

The Scope of Judicial Review in Electoral Matters: Constitutional Accountability and Electoral Autonomy

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ABSTRACT

Article 329(b) of the Constitution of India diverts challenges against the elections into election-petition procedure, which safeguards the continuity of elections from litigation, which can scuttle a scheduled poll. This principle was established in *N. P. Ponnuswami v. Returning Officer* and also reiterated in later cases, but is challenging in cases where the nomination of a candidate is done away with and the election is essentially concluded before there is heard from a post-election remedy. This paper takes the centre of discussion to be Supreme Court's *Meenakshi Natarajan v Election Commission of India* case (2026) to consider the tension between electoral autonomy and timely legal accountability. It discusses the provisions of the Constitution (Articles 324-329), the Representation of the People Act, 1951, and the judicial interpretation of nomination stage controversies involving the functional test put forward by the Election Commission of India in the case of *Election Commission of India v. Ashok Kumar*. It also raises the issue of the institutional responsibility of the Electoral Commission and makes a slightly limited comparison with the reluctance of the United States to extend last-minute electoral relief. The paper will suggest that the post-election petition is still a constitutionally significant process, but it might be of little practical utility where the lost chance to challenge cannot be recovered. It suggests that nomination decisions should be subject to a strictly framed, time-limited, record-based review, a response to representations, and reasonable restrictions on delay, and calls for the retention of the ordinary election-petition remedy. Importantly, the proposal—and its ability to survive Article 329(b)—must be carefully analyzed constitutionally, because mere legislation is not enough to invalidate the existing ban.

Keywords: Article 329(b); judicial review; Election Commission of India; nomination scrutiny; election petition; electoral autonomy; Meenakshi Natarajan.

RESEARCH METHODOLOGY

This paper adopts a doctrinal legal research methodology. The doctrinal component analyses the constitutional text, principally Articles 324–329, the Representation of the People Act, 1951, the Conduct of Elections Rules, 1961, and leading Supreme Court decisions concerning the meaning of “election”, the powers of the Election Commission, and the limits of judicial intervention. The 2026 order in *Meenakshi Natarajan v. Election Commission of India* is treated as the principal case study, with its reasoning considered alongside *N.P. Ponnuswami*, *Mohinder Singh Gill*, and *Election Commission of India v. Ashok Kumar*. The paper also reviews secondary commentary and public reporting where the discussion concerns

recent institutional developments. The analysis is qualitative rather than statistical. No comprehensive dataset of election-petition disposal times has been independently analysed, so claims about systemic delay are framed as a structural concern rather than as a quantified empirical finding. The proposed reforms are normative suggestions, not a statement of current law. Their constitutional validity, statutory cross-references, and implementation timelines require further legal review before legislative use.

1. INTRODUCTION

1.1 Historical perspective of Electoral Dispute Resolution in India

The cornerstone of India's constitutional democracy is free and fair elections. The Supreme Court in many cases has held the free and fair election as an integral part of the basic structure of the Constitution and has not deemed that it can be removed by Parliament by passing a law. Elections embrace the sovereignty of the people and its exercise via a republican form of government, and any dispute resolution mechanism connected with the electoral process must square two competing needs – the individual's right to contest and be heard, along with the continuity of the electoral procedure as a whole without interruption. The Electoral Structure of the Constitution stands on the shoulders of Part XV in particular, namely, Articles 324 to 329. The authority of the Election Commission of India to run the elections, given under Article 324 is an extraordinary grant of powers to the Commission as it has a wide jurisdiction over the way elections are conducted, and this authority is largely untouchable. This setup reflects to an implicit recognition that conducting elections inevitably involves the individual decisions of thousands of people such as scrutinizing nominations, conducting polls and counting votes. In addition, these decisions which have to be made individual must be finalized quickly enough so that the process can take place. The dual nature of the role of the Election Commission is thus two-fold: as a protector of electoral integrity it acts, and in the examination of nominations, it serves as a quasi-judicial body, during the election period. Such a position and the conflict between the two sides will give the background to a central question which this paper tries to explore. The tension between electoral continuity and the right of the individual to a remedy first appears at the scrutiny stage, that is when the Commission or its officers refuse to make a candidate a nomination. The demand for electoral continuity should not be ignored because it is a "pure administrative convenience. With a fixed electoral schedule for nomination, scrutiny, withdrawal, polling and counting of votes, any mishap at any stage may cause the entire electoralism process of the constituency or in the indirect election system of the Rajya Sabha to go haywire. This consideration has been the basis for the constitutional ban on judicial interference during an election, discussed in Part 2.

1.2 Constitutional Bar under Article 329(b)

Article 329(b) of the Constitution lays down that no election to either of the Houses of Parliament or to a House of State Legislature may be questioned other than by an election petition which is filed pursuant to a law enacted by the relevant Parliament or Legislature. Combined with Article 329(a) which prohibits the courts from hearing any petition or application in regard to the validity of any law pursuant to the delimitation of constituencies, this implies that normal judicial review is effectively eliminated during the election process. The Supreme Court decided in *N.P. Ponnuswami v. Returning Officer, Namakkal* (1952), that the word 'election' in Article 329(b) would refer to the overall process of the election, starting from the issuing of the notification calling the election till the election result was declared, and not just the voting itself. Thus a challenge to rejection of a nomination paper which is to be treated at the scrutiny stage is clearly in the bar and cannot be treated on a writ petition. The election petition is provided under article 329(b) and is set in the Representation of the People Act, 1951. In accordance with section 80 of

the Act, a person is only allowed to challenge the result of an election through an election petition, and under section 100 of the Act, the grounds for having an election set aside include among others, improper rejection of a nomination. However, this cure is only available after a balloting and a verdict is given. The reason for this limitation is that this would make litigation at intermediate stage a possibility of postponing or disrupting election which is bound to go from one deadline to another as the Court has held in Ponnuswami and Mohinder Singh Gill v. Chief Election Commissioner (1978). In Gill, the Court also noted that the Election Commission has the wide residuary power under Article 324 to deal with things not explicitly covered by the other provisions of the Constitution. By law, he may use such powers "fairly and within the limits of the Constitution", he warns. These two decisions taken together provide the doctrinal framework for the working of the present electoral dispute resolution mechanism – the keeping of the courts out, the action of the Commission, and the devolution of all disputes into an election petition.

1.3 The Problem of Delayed Electoral Remedies

The first difficulty with Electoral Remedies is that they are delayed. First, Electoral Remedies are delayed. But this is a doctrine that in its early days may be reasonably sound but, when the nomination has failed, creates a unique issue. A candidate who has been rejected (rightly or wrongly) at the scrutiny stage has no opportunity to obtain a pre election ruling on the validity of the rejection. Article 329(b) prohibits the writ jurisdiction; and the sole forum available to the petitioner, the Election Commission itself, is not statutorily bound to take any particular decision on such a representation within any time limit and to furnish a reason for its action. The only remedy available to the candidate is to file an election petition, which is possible after the elections are declared, under Section 81 of the Representation of the People Act, 1951, and in principle is to be determined in the time frame provided under Section 86. In practice, however, election petitions are not decided much later, as late as the end of the tenure of the office to which the petitioner's victory would apply. This makes it possible that the cure will ultimately be effective, but will come at a time too late to be of any use. When a Court finds that a nomination was not considered as such, the seat is already taken, the term has expired, or in the case of a fixed duration body like the Rajya Sabha, may have ended by then. The relief of the election which is set aside, to have another election, doesn't restore the electoral opportunity that is lost right at the outset. That is, the right to a remedy is guaranteed by the law, but not by a prompt remedy, and a delayed remedy is, in reality, no remedy at all. This paper aims to address this conflict -- between the doctrinal rationale for the law to keep courts out of an election and the effectiveness of whatever alternative remedy it provides -- and this, I think, is where I ought to begin. The landmark case of Meenakshi Natarajan v. Election Commission of India (2026) is a suitable setting for this paper as the Court found that there was no exception under the clause of Article 329 (b) which bars the nomination for election to any position by a person who fails to satisfy the citizenship requirement. The paper, informed by this case, reflects whether such a temporal mechanism exists or might be developed, with reference to that of the United States, where pre-election rulings on the eligibility of candidates are made in tandem with a judicially fashioned rule aimed at discouraging courts from meddling in an election that is too close to calling.

