

EDITORIAL NOTE

ACCESS, ACCOUNTABILITY AND ARCHITECTURE: EXAMINING THE 2024 AMENDMENT TO THE CONDUCT OF ELECTION RULES, 1961

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In the recent past, significant concerns have been raised over the increasing institutional opacity in India's electoral framework. The December 2024 amendment to the Conduct of Elections Rules, 1961, which restricts public inspection of non-specified documents, is a worrying development. This Note argues that the amendment curtails right to information, a crucial component of Article 19(1)(a), integral for legitimate democratic governance and accountability. The Note also argues that the pre-amended Rule 93(2)(a) hitherto served an important function of 'architectural regulation' — a mechanism enabling citizens to act as guardians to ensure deterrence against malpractice. By undoing this pre-emptive check, the State reverts to the onerous, adversarial litigation route, which undermines the spirit of informational equity that weakens India's accountability architecture.

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I. INTRODUCTION

In December 2024, the Central Government amended Rule 93(2)(a) of the Conduct of Elections Rules, 1961 ('COE Rules').¹ Rule 93 provides for the inspection of election documents. Rule 93(1) contains a negative list of documents not subject to disclosure, except on the direction of a court, and relate to ballot papers, register of voters, declaration by electors, etc.²

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¹ Ministry of Law and Justice, Conduct of Elections (Second Amendment) Rules, 2024, S.O. 5517(E) (Notified on December 20, 2024).

² The Conduct of Election Rules, 1961, R. 93(1).

Prior to the amendment, Rule 93(2)(a) provided “all other papers relating to the election shall be open to public inspection”.³ As a result of the amendment, only documents “specified in these rules” are open to public disclosure. This amendment comes shortly after the Punjab & Haryana High Court’s order in *Mehmood Pracha v. Election Commission of India* (‘Mehmood Pracha’), directing the ECI to submit CCTV footage and copies of Form 17C to the petitioner in relation to the 2024 Haryana Assembly Elections.⁴ Currently, the Amendment stands challenged before the Supreme Court (‘SC’) in *Jairam Ramesh v. Union of India*.⁵

It is estimated that over sixty electoral documents, not traceable under the COE Rules, stand to be excluded from public inspection.⁶ Some important documents include general observer reports, counting arrangement reports, vulnerability mapping of polling stations, etc.⁷ Effectively, any document outside the purview of the COE Rules, even if they find mentioned in ancillary documents related to electoral administration.⁸ However, the majority of the ongoing discussion of the amendment has remained superficial and restricted to CCTV footage and videography.⁹

In this note, the author will make a larger argument on the impact of this amendment on informational rights under free speech on electoral architecture. Part II discusses electoral transparency as a facet of Article 19(1)(a), emphasising informational rights as being essential for the public to hold institutions accountable. Part III examines the justifications proffered by the Election Commission of India (‘ECI’) to defend the amendment, particularly on the ‘conflict’ between informational rights and the right to privacy of the voter. Part IV extends the argument to demonstrate how the amendment alters the Indian electoral architecture, which has a detrimental impact on the culture of accountability. Part V concludes the argument.

II. ELECTORAL TRANSPARENCY AS A FACET OF ARTICLE 19(1)(a)

³ *Id.*, R. 93(2).

⁴ *Mehmood Pracha v. Election Commission of India*, CWP-33005-2024 (O&M).

⁵ Anmol Kaur Bawa, *Supreme Court Seeks Responses of Union & ECI on Jairam Ramesh’s Plea Against Election Rules Amendment on Public Disclosure of Poll Records*, LIVE LAW, January 15, 2025, available at <https://www.livelaw.in/top-stories/supreme-court-seeks-responses-of-union-eci-on-jairam-rameshs-plea-against-election-rules-amendment-on-public-disclosure-of-poll-records-281000> (Last visited on September 4, 2025).

⁶ See Venkatesh Nayak, *Transparency of Election Papers: Who’s Afraid of the Big Bad Wolf?*, THE WIRE, December 26, 2024, available at <https://thewire.in/government/election-papers-transparency-who-is-afraid-of-the-big-bad-wolf> (Last visited on June 16, 2025). For Venkatesh Nayak’s compilation of electoral documents, see also SCRIBD, *List of Documents and Papers Mentioned in the Conduct of Election Rules, 1961*, December 26, 2024, available at <https://www.scribd.com/document/808529921/List-of-documents-and-papers-mentioned-in-the-Conduct-of-Election-Rules-1961> (Last visited on June 16, 2025).

⁷ *Id.*

⁸ Such ancillary documents include the items mentioned in Compendium of Instructions on Election Expenditure Monitoring, Handbook for General, Police and Counting Observers, Handbook for Sector Officers, Handbooks of the Presiding Officer and Returning Officer, among others.

⁹ For example, see, Sreeparna Chakrabarty, *Centre Amends Rule to Restrict Access to Poll Documents*, THE HINDU, December 21, 2024, available at <https://www.thehindu.com/news/national/election-rules-tweaked-to-restrict-public-inspection-of-electronic-records/article69012490.ece> (Last visited on September 5, 2025); THE TIMES OF INDIA, *Government Amends Election Rules to Restrict Public Access to CCTV, Other Electronic Poll Documents*, December 21, 2024, available at <https://timesofindia.indiatimes.com/india/government-amends-election-rules-to-restrict-public-access-to-cctv-other-electronic-poll-documents/articleshow/116535627.cms> (Last visited on September 2, 2025); Bharti Jain, *Rule Changes to Restrict Access to Polling Footage to Protect Voter Privacy: CEC*, THE TIMES OF INDIA, January 8, 2025, available at <https://timesofindia.indiatimes.com/india/rule-changed-to-restrict-access-to-polling-footage-to-protect-voter-privacy-cec/articleshow/117049482.cms> (Last visited on September 5, 2025).

