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EDITORIAL: A DEFENCE FOR OVERREACH: THE ECI APPOINTMENTS CASE

Ayush Mehta[1] *& Prakhar Raghuvanshi*[2]

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INTRODUCTION

Democracy brings equality, fraternity and liberty to the citizens of a country. Adopting a democratic form of government signifies a transformation from the orthodox methods of governance, which more often than not, place humans on different pedestals.[3] This transformation is political, extending to social transformation as well. In the political sense, the litmus test for this transformation is periodic, along with free and fair elections. Elections are pivotal to a democratic nation. While franchise was restricted in parts of the world and gradually attained a universal status,

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[1] Ayush Mehta is the Editor-in-Chief of the Comparative Constitutional Law and Administrative Law Journal (ISSN: 2582-9807). He is a graduate of National Law University, Jodhpur. The author may be reached at <ayush.mehta@nlujodhpur.ac.in>.

[2] Prakhar Raghuvanshi is the Editor-in-Chief of the Comparative Constitutional Law and Administrative Law Journal (ISSN: 2582-9807). He is a graduate of National Law University, Jodhpur. The author may be reached at <prakhar.raghuvanshi@nlujodhpur.ac.in>.

[3] Justice D.Y. Chandrachud, Chief Justice, Supreme Court of India, Address at the 8th Dr. L.M. Memorial Lecture: Universal Adult Franchise: Translating India's Political Transformation into a Social Transformation (Dec. 2, 2022).

today the importance of elections is immense.[4] While it is not the sole vehicle of democracy, it is indeed the foundation.[5]

In India particularly, elections are tumultuous and frequently controversial. At the helm of this humongous exercise is the Election Commission of India ("**ECI**" or "**Commission**") a constitutional body authorised with 'superintendence, direction and control of elections' in India.[6] The ECI was set up on 25 January 1950, one of the democratic institutions established in India before it became a republic. Considering the importance of the functions it carries out, ECI's careful constitution and fair functioning, or lack thereof, is always a relevant discussion in the public domain (and rightly so). By this extension, it also becomes an important constitutional question. In March 2023, a 5-judge Constitution Bench of the Supreme Court of India [**"SC"**] gave a ground-breaking judgement regarding this question, primarily concerning the appointment of the Chief Election Commissioner and Election Commissioners.[7]

In this editorial, we dissect the appointment methods which have been used in the past and the one proposed by the SC. To contextualise the discussion, in the *first* part of this editorial, we discuss the role and powers of the ECI. In the *second* part, we discuss the intent behind the drafting of Article 324 and the history of appointment to the ECI. In Part IV, the authors have attempted to defend the judgment of the court.

FUNCTIONS AND POWERS

The ECI is a constitutional body which can be categorised as a fourth branch institution.[8] Fourth-branch institutions have the onus to protect a constitutional democracy.[9] Thus, making their role and power within the

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[4] Bhikhu Parekh, *The Dialetics of Elections* in THE GREAT MARCH OF DEMOCRACY (SY Quraishi ed., Penguin 2019).

[5] Mehta & Raghuvanshi, Editorial, *The Partial and Inconsistent Idea of Franchise and Democracy*, COMP. CONST. & ADMIN. L. J. vii (2022).

[6] INDIA CONST. art. 324.

[7] Anoop Baranwal v. Union of India, 2023 SCC Online SC 216 (India).

[8] Mark Tushnet, *Electoral Commissions: Case Studies from India, the United States, and South Korea in* THE NEW FOURTH BRANCH: INSTITUTIONS FOR PROTECTING CONSTITUTIONAL DEMOCRACY 123-157 (Cambridge University Press, 2021).

[9] *Id.*

constitutional framework is exceedingly important. The ECI has multifaceted functions to perform, with respect to the conduct of elections. Article 324 of the Constitution of India grants plenary authority to the ECI to ensure free and fair conduct of elections at the national and state level.[10] In terms of the Constitution, the ECI has the power of direction, superintendence and control over election to the Parliament and state legislatures. This power of the Commission is subject to: a) laws made by the parliament or state legislature; and b) norms of fairness i.e., it cannot act arbitrarily or with malafide intent.[11] In discharge of its constitutional duties, the ECI carries out numerous functions which can be categorised under three stages: a) pre-election; b) election; and c) post-election.

