a nation. The CEC's capacity to perform its tasks impartially may be jeopardised if it lacks independence from outside forces like political influence or interference. Numerous unfavourable outcomes, including voter suppression, skewed election outcomes, and a decline in public trust in the political system, may follow from this²².

It is crucial to guarantee that the CEC is free from undue influence or intervention and that they are given the authority to do their tasks without fear or favour in order to avoid such situations. This may be accomplished by a number of strategies, including offering the CEC operational autonomy, legal safeguards, and clear, nonpartisan appointment procedures.

V. THE ELECTORAL BONDS SCHEME AND THE SUPREME COURT'S JUDGEMENT DECLARING IT UNCONSTITUTIONAL THROUGH THE LENS OF TRANSPARENCY

An electoral bond, similar to a promissory note, is a kind of bearer instrument that is payable to the bearer upon demand. Unlike a promissory note, an electoral bond lacks any information

²¹ Supra note 11

²² Supra note 9

about the payer and payee, ensuring complete anonymity and secrecy for the parties involved.²³ Initially, parties had to report any donations over ₹20,000 and specify whether they originated from corporate or individual donors in accordance with Section 29C of the Representation of the People Act, 1951. However, the Finance Act of 2017 changed this provision by adding an exception that said contributions made through electoral bonds would not be subject to this obligation.²⁴ Subsequently, a notification by the Ministry of Finance on January 2, 2018 inaugurated the Electoral Bond Scheme, 2018.

(A) The Electoral Bond Scheme operates in the following manner²⁵:

1. Bond Purchase: During specific times, individuals and businesses may purchase electoral bonds in values of Rs 1,000, Rs 10,000, Rs 1,00,000, Rs10lakh and Rs100crore from some branches of SBI.
2. Donor Anonymity: Other than SBI which must keep a record of the buyer's KYC information the names are kept secret.
3. Donation Process: These bonds can be donated to political parties satisfying conditions given in Section 29A of RPA. They can be made through e-mode via demand draft or cheque.
4. Encashment: Within a period not exceeding fifteen days after issuance of these bonds; political parties may incash them using any bank account they have chosen.
5. Transparency Measures: The Election Commission of India (ECI) maintains records for all electoral bond transactions for ensuring transparency and accountability in political fund raising.
6. Tax incentives: Donations made through electoral bonds qualify for tax benefits under Sections 80GG and 80GGB of the Income Tax Act.

The Electoral Bond Scheme was introduced to enhance transparency in political fundraising by ensuring contributions are channelized through proper banking system, thereby reducing possibilities of intimidation or backlash on contributors. Nevertheless, these bonds have been criticized for their secrecy that has prompted a debate on the impact of such instruments on election integrity and voter's right to information.

²³ "Constitutionality of the Electoral Bond Scheme - Supreme Court Observer" (*Supreme Court Observer*, March 15, 2024).

²⁴ Aaratrika Bhaumik, "Electoral Bonds SC Verdict: Why Did the Supreme Court Strike down the Electoral Bonds Scheme? | Explained" (*The Hindu*, February 17, 2024).

²⁵ *Supra* note12.

(B) Election Commission of India on the Electoral Bonds Scheme:

The Election Commission of India (ECI) submitted an affidavit objecting to the Election Bond Scheme on March 25, 2019. The affidavit made the assertion that the electoral bond scheme is incompatible with the goal of promoting transparency in political financing. Additionally, ECI said in its affidavit that it had warned the Union Government in writing on May 26, 2017, about possible "repercussions/impact on the transparency aspect of political finance/funding." ECI said that by keeping political parties' contribution records secret, they would also be prevented from revealing information concerning foreign funding. The ECI said in the affidavit that "unchecked foreign funding of political parties in India could lead to foreign companies influencing Indian policies."²⁶

(C) The ruling of the Supreme Court regarding the Election Bond Scheme:

On February 15, 2024, a five-judge Supreme Court Constitution Bench unanimously declared the Electoral Bond Scheme as unconstitutional. The bench, presided over by Chief Justice D.Y. Chandrachud, ruled that the scheme violated voters' constitutionally protected right to information as stated in Article 19(1)(a) of the Constitution.²⁷ The judgement emphasised a number of important points:

1. Violation of Right to Information: By hiding important information regarding political finance, the scheme's anonymity clause made it more difficult for voters to make informed decisions.
2. Unrestricted Corporate Funding: It was held that permitting unrestricted corporate contributions would undermine political equality and be incompatible with free and fair elections.
3. Least restrictive method not adopted: The court dismissed the government's assertion that the initiative effectively curbs the flow of black money and found it insufficient to justify its infringement on fundamental rights. By using the proportionality criteria set out in its 2017 ruling in the *KS Puttaswamy* case, which maintained the right to privacy, the court highlighted that the government failed to use the least restrictive means to achieve its objective.²⁸ The Chief Justice proposed two instances of least restrictive methods, including imposing a cap of ₹20,000 on

²⁶ Vasudha Mukherjee, "SC Strikes down Electoral Bonds: Full Timeline and Scheme Explained" (*www.business-standard.com*, February 15, 2024).

²⁷ Supra note 12.

²⁸ By Krishnadas Rajagopal, "SC Declares Electoral Bonds Scheme 'Unconstitutional'" (*BusinessLine*, February 15, 2024).

anonymous donations and creating Electoral Trusts to facilitate political contributions from donors.²⁹

(D) Important Directions the Supreme Court Issued³⁰:

The Supreme Court issued multiple directions in response to the ruling to address the concerns brought up by the Electoral Bond Scheme:

It was directed that the State Bank of India (SBI) stop issuing electoral bonds right away. SBI was required to provide the Election Commission of India (ECI) with information on any electoral bonds acquired after April 12, 2019, including the names of the buyers and the denominations of the bonds.

SBI was mandated to publish information about political parties that received contributions through electoral bonds.

SBI was required to give this data to the ECI no later than three weeks from the date of ruling. It was the ECI's responsibility to quickly post this information on its official website.

(E) Impact and Consequences of verdict of the Supreme Court:

The decision of the Supreme Court was a major step in maintaining democratic values and improving political finance transparency. The Court underscored the significance of people's access to knowledge in guaranteeing fair and informed voting processes by overturning the voting Bond Scheme.

The Supreme Court judgement declaring that Electoral Bond Scheme as unconstitutional has been a game changer for Indian democracy in terms of transparency in political funding and accountability towards the electorate as it has made elections more democratic.

VI. SUGGESTIONS

Fearless election cannot be divorced from democracy. For democracy to be maintained and prevent crooked practices like having government machinery interfere with elections, the CEC should be self-sustaining without depending on the Executive or Parliament. Presently, EC lacks an independent workforce. Election Commission always depends on personnel from Central and State Governments. The administrative personnel, who have a dual role of normal administration to government and electoral administration to EC, made its impartiality and inefficiency affected. It also comes with the problem of how to discipline employees deployed

²⁹ Supra note 13.

³⁰ "Electoral Bonds Constitution Bench | Judgement Summary - Supreme Court Observer" (*Supreme Court Observer*, February 24, 2024).

to handle election tasks which most times result in conflict between the EC and Government. Ideal thing will be if EC has permanent electoral department with enough disciplinary supervision over them since those elections are not just an annual event. To ensure independence the election commission other ECs should also be extended the same protection from removal which is available to the CEC.

Also, an institutionalised system of election finance can be considered as it is essential for India's democracy to enhance monitoring and execution of budgetary policies. Whenever feasible, this should be given in kind to ensure that parties, independent of the state's contribution, have enough money to maintain their democratic activities. This guarantees that the system accomplishes its goal successfully. To create greater transparency in electoral financing, the creation of an autonomous regulatory entity to supervise election finance, and the enforcement of more stringent penalties for breaches of election financing legislation can be considered.

The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, currently regulates the process of appointing the CEC and other ECs. This legislation was implemented to fill the vacuum under Article 324(2) of the Constitution of India. As per this legislation, the CEC and other ECs will be appointed by the President based on the recommendation of a Selection Committee.

The Selection Committee will be comprised of the Prime Minister, a Union Cabinet Minister, and the Leader of the Opposition or in case where there can not be a leader of opposition then the leader of the biggest opposition party in the Lok Sabha. The 2023 Act eliminates the inclusion of the Chief Justice of India in the selection committee, which was previously included in the appointment process. By including the Chief Justice of India (CJI) on the selection committee, the appointment process for the Chief Election Commissioner (CEC) and Election Commissioners (ECs) would be more equitable and impartial. This is because the CJI, being a representative of the judiciary, may provide useful insight on the selection of these officials and would also insure the election commission from over dominance of executive in the selection commission.