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The Supreme Court has consistently interpreted Article 19(1)(a), which guarantees freedom of speech and expression,¹⁰ to encompass the ‘right to know’ or the ‘right to information’.¹¹ Existing literature on ‘right to information’ flows principally from the right of the public to be aware of candidate details, to be able to make an ‘informed choice’ and express their opinion via a vote.¹² However, the immediate impact of the amendments is not on the right to express, as much as it is on the right to express to ‘demand accountability’. The focus of this section is on the latter question.

The ‘right to information’ is premised on the right to express oneself effectively in a democratic polity, which is effective only when citizens are aware of the activities of state bodies.¹³ An ‘aware’ citizenry is thus quintessential to a well-functioning democracy,¹⁴ and for the citizenry to be adequately informed, access to information and data is crucial.¹⁵ The ability of societal groups, organisations and individuals to actively engage in debate surrounding state conduct is inextricably linked with the amount of information at their disposal.¹⁶

Accountability is rooted in the relationship between the ‘duty holder’ on one end and the ‘right holder’ on the other.¹⁷ Among others, it also has a corrective function, which has the effect of enabling action against institutions in the event of dereliction of duty.¹⁸ For accountability to truly subsist, public scrutiny must exist.¹⁹ It is effectively an extension of democratic deliberation, involving engaging in debate and requiring officials to justify their conduct.²⁰

More recently, in *Association for Democratic Reforms v. Union of India* (‘Electoral Bonds’), the SC focused on the “close relationship” between the right to information and open governance.²¹ It noted citizens have a duty to hold the government accountable, which cannot be fulfilled if it is “clothed in secrecy”.²² The SC, in striking down the electoral bonds

¹⁰ The Constitution of India, 1950, Art. 19(1)(a); *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, ¶276; *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, ¶41.

¹¹ *State of U.P. v. Raj Narain*, (1975) 4 SCC 428.

¹² See *People’s Union of Civil Liberties v. Union of India*, (2003) 4 SCC 399 (Discussing that scuttling essential information about a candidate being available would “affect the electorate’s ability to evaluate the candidate”); *Union of India v. Association for Democratic Reform*, (2002) 5 SCC 294; *SP Gupta v. Union of India*, (1981) 1 Supp SCC 87; *State of UP v. Raj Narain*, (1975) 4 SCC 428; See also Sharnam Agarwal, *Conduct of Elections (Second Amendment) Rules, 2024 – Another Blow to Electoral Freedom*, LAW AND OTHER THINGS BLOG, February 9, 2025, available at <https://lawandotherthings.com/conduct-of-elections-second-amendment-rules-2024-another-blow-to-electoral-freedom/> (Last visited on July 6, 2025).

¹³ See Tarunabh Khaitan, *The Importance of Fourth Branch Institutions to Constitutional Democracy*, CONSTITUTIONAL LAW AND PHILOSOPHY, April 7, 2019, available at <https://indconlawphil.wordpress.com/2019/04/07/the-importance-of-fourth-branch-institutions-to-constitutional-democracy-guest-post/> (Last visited on); See also *Rajeev Suri v. DDA*, 2021 SCC OnLine SC 7, ¶624.

¹⁴ *Secretary, Ministry of I & B vs. Cricket Association of Bengal*, (1995) 2 SCC.

¹⁵ Roy Peled & Yoram Rabin, *The Constitutional Right to Information*, Vol. 42, COLUM. HUM. RTS. L. REV., 360 (2011).

¹⁶ *Id.*, 361.

¹⁷ See *Vijay Rajmohan v. Central Bureau Of Investigation*, (2023) 1 SCC 329, ¶¶35, 36 (also noting the three constituents of accountability, viz, responsibility, answerability and enforceability).

¹⁸ *Id.*

¹⁹ Colin Anderson, *Understanding Accountability in Practice: Obligations, Scrutiny, and Consequences*, Vol. 41, DEV. POL. REV., 3 (2023); Jane Martin, *Overview and Scrutiny as a Dialogue of Accountability for Democratic Local Government*, Vol. 21(3), PUB. POLICY AND ADMINISTRATION (2006).

²⁰ Richard Mulgan, ‘*Accountability: An Ever-Evolving Concept?*’, Vol. 78(3), PUB. ADMIN., 567 (2002).

²¹ *Association for Democratic Reforms v. Union of India*, (2024) 5 SCC 1, ¶66.