A. PRE-ELECTION

The pre-election stage primarily consists of two aspects. *First*, registration of voters and *second*, awareness campaigns or 'election literacy'.[12] One can understand these better by going over the history of the first elections in India. The Commission undertook the daunting task of conducting a nationwide election on the basis of universal adult suffrage.[13] Under the able leadership of Sukumar Sen, the first Chief Election Commissioner of India, the ECI started preparing electoral rolls for 176 million Indians aged 21 years or more.[14] Elections were conducted on a total 4500 seats, including 500 for Parliament and 4000 for state assemblies.[15] The ECI also ran a documentary on franchise and duties of the electorate in over 3000 cinema halls to encourage the citizens.[16] Since 2009, the task of voter

[10] Mohinder Singh Gill v. Chief Election Commissioner, New Delhi (1978) 1 SCC 405 (India).
[11] *Id.*
[12] S.Y. QURAISHI, AN UNDOCUMENTED WONDER: THE GREAT INDIAN ELECTION (1st ed. 2014).
[13] RAMACHANDRA GUHA, INDIA AFTER GANDHI: THE HISTORY OF THE WORLD'S LARGEST DEMOCRACY (1st ed. 2008).
[14] *Id.*
[15] *Id.*
[16] *Id.*

education is run with the Commission's flagship program Systematic Voter Education and Electoral Participation ("**SVEEP**").[17]

B. ELECTION

The role of the Commission during the election is two-fold and includes administrative or organisational work as well as oversight. Administrative or organisation tasks include setting up of polling booths, arranging returning officers, security officers and such. In the first general election 224,000 polling booths, 2 million ballot boxes, 56,000 presiding officers, 280,000 helpers, 224,000 policemen and 16,500 clerks were arranged. Ensuring compliance of the Model Code of Conduct and relevant statutory provisions falls under its oversight role.[18] The Model Code of Conduct is a set of guidelines to be followed by the candidates and political parties.[19] In case of violation, the ECI passes prohibitory orders or imposes bans on campaigns. It also directs the police to investigate or forwards the complaint to be handled via ordinary legal mechanism.[20]

C. POST-ELECTION

The role of the Commission at the post-election stage is primarily adjudicatory. This adjudication is both at an individual and institutional level.[21] At the individual level, the adjudicatory role of the Commission is regarding disqualification of cases under Articles 103 or 192 of the Constitution of India.[22] The decision-making authority under Articles 103 and 192 falls with the President and the Governor respectively, however,

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[17] Voter Education, Election Commission of India, available at: https://eci.gov.in/voter/voter-education/ (Accessed on 30 May 2023). *See generally* S.Y. Quraishi, *Participation Revolution with Voter Education* in THE GREAT MARCH OF DEMOCRACY (SY Quraishi ed., Penguin 2019).

[18] Alistair McMillan, *The Election Commission of India and the Regulation and Administration of Electoral Politics*, 11(2) ELECTION LAW JOURNAL: RULES, POLITICS AND POLICY 187 (2014).

[19] Model Code of Conduct, Election Commission of India, available at: https://eci.gov.in/mcc/ (Accessed on 30 May 2023)

[20] Mohsin Alam Bhat, *Governing Democracy Outside the Law: India's Election Commission and the Challenge of Accountability*, 16(S1) ASIAN J. COMP. L. (2021).

[21] Sregurupriya Ayappan, *Exploring the Duality of the Election Commission and the Scope of Judicial Review,* 4(3) COMP. CONST. & ADMIN. L. J. 52 (2019).

[22] INDIA CONST. art. 102 & 193.

the opinion of the Commission ought to be sought.[23] While exercising this function, the Commission has powers akin to a civil court and the authority to regulate its own procedure. For instance, in a 2021 reference case from Odisha, the Governor of Odisha sought opinion of the Commission on disqualification of 22 Members of the Legislative Assembly for holding office of profit.[24] Upon inquiry, the Commission found that the offices in question were exempt from disqualification on grounds that these offices of profit fell under the government by virtue of Odisha Offices of Profit (Removal of Disqualifications) Amendment Act, 2016.[25] Thus, the commission opined that MLAs did not incur disqualification.[26]

The *second* role, which operates at an institutional level, is adjudication of symbols disputes. In case of a split in the political party, where both factions wish to retain the symbol of the party, the decision with respect to this rests with the Commission, under the terms of paragraph 15 of the Symbols Order. The 2023 decision of the ECI in the Maharashtra political crisis of 2022 regarding the allotment of the Shiv Sena symbol to the faction led by Eknath Shinde over the one led by Uddhav Thackrey is a prime example.[27]

APPOINTMENTS TO THE COMMISSION

The constitution grants the appointment authority to the President, subject to any law made by the Parliament in the regard.[28] Under the Government of India (Transaction of Business) Rules, 1961, any case of appointment,

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[23] INDIA CONST. cl. 2.

[24] Reference Case No. 9(G) of 2021 (Election Commission of India). The MLAs held the position of Chairperson of District Planning Committees.

[25] The Orissa Offices of Profit (Removal of Disqualifications) Act, 1961, No. 26, Acts of Parliament, 1961.

[26] It must be noted that 2 MLAs had already resigned from the office in question before the constitution of the 16th Legislative Assembly of Odisha while 20 were still holding the office (¶ 10).

[27] Final Order, Election Commission of India, Dispute Case No. 1 of 2022 (Feb. 17, 2023), https://eci.gov.in/files/file/14826-commissions-final-order-dated-17022023-in-dispute-case-no-1-of-2022-shivsena/.

[28] INDIA CONST. art. 324 cl. 2.

resignation or removal of the Chief Election Commissioner or the Election Commission must be submitted to the Prime Minister and the President.[29]

A. UNREALISED INTENTION

Theoretically, the possibility of rendering discretion of appointment lies with one individual, however, the surety of rendering it remains with the executive alone. Prof. Shibban Lal Saxena raised this concern in the constituent Assembly, while proposing an amendment which would require two-thirds majority of the Parliament to confirm the appointment of the Chief Election Commissioner.[30] He stated[31]:

> *"...Of course it [Election Commission] shall be completely independent of the provincial Executives but if the President is to appoint this Commission, naturally it means that the Prime Minister appoints this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence…the person who is appointed originally should be such that he should be enjoying the confidence of all parties—his appointment should be confirmed not only by majority but by two-thirds majority of both the Houses."*

Pandit Hriday Nath Kunzru voiced similar concerns and proposed a remedy that the Parliament may be authorised to lay down norms for such appointment. While pointing out the political reality, he unequivocally stated[32]:

> *"The Chief Election Commissioners will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a*

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[29] Government of India (Transaction of Business) Rules, 1961, Rule 8, Pausa 24, 1882(S), r/w Government of India (Transaction of Business) Rules, 1961, Sch. 3 Entry 22, Pausa 24, 1882(S).

[30] Shibban Lal Saksena, 8 CONST. ASSEMB. DEB. ¶ 8.105.221 (June 15, 1949) https://www.constitutionofindia.net/debates/15-jun-1949/.

[31] *Id.*

[32] Hriday Nath Kunzru, 8 CONST. ASSEMB. DEB. ¶ 8.106.20 (June 16, 1949)https://www.constitutionofindia.net/debates/16-jun-1949/. Similar concern was raised by Kuladhar Chaliha. Chaliha questioned the appointment by the President by calling him a 'party-man' with some biases towards his own party.

party-man the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds."

The Constituent Assembly Debates also reflect the views that portray the Commission as a quasi-independent body and an ally of the government.[33] However, even such views carried the caution of executive appointment. Based on these concerns, Ambedkar is said to have favoured a flexible prescription in the Constitution which produces a less stringent structure, one that would be capable of being amended by the Parliament.[34] Ambedkar stated that one '*cannot deal with a constitution on technical points*.'[35] Constitution-making may be a farce in the face of a huge number of technicalities.[36]

The intent of the framers of the Constitution becomes abundantly clear from the discussion: a) the Commission ought to be independent from the Executive; b) the appointment process laid down in Article 324 was envisaged with an expectation that the Parliament will set the norms; and that c) the appointment authority resting solely with the Prime Minister was a matter of concern warranting the wisdom of future Parliaments.

B. HISTORY

A history of appointments to the ECI hints towards an inclination to misuse this discretion. The Constitution authorises the President to appoint election commissioners, alongside the Chief Election Commissioner. However, up until the late 1980s, this provision was a dead letter, despite recommendations of a Joint Parliamentary Committee on Electoral Reforms in 1972[37], Tarkunde Committee on Electoral Reforms in 1975[38] and Dinesh Goswami Committee on Electoral Reforms for a

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33 8 CONST. ASSEMB. DEB. (June 16, 1949), https://www.constitutionofindia.net/constitution_assembly_debates/volume/8/1949-06-16.

34 Alistair McMillan, *The Election Commission*, in THE OXFORD COMPANION TO POLITICS IN INDIA (Niraja Jayal & Pratap Mehra (eds), Oxford University Press, 1st ed. 2010).

35 *Id.*

36 *Id.*

37 Election Commission and Electoral Reform, 37(3) INDIAN J. OF PUB. ADMIN. 557 (1991).

38 *Id.*

multi-member commission. In 1989, the government headed by then Prime Minister Rajiv Gandhi, appointed two election commissioners alongside with the Chief Election Commissioner. Scholars have argued that this change was perceived as an attempt to undermine the independence of the Commission.[39] This expansion of the Commission to a multi-member body was short-lived and the VP Singh government returned to one-member body in 1990 itself.[40] This reduction was challenged by one of the election commissioners, SS Dhanoa, before the Supreme Court. The challenge was rejected by the court with an observation[41]:

> *"There is no doubt that two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, all-wise he may be. It ill-conforms the tenets of the democratic rule. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single indi- vidual may sometimes prove capable of withstanding all the pulls and pressures, which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness.". (emphasis supplied)*

The history of India in the 1990s is a rather peculiar story, with minority and coalition governments forming an unstable centre.[42] In 1993 again, two election commissioners were added vide a presidential ordinance.[43] Christophe Jaffrelot remarks that *"[TN] Seshan [the then Chief Election Commission] turned out to be tough to manipulate. Finally, the prime minister had the President expand the Commission with two additional members."*[44] The Election Commission (Conditions of Service of the Election Commissioners and

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[39] Christophe Jaffrelot, *T.N.Seshan and the Election Commission* in THE GREAT MARCH OF DEMOCRACY (SY Quraishi ed., Penguin 2019).

[40] *Id.*

[41] SS Dhanoa v. Union of India, 1991 SCR (3) 159 (India).

[42] Atul Kohli, *Politics of Economic Growth in India, 1980-2005: Part II: The 1990s and Beyond*, 41(14) ECON. & POL. WKLY. 1361 (2006).

[43] The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993, The Gazette of India, pt. II sec. 1 (October 1, 1993).

[44] Christophe Jaffrelot, *supra* note 39 at 107.

Transaction of Business) Act, 1991, was amended in 1993. A Chapter 2 was introduced, which granted parity to the opinion of the Chief Election Commissioner and Election Commissioners.[45] Upon challenge, the SC upheld this amended provision.[46]

From this discussion, a few inferences may be drawn: a) the independence of the Commission cannot be assured through the appointment process where such appointments are made at the behest of the Prime Minister and b) the addition and removal of election commissioners has been undertaken for fulfilling political motives.

GAP FILLINGS AND CONVENTIONS

The apex court in *Anoop Baranwal v Union of India,* [**hereinafter "Anoop Baranwal"**] directed that the appointment of the Chief Election Commissioner and other election commissioners be carried out through a three-member committee. This committee ought to include the Prime Minister, the leader of opposition in Lok Sabha (in absence of such leader, the leader of the single largest party in opposition in Lok Sabha)[47], and the Chief Justice of India.[48]

A similar process was proposed by the Dinesh Goswami Committee. It recommended a consultation by the President with the Chief Justice and the leader of opposition in Lok Sabha. Effectively, this would mean a consultation between the Prime Minister, Leader of Opposition and the Chief Justice of India. Another framework was proposed in 2002, by the National Commission to Review the Working of the Constitution, which proposed a committee of the Prime Minister, leader of opposition in both houses, speaker of Lok Sabha and Deputy Chairman of the Rajya Sabha. Several other recommendations included a permutation-combination of

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[45] The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, No. 22 of 1991, India Code (1991), https://www.indiacode.nic.in/bitstream/123456789/1965/1/A1991-11.pdf.

[46] T.N. Seshan, Chief Election Commissioner of India v. Union of India, (1995) 4 S.C.C. 611 (India).

[47] For the sake of brevity, unless otherwise specified, leader of opposition is used in this article to mean the leader of opposition in Lok Sabha or the leader of the single largest party in opposition in Lok Sabha.

[48] Anoop Baranwal v. Union of India, 2023 SCC Online SC 216 (India), ¶ 239.

constitutional functionaries at the federal level.[49] A common feature in most of these recommendations was the inclusion of the Prime Minister and the Leader of Opposition in the Committee.

Justice Joseph has taken note of these proposed changes. Furthermore, while recommending the committee, he relied on the mode of appointment for Director of Central Bureau of Investigation[50] and Chairperson and Members of the Lokpal[51] which have the Prime Minister, the Leader of Opposition and the Chief Justice in common. Justice Joseph has referred to cases on constitutional silence and thereby classifying this as a gap-filling exercise. A natural response to constitutional silences is the development of conventions.[52] However, the actors responsible for development of conventions are political.[53] For a convention to develop, there ought to be precedents, respect for such precedent and conformity with such precedent by the political actors, as per Ivor Jennings.[54]

One may notice that while there may have been an original intent to discourage executive fiat in appointments, such intent never translated into practice, which may transform into a precedent for the purpose of development of a convention. The primary reason for this may be twofold: a) the non-mandatory nature of the legislation to be enacted for governing appointments; and b) lack of political will, reasons for which were raised as concerns by Constituent Assembly members. This leads us to an anxious conclusion, which Gautam Bhatia labelled as a 'weakness in the design of the Constitution.'[55] This flaw in the design, coupled with an optimism that the future parliament or the government would engage in such exercise is the foremost reason why a convention could not be developed. There were

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[49] *Id.* ¶ 68-72.

[50] The Delhi Special Police Establishment Act, 1946, § 4A, No. 25, Acts of Parliament, 1946.

[51] The Lokpal and Lokayuktas Act**,** 2013, No. 1, Acts of Parliament, 2014.

[52] Martin Loughlin, The Silences of Constitutions, 16(3) INT'L J. OF CONST. L. 922 (2018).

[53] Richard Albert, *How Unwritten Constitutional Norms Change Written Constitutions*, 38 DUBLIN U. L.J. 387 (2015).

[54] *Id.*

[55] Gautam Bhatia, Decoding the Supreme Court's Election Commission Judgment - I, INDIAN CONST. L. & PHIL. (Mar. 3, 2023) https://indconlawphil.wordpress.com/2023/03/03/decoding-the-supreme-courts-election-commission-judgment-i/.

undercurrents furthering a similar development and a broad consensus across the political spectrum for improving the appointment process, however, perhaps lack of political will ensured that the development of a convention is transformed into a gap-filling exercise by the judiciary. This has also opened the possibility of calling this decision a judicial overreach.[56] However, due to the failure of the political actors, the judiciary was compelled to exercise its role as the guardian of the constitution,[57] since the argument for gap-filling is not simply one that a convention should have mandatorily been developed.

First, the master-text of the Constitution[58] subjects the appointment to the law made by the Parliament. It is worth noting that a plain reading of the bare text does not mandate enactment of such a law. However, when the intent of the framers, as well as the scheme of the constitution is considered, the practice in place for appointment of up till 2023 stands in violation of the constitutional principles. The Constitution abhors concentration of power in the hands of one individual. This principle was also observed by the Supreme Court with respect to the Commission in *SS Dhanoa*.[59]

Second, non-enactment of such a law would not warrant interference of the SC if the practice developed conformed to the tenets of democratic rule i.e., exercise of discretion by more than one-individual. Such a practice, if it engaged relevant stakeholders, especially the leader of opposition, and created a balanced forum for appointments to the commission would not have required intervention of the judiciary.[60]

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[56] *Id.*

[57] Jayanta Boruah, *Judicial Dynamism in India: Supreme Court's Landmark Judgments in 2018*, 3(1) NLUA L. REV.,(2019).

[58] Albert, *supra* note 53, at 47.

[59] The observation was in context of a multi-member Commission, however, the key principle that it will conform with the tenets of democratic rule, squarely applies even for appointments to the Commission.

[60] The inclusion of Chief Justice of India in the committee for appointment, in opinion of the authors, was unwarranted. The role of Chief Justice in appointments concerning the political domain is not desirable. Appointments to such bodies ought to be made by a group composed of the representatives of the executive, opposition and neutral parties

CONCLUSION

Through this Editorial, we have attempted to detail the crucial functions carried out by the Commission, thereby highlighting its importance and centrality in the democratic setup of the country. Having discussed this aspect, we have highlighted the tumultuous history of appointments to the commission, with an aim to strengthen the argument for an appointment process, in line with the original intent of the framers of the Constitution.