2. CONSTITUTIONAL ARTICLES AND LAWS RELATED TO ELECTION IN INDIA:

Articles 324 to 329 in part XV of the Constitution of India make the provisions with regard to the electoral system in India. The provisions collectively deal with institutional design, authority and functional autonomy of the Election Commission of India (ECI), ensuring that the conduct of elections remains insulated from political interference.

- **ARTICLE 324: Superintendence, direction and control of elections to be vested in an Election Commission** - The constitutional basis for the Election Commission of India's independence and power is provided under Article 324. The clause aims to guaranty the unbiased, independent, and efficient administration of the electoral process by giving the Commission extensive authority over electoral rolls and election conduct while offering institutional and removal safeguards for its members. It ensures that an independent body oversees electoral rolls and conducts free, fair elections.
- **Article 325: No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex** – It guarantees equality and non-discrimination in the electoral process by providing for one general electoral roll for each territorial constituency. This article prohibits discrimination in electoral roll inclusion based on religion, race, caste, or sex. It ensures that every eligible citizen has an equal right to be part of the electoral process, regardless of their background. This upholds the principle of universal adult suffrage and equality before the law.
- **Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage** — It establishes universal adult suffrage as the basis for elections to the House of the People and State Legislative Assemblies. Every Indian citizen aged 18 or above is entitled to register as a voter, unless disqualified under the Constitution or applicable law on grounds like non-residence, unsoundness of mind, crime, or corrupt practices. This provision ensures broad and equal participation of adult citizens in the democratic process. It forms a fundamental constitutional basis for representative democracy and electoral inclusion in India.
- **Article 327: Power of Parliament to make provision with respect to elections to Legislatures** - It empowers Parliament to enact laws governing elections to both Houses of Parliament and State Legislatures, subject to constitutional provisions. This includes matters such as preparing electoral rolls, delimiting constituencies, and other measures necessary for properly constituting legislative bodies. The provision establishes Parliament's legislative authority over the electoral framework. It facilitates the systematic and orderly conduct of elections across India.
- **Article 328: Power of Legislature of a State to make provision with respect to elections to such Legislature** - It empowers State Legislatures to make laws concerning elections to their Legislative Assembly or Legislative Council, subject to the Constitution. This applies only to the extent that Parliament has not already made provisions on the matter. It includes the preparation of electoral rolls and other matters necessary for properly constituting the State Legislature. The provision recognizes a limited legislative role for States in regulating their own electoral processes. It maintains the supremacy of the constitutional framework and Parliament's legislative provisions.
- **Article 329: Bar to interference by courts in electoral matters** — It restricts judicial interference in electoral matters to prevent disruption of the electoral process through ordinary court proceedings. It provides that laws relating to the delimitation of constituencies and allocation of seats made under Articles 327 and 328 cannot be challenged in court. The validity of an election to Parliament or a State Legislature can be questioned only through an election petition before the authority and in the manner prescribed by law. Thus, Article 329 seeks to maintain the continuity and finality of the electoral process. It provides a specific legal mechanism for challenging election-related disputes.

3. REPRESENTATION OF THE PEOPLE ACT, 1951:

Representation of the People Act, 1951, deals with conduct of elections. This Act contains the following Key provisions:

- Qualification and disqualification of candidates
- Election procedures
- Corrupt practices and election offences
- Election disputes and by-elections
- Registration of Political parties

Sections 33, 33A and 36 regulate the pre-election stage by prescribing the requirements for valid nomination, mandating disclosure of specified criminal antecedents and empowering the Returning Officer to scrutinise nominations. Section 33A is particularly significant from the perspective of electoral transparency because it transforms the judicially recognised right of electors to obtain relevant information concerning candidates into a statutory disclosure obligation. The Supreme Court's jurisprudence, particularly the development culminating in the insertion of Section 33A, demonstrates that informed electoral choice is an important component of democratic participation.

Sections 80, 81, 86, 98 and 100 of the Representation of the People Act, 1951 collectively constitute the principal statutory framework for post-election judicial scrutiny. Section 80 establishes the foundational rule that an election can be called in question only through an election petition presented in accordance with the Act. This statutory mechanism operates alongside Article 329(b) of the Constitution and reflects the legislative intention that electoral disputes should be determined through a specialised and structured procedure rather than through fragmented challenges during the electoral process.

Section 81 complements Section 80 by regulating the institution of an election petition. It identifies the persons entitled to challenge an election, prescribes the High Court as the forum and imposes a strict limitation period of forty-five days. The provision therefore reflects the need to reconcile the right to challenge an allegedly unlawful election with the equally important requirement of certainty and finality in electoral outcomes. An election cannot remain perpetually vulnerable to litigation, and the statutory limitation period ensures that electoral disputes are brought before the Court within a defined period.

Section 86 introduces the procedural discipline governing election litigation. It requires the High Court to dismiss an election petition that fails to comply with Sections 81, 82 or 117. Consequently, the statutory right to challenge an election is not an unrestricted right; it must be exercised in conformity with mandatory procedural requirements. At the same time, Section 86 regulates the conduct of the trial, joinder of candidates, amendment of particulars concerning corrupt practices and expeditious disposal. It thereby seeks to prevent election litigation from becoming unduly prolonged and to ensure that the legitimacy of an elected representative is not left indefinitely uncertain.

Section 100 constitutes the substantive core of this framework because it identifies the circumstances in which an election may be declared void. The grounds include the lack of qualification or the existence of a disqualification of the returned candidate, commission of corrupt practice, improper rejection of a nomination and circumstances in which the result has been materially affected by specified electoral irregularities. Particularly significant is Section 100(1)(d), which introduces the requirement of demonstrating that the result of the election was materially affected in the circumstances specified therein. The jurisprudence concerning this expression demonstrates that an electoral irregularity does not, by itself, automatically invalidate an election. Where the statute requires proof of material effect, the petitioner must establish a causal connection between the alleged illegality and the electoral result.

Section 98 represents the remedial culmination of this statutory framework. Upon completion of the trial, the High Court may dismiss the election petition, declare the election of the returned candidate void, or, where the statutory conditions are satisfied, declare another candidate duly elected. The provision therefore converts the findings reached under Section 100 into legally defined remedies.

4. EVOLUTION OF JUDICIAL APPROACH TO ARTICLE 329 (B):

N.P. Ponnuswami vs Returning Officer

Namakkal - On 21 January, 1952 (AIR 1952 SC 64; [1952] SCR 218)

In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, the appellant's nomination for election to the Madras Legislative Assembly was rejected by the Returning Officer during scrutiny. He approached the High Court under Article 226 of the Constitution, seeking a writ of certiorari to quash the rejection and a direction to include his name among valid candidates. The High Court dismissed the petition, holding that Article 329(b) barred judicial interference at that stage of the electoral process.

The Supreme Court upheld the High Court's decision and gave a broad interpretation to the term "election" under Article 329(b). The Court held that the term covers the entire electoral process, from the nomination stage to the declaration of the result. Therefore, a matter affecting the validity of an election could not ordinarily be challenged before a court at an intermediate stage.

The Court also examined Part XV of the Constitution and the Representation of the People Act, 1951. It noted that the statutory framework provides a special and exclusive remedy through an election petition for questioning an election's validity. Under the Act, an election cannot be called into question except by an election petition presented according to the prescribed procedure. The proper remedy against an improper rejection of nomination was to challenge the election through this statutory mechanism after the election had been completed, rather than seeking immediate relief through a writ petition.