²² *Id.*

scheme, had given high weightage to the idea of transparency in the electoral process, flowing from the voter’s right to information.²³

The author acknowledges that in reaching its conclusion, Electoral Bonds cites *State of U.P. v. Raj Narain* (‘Raj Narain’) and *PUCCL v. Union of India* (‘PUCCL’), both of which focus on the ‘candidate side’ of the elections.²⁴ In other words, both PUCCL and Raj Narain decisions focus on informational decision-making so as to achieve transparency at the pre-voting stage. These decisions do not particularly examine informational transparency as a larger right beyond the voting exercise. However, it would not be correct to say that such transparency is limited in scope. Electoral democracy is meaningful only if transparency exists at all points, and the entire system is open to public scrutiny. For democracy to sustain, accountability of institutions,²⁵ especially fourth branch institutions,²⁶ such as the ECI, is crucial. Both classical and contemporary perspectives on democracy²⁷ view asking for information on the activities of the state and its institutions as an inherent right.²⁸ Resultantly, as also noted in *Anoop Baranwal v. Union of India*, any norms or rules governing the conduct of such institutions cannot be arbitrary or lack transparency.²⁹ This accountability is towards the primary stakeholder, i.e., the citizens. These observations, albeit made in the context of the appointment of Election Commissioners, demonstrate the ECI’s role in ensuring fair elections in a democratic polity, which may also be examined by the citizenry should they choose to do so.

Multiple observations by the SC clearly indicate that Indian jurisprudence has never hinted at any ‘scope restriction’ on the right to information *per se* — it is not limited solely to candidate disclosures prior to elections. Democracy, after all, is a cumulation of a range of processes.³⁰ In Electoral Bonds itself, the SC acknowledged that the right to information has developed to the point of enabling effective participation in a democracy, as an end in itself.³¹ Only when the citizens have access to all relevant documents pertaining to elections can they affirm their trust in the system or ask questions and demand accountability.³²

The normative necessity of information must be underscored. Information is crucial in a discussion of accountability.³³ This is primarily due to informational asymmetry that often pre-exists between the actor which owes accountability (i.e., the state or its instrumentality) and the stakeholder (i.e, citizens).³⁴ The stakeholder has little awareness of the

²³ *Id.*, ¶¶268, 286.

²⁴ By ‘candidate side’, the author refers to right to information in context of voters being able to form an informed view prior to exercise their right to vote, *see* *State of U.P. v. Raj Narain*, (1975) 4 SCC 428; *People’s Union of Civil Liberties v. Union of India*, (2003) 4 SCC 399.

²⁵ Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, Vol. 99(1), *AM. POL. SC. REV.*, 1 (2005).

²⁶ Michael Pal, *Electoral Management Bodies as a Fourth Branch of Government*, Vol. 21, *REV. CONST. STUD.*, 111 (2016).

²⁷ *See* David Mitchell Ivester, *The Constitutional Right to Know*, Vol. 4, *HASTINGS CONST. L. Q.*, 115 (1977) (“Self-government is possible only to the extent that the leaders of the state are responsible and responsive to the will of the people. [...] Without such knowledge the people can neither participate effectively in governmental processes nor hold the government accountable for its actions”).

²⁸ David M. O’Brien, *The First Amendment and the Public’s Right to Know*, Vol. 7(3), *U.C. L. CONST. QUART.*, 589 (1980).

²⁹ *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161, ¶¶352, 358.

³⁰ *Id.*, ¶357.

³¹ *Association for Democratic Reforms v. Union of India*, (2024) 5 SCC 1, ¶67

³² *See* *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, ¶75.

³³ Colin Anderson, *Understanding Accountability in Practice: Obligations, Scrutiny, and Consequences*, Vol. 41, *DEV. POLICY REV.*, 9 (2023).

³⁴ Gary J. Miller, *The Political Evolution of Principal-Agent Models*, Vol. 8, *ANNU. REV. POLIT. SCI.*, 207 (2005).

organisational practices and activities of the actor.³⁵ In such a case, the supply of information (or granting the right to citizens to get this information supplied, as was the case prior to the amendments) significantly evens out this balancing problem.³⁶ Importantly, information is also needed to effectively utilise other rights, beyond freedom of expression.³⁷ Without adequate information, stakeholders cannot form valid bases backed by evidence to challenge electoral conduct before a court.

Resultantly, the right to access documents, provided through Rule 93 of the Conduct of Election Rules, is a necessary extension of the right under Article 19(1)(a), central to its realisation. In the absence of access to polling documents, including but not limited to CCTV footage, it becomes onerously burdensome for the citizen, the primary stakeholder, to hold the institution accountable.

III. ON VOTER PRIVACY AND ‘AI ABUSE’: REBUTTING ECI’S ARGUMENTS

While the COE Rules amendment impacts a wide range of documents, much of ECI’s publicly available responses have primarily been based on access to CCTV footage. On the face of it, it is unclear what justifications may exist for denying access to observer reports, vulnerability reports, and other similarly excluded documents. Therefore, this Part will engage with ECI’s justification of CCTV footage exclusion directly.

The ECI has argued that disclosure of CCTV footage would lead to undue harassment of voters by political parties and “anti-social elements”.³⁸ They have further claimed that such footage could be subject to manipulation using AI systems.³⁹

Perception and trust in all processes are crucial, as they form the basis for evaluating the success of a democratic system.⁴⁰ As also acknowledged by the SC in *Lok Prahari v. Union of India*, such purity of the electoral process is central to the strength of democracy.⁴¹ The observations made by the SC in *Kuldip Nayar v. Union of India* are also worth noting. The Court noted that in the context of elections to the Rajya Sabha by open ballot instead of secret ballot, the prospect of secrecy of ballot “was not as crucial” as the purity of elections.⁴²

The ECI’s argument on voter privacy and narrative manipulation involves an assessment of (a) the gravity of this concern; and (b) balancing this ‘conflict’ between informational right and the right to privacy of the individual voter. In *R. Rajagopal v. State of*

³⁵ Dorathea Greiling & Katharina Spraul, *Accountability and the Challenges of Disclosure*, Vol. 34(3), PUBLIC ADM. Q., 344 (2010).

