

# 2024 in Review

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## Democracy and the Election Commission of India

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As I write this review on the eve of 2025, much hasn't changed when it comes to the status of democracy in India. If anything, there are increasing concerns that the gains of democratic consolidation since the inauguration of the Indian Constitution are withering away and giving ample space for the entrenchment of a majoritarian, anti-democratic political culture. The vile and morally corrupt politics of the Bharatiya Janata Party ("BJP") have struck a chord with the voters, who continue to support its exclusionist vision of India. Many have been emboldened, and millions converted thanks to several television news platforms working as the BJP's spokesperson, the immense presence of BJP's ideologues across WhatsApp groups, and its social media cell that continue to spew hate in its effort to radicalize society and repeat false narratives about India's *amrit kaal* or 'The Era of Elixir'.

There is no *amrit kaal* for everyday citizens of India, who continue to face the brunt of severely polluted air, unclean water, subpar healthcare facilities, grossly underfunded and substandard education facilities, poorly planned and managed public infrastructure and transportation services, and a highly corrupt bureaucracy. It is a farce to claim *amrit kaal* when India remains poverty-ridden, and one of its states continues to suffer from violent civil unrest for more than a year.

However, viewed from the perspective of the Modi-led BJP, the present era is indeed an era of elixir. They have successfully won the third consecutive general election and currently hold power in more than half of the Indian states (either alone or in coalition) while boosting their exclusionary, centrally controlled, non-accountable, and crony capitalistic governance model. There is a realization that smart narrative-building could effectively transform these deficiencies into strengths. They have mastered the game of abusing the silences and gaps in the Indian constitution to their political favour. The BJP government knows that it could effectively crush civil rights with the heavy hand of the state, use laws and the state machinery as a web to capture every form of opposition, and create a system that prizes a few at the cost of the many, all with complete electoral impunity. It does not consider citizens to be constituent units of the state—citizens are

choice-less consumers who must ever be thankful and non-critical of the services provided by the enterprise called the state. And if this [Pew survey result](#) is anything to go by, the BJP seems to be winning in this endeavor:

“In India, 85% of respondents to a 2023 survey said that military rule or rule by an authoritarian leader would be good for the country. India’s share was the highest among the 24 countries surveyed. Notably, the share of Indians who said that it is important for Opposition parties to operate freely was the third lowest among the countries surveyed. In 2023, the share of Indians who believed that representative democracy is a good way of governance declined considerably from 2017, when the same survey was conducted.”

## The Election Commission of India: Highlight of 2024

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Amidst all this, if I were to nominate the most significant contributor to the ongoing democratic backsliding of Indian democracy from 2024, it would be the fall from grace of India’s electoral processes and a heavy dent in the credibility of the Election Commission of India (“ECI”).

The success and soundness of free and fair electoral processes hinge on three core elements: freedom of speech and association, with adequate institutional arrangements to protect the fearless propagation of one’s political ideology and opinions; the regulation of campaign finance; and the presence of an effective and impartial electoral commission. In the last 10 years, India’s civic space has been constantly and strategically narrowed to electorally benefit the BJP. It has used two broad methods in this regard. *First*, journalists, civil society leaders, think tanks, NGOs, academicians, political opposition, and every perceived critic are silenced using legal and extra-legal methods. *Second*, the BJP supports and engages in hate campaigns and a discriminatory social outlook that effectively makes those at the receiving end fearful and uncomfortable in sharing their ordeals and voicing a counter, thus, virtually excluding their voices from the political space.

The second strand—campaign finance—has suffered a similar fate. There are no restrictions on the amount of money a political party can spend in their electoral campaigns, which effectively benefits the incumbents as they tend to attract more donations from wealthy business houses. The electoral bonds scheme was introduced to double down the BJP’s financial capabilities, as it created a mechanism to raise enormous funds (perhaps even tainted money) in a completely non-transparent manner. In a welcome decision issued earlier this year, the Supreme Court of India quashed the scheme and strongly reaffirmed the citizen’s right to information under Article 19(1)(a) of the Constitution.

The third strand—the ECI—and the absence of its impartiality have been the highlight of 2024. There is no doubt that the perceived credibility of the ECI has been undergoing a sustained downfall over the last decade (see [here](#), [here](#), [here](#), and [here](#)), and noticing its conduct during the 2024 general elections, one can only say that its credibility has dipped

further. Apart from the judiciary, the ECI used to be the loudest harbinger of the success of electoral democracy in India. This is the biggest tragedy of the Modi era—both the society and the institutions are losing their democratic spirit, bit by bit, incrementally. I study and account this downgrade in India's electoral processes in the rest of this article.