The decision established two important principles. First, "election" under Article 329(b) has a wide meaning covering the entire electoral process. Second, electoral disputes must ordinarily be raised through the special statutory remedy of an election petition under the Representation of the People Act, 1951, not through judicial proceedings at an intermediate stage.

The significance of *Ponnuswami* for the present research lies in the tension it creates between electoral continuity and effective remedies. While the election-petition mechanism preserves the uninterrupted conduct of elections, requiring the candidate to wait until after the election may mean that the immediate opportunity to contest cannot be restored, even if the nomination was ultimately found to have been improperly rejected.

Mohinder Singh Gill v. Chief Election Commissioner

(1978) 1 SCC 405

In *Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors.*, the Supreme Court examined the expansive powers of the Election Commission under Article 324 and their relationship with the judicial restriction imposed by Article 329(b). The case arose when serious violence during the counting process destroyed ballot papers and ballot boxes, making it impossible to determine the result with certainty. Exercising its powers under Article 324, the Election Commission cancelled the poll and directed a fresh poll. The decision was challenged on the ground that the Commission had acted arbitrarily and contrary to fairness and natural justice.

The Supreme Court recognised the wide constitutional authority of the Election Commission under Article 324, particularly its power of "superintendence, direction and control" over elections. The Court

acknowledged that the Commission may need to act in situations not expressly covered by existing electoral legislation. However, this broad constitutional power is not unfettered or arbitrary. Its exercise remains subject to the rule of law, fairness, reasonableness and principles of natural justice.

More significantly for the present research, the judgment reinforced the blanket constitutional bar in Article 329(b) against judicial intervention in election matters once the electoral process has commenced. The Court emphasised that an election is a continuous constitutional process. Allowing courts to entertain challenges at every intermediate stage could fragment, delay and disrupt the electoral process. Consequently, electoral grievances must ordinarily be pursued through the special statutory remedy of an election petition under the Representation of the People Act, 1951, rather than through proceedings intended to interrupt the ongoing election.

The significance of *Mohinder Singh Gill* lies in this apparent constitutional tension. Article 329(b) creates a strong, and in practical terms blanket, shield against judicial interruption of an ongoing election. At the same time, Article 324 requires the Election Commission to exercise its extensive powers within the boundaries of constitutional fairness and legality. The judgment strengthens the principle of electoral continuity but does not transform the Election Commission into an institution immune from constitutional accountability.

Election Commission of India v. Ashok Kumar (2000) 8 SCC 216

In *Election Commission of India v. Ashok Kumar*, the Supreme Court addressed a fundamental constitutional tension between the autonomy of the Election Commission, the power of constitutional courts to exercise judicial review, and the constitutional prohibition against interrupting an ongoing electoral process. The case arose during the 1999 Lok Sabha elections in Kerala, when the Election Commission, acting under Rule 59A of the Conduct of Election Rules, 1961, directed that ballot papers from different polling stations be mixed before counting. The decision was challenged before the Kerala High Court under Article 226 on the ground that polling-station-wise counting was necessary to preserve evidence relating to alleged booth capturing and other irregularities. The High Court intervened and directed the Election Commission to follow the earlier method of polling-station-wise counting. The Election Commission challenged that intervention before the Supreme Court.

The controversy required the Court to reconcile three constitutional provisions operating within the electoral framework: Article 324, which confers upon the Election Commission the superintendence, direction and control of elections; Article 226, which empowers High Courts to exercise judicial review; and Article 329(b), which provides that an election can be called in question only through an election petition in the manner prescribed by law. The central question was therefore not merely whether a court possesses jurisdiction during an election, but where the constitutional boundary lies between legitimate judicial review and impermissible judicial interference with the electoral process.

The Supreme Court rejected an excessively broad interpretation of Article 329(b). It made clear that the provision cannot be transformed into a blanket constitutional immunity protecting every action taken during an election from judicial scrutiny. The Court emphasised that the crucial test is the effect of judicial intervention upon the electoral process. Where an intervention tends to interrupt, obstruct, delay or protract the election, the constitutional scheme requires judicial restraint and ordinarily leaves the aggrieved party to the remedy of an election petition after completion of the election. However, where judicial intervention facilitates, advances or smoothens the completion of the election, such intervention cannot automatically be characterised as "calling the election in question."

This distinction constitutes the central doctrinal contribution of Ashok Kumar. The judgment recognises that Article 329(b) is designed to prevent the electoral process from being paralysed by litigation, but it was never intended to create an area of governmental action wholly insulated from constitutional scrutiny. A contrary interpretation would permit an electoral authority to commit an unlawful or arbitrary act during an election and then invoke Article 329(b) as an absolute shield against judicial examination. Such an interpretation would undermine the constitutional commitment to free and fair elections and place electoral administration beyond meaningful judicial accountability.

The Court simultaneously affirmed the extensive constitutional authority of the Election Commission under Article 324. The power of superintendence, direction and control enables the Commission to take necessary measures to ensure the effective conduct and completion of elections, particularly where the existing statutory framework does not exhaustively prescribe a solution to every electoral contingency. Nevertheless, the breadth of Article 324 does not imply unfettered or unreviewable discretion. The Election Commission remains subject to constitutional limitations and judicial review where its actions are shown to be arbitrary, mala fide, contrary to law, or otherwise legally unsustainable. The judgment therefore rejects both extremes: neither may the Election Commission be treated as an ordinary administrative authority whose every electoral decision can be routinely stalled through litigation, nor may Article 324 be understood as conferring absolute immunity upon the Commission.

An equally significant feature of the judgment is the Court's recognition that the judicial process may, in appropriate circumstances, be necessary to preserve vital electoral evidence. A rigid interpretation of Article 329(b) could create an anomalous situation in which evidence necessary for a subsequent election petition is irretrievably lost during the period in which the Court is constitutionally expected to remain passive. The Court therefore recognised that limited judicial intervention may be justified where it protects the evidentiary foundation of a future electoral challenge, so long as such intervention does not interrupt, obstruct or protract the election itself. This approach demonstrates that judicial restraint does not mean judicial abdication.

The Supreme Court ultimately found that the circumstances did not justify the Kerala High Court's intervention. The Election Commission had acted within the statutory framework available to it, and the allegations of mala fide exercise of power were not supported by sufficient material. The Court therefore set aside the High Court's orders. Importantly, the decision did not establish that electoral decisions are immune from judicial review. Instead, it established a functional test based on the consequences of judicial intervention: the Court must determine whether its intervention protects and facilitates the electoral process or instead brings that process to a halt.

5. CASE STUDY: *MEENAKSHI NATARAJAN V. ELECTION COMMISSION OF INDIA (2026)*

Facts of the Case

The petitioner, Meenakshi Natarajan, a candidate of the Indian National Congress, filed her nomination for a Rajya Sabha seat from the State of Madhya Pradesh.

On 9 June 2026, the Returning Officer rejected her nomination on the ground that her Form 26 affidavit failed to disclose the pendency of a criminal case, despite the fact that summons had already been issued and she had appeared before the Magistrate. The Returning Officer held that this amounted to suppression of material information and rendered the affidavit incomplete.

Following the rejection, the petitioner approached the Election Commission of India seeking relief. As no order was passed by the Commission, she invoked the Supreme Court's jurisdiction under Article 32,

contending that the Returning Officer's decision was contrary to Section 33A of the Representation of the People Act, 1951.

She argued that disclosure under Section 33A is required only where charges have been framed for offences punishable with imprisonment of two years or more, whereas in her case, no charges had yet been framed. She further argued that the writ petition sought to enable a fair election rather than obstruct the electoral process.

The respondents, including the Election Commission of India and the private respondents, opposed the maintainability of the petition. They relied upon the constitutional bar contained in Article 329(b) and the settled precedent beginning with *N.P. Ponnuswami v. Returning Officer*, contending that the only remedy available against rejection of a nomination paper is an election petition after completion of the election.

The Legal Framework

Constitutional and Statutory Provisions

The constitutional and statutory scheme governing the issue is primarily contained in **Article 329(b)** of the Constitution of India, which provides that no election to either House of Parliament or to a State Legislature may be called in question except through an election petition presented in the manner prescribed by law.

This bar is reinforced by Sections 80 and 170 of the Representation of the People Act, 1951, which restrict election challenges to the statutory election-petition mechanism and limit judicial interference with decisions of the Returning Officer during the electoral process.

Nomination Scrutiny and Disclosure Requirements

In relation to nomination scrutiny, **Section 33A** of the 1951 Act, read with Rule 4A of the Conduct of Election Rules, 1961 and Form 26, requires candidates to disclose specified pending criminal cases and convictions.

Under Section 100(1)(c) of the 1951 Act, improper rejection of a nomination paper may constitute a ground for declaring an election void, but such a challenge must be raised through an election petition after completion of the election.

Key Precedents

Relying on *N.P. Ponnuswami v. Returning Officer*, *Mohinder Singh Gill v. Chief Election Commissioner*, *Election Commission of India v. Ashok Kumar* and *Manda Jaganath v. K.S. Rathnam*, the Court in *Meenakshi Natarajan v. Election Commission of India* reaffirmed that "election" covers the entire electoral process and that courts should not interrupt that process through Articles 32 or 226, even where the rejection of a nomination is alleged to be manifestly illegal.

The Court's Reasoning

The Division Bench comprising of Hon'ble Justice Prashant Kumar Mishra and Justice Atul S. Chandurkar reasoned as follows:

1. **Non-maintainability under Article 32:** The Court held that the writ petition under Article 32 of the Constitution was not maintainable because the dispute directly concerned the rejection of the petitioner's nomination paper during an ongoing election. The right to contest an election is a statutory right and not, by itself, a fundamental right enforceable under Article 32.
2. **Express bar under Article 329(b):** The Court relied on Article 329(b), which expressly provides that an election to Parliament or a State Legislature can be questioned only through an election petition presented in the manner prescribed by law. The Court held that the constitutional bar applies to the entire electoral process and not merely to the final result.

3. **Wide meaning of “election”:** Relying on *N.P. Ponnuswami v. Returning Officer*, the Court held that the word “election” must be understood in its wider sense. It covers the complete process beginning with the submission and scrutiny of nomination papers and ending with the declaration of the elected candidate. Therefore, rejection of a nomination paper is itself an election-related matter falling within the scope of Article 329(b).
4. **Complete statutory mechanism:** The Court observed that the Representation of the People Act, 1951 provides a complete statutory mechanism for resolving election disputes. Under Sections 80 and 100, an aggrieved candidate may challenge the election through an election petition after the election has concluded, including on the ground of improper rejection of a nomination paper.
5. **No exception for “manifest illegality”:** The Court rejected the argument that writ jurisdiction could be exercised because the alleged illegality was “glaring” or “manifest.” It held that Article 329(b) does not create an exception permitting courts to interfere in some cases of improper rejection while directing parties to file election petitions in others. Creating such an exception would be contrary to the constitutional scheme and would result in uncertainty and delay in the election process.
6. **Section 33A, Rule 4A, and Form 26:** The Court considered the petitioner’s reliance on Section 33A of the Representation of the People Act, Rule 4A of the Conduct of Election Rules, 1961 and Form 26. However, it held that even the correctness of the Returning Officer’s interpretation of the disclosure requirement could not be examined in a writ petition during the pendency of the election.
7. **Preservation of electoral timetable:** The Court emphasized the need for elections to be completed expeditiously and according to the prescribed timetable. Permitting judicial challenges at an intermediate stage could interrupt the election process, create conflicting decisions and undermine the special election-dispute mechanism established by Parliament.
8. **Disposition with preservation of rights:** The Court dismissed the writ petition on the ground of the express constitutional bar under Article 329(b). It clarified that any observations made while deciding the writ petition would not prejudice the petitioner’s right to file an election petition, which would have to be decided independently on its own merits.

6. CRITICAL ANALYSIS

A. The Article 329(b) Bar

On the narrow question of precedent, the judgment is consistent with the settled line. *Ponnuswami* gave “election” its wide meaning, and the Court in *Meenakshi Natarajan* applied it directly to a scrutiny-stage rejection. The more interesting move is the refusal of any exception. The petitioner’s argument that her writ would assist the election and not stall it has some support in the principles summarised in *Election Commission of India v. Ashok Kumar* (2000)⁸, which allow interference where it aids the election’s progress. The Court did not accept that framing here.

Two features of the reasoning deserve attention. First, the Court declined to examine even the Section 33A question. That means a purely legal question, namely what the disclosure duty actually requires, remained unanswered at the stage when an answer was needed. Second, a categorical rule is certain, but it also makes the correctness of the rejection irrelevant to the *timing* of the remedy, however clear the error might be.

B. Effectiveness of the Election-Petition Remedy

The Court’s answer is that the petitioner is not left without a remedy, since she may file an election petition. On paper, this is right. Improper rejection of a nomination is a ground under Section 100(1)(c), and a

Rajya Sabha election petition is heard by the High Court with a statutory target of six months for trial under Section 86(7).

The difficulty is what the remedy can deliver. The three seats were filled unopposed. A successful petition could at best set aside an election that has already produced three sitting members, each serving a six-year term, and would then lead to a fresh election. The petitioner would not get back the contest that was lost, only the possibility of a new one, much later. The practical scale of this concern should be tested against disposal data from the National Judicial Data Grid or relevant High Court statistics; this paper does not independently quantify those delays.

C. Timing of Judicial Review

The timeline is the strongest empirical fact in this case. The period between rejection and the filling of all three seats was about two days. During that period, the only forum that could have given an effective remedy was one the law closes off. This is not a case of a court being too slow: the Supreme Court heard the petition the day after it was filed. The delay, if there is one, lies in the *architecture* of the remedy and not in the speed of the judiciary.

This also exposes a conceptual point. The Ponnuswami rationale is that a court should not interrupt an election in progress. But where the rejection of the only opposing candidate leads to an unopposed return, there may be no polling left to interrupt. The reports suggest the result was in effect settled before the hearing. If so, the bar operated even though the practical concern behind it, a stalled poll, had largely disappeared. The rule is categorical, so it applies in either case, and that is exactly the point where its fit with its own rationale weakens.

D. Role of the Election Commission

The record on the Commission is thin but telling. The petitioner approached it and received no order. During the hearing, the bench is reported to have said that the remedy after a rejection is to approach the Election Commission, yet the written disposal points to an election petition. The two are hard to reconcile. There is also a structural question. The Returning Officer's scrutiny under Section 36 is a statutory function, and the Act does not obviously give the Commission an appellate or revisional power over it. The Commission's Article 324 powers are wide, as *Mohinder Singh Gill* recognised, but they are residuary and are to be exercised within the law. If the Commission cannot or will not revisit a Returning Officer's order, then "approach the Commission" is not a real remedy, and no statutory duty requires it even to respond. This is the gap that Recommendation 2 in Part VII addresses.

E. Consequences of Nomination Rejection

The consequences of the rejection extended well beyond the petitioner. The contest itself ended: all three seats went to one party without a vote. The electors, the 230 members of the Madhya Pradesh Assembly, lost the opportunity to choose between candidates. Where the eligible candidates equal the number of seats, the law requires the Returning Officer to declare them elected, so the declaration followed almost automatically.

The point for this paper is not that the rejection was wrong, which the Court has not decided, but that a single scrutiny decision, made by one officer within a day, was able to determine the outcome of the election with no possibility of review before the result. A rejection that is correct and one that is mistaken produce the same irreversible effect, and the system has no mechanism to tell them apart in time.