³⁶ Anderson, *supra* note 33.

³⁷ See Pal, *supra* note 26.

³⁸ THE HINDU, *Release of CCTV Footage from Polling Booths May Put Voters in Danger, says EC*, June 21, 2025, available at <https://www.thehindu.com/news/national/sharing-video-footage-of-polling-station-breaches-voters-privacy-ec-officials/article69721059.ece> (Last visited on September 2, 2025).

³⁹ THE TIMES OF INDIA, *Government Amends Election Rules to Restrict Public Access to CCTV, Other Electronic Poll Documents*, December 21, 2024, available at <https://timesofindia.indiatimes.com/india/government-amends-election-rules-to-restrict-public-access-to-cctv-other-electronic-poll-documents/articleshow/116535627.cms> (Last visited on September 2, 2025); Bharti Jain, *Rule Changes to Restrict Access to Polling Footage to Protect Voter Privacy: CEC*, THE TIMES OF INDIA, January 8, 2025, available at <https://timesofindia.indiatimes.com/india/rule-changed-to-restrict-access-to-polling-footage-to-protect-voter-privacy-cec/articleshow/117049482.cms> (Last visited on September 5, 2025).

⁴⁰ Pal, *supra* note 26.

⁴¹ See *Lok Prahari v. Union of India*, (2018) 4 SCC 699, ¶48.

⁴² *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1, ¶464.

Tamil Nadu, the SC observed that there are occasions where private matters become a legitimate concern of the public.⁴³ When personal affairs already become part of the official record, the “claim of right to privacy does not stand”.⁴⁴ It is also important to underline that a mere possibility of abuse should not lead to unwarranted restrictions on the availability of the right itself.⁴⁵ A misuse by a select few, termed “malicious” by the ECI,⁴⁶ is being used to deny access to all. In a democracy, the role of any institution is to prosecute such illicit usage of data and not go overboard by denying access itself.⁴⁷ In *PUCL v. Union of India*, the SC further noted that in a clash between the right to privacy of an individual and the right to information of citizens, the former stands “subordinated” to the latter, as it serves the larger public interest.⁴⁸

Furthermore, it is clear that more reasonable alternatives exist. For instance, redacting the faces of voters, as opposed to a complete erasure of the record, as well as of the right to obtain footage itself.⁴⁹ This immediately militates against the reasonability and necessity of the amendments. The amendment significantly limits the ability of citizens and civil organisations to expose electoral malpractices.

In response to the above claims, the ECI has argued that the court route remains open, i.e., any individual may file a petition before a court and request a direction for the release of such documents.⁵⁰ However, this underestimates the legal as well as financial barriers this measure poses to individuals and organisations that seek access.⁵¹ Much of transparency hinges on the elimination of barriers to monitoring.⁵² ECI’s position forces citizens into an adversarial process, raising grave issues of discouraging scrutiny. ECI’s argument in this respect, therefore, should be rejected.

⁴³ *R. Rajgopal v. State of Tamil Nadu*, (1994) 6 SCC 632, ¶9.

⁴⁴ *Id.*

⁴⁵ See *Namit Sharma v. Union of India*, (2013) 1 SCC 745, ¶13; *Subramanian Swamy v. Union Of India, Ministry Of Law And Others*, 2016 SCC 7 221, ¶103.

⁴⁶ THE WIRE, *The EC Has Cited 'Malicious Narratives' to Ask Officers to Destroy CCTV, Other Footage in 45 Days*, June 20, 2025, available at <https://thewire.in/government/election-commission-cctv-webcasting-video-footage-destroy-45-days> (Last visited on September 3, 2025).

⁴⁷ An act of denial of information without assessing alternative modes of ‘least restrictive’ measures would also violate norms of necessity and proportionality when dealing with restrictions of a fundamental right, *see generally* A. Barak, *Necessity in PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS*, 319 (Cambridge University Press, 2012).

⁴⁸ *PUCL v. Union of India*, (1997) 1 SCC 301, ¶121; *See also Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148, ¶22.

⁴⁹ See CITIZENS FOR JUSTICE AND PEACE, *ECI: Moving from Transparency to Opacity, the Decision to 'Destroy' CCTV Footage After 45 Days*, July 8, 2025, available at <https://cjp.org.in/eci-moving-from-transparency-to-opacity-the-decision-to-destroy-cctv-footage-after-45-days/> (Last visited on September 2, 2025).

⁵⁰ See Kaushik Deka, *Why Modi Govt Doesn't Want You to See CCTV Footage from a Poll Booth*, INDIA TODAY, December 23, 2024, available at <https://www.indiatoday.in/india-today-insight/story/why-modi-govt-doesnt-want-you-to-see-cctv-footage-from-a-poll-booth-2653966-2024-12-23> (Last visited on September 5, 2025).