In doing so, we believe that the judiciary engaged in a gap-filling exercise which ought to be taken care of by way of conventions. However, the development of a convention being dependent on the will of the political actors is not assured.

While we have argued that this exercise could not be classified as a judicial overreach, we agree that Gautam Bhatia is correct in stating that this may be a case of rewriting the constitution by the judiciary.[61] Such shifts in the operation of constitutional provisions, through judicial decisions, has also been referred to as informal constitutional change.[62] We would prefer calling this a disjuncture between the constitution and constitutional law.[63] This disjuncture would have taken place in case of development of a convention to this effect as well.

IN THIS ISSUE

The field of constitutional law, administrative law and their comparative aspects demand academic rigour from both the authors and the editors. Together, we are in a position to deliver something meaningful to the academic discourse. As the Editors-in-Chief of the Comparative Constitutional Law and Administrative Law Journal ("**CALJ**") under the

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like members of civil society. The exact composition, though, is outside the scope of this editorial.

[61] Bhatia, *supra* note 55, at 49.

[62] Anujay Shrivastava, *Mapping 'Unconstitutional Informal Constitutional Changes' by Constitutional Courts- A Comparative Study of Supreme Courts' in India, Bangladesh, Honduras and the USA*, 7(1) COMP. CONST. L. & ADMIN. L. J. 42 (2022).

[63] Chintan Chandrachud, *Constitutional Falsehoods: The Fourth Judges Case and the Basic Structure Doctrine in India in* AN UNAMENDABLE CONSTITUTION? UNAMENDABILITY IN CONSTITUTIONAL DEMOCRACIES (Richard Albert & Bertil Emrah Oder eds., 2018).

Centre for Comparative Constitutional Law and Administrative Law ("**CCAL**"), it gives us immense pleasure to introduce Issue II of Volume VII of our journal to the readers.

Ritwika Sharma and Mayuri Gupta in ***The Omnipresence of Political Parties in India's Democratic Landscape: Building a Case for Future Constitutionalisation*** discuss the role played by political parties in the functioning of an electoral democracy, making an argument for greater regulation in consideration of their unique position at the intersection of private and public law. The authors begin with an overview of the institution of political parties, concluding that they remain largely unregulated, with the exception of the anti-defection law. Subsequently, the authors delve into the critical role of parties as a bridge between the people and the government, further examining the impact of the issues plaguing parties on the health of democratic governance. The authors finally offer a comparative analysis with various other jurisdictions to suggest a framework of principles guiding constitutional recognition of political parties in India.

Our next author Monika Polzin examines the recent use of comparative constitutional law by the Malaysian Federal Court in justifying on the existence of the basic structure doctrine in the Malaysian Constitution in ***The German Eternity Clause, Hans Kelsen and the Malaysian Basic Structure Doctrine***. The author begins with a brief history, stating that unlike India, Malaysian courts had never annulled constitutional amendments on the grounds of basic structure doctrine. However, recent rulings, relying upon the ideas of Hans Kelsen and the German Constitution, expressly support the usage of the doctrine to annul amendments, and extend the reading of constitutional supremacy provided under Article 4(1). However, the author asserts that these are weak justifications, and difficult to reconcile with the abstract understanding of the Federal Court that all constitutions require limits on amendments. Finally, the author looks into problems with this approach, concluding that while the basic structure doctrine should be employed only within a democratic and liberal constitution, the recent ruling is an excellent example of international constitutional dialogue.

In the present, highly polarised political climate, satire as a means of political dissent is heavily regulated, which raises the question of just how free satire really is. Avinash Kotval in ***A Jocular Landmine: Navigating the Position of Political Satire in the Sphere of Free Speech and Expression*** discusses the status of political satire. The author begins with a doctrinal understanding of the fundamental nature of satire – a dual-edged sword, both ridiculing the subject, as well as attempting to trigger social change. The author then examines satire in through the lens of free speech jurisprudence and the Supreme Court ruling expressly bringing satire within the protection of Article 19(1)(a); further, an attempt is made to determine the manner and extent to which satire may be regulated by formal as well as informal means. In this backdrop, the author attempts to situate satire in the free speech spectrum, suggesting the introduction of an objective standard that would allow the protection of satire as a means of dissent.

In ***Horizontal Application of Fundamental Rights: Benign or Misconceived?*** Sujith Nair critiques the recent judgment of *Kaushal Kishore* v. *State of Uttar Pradesh*, where the Supreme Court held that Articles 19 and 21 of the Indian Constitution may be enforced even against private parties, a tectonic shift in the prevailing view that fundamental rights may be enforced only against the State and its instrumentalities. The author undertakes a preliminary review of the various types of horizontality – direct & indirect horizontality and positive obligations – taking examples from jurisdictions all over the world. He then delves into the jurisprudence in India – where courts have steadily broadened the applicability of fundamental rights, and with this background, elaborates upon the Pandora's box of issues with Kaushal Kishore. The author concludes with words of caution on the development of this new avenue of jurisprudence.

And finally, Rudra Chandran reviews Abhinav Chandrachud's ***These Seats are Reserved: Caste, Quotas and the Constitution of India***, recommending it to understand reservations and caste dynamics. However, the author delves into shortcomings of the book – Chandrachud's failure to adequately engage with the primary aim of reservations – enforcing distributive justice – with no suggestions as to how inequalities may be addressed beyond the provision of quotas. Further, the book also does not address issues relating to economically weaker sections. The author

concludes that while the book may be referred to as a neutral, beginner's guide, neutrality is a position that one may no longer take in the present climate.

CCAL ACTIVITIES

Over the last five months, CCAL has undertaken several activities aimed to foster interest and development in the field of constitutional law and administrative law.

In 2022, CCAL started hosting *Writ[e] & Talk* podcast. With the help of this podcast, the Centre aims to bring clarity and build discussion when it comes to writing on Constitutional Law and Administrative Law. We aim to interview authors of academic papers on varied subject matters that the journal deals with. We seek to go in-depth with the theme of their piece, the arguments they raise in their article, their journey of discovering the topic, the methods and techniques used by them to derive their arguments and so on. This initiative is an attempt to increase dialogue, discussion and engagement with legal writing.

Our podcast is available on Spotify, Google Podcasts and YouTube. Transcripts of the episodes and links to relevant reading material can be found on our blog, *Pith & Substance: The CCAL Blog*.

We hosted Mr. Lalit Panda, a Senior Resident Fellow at Vidhi Centre for Legal Policy, New Delhi. The episode discusses his paper titled "***The Weight of Secrets: Assessing the Regulatory Burden for Informational Privacy in India***", which suggests a broad data protection regime and various regulatory tools that may be employed in the creation of an effective Data Protection Authority.

Subsequently, we hosted Mr. Shrutanjaya Bhardwaj who is a practising lawyer at the Supreme Court and the Delhi High Court. The episode discusses Mr. Bhardwaj's paper titled "***Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study***", which draws from an empirical study on the delay in adjudication of habeas corpus petitions in preventive detention cases. He provides a fascinating analysis of successful habeas corpus petitions; with the three indicators

chosen for the study ultimately suggesting that the writ is often rendered ineffectual.

We are also delighted to announce the successful commemoration of the 132nd birth anniversary of Dr. Bhim Rao Ambedkar on April 14, 2023. The occasion duly recognized and appreciated Dr. Ambedkar for his extraordinary contributions to our nation and society, emphasizing his relentless pursuit of constitutional ideals. The commemoration featured musical tributes, eloquent speeches, and recitations of the Preamble in a myriad of regional languages. Additionally, the event was graced with a special address from Mr. Nagesh Jadhav, the esteemed Training and Programme Manager at Coro, India. His enlightening discourse focused on "*Ambedkar and the Grassroots Movement in India*", shedding light on the late jurist's profound impact on India's grassroots activism.

The endeavour of the Centre to encourage discourse on the subject matter of constitutional and administrative law is furthered by the bi-annual publication of CALJ, guest lecture events, *Writ[e] & Talk* podcast and the regular publication of articles on topics of contemporary relevance on our blog "*Pith and Substance: The CCAL Blog*".

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The Board hopes that readers will find this issue to be a useful resource and that it will encourage informed discussion on the topics of administrative law and constitutional law. Should our readers have any queries, suggestions or feedback for us, write to us at: **editorcalq[at]gmail[dot]com**.

Ayush Mehta & Prakhar Raghuvanshi

Editors-in-Chief