
ENSURING ELECTORAL INTEGRITY

BY AKSHIT CHAUHAN & NIHARIKA MEHTA¹

I. DEMYSTIFYING THE LEGAL SYSTEM: HOW LEGAL AID EMPOWERS INDIVIDUALS

“We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice.” -Justice Sonia Sotomayor, Associate U.S. Supreme Court (November 2002)²

Legal aid can be delineated as an institutional framework established to facilitate equitable access to justice for all members of society, irrespective of their socioeconomic status, thereby ensuring parity. It serves as a crucial pillar of assistance for those individuals who lack the means or opportunities to procure legal representation in pursuit of justice. Marginalized demographics, including individuals with limited financial resources, ethnic minorities, persons with disabilities, women, and children, frequently encounter formidable obstacles in accessing legal redress, primarily due to financial constraints.³

The government initiated a resolution to address the matter by instituting the National Legal Services Authority (NALSA) in 1995 under the Legal Services Authorities Act of 1987. Legal aid has been established as a constitutional right supported by Article 21 and Article 39A of the Constitution of India. In *Rajoo @ Ramakant vs. State Of M.P.*⁴, a rape convict was provided with legal aid under the Legal Service Authority Act, 1987 establishing the fact that every individual should have equal access to justice. Article 21 of the Indian Constitution⁵ states that no person shall be deprived of his life and personal liberty except according to procedure established by law and Article 39A⁶ directs the State to ensure that the operation of the legal system promotes justice based on equal opportunities, and shall in particular, provide free legal

¹ Authors are students at Hidayatullah National Law University

² Legal Aid & Pro-Bono Services | Aura & Company, <https://www.auraleague.com/practice-area-details.aspx?lawyer=2042> (last visited Mar 26, 2024).

³ Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia, UNICEF https://www.unicef.org/media/50996/file/Equitable_access_to_justice_for_children_in_Central_and_Eastern_Europe_and_Central_Asia_-_v2_1.pdf

⁴ *Rajoo @ Ramakant vs State Of M.P* on 9 August, 2012, <https://indiankanoon.org/doc/191628518/> (last visited Mar 26, 2024).

⁵ Article 21, Constitution Of India

⁶ Article 39A, Constitution Of India

aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

II. CHALLENGING IRREGULARITIES, PROTECTING DEMOCRACY: THE ROLE OF LEGAL AID IN FAIR ELECTIONS

A democratic government often runs on the voters' trust in the country's electoral processes. However, trust deficits occur when the country's electoral integrity is compromised. Electoral integrity here refers to free, fair, and transparent elections adhering to all the rules and norms laid down by the election body of a country. According to a 2020 study on Quantity and Quality, individuals who cast their votes for an unsuccessful candidate exhibited diminished confidence in the election outcome's fairness, consequently reducing their trust in the political process.⁷

Electoral integrity runs on three cornerstones that is transparency, inclusivity, and fairness. It establishes that all citizens should have equal rights as any other person who governs them. Inclusivity in a democracy is also very important to ensure there are no obstacles to the electoral process. At last, the promotion of transparency in elections serves to expose instances of corruption and mitigate the prevalence of unfair advantages, thereby fostering integrity within the electoral process.

Palshikar (2012) points out elections have become an indispensable part of the governmental system and have become ingrained in the political common sense of India. Elections are considered central to the management of ethnic and regional conflicts, the balance achieved between the central government and state and local authorities, and the pride Indians take in their democratic institutions. (Foreign Affairs 2008).

However, a recent controversy of electoral bonds has come to light which has severely compromised the electoral integrity of the upcoming 2024 elections.

III. ELECTORAL BOND CONTROVERSY

⁷ Marlene Mauk, *Electoral Integrity Matters: How Electoral Process Conditions the Relationship between Political Losing and Political Trust*, 56 *Quality & Quantity* 1709 (2022).

Electoral bonds were introduced in 2018 by then-finance minister Arun Jaitley. Citizens of our country or any other entity incorporated within the country can purchase these bonds from some specified branches of the State Bank of India.

Being a democracy holding free and fair elections is one of the primary considerations. As the upcoming Lok Sabha elections come, the electoral bond controversy has been in the limelight. In the *Association of democratic reforms Vs Union Of India*⁸, the Hon'ble Supreme Court of India held that the electoral bond scheme violated the voters right to information enshrined under Article 19(1)(a)⁹ and declared it unconstitutional. This landmark judgment by the court ensures electoral integrity and tries to promote the citizen's rights and the importance of holding an election fair.

On the 12th of March, 2024 SBI who were directed by the Supreme Court to submit the data of electoral bonds to the Election Commission of India. The Bhartiya Janata Party has been the largest beneficiary of this scheme Rs 8251.8 crores, followed by the Indian National Congress and then Trinamool Congress. The gap between the leading party and the following party is very large which gives the leading party an upper hand in the elections which also hampers the true nature of electoral integrity.