⁵¹ LAW COMMISSION OF INDIA, *Report on Cost of Litigation*, Report No. 188, 5, 6 (December 5, 2003) (noting that litigation costs constitute a total bar for low-income and many middle-income class groups). The move also impacts many NGOs, which are often have severely limited resources, *see* KEARNEY, *India Nonprofit Report: Role, Evolution and Impact*, 14 (February 2025), available at <https://www.kearney.com/documents/d/asset-library-291362522/india-nonprofit-report-role-evolution-and-impact-pdf> (Last visited on October 8, 2025); Diana C. Bódi, *Challenges and Opportunities of Non-Governmental Organizations*, Vol. 16(65), BULL. TRANSILV. UNIV. BRAS., SER. VII SOC. SCI. LAW, 227 (2023).

⁵² European Commission for Democracy Through Law, CDL-AD(2024)039, *Report on Election Observers as Human Rights Defenders*, ¶61 (December 5, 2024) (noting that adoption and enforcement of unduly restrictive measures contribute to the stigmatization of civil society and media organisations) (“Venice Commission”); *See also* Joe Regalia, *The Common Law Right to Information*, Vol. 18, RICH. J. L. & PUB. INT., 92 (2015) (observing that the efficacy of FOI statutes is reduced substantially in the presence of procedural hurdles).

IV. ACCOUNTABILITY AND INDIA'S 'ELECTORAL ARCHITECTURE'

The implications of the amendment are not merely restricted to the constitutional question under Article 19(1)(a) but also have an impact on the electoral environment of India. Using the sociological tools of rational choice theory and opportunity reduction, this Part will explain how the amendment alters inherent vigil and accountability mechanisms in the electoral process. To illustrate the analysis, the author will also refer to the structural changes enabled by the implementation of freedom of information statutes in India and other jurisdictions.

A. 'ARCHITECTURAL REGULATION' AND DETERRENCE

'Architectural regulation' refers to regulation aimed at influencing acts by shaping conditions or settings in which those actions occur.⁵³ While legal rules are seen as a method of social control,⁵⁴ architectural regulation emphasises changing behaviour by changing the social context.⁵⁵ In other words, the design itself influences action.

As Bhat observes, architectural regulation differs from traditional legal regulation in focus, mode of operation and efficacy.⁵⁶ It focuses on shaping behaviour through changes in the environment and the context, as opposed to legal rules, which regulate the subject directly.⁵⁷ The perspective of enforcement is also different — it creates a pre-emptive constraint on an action. Legal rules, on the other hand, focus on 'consequences' after the action has already occurred.⁵⁸ Legal rules are, thus, 'reactive', while architectural regulation is pre-emptive.

The consequences of disobeying the two are also distinct. Disobeying a legal rule invites sanction.⁵⁹ However, 'disobeying' architectural regulation can only work when the individual either (a) exits the system; or (b) circumvents the constraint imposed.⁶⁰ It is very difficult for an offender to alter the architecture or 'physically circumvent' architectural restraint.⁶¹ As will be discussed subsequently, this difficulty holds true even when architectural regulation is analogised against election rules.

⁵³ Lee Tien, *Architectural Regulation and the Evolution of Social Norms*, Vol. 7, YALE J. L. & TECH., 7 (2004).

⁵⁴ Carol J. Greenhouse, *Social Control through Law* *Critical Afterlives* in THE OXFORD HANDBOOK OF LAW AND ANTHROPOLOGY (Marie-Claire Foblets et al. eds., Oxford University Press, 2022); Mathieu Deflem, *Social Control: The Enforcement of Law* in SOCIOLOGY OF LAW: VISIONS OF A SCHOLARLY TRADITION, 227 (Cambridge University Press, 2008).

⁵⁵ Tien, *supra* note 53.

⁵⁶ M. Mohsin Alam Bhat, *Governing Democracy Outside the Law: India's Election Commission and the Challenge of Accountability*, Vol. 16, ASIAN J. COMP. LAW, S88 (2012).

⁵⁷ *Id.*

⁵⁸ For example, Lessig cites the act of installing locks on doors as a pre-emptive constraint on a potential trespasser, with criminal and social sanction against trespassing both imposed after the act of trespassing is committed, see Lawrence Lessig, CODE AND OTHER LAWS OF CYBERSPACE, 237 (1999); See also Tien, *supra* note 53, 7.

⁵⁹ Hans Oberdiek, *The Role of Sanctions and Coercion in Understanding Law and Legal Systems*, Vol. 21(1), THE AM. J. JURIS., 71 (1976); Richard A. Wasserstrom, *The Obligation to Obey the Law*, Vol. 10, UCLA L. REV., 780 (1962–63).

⁶⁰ Sarah B. Schindler, *Architectural Exclusion: Discrimination and Segregation through Physical Design of the Built Environment*, Vol. 124, YALE L. J., 1996 (2015).

⁶¹ *Id.*

Criminal justice literature has traditionally considered architectural regulation to fall under ‘situational prevention’ (‘SP’).⁶² Criminal conduct does not result simply from the presence of a criminally disposed individual, but is also influenced by the presence of ‘situational factors’ such as a vulnerable target and an appropriate opportunity.⁶³ SP is also described in relation to individuals taking environmental “cues” to adjudge the appropriateness of their actions.⁶⁴ SP aims to limit the harm inflicted by crime. As a corollary, ‘opportunity reduction’ has been repeatedly proven to deal with crime and otherwise deviant behaviour.⁶⁵

In this context, the Rational Choice Theory (‘RCT’) and Routine Activities Theory (‘RAT’) are equally important. RCT specifies that a potential offender’s choice to commit an offence is based on a rational decision between maximising rewards and minimising risk.⁶⁶ RAT states that in order for crime to occur, there must be a presence of a motivated offender, a suitable target and ‘absence of capable guardians’.⁶⁷ This ‘capable guardians’ is relevant to our assessment of the amendment to the COE Rules, as will be explained subsequently.