## **From the umpire to the 12th player (and finisher, at times)**

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It does not take one to have a proficient understanding of political science or law to appreciate the crucial significance of a neutral and independent electoral commission for the sustenance of an electoral democracy. Democracies sustain on account of the clash of ideas in the electoral battlefield, and it is the constitutional duty of the ECI to ensure that every citizen can, without any hindrance and in a fair manner, exercise their right to associate and raise campaigns to win a seat in the legislative bodies. Speaking in terms of political parties, the ECI is mandated to maintain a level playing field for the parties to launch and build their campaigns in their effort to seek state power. In cricketing terminology, the ECI is the umpire, and given the ongoing Australia tour, I count on many Indians to have a long memory of how the compromised umpiring in the 2008 Border-Gavaskar Trophy scandalized the entire game.

### *1. Chandigarh Mayoral Election*

For the Indian democracy, this year is analogous to the 2008 moment; only the field of contestation is the game of electoral politics. It could not be more emblematic of the times we are in that the first major controversy pertained to a mayoral election, and it took place on the death anniversary of Mahatma Gandhi—January 30—one of the biggest champions of the cause of local governments. Anil Masih, a long-time member of the BJP and a councilor in the Chandigarh Municipal Corporation, who was nominated to preside over the mayoral election, was caught on camera defacing ballot papers with votes in favor of the opposition. But for the CCTV recording, the actions of Masih would have gone unchallenged, and allegations dismissed as unreasoned noise by the defeated parties. The Supreme Court was quick to intervene. It quashed Masih's results and declared the opposition's candidate as the mayor (¶39).

### *2. Law on the appointment of ECI members*

However, when it came to the challenge to the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Office and Terms of Office) Act, 2023, the Court's actions and its pace were diametrically opposite. This law was introduced to undo the judgment of the Supreme Court in Anoop Baranwal v. Union of India, wherein a five-judge constitution bench of the Court held that until the Parliament enacts an appropriate appointment process of election commissioners, the appointments shall be made by a three-member committee comprised of the Prime Minister, Leader of Opposition of the Lower House of Parliament, and the Chief Justice of India. The 2023 Act, in a sinister and openly partisan move, replaced the Chief Justice with 'a Union Cabinet Minister to be nominated by the Prime Minister.' I have argued elsewhere that this is an unconstitutional exercise of power for multiple reasons. When this law was

challenged earlier this year, the Supreme Court declined to grant a stay. Right before the general elections scheduled for April-May, the three-member ECI was reduced to a single member on account of a resignation and a retirement, giving an opportunity to the government to staff the commission with new members. When another application was filed to seek a stay on the new law in light of these developments, the Court again declined to give any relief. Two new election commissioners were appointed by a government-heavy selection committee—comprised of the Prime Minister, Home Minister, and the Leader of the Opposition—with the LoP noting that he was given a copy of the shortlisted names only ten minutes before the meeting.

### 3. *The 2024 general elections*

Such developments right before the general elections would naturally give rise to a sense of impending foul play in the upcoming elections. And so was the case. Several independent observers and political parties have questioned the way the general elections were scheduled and spread across two months. They allege that the ECI's scheduling assisted the BJP's poll campaign strategies. During the electoral campaigns as well, the ECI failed to perform its duties when the Prime Minister openly engaged in desperate dog-whistling as BJP's internal polls started showing concerning trends for the party. When the Prime Minister called Muslims 'infiltrators' and falsely alleged that 'Congress will collect your properties and give them to the ones who have more kids' (insinuating Muslims), no action from the ECI ensued. Rather, the Prime Minister double downed. In the subsequent speech, he engaged in further disparagement and distortions, alleging that 'the Congress will snatch your [buffalo] ... it will X-ray your lockers, your bank accounts, even your [grains]. And then, the Congress government will take and distribute it.' When pressure built up, a minor slap on the wrist in the form of an order to refrain from communal speeches came. Interestingly, the order was addressed to the respective presidents of the BJP and the Congress. Decency standards were thrown aside during the electoral campaign—as has been the practice if one traces several of Modi's and other BJP officeholders' speeches over the last few years—and ECI's approach reflected a conscious exercise of balancing to secure the BJP's standing in the election. If the ECI does not introspect and attempts a course correction, the dangers are immense. As an editorial observed,

“Such hesitation skews the level playing field of the electoral competition and threatens to erode the credibility of the institution in the eyes of the people. The consequent apathy and cynicism towards the electoral process are harmful to the health of democracy as they may induce withdrawal and passivity among the citizenry. Such a situation also provides a breeding ground for unreasonable and irrational assertions about the procedural lapses in the electoral process, which can further compound such passivity.”

As the elections proceeded with each phase and the results emerged in June, several reports emerged of three kinds of discrepancies in the voter turnout data. *First*, journalists have uncovered cases of unlawful voter deletions and the addition of fake voters in several constituencies that returned a BJP representative with a razor-thin majority.