IV. SAFEGUARDING THE VOTE: A COMPARATIVE ANALYSIS OF ELECTORAL INTEGRITY IN INDIA AND CANADA

A. Situation in India

India is one of the largest democracies in this world, though it has been questioned a lot in terms of the stability of its electoral system among the post-colonial states. India with its conditions of illiteracy, high rates of poverty, large peasantry and has faced a lot of challenges in its electoral system.¹⁰

B. Issues faced by India

i. Electoral violence

⁸ Association for democratic reforms vs Union Of India, Writ Petition (C) No. 880 of 2017

⁹ Article 19(1)(a), Constitution Of India

¹⁰ Zaad Mahmood, *Governance and Electoral Integrity* (2017).

Electoral violence is a major issue that hampers the election process, instances of coercion, murder, and threat can play a significant role in voter participation. In India, the election and the violence come simultaneously. The situation in West Bengal would be one of the best examples here, according to the National Crime Record Bureau Report (NCRB) West Bengal accounted for the highest number of political murders in the country, as per this data 20 political killings per year Since 1999 in West Bengal is recorded.

ii. Media concentration

Media plays a very significant role in politics as well as elections. It provides information about the candidates and the party manifesto as well as propaganda of parties. Media concentration declining diversity of news and increasing political agendas through media could harm the motive of a democracy..

C. Situation in Canada

Canada, which became a democracy on 11th March in the year 1848 is one of the few democracies in the world that have been able to maintain the situation smoothly, its first bill the New Reform Majority was a law which was to encourage protect, and support immigrants. Which at that time was one of the reforms that a lot of countries and their government weren't able to do.

D. Use of foreign funds

Bill C-76 has new rules to stop foreign involvement in Canadian elections.

- No foreign money for Canadian ads: Groups trying to influence Canadian elections cannot use money from outside the country for things like ads that support a certain party.
- Foreign groups can't get involved: This applies to people who don't live in Canada permanently, companies not in Canada, and even foreign governments.
- New rules for pre-election time: These groups also can't spend their own money on influencing the election before the official campaign period.

- Previous small spending allowed: Before this law, foreign groups could spend a little bit of money on ads during the election. Now, they can't spend anything at all.¹¹

E. Provisions for false statements

False statement that plays a significant role during the time of election which could be pre-election period or post-election period. The types of statements that are prohibited by the provision are limited to those that falsely state that a protected political person has committed an offense or is charged with an offense. It also punishes those who try to impersonate a politician or any other leader.

F. Canada's approach- Electoral integrity

The plan focuses on four pillars first one is enhancing citizen preparedness, second improving organizational readiness; combatting foreign interference; and expecting social media platforms to act.

- Improving Citizen Preparedness: This attempts to inform voters about the voting process, their rights, and how to spot false information. Elections are more equitable when voters are informed and less vulnerable to manipulation.
- Enhancing Organisational Readiness: This entails making Elections Canada more capable of conducting safe elections. This could entail making sure voting processes run smoothly, updating cyber security, and educating workers.
- The goal of combating foreign interference is to shield elections from outside interference. This might entail keeping an eye out for any questionable activities, having defined protocols in place for reporting efforts at intervention, and possibly even putting penalties on foreign entities.
- Anticipating Social Media Companies to Take Action: This puts pressure on social media firms to answer for the content that appears on their networks. This could entail taking steps to promote factual information, get rid of fake news, and increase transparency.

¹¹ New Report Praises Canada's Efforts to Combat Election Interference, but Warns Important Gaps Remain, Centre for International Governance Innovation, <https://www.cigionline.org/articles/new-report-praises-canadas-efforts-combat-election-interference-warns-important-gaps/> (last visited Mar 26, 2024).

V. THE WAY FORWARD FOR INDIA

In both India and Canada, the way they choose their representatives differs. India follows the past-the-post (FPTP) system, where the candidate who gets the votes in a constituency wins even if it's not a majority. This often results in the rise of parties and governments formed by coalitions at the level. Similarly Canada also uses FPTP. There is the focus, on national parties since electoral districts are smaller.

In Canada, it's possible for a party to win a majority of seats without winning a majority of the vote. This can create a gap between what people want and the government in power. On the hand India may face challenges with legislatures due to various regional parties. This can lead to negotiations for coalitions and less stable governments.

Given these factors India could consider adopting a system like some democracies do. This could blend aspects of FPTP with representation to ensure local representation while providing a clearer national voice through parties, with wider backing. Such an approach could lead to governments that better reflect the overall will of Indian voters.