SP is traditionally applied to physical spaces,⁶⁸ and more recently to computer environments.⁶⁹ The main underlying principle of opportunity reduction and rational choices can be analogised to electoral architecture involving transparency.⁷⁰ Just as physical design may enable greater “natural surveillance” by maximising visibility,⁷¹ information transparency by way of informational rights results in any citizen possessing the ability to surveil at any given time, thereby similarly maximising visibility.

B. RULE 93(2)(a) AS A FACET OF ELECTORAL ARCHITECTURE

It is worth noting that such rules on electoral architecture are distinct from the legal rules governing the conduct of individuals. The Representation of People Act, 1951, as well as the Bharatiya Nyaya Sanhita, 2023, include legal rules governing the conduct of

⁶² See Douglas D. Perkins, John W. Meeks & Ralph B. Taylor, *The Physical Environment of Street Blocks and Resident Perceptions of Crime and Disorder: Implications for Theory and Measurement*, Vol. 12, J. ENV. PSYCH., 23 (1992); Neal Kumar Katyal, *Architecture as Crime Control*, Vol. 111, YALE L. J. (2002).

⁶³ Ronald V. Clarke, *Situational Crime Prevention, Situational Crime Prevention: Its Theoretical Basis and Practical Scope*, Vol. 4, CRIME AND JUSTICE, 229 (1983).

⁶⁴ See Thomas Gabor, *Crime Displacement and Situational Prevention: Toward the Development of Some Principles*, Vol. 32, CAN. J. CRIMINOL., 54 (1990).

⁶⁵ Keith Hayward, *Situational Crime Prevention and its Discontents: Rational Choice Theory versus the ‘Culture of Now’*, Vol. 41(3), SOC. POL. ADMIN., 234 (2007); Joon B. Suh, Rebecca Nicolaides & Richard Trafford, *The Effects of Reducing Opportunity and Fraud Risk Factors on the Occurrence of Occupational Fraud in Financial Institutions*, Vol. 56, INT. J. LAW CRIME JUSTICE, 81 (2019); Lessig, *supra* note 58; Tien, *supra* note 53.

⁶⁶ Thomas A. Loughran et al., *Can Rational Choice be Considered a General Theory of Crime? Evidence from Individual-Level Panel Data*, Vol. 54(1), CRIMINOLOGY, 86 (2016); In fact, RCT has been used in multiple fields beyond criminology as well, see Keith Dowding, *Rational Choice Theory and Voting* in THE ROUTLEDGE HANDBOOK OF ELECTIONS, VOTING BEHAVIOUR AND PUBLIC OPINION (Justin Fisher et al. eds., Routledge, 2017).

⁶⁷ Edward R. Kleemans, Melvin R. J. Soudijn & Anton W. Weenink, *Organized Crime, Situational Crime prevention and Routine Activity Theory*, Vol. 15, TRENDS IN ORGANIZED CRIME, 88 (2012); Arelys Madero-Hernandez & Bonnie S. Fisher, *Routine Activity Theory* in THE OXFORD HANDBOOK OF CRIMINOLOGICAL THEORY (Francis T. Cullen & Pamela Wilcox eds., Oxford University Press, 2012).

⁶⁸ *Id.*

⁶⁹ Heemeng Hoa, Ryan Koa & Lorraine Mazerolle, *Situational Crime Prevention (SCP) Techniques to Prevent and Control Cybercrimes: A Focused Systematic Review*, Vol. 115, COMP. & SEC., 1–24 (2021).

⁷⁰ Albeit in a different context, Bhat also makes an argument extending architectural regulation to ECI’s powers to control election environments, see Bhat, *supra* note 56, S90.

⁷¹ Bruce A. Jacobs & Michael Cherbonneau, *Carjacking and the Management of Natural Surveillance*, Vol. 61, J. CRIM. JUSTICE, 41 (2019).

individuals.⁷² These statutes either prescribe or proscribe conduct that must be followed, the contravention of which would be punishable as a criminal offence. The COE Rules, on the other hand, govern the ‘manner’ in which elections are to be conducted, including duties of officials and entitlements of voters, and not the conduct of individuals leading to criminal liability. Rule 93, in particular, occupies a distinct place in the system since it does not impose a requirement of ‘conduct’ as most legal rules do. Rather, it is in the nature of a ‘right’ granted to an individual to access documents relating to an election. Much like traditional architectural restraints, this right cannot be overstepped by an offender since they do not exercise any control over the right that may be exercised by an individual under Rule 93. For example, an electoral officer may be susceptible to external influence, such as bribery or intimidation, thereby undermining the enforcement of a legal rule. By contrast, a rule like Rule 93 of the COE Rules cannot be evaded in the same manner because it vests in every individual voter or candidate the right to access electoral records. No single offender can effectively prevent the collective exercise of this right by all individuals.

