

4. Nomination – Polity

India's electoral nomination process, governed by the RPA 1951, is criticized for being overly procedural, allowing Returning Officers to reject candidates for minor paperwork errors. Due to Article 329(b), these rejections cannot be challenged until after the election, prompting calls for reforms like a 48-hour correction window and a digital-by-default system to make the process facilitative rather than exclusionary.

Reforms Needed in India's Electoral Nomination Process

There is a recognized need for reforms in India's electoral system, as the current nomination process has become increasingly exclusionary, vulnerable, and convoluted, making it susceptible to procedural misuse.

About the Nomination Process in India's Electoral System

The nomination process serves as the gateway to electoral participation. It is governed by constitutional provisions and detailed procedures established by the Election Commission of India (ECI).

Key Components

Eligibility Criteria – Candidates must meet specific age and voter registration requirements as outlined in the Representation of the People Act, 1951 (RPA). To contest Lok Sabha (House of the People) or Vidhan Sabha (State Assembly) elections, candidates must be at least 25 years old and be registered voters.

Filing Nomination Papers – Candidates are required to submit Form 2A (for Lok Sabha) or Form 2B (for State Assemblies). Alongside these forms, they must file affidavits that declare –

1. Criminal records
2. Assets
3. Liabilities
4. Educational qualifications

Scrutiny and Withdrawal – All nomination papers are formally scrutinized by the Returning Officer (RO). Candidates are permitted to withdraw their candidacy by a specified deadline.

Digital Integration – The ENCORE portal facilitates the online submission of nomination forms and affidavits. This digital system is intended to enhance both transparency and accessibility for candidates.

Lapses & Concerns in the Current Nomination System – The current system is criticized for prioritizing procedural technicalities over democratic fairness, leading to several significant concerns.

Procedural Complexity vs. Substantive Justice – The verification of qualifications under the RPA, 1951, has become overly procedural. The Returning Officer (RO) is empowered to reject a nomination deemed invalid after only a summary inquiry (under Sections 33–36 of RPA, 1951, and the Conduct of Elections Rules, 1961). Critically, the RO's decision is unchecked until after the election due to Article 329(b), which allows minor technicalities to triumph over genuine fairness.

Procedural Traps – Candidates are often disqualified due to simple paperwork errors rather than failing to meet constitutional qualifications. Common pitfalls include –

Oath Trap – Taking the required oath too early, too late, or before an unauthorized authority.

Treasury Trap – Using an incorrect payment mode or facing late submission of the security deposit.

Notarisation Trap – Missing the required notarised affidavits (Form 26).

Certificate Trap – Experiencing delays in obtaining necessary no-dues certificates from various government departments.

Constitutional Barriers – Article 329 of the Constitution explicitly bars courts from intervening in electoral matters until after the elections are officially concluded. This means that even a wrongful rejection of a nomination cannot be challenged immediately via a writ petition. The only remedy available to the aggrieved candidate is to wait until the election is over to file a formal election petition.

Judicial Complexities – While judicial interventions have aimed for transparency, they have also created new grounds for disqualification.

Supreme Court's 2013 Resurgence India Judgment

This ruling determined that incomplete affidavits are invalid (and thus rejectable), but false declarations within an affidavit are *not* grounds for rejection at the scrutiny stage.

Filtration Approach – The RO Handbook provides a checklist system, but this checklist does not have legal value. An RO can still reject a nomination at the scrutiny stage even if it was previously marked ‘defect-free’ by the checklist. This power breeds arbitrariness and significantly undermines trust in the electoral process.

Disproportionate Impact on Marginalized Candidates – This complex and punitive system disproportionately affects candidates from marginalized backgrounds.

They often face – A lack of legal literacy to navigate the complex rules. Limited access to professional or legal assistance. A pervasive fear of procedural rejection, which discourages them from participating in the first place.

What Reforms Are Needed?

The proposed reforms focus on shifting the system from filtration to facilitation, ensuring fairness, and leveraging technology.

Restoring Fairness (Role of the RO) – Returning Officers (RO) need to be legally required to – Issue written notices that specify the exact defects and cite the relevant legal provisions. Allow candidates a mandatory 48-hour correction window to rectify the identified defects. Provide reasoned rejection orders that detail the evidence and justification used for the rejection.

Adopting a Digital-by-Default Framework – The Election Commission of India (ECI) can build a comprehensive digital framework to simplify the nomination process –

Online Verification – Automatically verify a candidate’s Voter ID, age, and constituency registration.

Digital Submission – Allow for the complete digital submission of oaths and affidavits.

Electronic Payment – Enable electronic payment options (like UPI, RTGS, cards) for security deposits.

Public Dashboard – Maintain a public dashboard that tracks every stage of the nomination, including publishing the specific reasons for any rejection.

Strengthening Democracy

When a nomination is rejected unfairly, two fundamental rights are violated –

1. The candidate’s right to contest.
2. The voter’s right to choose from a full slate of candidates.

India’s system must become citizen-centric, transparent, and inclusive. The process needs to evolve from “rule by law” (rigid adherence to procedure) to the “rule of democracy” (facilitating participation). The goal is to move from filtration to facilitation.

Best Practices – A Facilitative Approach in Other Democracies

Several other democracies prioritize assisting candidates in meeting requirements rather than disqualifying them on technicalities.

Country	Facilitative Practice
United Kingdom	Officials actively help candidates correct errors before the submission deadlines.
Canada	Candidates are legally allowed 48 hours to fix any deficiencies in their nomination papers.
Germany	Authorities are required to issue a written notice of defects and provide appeal opportunities.
Australia	Authorities are required to issue a written notice of defects and provide appeal opportunities.

Source – <https://www.thehindu.com/news/national/why-the-nomination-process-needs-reform-explained/article70249834.ece>