

Draft

'One Day's Sultan': T. N. Seshan and the Reform of the Election Commission in the 1990s

David Gilmartin
North Carolina State University

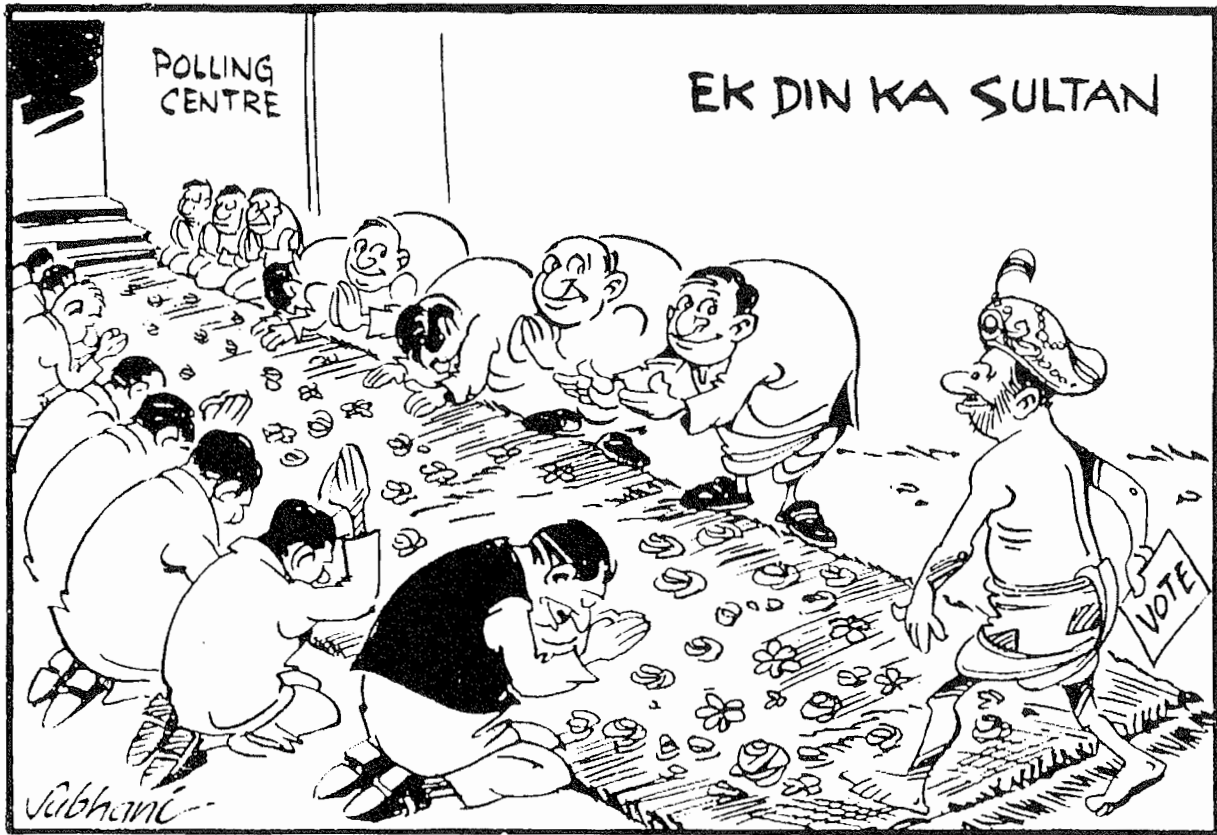
I open with a cartoon printed in the Deccan Chronicle, from the 1990s, that captures a central feature of popular sovereignty and elections that I would like to discuss in this paper [cartoon 1]. In a democracy, elections represent, in a certain sense, the apotheosis of politics. They represent the apogee of political competition, the moment when the greatest prize of political conflict, control of the machinery of Government, is up for grabs. There are few acts so overtly saturated with politics as elections. Elections provide access to the flows of resources and patronage, and to all the levers of everyday power, that allow political leaders to bind the less powerful to their wills. Little wonder that politicians look toward elections with what sometimes amounts to frenzied anticipation. And yet, elections, at the very same time, represent something strange and very different from this—indeed, quite the opposite. Far from the apogee of politics-as-usual, they also represent a critical moment when the normal flows of power are dramatically reversed. The most clever and well-entrenched politicians at election time must bow down before the “people,” abasing themselves before the most powerless. The most unprepossessing, unshaven, dhoti-clad voter becomes “Sultan for a day.” What could be more contrary than this to common sense understandings of the working of power?

In fact, the contradictory character of elections, which this cartoon captures well, requires considerable probing if we are to understand the nature of elections in India and of democracy as a system. At the root of this, of course, is the notion of popular sovereignty, the ideal, embodied in the Constitution of India, that it is the “people” who are ultimately sovereign. No government can claim constitutional legitimacy without appealing to this concept of the “people,” and it is at elections that the voice of the people is heard. But how can the assertion of such a voice be reconciled with the normal workings of politics? The cartoon in fact captures well the deep tensions that are involved. If elections represent a reversal through which the common man becomes “Sultan for a day,” he can only, in the presence of his political bosses, wear his crown awkwardly. The reversal of power flows implicit in popular sovereignty is clearly under constant threat of subversion by power-as-usual, a fact readily evident as Mr. Nobody starts down the carpet, vote in hand, to exercise his “Sultanat.” Are the assembled politicians abasing themselves? Or are they cleverly scheming to turn him toward their own purposes? Is the message of the cartoon, in the midst of the considerable soul-searching marking public debate on Indian democracy in the 1990s, the will of the people is stronger than that of the politicians? Or is the message that, even as they overtly recognize the people’s will, the politicians are in fact suborning the voter in the very shadow of the voting booth as they turn the basic, private act of voting into a public gauntlet?