It is argued, therefore, that COE Rules, and in particular, Rule 93 thereof, closely resemble the ‘electoral environment’ to which the analysis of SP may be applied. The very possibility of increased transparency from public access to the CCTV footage and related granular data directly operationalises key SP elements. It increases the perceived risk of detection for offenders by making their actions subject to potential public scrutiny.⁷³

It also increases the effort required to commit fraud undetected, when there is a parallel risk of discovery by any member of the citizenry simply requesting ECI for documents against the prescribed fee. The citizenry, thus, becomes the ‘capable guardian’ whose presence discourages electoral crimes, under RAT. By acting as a psychological barrier to illicit behaviour, it makes any act of malpractice significantly harder to conceal and thus directly deters potential offenders.

This moves beyond the immediate challenge of circumvention to the broader implications of enhanced accountability. This mimics the idea of “natural surveillance”⁷⁴ that exists in physical architectural design — the wider right of any individual to access documents. The architectural design ensures that even if an attempt at an offence is made, the system itself records the attempt or its effects, providing the necessary audit trail for subsequent legal action. This fundamentally increases the anticipated risks of the crime by making successful evasion of justice highly unlikely, thereby reinforcing the integrity of the electoral process.

The 2024 amendment significantly changes this electoral architecture. It may be argued that mere non-disclosure of these documents does not mean that they will not be recorded with the election officials at all. Indeed, it is not the case of the authors that non-disclosure of these documents will diminish the entire deterrent effect of legal rules already governing the conduct of individuals, or the compliance requirements flowing therefrom.⁷⁵

C. LESSONS FROM FREEDOM OF INFORMATION STATUTES

⁷² For example, *see*, The Representation of People’s Act, 1951, §123(1) (bribery), §135A (capturing of a polling booth), §123 (undue influence).

⁷³ *See* Venice Commission, *supra* note 52, ¶¶52, 53.

⁷⁴ *See* Jake Desyllas, Phillip Connolly & Frank Hebbert, *Modelling Natural Surveillance*, Vol. 30(5), ENVIRON. PLAN. B-URBAN., 644 (2003).

⁷⁵ This concession, however, is immaterial to the authors’ arguments under Part II on the violation of Art. 19(1)(a) resulting from the amendment.

The argument is strengthened by drawing a parallel with how freedom of information (‘FOI’) laws, such as India’s Right to Information Act, 2005 (‘RTI Act’), generally have shaped governance practices across the world. Rule 93, in essence, is nothing but a mode of FOI.

There exists empirical evidence which demonstrates that the presence of informational rights and infrastructure itself serves as a motivator and incentive for positive institutional change.⁷⁶ It has resulted in both corrupt acts being detected and in reducing corruption itself.⁷⁷ An assessment of data from 132 countries over the period of 1990–2011 indicates a strong correlation between improvement of bureaucratic efficiency and the adoption of freedom of information laws.⁷⁸

This also resembles what has been described as the ‘subjective view’ of accountability — the actor feels ‘obliged’ to render an account of their conduct to the stakeholder.⁷⁹ The reference to information in this sense is less as a natural right, and more as a component of governance in a democratic system.⁸⁰ In India, the RTI Act has led to improved record-keeping by government departments.⁸¹ While the implementation is non-uniform and imperfect, the very fact that the public can ask for documents serves as a positive incentive for officials to maintain proper records.⁸² In other words, the potential impact of corruption leading to faulty record-keeping/interference is also substantially reduced, especially when backed by sanctions.⁸³

The author acknowledges that while a mere presence of FOI laws is insufficient to obtain positive results,⁸⁴ it nevertheless mitigates informational opacity that prevented the ‘real’ figures and facts from being presented before the public eye. In other words, on a comparative basis, there is a clear marginal benefit — there now exists an informational baseline, upon which social activism can push for reform. Under the *status quo*, such activism cannot be possible.

In this respect, the pre-amended Rule 93(2)(a) served as a crucial component of electoral transparency, extending the pre-existing FOI regime in India. Much like the RTI Act, it acted as a deterrent for election officials and the ECI. Resultantly, the argument on

⁷⁶ Jeannine E. Rely et al., *More Than a Decade in the Making: A Study of the Implementation of India’s Right to Information Act*, Vol. 136, WORLD DEVELOPMENT, 12 (2020); See Roumeen Islam, *Does More Transparency Go Along with Better Governance?*, Vol. 18(2), ECON. & POL., 53 (2006).

⁷⁷ Ardiana Cordis & Patrick L. Warren, *Sunshine as Disinfectant: The Effect of State Freedom of Information Act Laws on Public Corruption*, Vol. 115, J. PUBLIC ECON., 18 (2014).

⁷⁸ Krishna Chaitanya Vadlamannati & Arusha Cooray, *Do Freedom of Information Laws Improve Bureaucratic Efficiency? An Empirical Investigation*, Vol. 68(4), OXFORD ECON. PAPERS, 3 (2016).

⁷⁹ Mulgan, *supra* note 20, 567 (“The fear of being called to account, of facing scrutiny and possible penalty, is undoubtedly a pervasive motive among public officials”); See generally, Amanda Sinclair, *The Chameleon of Accountability: Forms and Discourses*, Vol. 29, ACCOUNT. ORG. SOC., 219–237 (1995).

⁸⁰ Peled & Rabin, *supra* note 15.