F. Electoral Continuity versus Individual Electoral Rights

The Court was right that the right to contest is statutory and not fundamental, a position long established in election law. But a statutory right is still a right, and Parliament chose to make improper rejection a

ground for voiding an election. That choice implies that the right matters. The issue is therefore not whether the right exists, but whether the remedy attached to it can protect it.

The balance can be put simply. Continuity protects the *collective* interest in elections that finish on time. The rejected candidate's interest, and the electors' interest in a real choice, are the *individual and representative* interests. *Meenakshi Natarajan* resolves the conflict entirely in favour of the first, even though the facts suggest that continuity was not actually at risk in the same way. This does not mean the Court was wrong to apply the rule. It means the rule leaves the second interest with no protection in the period when it matters. That conclusion, and not criticism of the judgment, is the foundation for the comparative and reform chapters that follow.

7. ACCOUNTABILITY AND INSTITUTIONAL INDEPENDENCE OF THE ELECTION COMMISSION

7.1 Constitutional Independence of the ECI

A. Article 324

Article 324(1) vests the "superintendence, direction and control" of the conduct of the elections and the preparation of electoral rolls in the Election Commission. That is an unusually wide-breadth. Does not spell out individual functions of the Commission. It confers on the Commission a general responsibility and details on to law and the Commission's judgment. This has been read liberally by the Supreme Court. In *Mohinder Singh Gill v. Chief Election Commissioner* (1978), the Court said that Article 324 is a reservoir of power and that the Commission is empowered to commence action in situations where the law is silent as long as it does so fairly and within the law. In both *T.N. Seshan v. Union of India* (1995) and *S.S. Dhanoa v. Union of India* (1991) above, it was observed that the Commission was a multi-member body and the relationship between the Chief Election Commissioner (CEC) and the other Commissioners was examined.

The administration of elections must be independent. There are three layers of independence and separating these will help.

- **Security of tenure:** Removal of the CEC can only be effected on a similar basis and for similar reasons as those applicable to Supreme Court judges (Art. 324(5)) and his service conditions can not be made less favorable after he has been appointed (Art. 324(6)).
- **Functional autonomy:** The Commission runs elections without taking directions from the executive.
- **Insulation in appointments:** In *Anoop Baranwal vs Union of India* (2023), a five-judge bench had ruled that appointments had to be without executive influence, until Parliament passes an Act, and had appointed a committee for the purpose, composed of the Chief Justice. The critical point for this paper is this: The Constitution is supposed to give the Commission protection from the executive. It does not say that the Commission is free of any examination. Being free from control and being accountable for behavior are not the same concepts and the remainder of the chapter hinges on that idea.

7.2 Appointment and Removal Framework

A. Constitutional provisions

Article 324(2) says the President appoints the CEC and the other Election Commissioners (ECs), subject to any law made by Parliament. Parliament for decades did not make such a law and appointments were based on the practice of the executive. The gap that Anoop Baranwal filled. The situation with regards to removal is asymmetric according to the constitutional provision:

	CEC	Other ECs
Removal	Like a Supreme Court judge, on proved misbehaviour or incapacity	By the President, on the CEC's recommendation
Who can start it	Members of Parliament (100 in Lok Sabha or 50 in Rajya Sabha)	The CEC's recommendation
Safeguards	Inquiry by a three-member committee; special majority in both Houses	Dependence on the CEC

The CEC's removal procedure borrows from Article 124 and the Judges (Inquiry) Act, 1968. After the notice is given, the Speaker or Chairman decides whether to admit it. If admitted, a committee consisting of a Supreme Court judge, a High Court Chief Justice and a distinguished jurist examines the charges. If misbehaviour or incapacity is proved, both Houses must separately pass the motion by most of the total membership and two-thirds of those present and voting.

B. Statutory framework

There is a new Act in place that deals with the appointment, conditions of service and term of office of the Chief Election Commissioner and Other Election Commissioners, the 2023 election commissioners' act. The 2023 election commissioners' act is now overlaid on the constitutional text. It has a section-7, where the Prime Minister along with a Union Cabinet Minister nominated by the Prime Minister and the Leader of Opposition form the selection committee. It doesn't include the interim arrangement, which included the Chief Justice, Anoop Baranwal. A two-tier removal position is reiterated in Section 11 and is set forth in Section 18 below as to how decisions are made by the Commission. Here is one structural feature that is worthy of comment. The asymmetry in article 324(5) gives a special advantage to the CEC since two out of the three Commissioners can be removed only following its recommendation. This could be a wrongful distribution of influence among members of a body supposed to make decisions collectively by means of discussion. This is both a possibility and a long debate subject in a body which is supposed to make decisions by collective deliberation.

7.3 The 2023 Electoral Commission Law

A. The appointment challenge

A two-judge bench headed by Justices Dipankar Datta and Satish Chandra Sharma gave a split verdict on 23 September 2026 regarding the need for a bigger bench for challenging the Act. While referring a case, Justice Datta relied upon Anoop Baranwal to hold that a two judge bench was not competent under Article 145 and Supreme Court Rules to decide it. Justice Sharma, on the other hand, held that a two judge bench could not finally resolve it under Article 145 and the Rules of the Supreme Court, on a referral. Considering the difference, the papers were remitted to the Chief Justice for forming a suitable Constitution Bench. The challenge has not yet wrapped up and this paper does not predict the outcome of that challenge.

B. Removal mechanism in practice

This first used in 2026. The opposition members sent March notices to remove the current CEC, signed by 130 members of Lok Sabha and 63 Rajya Sabha (193 in total) to claim that the electoral rolls are being revised in a biased manner under the Special Intensive Revision (SIR) Programme. The notices were

denied by both the presiding officers in early April, for reasons not specified, on the basis of their jurisdiction under Section 3 of the Judges (Inquiry) Act. There were reports in September that a new motion was being drafted in response to press reports of split within the Commission.

There are three observations to be made on the paper:

1. The threshold was reached (193 signatures) and the process had not reached the end at the first gate. That is a very good indication that the so called 'crucial stage' is the admission of the presiding officer which is discretionary and admitted without justification.
2. Requires political will of 100 or 50 legislators – and ultimately a special majority. No individual aggrieved candidate or voter can start it.
3. The Commission has always held that the result of its deliberations was unanimous and that disagreements amongst members are consistent with the normal course of deliberation. The following are disputed claims and allegations. None of them are established in this paper.

C. Immunity provisions: Section 16

The most relevant section of the Act to accountability is section 16. As described, it has the following capabilities:

- It starts with 'notwithstanding anything contained in any other law' as well as it provides that that no court shall be able to entertain or continue any civil or criminal proceedings against a person who is or was a CEC or EC for any act, thing or word done or spoken by him in the exercise of his official duty or function or purporting to exercise his official duty or function.
- It was not in the original Bill. This provision was introduced in the Bill in the Rajya Sabha on 10 August 2023 and was added by an amendment from the Government on 12 December 2023 (new Clause 15A). The then Law Minister claimed this was "to allow Commissioners to do their job unhindered and independently. The Act was given assent on 28 December 2023 and it entered into force on 2 January 2024.
- Does not explicitly say that there is no arrest, so to call it an "arrest ban" is incorrect. It prevents courts from hearing and/or continuing covered action, and affects pre-trial action is contentious. A bench led by the Chief Justice had issued notice to the petitioners on a Lok Prahari petition challenging the section, in January 2026, which had stated that the section was giving perpetual protection against civil and criminal proceedings. The argument contained in the petition is the petitioner's argument and none of the Courts has found the section invalid.

Section 16 may be compared to the protection afforded statutory judges for acts in their official capacity. The issues are whether good faith is required as a condition of protection, whether the protection is only for the duration of office and if so, what exceptions are available. These are the issues addressed in the petition.

D. Institutional accountability inside the Commission

Section 18 provides that the Commission's decisions should, as far as possible, be unanimous, and otherwise by majority. This is an internal accountability mechanism, because it makes collective decision-making a legal requirement and not just a convention.