CARTOON 1

4 DECCAN CHRONICLE, HYDERABAD

112-014



There can of course be no real answer to these questions. But the contradictory interpretations that one can ask about a cartoon such as this, in fact lie at the heart of some of the most complex questions concerning the meaning of elections in India's democracy. Given the reversals involved, it is no surprise that commentators have sometimes seen elections as "rituals."¹ As the cartoon suggests, elections undoubtedly embody a sort of special "electoral time," in which the normal workings of power are suspended and in which the most lowly can become, as voters, "Sultan for a day." But to see elections, in parallel with religious observance, as primarily "rituals" cannot possibly capture the contradictions that lie at the heart of the electoral process. For if elections occur in a special time that, like "sacred" or ritual time, in some ways reverses the normal flows of politics in the everyday world, their meaning also depends critically on their ability to capture these flows in concrete electoral results. Without the power of politicians, both mobilized and constrained by the realities of power in society, elections would have no significance. Indeed, elections that were, as ritual, truly divorced from the operation of worldly power would be completely without meaning.

Electoral Time and the Indian Election Commission

To understand the structure and meaning of elections, and their inescapable contradictions, it is thus necessary to begin with a discussion of the legal and administrative structures within which they occur. Under India's Constitution, the administration of all elections is vested in a National Election Commission. As the debates in the Constituent Assembly suggest, the fundamental aim of the Election Commission's establishment was to create an institution for the management of elections that would stand outside the normal ambit of power and thus make possible the contradictory operation of popular sovereignty that the cartoon captures. It was agreed by the Constituent Assembly without dissent, as Dr. Ambedkar put it, "that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they [elections] should be free from any kind of interference from the executive of the day."² This provided for a semi-autonomous Election Commission, headed by an independent Election Commissioner (or Commissioners, as the government had the discretion to appoint more than one if it felt it necessary). But in fact, as many of the delegates to the Constituent Assembly clearly realized, to define such a position of independence from politics was itself a conundrum.

The ambiguities in the position of the Election Commission lay not just in its constitutional position, but in the special law relating to the conduct of elections that it was intended to uphold. The roots of India's election law in fact go back to the British colonial period, before the Election Commission was formed. When the British in 1919 introduced elections into India, they introduced at the same time a body of election law relating to how elections would be conducted. The law built on the assumption, derived from British tradition, that elections required a special set of legal restrictions relating to

¹ For one example, see Walter Hauser and Wendy Singer, "The Democratic Rite: Celebration and Participation in Indian Elections," *Asian Survey*, XXVI, 9 (September 1986) pp. 941-958

² See Constituent Assembly Debates (p. 4)

appropriate political speech and behavior that marked them out from the time of “normal” politics. At the root of this, and of the idea of “free” and “pure” elections (terms that were widely used after 1947 as well), was the assumption that the free choice of the voter was essential if elections were to have any meaning. But in India (as in Britain in the 19th century) society was widely perceived as structured by hierarchy and “influence” as the normal order of the day. To maintain a framework of free voter consent, elections thus required a structure of law that prohibited (or at least limited) the exercise of “normal” coercive authority over voters. From the very beginning, election law in India thus prohibited the exercise at election time of what was legally referred to as “undue influence” over the voter, whether this came from the government in power, from powerful patrons in society, or from religious figures threatening voters with spiritual censure. Election law was thus built on the assumption that the free voice of the voter could not be heard without the existence of some form of legal restraint on “normal” politics.

Implicit in the colonial law, therefore, was the tension between the idea of elections as a framework for popular political competition reflecting society’s competing interests and identities, and the idea of elections as a special time at which the free choice of the voter had to be protected. But this took on a new character after 1947 with the management of elections by the Election Commission. Though the Election Commission’s work focused largely on the administrative management of elections, itself a massive task (involving the preparation of electoral rolls, the staffing of polling booths, the counting of votes, etc.), it also assumed an increasingly important role as a monitor of election conduct. Nowhere was this clearer than in the Commission’s ultimate development of a “Model Code of Conduct” for electioneering, whose operation will be the focus of most of this paper.

The original impetus for the Code did not, in fact, come from the Election Commission itself, but from groups in civil society who, early on, sought to broker agreements among political parties and election officials to lay down standards for electoral campaigning. The first such agreement was negotiated in Kerala in 1959 and was issued by that state as a code of conduct for the 1960 state assembly elections. Similar codes were subsequently issued in other states, and in the late 1960s the Election Commission issued its first Code in the form of “An Appeal to Political Parties for the Observance of a Minimum Code of conduct during Election Propaganda and Campaign.” Subsequently, the Code evolved in a more authoritative direction, with rules for candidates, political parties, the ruling party and officials more clearly delineated, particularly after an all-parties conference in 1979 called by the EC specifically to deal with the problems of government electoral abuses that had marked the 1970s—and the Emergency period.³ Yet the Code remained an essentially voluntary guideline whose limitations were manifest: it had no force of law and depended on the political parties’ compliance. Though legal challenges to the violation of election law could be

³ This history of the Model Code is drawn largely from K. C. Saha, *Elections Model Code of Conduct: A Reference Handbook* (Delhi: Shipra Publications, 2005) p. 13. See also, *Pioneer*, 18 February 1994 (This and all subsequent newspaper citations from this paper are taken from the clipping notebooks at the Library and Resource Centre, