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# Electoral Integrity in India: Judicial Wardship

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## ABSTRACT

*The judiciary in India plays a significant role in maintaining electoral integrity, ensuring the democratic process remains fair, transparent, and credible. The Indian Constitution entrusts the judiciary with the power to adjudicate disputes related to elections, thereby acting as a guardian of electoral fairness. Through landmark judgments, the judiciary has set important precedents that uphold the sanctity of the electoral process. For instance, the Supreme Court's directive to introduce the Voter Verified Paper Audit Trail (VVPAT) in Electronic Voting Machines (EVMs) enhances transparency and voter confidence. Furthermore, the judiciary enforces strict compliance with the Model Code of Conduct, curbing the misuse of governmental power during elections. It also scrutinizes and nullifies nominations and elections tainted by corrupt practices such as bribery, undue influence, or use of muscle power. Through these actions, the judiciary safeguards the democratic process, ensuring that elections reflect the true will of the people and reinforcing the principles of justice, fairness, and equality enshrined in the Indian Constitution. Moreover, by interpreting and reinforcing electoral laws, the judiciary acts as a check against any form of subversion of the democratic process. This article delves into critical landmark judgements that illustrate the judiciary's crucial role in safeguarding democracy against political and legal loopholes that threaten its sanctity.*

**Keywords:** *Electoral integrity, Corrupt practices, Judiciary, Democracy, Free and fair elections.*

## I. INTRODUCTION

Electoral integrity is the cornerstone of a functioning democracy, and in India, the judiciary plays a crucial role in safeguarding this integrity. The democratic process in India, the world's largest democracy, involves an extensive and complex system designed to ensure that the will of the people is accurately reflected in the election results. The judiciary's role in maintaining this system's integrity is indispensable, encompassing adjudication of disputes, enforcement of laws, and upholding democratic principles.

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The Supreme Court and High Courts of India are empowered to hear petitions challenging election results and address allegations of electoral malpractices. This judicial oversight ensures that any grievances regarding the conduct of elections are addressed promptly and fairly. By doing so, the judiciary acts as a guardian of the electoral process, ensuring that it remains free, fair, and transparent.

One of the judiciary's significant contributions to electoral integrity has been through landmark judgments that set important precedents. For instance, the Supreme Court's directive to include the Voter Verified Paper Audit Trail (VVPAT) with Electronic Voting Machines (EVMs) was a crucial step in enhancing the transparency and credibility of the voting process. VVPAT allows voters to verify their vote, thereby increasing confidence in the electronic voting system and providing a mechanism to audit the election results if necessary.

The judiciary also plays a vital role in enforcing the Model Code of Conduct (MCC) during elections. The MCC is a set of guidelines issued by the Election Commission of India (ECI) to ensure that elections are conducted in a fair and equitable manner. The judiciary steps in to ensure compliance with these guidelines, preventing the misuse of government resources, addressing hate speech, and curbing other unethical practices during the campaign period. By holding candidates and parties accountable to the MCC, the judiciary helps maintain a level playing field, essential for the democratic process.

Another critical aspect of the judiciary's role is the interpretation and enforcement of electoral laws. The Representation of the People Act, 1951, is a comprehensive law that governs the conduct of elections in India. The judiciary interprets this law to ensure it is applied correctly and fairly. For example, the courts have ruled on issues such as the disqualification of candidates for corrupt practices, the eligibility criteria for candidates, and the validity of election procedures. These rulings help maintain the integrity of the electoral process by ensuring that it is conducted according to established legal standards.

The judiciary's intervention is also crucial in addressing electoral malpractices such as vote-buying, booth capturing, and voter intimidation. By hearing cases related to these malpractices and delivering judgements that penalize the offenders, the judiciary sends a strong message that such actions will not be tolerated. This deterrence is vital for maintaining public trust in the electoral process.

Moreover, the judiciary's role extends beyond just addressing grievances and malpractices. It also involves proactive steps to improve the electoral process. For instance, judicial recommendations have led to reforms in electoral laws and practices, aimed at making the

process more inclusive, transparent, and robust. These reforms are essential in adapting the electoral system to changing times and challenges.

## II. GUARDIAN OF DEMOCRACY: THE JUDICIARY'S ROLE IN UPHOLDING ELECTORAL INTEGRITY IN INDIA

Judiciary's role in maintaining electoral integrity in India is multifaceted and indispensable. Through its adjudicative, interpretative, and enforcement functions, the judiciary ensures that elections are conducted in a manner that is fair, transparent, and reflective of the people's will. This role not only safeguards the electoral process but also strengthens the overall democratic framework of the country, reinforcing the citizens' faith in their democratic institutions.

### (A) Disqualification of Candidates

The disqualification of candidates has always been a critical aspect of maintaining electoral integrity. The landmark judgment in *Lily Thomas v. Union of India*<sup>2</sup> by the Supreme Court of India significantly impacted the disqualification criteria for candidates convicted of certain offences.

The *Lily Thomas* case challenged the constitutional validity of Section 8(4) of the Representation of the People Act, 1951. This section allowed convicted members of Parliament or state legislatures to continue in office if they appealed their conviction within three months and until the appeal was decided. The petitioners argued that this provision was discriminatory and violated the principle of equality enshrined in the Constitution.

The Supreme Court's judgment, delivered by Justice A.K. Patnaik, declared Section 8(4) of the Representation of the People Act as unconstitutional. The Court reasoned that Articles 102(1)(e) and 191(1)(e) of the Constitution mandate uniform disqualification criteria for both prospective candidates and sitting members of Parliament and state legislatures. The provision under Section 8(4) created an unjust distinction by allowing convicted sitting members to continue in office while the appeal was pending, whereas ordinary candidates would be disqualified upon conviction.

The Court emphasized that the intention of the Constitution was to ensure that both prospective candidates and sitting members meet the same standards of integrity and probity. The judgment relied on the principle that public office should not be occupied by individuals convicted of serious offenses, as it undermines the sanctity and integrity of the electoral process.

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<sup>2</sup> AIR 2013 SC 2662.

The judgment in *Lily Thomas* reinforced the principle that individuals with criminal convictions should not hold public office, thereby strengthening electoral integrity. By removing the protection previously afforded to sitting members under Section 8(4), the judgment ensured that all candidates, whether sitting members or new aspirants, are subject to the same disqualification criteria.

This uniform application of the law enhances public confidence in the electoral process by ensuring that elected representatives are free from criminal taint. The judgment acts as a deterrent against the criminalization of politics, as it removes the incentive for convicted individuals to seek election or continue in office while exploiting legal loopholes.

### **(B) Federalism and Elections**

In India, the federal structure divides power between the central government and the states, each with its own elected representatives. The use of Article 356, which allows the central government to impose President's Rule in a state under certain conditions, has significant implications for the electoral process and the stability of state governments.

#### *Judicial Review of Article 356*

The case *S.R. Bommai v. Union of India*<sup>3</sup> arose from the dismissal of several state governments by the central government using Article 356, purportedly on the grounds of a breakdown in constitutional machinery. The Supreme Court's judgment in this case provided critical guidelines to prevent the misuse of this power, ensuring that elections and the democratic process are respected. The Court held that the use of Article 356 is subject to judicial review, meaning that the central government's decision to dismiss a state government can be challenged in court, providing a check against arbitrary use of power.

#### *Criteria for Imposing President's Rule*

The judgment stipulated that President's Rule can only be imposed based on concrete and objective material indicating a failure of constitutional machinery in the state. This ensures that political motives do not override the democratic process and the will of the electorate. The Court also stated that if the imposition of President's Rule is found to be unconstitutional, the dismissed state government should be restored, protecting the mandate given by the electorate and reinforcing the stability of elected governments.

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<sup>3</sup> 1994 AIR 1918.

### **(C) Telephone Tapping and Electoral Integrity**

Telephone tapping, or the monitoring and recording of private conversations by government agencies, can significantly affect electoral integrity. During election periods, the privacy of political candidates, party workers, and voters is paramount to ensure a free and fair democratic process. Unauthorized tapping of telephones can lead to the misuse of sensitive information, manipulation, and undue influence, undermining the democratic fabric of the nation.

*People's Union for Civil Liberties v. Union of India & ors.*<sup>4</sup> challenged the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1885, which allowed the government to tap telephones under certain conditions. The Supreme Court, led by Justice Kuldeep Singh, recognized the increasing susceptibility to abuse with advancements in communication technology and emphasized the need for stringent safeguards. The Court affirmed that the right to privacy is intrinsic to the right to life and personal liberty under Article 21 of the Constitution. It held that telephone conversations in the privacy of one's home or office are protected under this right, and any form of surveillance must adhere to the "procedure established by law."

#### *Procedural Safeguards*

The judgment mandated that telephone tapping must be authorized by a Home Secretary at the central or state level and should be subject to strict procedural safeguards. Orders for tapping must be recorded in writing, specifying reasons for the interception, and be subject to review by a high-level committee to prevent misuse. The Court emphasized that such intrusions should be based on clear evidence of public emergency or public safety concerns and should be proportionate to the intended purpose.

## **III. PRE-ELECTION AND POST-ELECTION LITIGATION: ENSURING FAIRNESS**

### **(A) Pre-Election Litigation**

Pre-election litigation serves as a vital mechanism to address grievances that could potentially undermine the integrity of the electoral process. It ensures that issues such as improper rejection of nomination papers, inclusion or exclusion of voters in the electoral roll, and other procedural irregularities are scrutinized and rectified before they can affect the election results. This judicial scrutiny is essential to uphold the principles of free and fair elections, as mandated by the Constitution.

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<sup>4</sup> AIR 1997 SC 568.

In the landmark case of *N.P. Ponnuswami v. Returning Officer*<sup>5</sup> the Supreme Court underscored the paramount importance of allowing the electoral process to proceed uninterrupted. The Court held that pre-election challenges, such as the rejection of nomination papers, should not be entertained by courts during the electoral process. Instead, these issues should be raised through an election petition after the results are declared. This reasoning is rooted in the need to prevent the electoral process from being delayed or disrupted by litigation. Another significant case, *Baidyanath Panjiar v. Sitaram Mahto & ors.*<sup>6</sup> dealt with the inclusion of voters; names in the electoral roll after the last date for nominations. The Supreme Court held that such inclusions were illegal and invalidated the votes cast by these voters. This decision reinforced the principle that the electoral roll must be finalized before the nomination deadline to ensure transparency and fairness in the electoral process

### **(B) Post-Election Litigation**

Post-election litigation is initiated after the electoral process has concluded, primarily through election petitions. These petitions challenge the election results based on allegations such as corrupt practices, malpractices, or non-compliance with election laws. The Representation of the People Act, 1951, particularly under Section 100, outlines the grounds on which an election can be called into question, including improper acceptance or rejection of nominations and votes.

The judiciary's involvement at this stage is vital for two main reasons. First, it ensures that elections are not unduly delayed or obstructed by pre-election disputes, allowing the democratic process to proceed smoothly. Second, it provides a mechanism for addressing grievances and ensuring that the election's outcome genuinely reflects the voters' will.

In the landmark case of *Indira Nehru Gandhi v. Shri Raj Narain & Anr.*<sup>7</sup>, the election of then Prime Minister Indira Gandhi was challenged by Raj Narain on the grounds of electoral malpractices. The Allahabad High Court found her guilty of using government machinery for election purposes and declared her election void. This decision led to significant political turmoil and the imposition of the emergency in India.

In *Mohinder Singh Gill v. Chief Election Commissioner*<sup>8</sup>, the Supreme Court of India dealt with the cancellation of election results by the Election Commission due to large-scale violence and booth capturing. The Court held that the Election Commission has wide powers to ensure

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<sup>5</sup> 1952 AIR 64.

<sup>6</sup> 1970 AIR 314.

<sup>7</sup> AIR 1975 SC 2299.

<sup>8</sup> 1978 AIR 851.

free and fair elections, including the power to cancel polls if necessary. This judgment reinforced the Commission's role in maintaining the sanctity of the electoral process and affirmed the judiciary's support for such measures to uphold democratic integrity.

In *Azhar Hussain v. Rajiv Gandhi*<sup>9</sup>, the election of Rajiv Gandhi was challenged on grounds of corrupt practices and electoral fraud. The Supreme Court dismissed the petition, emphasizing the need for concrete and substantial evidence to prove allegations of corruption and fraud. This judgment highlighted the importance of a stringent evidentiary standard in post-election litigation, ensuring that frivolous claims do not disrupt the democratic process.

### **(C) Model Code of Conduct Violations**

Model conduct violations during elections have significant implications on the fairness and integrity of the electoral process. In India, the Model Code of Conduct (MCC) is a set of guidelines issued by the Election Commission of India (ECI) to regulate the actions of political parties and candidates during elections. These guidelines are designed to ensure free and fair elections and maintain the sanctity of the democratic process.

In the *Indira Nehru Gandhi v. Shri Raj Narain*<sup>10</sup>, the Supreme Court of India dealt with allegations of corrupt practices and misuse of governmental machinery by then Prime Minister Indira Gandhi during her election campaign for the Rae Bareli constituency in 1971. The respondent, Raj Narain, accused Gandhi of several violations, including the use of government officials for election purposes, which contravened Section 123(7) of the Representation of the People Act, 1951. This section explicitly prohibits the use of government machinery for electoral advantage, thereby maintaining a level playing field for all candidates.

The Allahabad High Court found Indira Gandhi guilty of electoral malpractices and declared her election void, leading to significant political turmoil. The High Court's judgment was primarily based on the violation of the MCC, where it was established that government officials, including the District Magistrate and Superintendent of Police of Rae Bareli, were involved in setting up rostrums and loudspeakers for Gandhi's election rallies. This contravened Section 123(7) of the Representation of the People Act, 1951, which states:

*“The corrupt practice shall be deemed to have been committed by a candidate if any person in the service of the Government acts as an agent or assists in the election campaign.”*

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<sup>9</sup> 1986 AIR 1253.

<sup>10</sup> *Supra* note 6.



The Supreme Court, while upholding the High Court's decision, emphasized the importance of maintaining electoral integrity and ensuring that no candidate enjoys an undue advantage due to the misuse of governmental resources .

Several subsequent cases have drawn from the principles established in **this case**. For instance, the Supreme Court's decision in *Ashok Shankarrao Chavan v. Madhavrao Kinhalkar*<sup>11</sup> dealt with allegations of corrupt practices related to election expenses, emphasizing the need for transparency and adherence to legal provisions governing elections .

#### IV. FUTURE OVERSIGHT

The way forward for the judiciary in maintaining electoral integrity in India involves several strategic enhancements and proactive measures. First, continued emphasis on technological advancements, such as the integration and refinement of Voter Verified Paper Audit Trails (VVPATs) with Electronic Voting Machines (EVMs), will further bolster transparency and public trust. The judiciary must also remain vigilant against new and evolving forms of electoral malpractice, including cybersecurity threats and the spread of misinformation on digital platforms.

To address these challenges, collaboration between the judiciary, the Election Commission of India (ECI), and tech experts is essential to develop robust cybersecurity frameworks and fact-checking mechanisms. Strengthening the enforcement of the Model Code of Conduct (MCC) through quicker judicial review processes and more stringent penalties for violations will help ensure a level playing field during elections.

Moreover, enhancing the accessibility of judicial processes for ordinary citizens will empower more individuals to report and challenge electoral malpractices. Regular training and sensitization programs for judicial officers on electoral laws and emerging challenges can ensure more informed and effective adjudication.

Finally, fostering greater public awareness about electoral integrity and the judiciary's role in safeguarding it will encourage civic engagement and vigilance, ensuring that the democratic process remains resilient and reflective of the people's will. Through these efforts, the judiciary can continue to uphold the sanctity of elections and reinforce India's democratic foundations.

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<sup>11</sup> (2014) 7 SCC 99.