⁸¹ See Amartya Sen, *THE IDEA OF JUSTICE*, 309 (Harvard University Press, 2009); See also Justice K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1, ¶177.

⁸² See Vadlamannati & Cooray, *supra* note 77, 29.

⁸³ David Banisar, *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, PRIVACY INTERNATIONAL, 24, available at https://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/intl/global_foi_survey_2006.pdf (Last visited on September 2, 2025).

⁸⁴ This is acknowledged by scholarly literature which argues that weak institutions result in limited effectiveness of the ultimate intended outcome of FOI laws, see Monica Escaleras, Shu Lin & Charles Register, *Freedom of Information Acts and Public Sector Corruption*, Vol. 145(3), PUBLIC CHOICE, 436 (2010).

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architectural regulation is not just limited to potential offenders outside of the electoral system, but also within, i.e., electoral officials themselves.

V. CONCLUSION

The 2024 amendment to the COE Rules has a significant impact on citizens' right to information regarding the obtaining of crucial electoral documents, which extends beyond merely choosing a candidate in an election. ECI's justification of voter privacy fails the muster of necessity and proportionality in established constitutional jurisprudence, when weighed against the larger public interest of electoral fairness. Through this note, the author has also examined the extended impact of the amendment on the electoral climate of India beyond informational rights under Article 19(1)(a). The amendment also substantially changes the relationship of accountability in the Indian democratic setup. It replaces pre-emptive vigilance with legally and financially onerous litigation. This shift has a chilling impact on informational equity, one that may have a detrimental effect on India's democratic health.

IN THIS ISSUE

Budhaditya Ghosh and Priyanshu Kar, through their paper titled “All Equal but Some More Equal: Passive Malapportionment in India and its Constitutional Justiciability”, highlight the ramifications of the longstanding freeze on delimitation. The authors critically analyse the constitutional justiciability of delimitation exercises and argue that judicial inaction, coupled with legislative freezes, causes disenfranchisement and distorts electoral representation. Using a robust data-driven approach, they demonstrate how the resulting unequal representation undermines the idea of ‘one person, one vote’, threatening both voter equality and democratic legitimacy. The paper critically analyses the judicial approach to delimitation, advocating for stronger constitutional protection coupled with judicial oversight to ensure that individual voter rights are not subordinated to political expediency.

Dr Pratyush Kumar, in their article titled “Democratic Constitutionalism’s Autophagic Allurement of Populism: A Comment on ‘Filtering Populist Claims to Fight Populism: The Italian Case In A Comparative Perspective’ By Giuseppe Martinico”, examines democratic constitutionalism and populism via a comparative lens, focusing on Italy’s constitutional history and contemporary challenges. The article explores how post-World War II constitutional frameworks in Europe — marked by constitutional rigidity, judicial safeguards, and counter-majoritarian checks — function as defences against authoritarian tendencies. Using Italy’s example as a case study, the article highlights the tension between populist claims to sovereignty and the constitutional safeguards designed to maintain democratic stability. Kumar argues for a nuanced constitutional theory that promotes democratic participation while ensuring that populist excesses do not compromise core democratic values.

Dr Shameek Sen’s book review provides an insightful assessment of “The Verdict: Decoding India’s Elections” by Prannoy Roy and Dorab B. Sopariwala. It outlines the book’s division of Indian electoral history into three distinct phases — the pro-incumbency era, anti-incumbency era, and the current “fifty-fifty” era — with a focus on changing voter behaviour, political party evolution, and democratic maturity. Sen highlights the book’s discussion of factors shaping elections, including active media involvement, female voter participation, and challenges in election forecasting. The review examines how the authors address electoral myths, representation disparities, and the growing sophistication of the Indian voter, making it a valuable resource for scholars and practitioners alike.

Anshul Dalmia and Debargha Roy, in their paper titled “The Constitutional Promise to Conduct Elections for Local Self-Governments in Maharashtra: Broken or Fulfilled?”, examine the pervasive failure of state authorities to conduct timely elections for local self-governing bodies, despite clear constitutional mandates. This failure, they argue, creates a constitutional crisis by enabling prolonged, governance by incumbents, which facilitates the misuse of public funds and undermines citizen trust in a decentralised democracy. To remedy this institutional decay, the paper advocates for structural reforms, including establishing strict constitutional limits on deferral periods, securing fiscal autonomy for local bodies regardless of election status, and introducing stringent accountability measures for officials responsible for unjustified delays.

Responding to the national debate ignited by the 129th Constitutional Amendment Bill and the recommendations of the High-Level Committee on ‘One Nation, One

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Election’, the NUJS Law Review presents a critical commentary, tying both empirical research and doctrinal analysis. This report builds on our foundational 2018 submission to the Law Commission and offers a comprehensive evaluation of the synchronicity proposal. It provides a nuanced perspective into the normative conduct of simultaneous elections, identifying implementation roadblocks and dissecting the inherent constitutional tensions brought in by the proposed amendments. This publication aims to provide essential commentary on the ongoing discourse and help readers understand the multifaceted challenges presented by the prospect of simultaneous elections.

We hope the readers enjoy reading these pieces and welcome any feedback that our readers may have for us. We would also like to thank all the contributors to the issue for their excellent contributions, and hope that they will continue their association with the NUJS Law Review!

Truly,

Board of Editors

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