The current dispute tests it. The Indian Express reported that two ECs recorded objections at least fourteen times over ten months on matters including voter registration, deletion and restoration of names, changes to Form 6 and the security of electoral-roll databases. The Commission's position is that written observations are part of normal deliberation and that its final decisions were unanimous. Whether any decision fell short of Section 18 is exactly what the Supreme Court has now agreed to examine.

7.4 Judicial Review and ECI Accountability

A. Scope of judicial review

Judicial review of the Commission operates unevenly across four situations:

Situation	Position	Key authority
The Commission's administrative and policy decisions (rolls, directions, transparency)	Reviewable under Articles 32/226	Gill; Seshan; ADR v. Union of India (2002); PUCL v. Union of India (2003)
Steps within a notified election (e.g. scrutiny)	Largely barred by Article 329(b)	Ponnuswami; Meenakshi Natarajan
Composition and appointment of the Commission	Reviewable	Anoop Baranwal; pending reference on the 2023 Act
Decisions of presiding officers on removal motions	Reviewability limited and unsettled	Kihoto Hollohan (1992); Raja Ram Pal (2007); Sub-Committee on Judicial Accountability (1991)

B. The current litigation: 5 October 2026

On 5 October 2026, a bench of the Chief Justice, Justice Joymalya Bagchi and Justice V. Mohana issued notice on petitions alleging that the CEC took several SIR-related decisions unilaterally, without the concurrence of the other two Commissioners. The notice went to the Union, the Commission, the CEC, the two ECs, a Deputy Election Commissioner and the Director General (IT).

The Court declined to suspend the CEC at an ex parte stage and said it wanted the respondents' replies first. It also indicated that if the record showed decisions taken neither unanimously nor by majority, the Commission would have to explain how they were reached, and such decisions could be reconsidered.[16] Submissions in the case distinguished between unanimity on how business is transacted and majority decision-making on functioning.

Two points matter for this paper. First, the Court is willing to examine **how** the Commission decides, which is a form of institutional accountability. Second, this review concerns decisions outside a particular candidate's scrutiny proceeding, and the contrast with *Meenakshi Natarajan* is deliberate and instructive.

C. Autonomy versus accountability

The cleanest way to analyse the balance is to separate the kinds of accountability and ask where each works.

Type	Mechanism	Strength	Weakness
Political / parliamentary	Removal motion	Very strong protection against hostile majorities	Gatekept by presiding officers; unusable by individuals
Legal / judicial	Writs, PILs	Active on institutional questions (October 2026)	Barred or delayed for election-stage grievances
Internal / collegial	Section 18 majority rule	Real check if followed	Depends on records and on ECs' dependence on the CEC
Personal legal liability	Civil and criminal proceedings	Traditional deterrent	Narrowed by Section 16, pending challenge

None of these is unreasonable alone. A high removal threshold protects against political retaliation, and protection from vexatious suits is a legitimate aim. The question is cumulative: when all four are narrow, who can a person with a specific grievance call to account, and when?

7.5 Connection with the Article 329(b) Problem

The question at the heart of this chapter is whether the protection of electoral autonomy risks creating insufficient accountability where an individual electoral grievance arises. On the material above, my answer is a **qualified yes**, and it rests on three observations.

1. Each route is closed or delayed at the moment it matters.

Level	Route for a wronged candidate	What happens
Courts, during the election	Article 32 / 226	Barred by Article 329(b) (Meenakshi Natarajan)
The Commission	Representation	No statutory duty to decide, no timeline, no reasons; no order passed in her case
The Commission's leadership	Removal or legal action	Needs 100/50 MPs and special majority; Section 16 limits proceedings; individuals cannot initiate
After the election	Election petition	Available, but only after the seats are filled

2. Accountability exists, but it operates at the wrong time. The October 2026 notice shows courts will scrutinise the Commission's decision-making between elections and on institutional questions. An individual's grievance, however, arises *during* a live election, when the bar applies. This is the same temporal mismatch identified in Chapter 5, now seen from the institutional side. The remedial gap is therefore not just a problem of one provision. It reflects how the whole system distributes scrutiny across time.

3. The Commission's own internal route is unregulated. If courts stay out and removal is out of reach, the Commission is the natural forum for a candidate's complaint, yet there is no duty on it to respond within a time or give reasons. In *Meenakshi Natarajan*, the Commission passed no order, and the oral remark that the remedy lay with the Commission sits uneasily with the written disposal.

The objection and the answer. An objector would say that the Commission is accountable: it is subject to the courts, to Parliament and to public scrutiny, as the present litigation shows. That is true, and this paper does not claim otherwise. The claim is narrower: the accountability that exists is structured around institutional and ex post review, so it leaves one category of grievance, the candidate-level complaint during a live election, with the weakest route.

8. RECOMMENDATIONS AND PROPOSED REFORMS:

Based on the results of this paper, one structure issue can be identified: A nomination rejected at the scrutiny stage can be a matter of days before a candidate's electoral opportunity is lost, while the effective, full statutory remedy is only available after the election has been called. This is illustrated by the fact that this is not where the United States would depart from early review and electoral continuity; on the contrary, there the application of early review was quite limited, fast, and ended as polling nears. Meanwhile, the Election Commission's current avenue for handling a candidate's representation is not clear and potentially

leaves out candidates. The recommendations set out in this Part are based on six principles. In the first place, the reform should have been limited, and should have been limited to the nomination papers, it should have nothing to do with the conduct of the polling. Second, each step of the remedy has to have definite time limits. Third, the review shall be based on the record, and shall not be a rehearing of contested facts. Fourth, a clear cut off point must occur after the polling has started, at which point it should not be possible to take any further actions. Fifth, in the case of an election in which it is anticipated that there will be no opposition, there should be a restricted standstill on declaring the result until the provisions on appeals are exhausted or until the appeal is finally determined. Sixthly, Election Commission shall not be silent when a candidate seeks relief in case of rejection of the candidate's nomination.

A. Expedited Pre-Election Remedy

Provide Parliament with a power to appeal a Returning Officer's rejection of a nomination paper. Appeal should be handled before the election end through a judicial authority of the day by a summary and record based procedure. The remedy shall be available to the person whose nomination has been rejected, and shall be available to any candidate, if Parliament deems it appropriate, who objected, prior to the acceptance of any other nomination, to the Returning Officer's acceptance of the nomination.

A judicial reading of an exception into Article 329(b) is undesirable: it would be better to have a statutory appeal. In every decision on a similar matter, the Supreme Court has stressed the importance of not interfering with the conduct of an election, and having an exception for what is described as the 'glaring case' could lead to doubt. A legislative solution offers certainty, while maintaining the constitutional design. Elections, and the question thereof, are governed by Article 327 and Article 329(a), (b), (c) which give Parliament the power to make law in respect of elections, and which allow an election to be questioned only by election petition presented in manner provided for by law.

The proposed appeal is not a proceeding to challenge a completed election, but rather is an election determination tool for parties to determine whether they have a valid interest in being nominated. An appeal challenging a scrutiny decision is a time bound appeal that is part of the electoral process and it does not affect the outcome of a previous election. It is therefore more palatable to Article 329(b) as opposed to writ jurisdiction in the midst of the ongoing election. The appellate forum should be a Judge of the High Court designated for this purpose by the Chief Justice of the concerned High Court. The reviewing authority cannot be appointed by the Election Commission as it is responsible for supervising Returning Officers in an administrative manner and it should not seem a review by the Election Commission of the Returning Officer's decision. The procedure should be summary, confined to a record before the Returning Officer and take place after notice has been given to the Returning Officer and to any objector. The appeal should not have a negative impact on the polling. It should have no impact on the election timetable other than the limited standstill of an unopposed candidate during the appeal process or while it hasn't yet expired. The election petition should continue to exist and the appeal should be a quasi-appeal that must be used in addition to the statutory election-petition regime and not in place of it.