*Second*, there was a huge increase in voter turnout numbers as recorded on the day of the election and as provided on the next day (which includes data on votes cast after the polls closed). *Third*, there were discrepancies between the number of votes cast and the number of votes counted. It's been six months since the elections; however, not only do these questions still linger, but similar concerns have also been raised in the subsequent state elections (see here and here). In some instances, parties have alleged that the difference between the votes cast and counted is as big as 30%. Calling the change in voter percentage 'unprecedented', a report by Vote for Democracy revealed that,

"This unprecedented vote percentage increase translated into actual votes has meant that the thus "manipulated" figures of Votes Recovered and Counted ensured that ... a possible minimum of as many as 79 seats in 15 states could have been won by the NDA/BJP through this hike of Votes!"

To clear doubts about the integrity of the electoral process, the Association of Democratic Reforms approached the Supreme Court seeking the counting of 100% physical slips produced as part of the electronic voting process and secured in VVPAT boxes (Voter Verified Paper Audit Trail). Currently, the paper trail of only five electronic voting machines (EVMs) per assembly segment in a parliamentary constituency is verified manually. However, elaborating on the theoretical impossibility of tampering with the EVMs, the elaborate and transparent processes followed during the electoral process, and the resultant 'increase in the time for counting and delay [in the] declaration of results', the Supreme Court dismissed the petition. The Court noted,

"67. We have referred to the data, after elucidating the mechanics and the safeguards embedded in the EVMs to check and obviate wrongdoing, and to evaluate the efficacy and performance of the EVMs. ... it is also necessary to exercise care and caution when we raise aspersions on the integrity of the electoral process. Repeated and persistent doubts and despair, even without supporting evidence, can have the contrarian impact of creating distrust. This can reduce citizen participation and confidence in elections, essential for a healthy and robust democracy. Unfounded challenges may actually reveal perceptions and predispositions ..."

A perusal of the Court order would reflect the preference for assumed integrity over clearance of doubts and reassurance about the electoral process and a choice for a quicker and electronically controlled process over a more transparent and secured process. It is quite possible that the allegations of electoral fraud are unfounded or 'half-baked conspiracy theories', as one has put it; nevertheless, it is undeniable that such widespread allegations have emerged due to several instances of the ECI's failure to act as the neutral umpire and uphold its constitutional duties.

#### *4. Changing the law to restrict transparency*

We end 2024 with yet another governmental move towards making the electoral process non-transparent and closing spaces for civil society and opposition-led interventions as the necessary checks and balances. In response to an order of the Punjab and Haryana High Court directing the ECI to supply the petitioner with a few poll-related documents, CCTV footage, and videography in relation to the Haryana state assembly polls, the Union government amended the Conduct of Election Rules, 1961, on December 20 to restrict the number and type of documents available for access. A challenge to this amendment has now been raised before the Supreme Court.

This review shows that a playbook is in place for entrenching a non-transparent, non-accountable, and self-benefiting electoral process. *First*, use the executive powers to issue schemes such as the electoral bonds scheme. *Second*, when challenged, overrule judicial pronouncements with immediate and timely legislative changes. *Third*, utilize the legislative changes to create a timid and complaint electoral commission. And *fourth*, run vile and divisive campaigns to polarize the voters with complete impunity. The cost of this playbook is the Indian democracy and the integrity of the electoral process.

## Concluding Remarks

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The threats to the idea of free and fair elections in India are live and urgent. A pre-poll survey conducted by CSDS-Lokniti earlier this year produced shocking but expected findings. It found that the percentage of people who have ‘not much’ or ‘not at all’ trust in the ECI has nearly doubled since 2019, growing to 23% from 12%. Similarly, the survey recorded that 45% of the voters believe that there is either ‘somewhat’ or ‘a lot’ of likelihood of the ruling party manipulating the EVMs. ‘Concerning’ cannot adequately capture the seriousness of the rupture in the public perception of the integrity of the ECI and the existence of a level playing field over the last few years. Voter trust in India’s electoral process is at a record low. With this, even the argument that India remains a democracy, at least in its thinner definition, loses its currency.

Indira Gandhi declared an internal emergency and suspended democracy in India in 1975-76 in the backdrop of a vigilant judiciary upholding the norms of democracy. It found Gandhi guilty of electoral manipulation and ordered her to vacate her seat. In 2024, instances of manipulation and violations of electoral norms and ethics abound, but all with impunity. The destruction of the institutions is appalling.

But as we look forward to 2025, let’s conclude this review with hope and a resolve to make our individual contributions—however small or big—toward strengthening the values of democracy, equality, liberty, fraternity, and justice. As I argued elsewhere, let’s engage in a project of constitutional literacy or deep politics, as Yogendra Yadav has noted. The Supreme Court was absolutely correct when it observed that,

“... free and fair elections are a part of the basic structure of the Constitution ... Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy.”

A Happy New Year to all!

## References

- ↑1 *Amrit Kaal*, or the Era of Elixir, is a term first used by the Prime Minister during his address to the nation on the occasion of India's 75<sup>th</sup> Independence Day celebrations on August 15, 2021. It refers to the 25-year period from 2022 to 2047, during which the government is committed to ideating and executing a transformative vision for the country to achieve comprehensive development across all sectors as India approaches the centenary year of its independence.

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## References

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