There were three possible solutions but they were rejected. A judicial exception under Article 32 and 226 would be unpredictable and against the continuation in the elections as insisted by the Supreme Court. It could be argued that there is a risk to commissioners' independence if the election commission is elevated to appellate powers because it oversees scrutiny and the Act doesn't explicitly give the commissioners appellate powers over scrutiny decisions. While election petitions were quicker, it would still provide a remedy post-election and not address the issue of return without opposition.

B. Fixed Time Limits for Decision

What is proposed to occur in a proper reform is fixed time limits as Indian electoral calendars run in days and not weeks. Each step of the cure, therefore, should be short and definite. The Returning Officer should determine scrutiny on the date of scrutiny as already provided for in Section 36 of the Representation of the People Act, 1951.

If a nomination is refused, the Returning Officer shall at once record the reasons for his refusal and furnish a certified copy of the reasons to the nominee or his authorised representative on that day to the Returning Officer's satisfaction. The current provision already calls for a reasons section to be included if the provision is rejected, the reform should make the reasons for the provision and a certified copy mandatory and now. These are essential documents and their absence means that a candidate will not have anything to appeal on within a reasonable time frame.

A candidate should be given time to appeal the decision of rejection, within 24 hours of the decision. The appellate authority should have the time limit of 48 hours for the resolution of the appeal. These are suggested timeframes that need be adjusted according to the statutory time frame for various types of elections. There is also an optional representation that can be made to the Election Commission by a candidate.

The Commission should be obligated, upon receipt, to dispose of such a representation within 24 hours. The representation should, however, not be a precondition to filing of an appeal and a pending representation should not shorten the appeal period. This will keep the Commission from stalling a remedy by the candidate. The Returning Officer must wait until the appeal is over or has been decided before after an election it is likely to be unopposed, the Returning Officer should declare none of the candidates elected. The date for withdrawal of candidature should also be extended for such a short time after the hearing of the appeal/completion of the appeal period in the relevant constituency. Other candidates are not forced to withdraw whilst an appeal is being processed. Unless the appellate authority decides the appeal within the time limit, then the Returning Officer's decision shall be considered as the decision of the appeal authority for the purpose of the election. However, the election petition should still be available to the candidate. This provision ensures that the Judicial Review forum does not cause the electoral schedule to be delayed.

C. Limited Grounds of Judicial Review

The appellate court is required to consider only a limited and comprehensive set of arguments, should consider the case as per the record and should not evaluate disputed facts. The grounds are that of want or excess of jurisdiction, violation of a mandatory statutory requirement and error of law on the face of the record. Jurisdictional error would occur when the Returning Officer fails to exercise his or her jurisdiction or acts beyond it as provided by law. Breach of the Representation of the People Act, 1951 Sections 33, 33A, 34 and 36 and rules made thereunder would be a mandatory statutory requirement. It would also cover failure to record reasons, failure to provide an opportunity of hearing when required and failure to afford a candidate a chance to cure a 'curable defect' when so required by law or binding judicial directions. An error of law should be obvious on the record in the third instance. The standard is well known in certiorari jurisdiction where it means an obvious lapse in law that does not require extended discussion or analysis. It would result in a clear question of law about what the disclosure requirement means being heard at appeal stage as long as the error is obvious and not genuinely debatable.

The appellate forum must not reappreciate facts in dispute or hear oral evidence or replace its own judgment for that of the Returning Officer when a very marginal point is in question. Generally, whether there are new grounds that weren't brought before the Returning Officer should be excluded except for a

jurisdictional error. These limitations prevent that the "appeal" would be a new hearing and maintain the finality of electoral administration. In certain cases, the standard of review is limited to favor finality over correction on purpose. The Returning Officer will decide and this decision will be final if the legal issue is a debatable one, the candidate can file election petition after election. This helps to safeguard the rights of the candidate to appeal if the voting was handled in an apparent manner that is incorrect, as well as the need for a clear electoral process.

D. Bar on Intervention Once Polling Commences

No appeal should be entertained after polling commences. Any appeal pending at that stage should abate without prejudice to the candidate's right to file an election petition. The appellate authority should have no power to stay, postpone or interrupt the poll.

This recommendation preserves the principle in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* that the electoral process should not be interrupted by litigation midway. The proposed design leaves polling untouched. The only schedule-related effect is a limited standstill on the declaration of an unopposed winner and a corresponding extension of the withdrawal period, both of which occur before polling.

The comparative experience of the United States supports the same principle. Courts may allow early review of candidate eligibility, but they become more restrained as polling approaches because logistical deadlines, such as the printing of ballots, create a practical end point. The proposed Indian reform replaces the uncertain American approach with a clear statutory cut-off: the commencement of polling.

In an unopposed election, the standstill ensures that the appeal is decided before the declaration is made. Once the appeal period has lapsed or the appeal has been decided, the declaration may proceed. Any remaining challenge may be pursued through the election petition.

E. Time-Bound Representation to the Election Commission

The existing legal framework does not clearly impose a duty on the Election Commission to decide a candidate's representation against rejection of nomination within a fixed period or to provide a reasoned order. This creates an institutional gap at the stage when the candidate's grievance is most urgent.

Parliament should create a statutory duty requiring the Election Commission to dispose of a candidate's representation against a rejected nomination within twenty-four hours. The Commission should pass a recorded and reasoned order and communicate it to both the candidate and the Returning Officer.

To respect the quasi-judicial function of the Returning Officer and the constitutional independence of the Election Commission, the Commission's duty should be to respond rather than to review the merits of the scrutiny decision. The Commission may direct the Returning Officer to comply with a mandatory procedural requirement, such as supplying reasons or a certified copy, or providing an opportunity to cure a curable defect where required by law.

Alternatively, the Commission may record that no intervention is warranted or inform the candidate that the appropriate remedy lies under the proposed statutory appeal. The representation should be optional and should not be a precondition to the appeal. A pending representation should not extend the time limit for filing an appeal.

This recommendation imposes a modest, time-bound accountability obligation on the Election Commission at the stage when an individual electoral grievance arises. It does not dilute the Commission's independence under Article 324 or interfere with its broader constitutional functions.

F. Safeguards Against Frivolous Litigation

The proposed appeal mechanism must contain safeguards against strategic or frivolous litigation. Strict

limitation periods, a fixed decision timeline, and the absence of any power to stay the poll will reduce the risk of appeals being used to delay the electoral schedule.

Standing should be limited to the candidate whose nomination has been rejected. Parliament may also extend standing to a candidate who raised an objection before the Returning Officer against the acceptance of another nomination, although this would increase the volume of appeals.

The appeal should be record-based and confined to limited legal grounds. Oral evidence should not be permitted, and new grounds not raised before the Returning Officer should generally be excluded, except for jurisdictional error. These restrictions prevent appeals from becoming fishing expeditions or a means of re-litigating factual disputes.

A security deposit may be prescribed by rules and refunded where the appeal succeeds or is found to be bona fide. Costs and forfeiture of the deposit may be imposed for vexatious or frivolous appeals. The appellate authority should also have the power to summarily dismiss appeals that are clearly frivolous.

A single designated forum within each High Court's jurisdiction should be created to prevent forum shopping. If the appellate authority fails to decide within the prescribed time, the Returning Officer's decision should stand for the purposes of the election, while the election petition remains available.

A standstill may delay the declaration of an unopposed winner by a few days, even where the appeal is ultimately meritless. This is a necessary cost of the reform. However, it is small compared with the cost of allowing a contest to be closed by a single unreviewed decision before the electorate has had an opportunity to choose.

G. Proposed Legislative Amendment

- **The core insertion: a statutory appeal against nomination decisions.** The central reform this paper proposes is the insertion of a new section, which may be numbered 36A, immediately after the existing provision on scrutiny of nominations. It should create a time-bound appeal against the Returning Officer's decision accepting or rejecting a nomination paper. The appeal should lie to a High Court judge designated for the purpose by the Chief Justice of that High Court, so that the reviewing authority is judicial and is not chosen by the Election Commission. The right to appeal should belong to the candidate whose nomination has been rejected. Parliament may also consider extending it to a candidate who objected before the Returning Officer to the acceptance of another nomination, which would make the remedy symmetrical but would also increase the number of appeals. This provision can be enacted under Article 327, which empowers Parliament to legislate on matters relating to elections, and it should be framed as a step within the process of deciding who is validly nominated, and not as a way of questioning a completed election, so that it sits comfortably with Article 329(b).
- **Time limits within the provision.** The section should state fixed periods for every stage. A workable proposal is that the appeal be filed within twenty-four hours of the Returning Officer's decision being communicated, and that the appellate authority decide it within forty-eight hours of filing. These figures are indicative and should be calibrated against the statutory calendar for each kind of election. The section should also say what happens if the authority does not decide in time: the Returning Officer's decision should then stand for the purposes of the election, and the election petition should remain available. That rule protects the schedule from delay by the reviewing forum itself.
- **Grounds and procedure.** The amendment should confine the appellate authority to a short, exhaustive list of grounds: want or excess of jurisdiction, violation of a mandatory requirement of the Act or the rules (including the rule that a defect not of a substantial character cannot justify rejection, the duty to record reasons, and the duty to give an opportunity to be heard or to cure a defect where the law

requires it), and an error of law apparent on the face of the record. The procedure should be summary and based on the record that was before the Returning Officer, with no oral evidence, and any question of disputed fact should be left to the election petition. The section should also give the authority a defined set of powers: to dismiss the appeal, to set aside the decision and direct the Returning Officer to accept the nomination, to send the matter back for a limited purpose within a short fixed period, and to award costs where an appeal is frivolous.

- **A standstill on unopposed declarations.** This is the most important practical feature, and it responds directly to the pattern seen in the 2026 Rajya Sabha case and the 2024 Surat case, where an unopposed return followed a rejection within a day or two. The amendment should provide that, while an appeal is pending or the time to file one has not expired, the Returning Officer shall not declare any candidate elected unopposed in that constituency. Alongside this, the time for withdrawal of candidatures in that constituency should be extended until a short, specified period after the appeal is decided or the time for appeal lapses. Without this extension, other candidates could be pushed into withdrawing while the appeal is still live. The power to extend time for completing an election may already exist in the Act, so the drafters should check how the new extension fits with it.
- **A bar once polling begins, and no power to stop the poll.** To preserve the reasoning in Ponnuswami, the section should state expressly that no appeal can be entertained after polling commences, and that any appeal pending at that point abates without prejudice to the election petition. It should also state that the appellate authority has no power to stay, postpone or interrupt the poll or to change the election programme, other than the limited standstill and withdrawal extension described above. Including these words in the statute makes it clear that the reform does not disturb the continuity that Article 329(b) was designed to protect.
- **Finality and relation to the election petition.** The amendment should say that an order of the appellate authority is final for the purposes of the election, so that the dispute does not continue in the ordinary courts during the election, while leaving two routes untouched: the Supreme Court's jurisdiction under Article 136, which Parliament cannot take away by statute, and the election petition. It should add that the order does not bar an election petition on the same ground, and that in the petition the High Court may have regard to the record and reasons. A related amendment to the section making the election petition the exclusive remedy should insert the words "save as provided in section 36A", and an explanation added to the provision on grounds for declaring an election void should confirm that a decision under the new appeal does not preclude a petition.
- **A parallel clause that gave the Election Commission an ad hoc representation.** A second new part (36B) can create a time-limited liability on the part of the Commission. If a candidate's nomination is unsuccessful the candidate may make a representation and the Commission must make a recorded, reasoned order in response within approximately twenty-four hours which must be communicated to the candidate and the Returning Officer. It is important to acknowledge the quasi-judicial role of the Returning Officer by stating that the Commission can order compliance with one of the mandatory procedural requirements, record a decision that there is no need for intervention, or refer the candidate to an appeal however the Commission shall not examine the merits of the Returning Officer's scrutiny decision. It should also state that the representation is at the discretion of the individual making it, it does not form part of the appeal and that if the person wishes to make a representation then the time for appeal will not be extended. This is in reply to the situation that arose before the Commission with

Meenakshi Natarajan where she did not receive any order from the Commission and there was no law compelling the commission to do so.

- **A change to the scrutiny clause.** Under the current "scrutiny" section, the Returning Officer if they reject a nomination must make a brief statement of the reasons. This can be reinforced by the amendment made in the said terms which stipulates that the Returning Officer shall forthwith provide a certified copy of the decision and the reasons to the candidate or his or her representatives, and shall cause the reasons to be uploaded as aforesaid. The short appeal window, coupled with the need to have a copy of the order to prepare an appeal, makes the need for immediate supply essential.
- **Abuse protection within the text.** The section may also include the anti-abuse provisions set out in 10.6 would be a prescribed amount to be refunded where the appeal is successful or is found to be genuinely brought, a power to award costs and forfeit the deposit in respect of any frivolous or vexatious appeal, and a rule that no new arguments raised before the Returning Officer are to be taken, except for a jurisdictional error. Forum shopping is also prevented by having one forum for each High Court's jurisdiction.
- **Changes to Rajya Sabha and rules of application.** The amendment needs to clearly specify that the new sections are to be applicable to elections to the Council of States with appropriate modifications, and whether there is a need for a parallel amendment in Conduct of Elections Rules, 1961. The statute should empower the rules to specify how the appeal shall be filed, by email, amount of the deposit, and the process. Through further instructions to Returning Officers, including the creation of a binding checklist of possible defects "of a substantial character" and disclosure on affidavit, the Election Commission can help implement the reform and lessen the likelihood of disputes culminating in appeal.

9. CONCLUSION

The constitutional bar under Article 329(b) serves a legitimate and important purpose: it prevents election litigation from fragmenting the electoral process and ensures that disputes are ordinarily resolved through the specialised election-petition mechanism. N.P. Ponnuswami and Mohinder Singh Gill establish the importance of continuity, while Election Commission of India v. Ashok Kumar clarifies that the practical effect of intervention matters and that electoral administration is not wholly beyond constitutional scrutiny. Meenakshi Natarajan demonstrates the difficulty at the nomination stage: a candidate may be unable to secure review before the electoral outcome becomes practically irreversible, even where the challenge raises a focused question of statutory interpretation. The concern is not that every rejected nomination should trigger immediate judicial intervention, nor that the Returning Officer's decision in the case was necessarily wrong. It is that the available remedy may arrive after the opportunity it was intended to protect has disappeared.

A narrowly designed review process could improve accountability if it is confined to nomination decisions, based on the existing record, decided within strict deadlines, and incapable of staying or postponing polling. Reasoned orders, immediate access to the scrutiny record, a short appeal window, standing rules, costs for abuse, and a default rule where the reviewing authority misses its deadline would reduce the risk of strategic delay. A time-bound Election Commission response could also improve administrative transparency, provided it does not become a compulsory extra step or an unregulated merits appeal. The proposal nevertheless faces a substantial constitutional question: Article 329(b) expressly channels challenges to elections through election petitions. The paper therefore does not assume that an ordinary

statutory amendment alone would necessarily validate a pre-election appeal. Parliament and constitutional courts would need to examine whether the proposed mechanism is compatible with Article 329(b), or whether a different constitutional or procedural route is required.

Ultimately, electoral autonomy and accountability should not be treated as opposites. The objective should be to preserve the election timetable while ensuring that a narrow class of serious, record-based nomination errors can be corrected before the contest is irretrievably closed. The reforms proposed here offer a framework for further legislative and empirical study, not a claim that the existing law already recognises such an appeal.

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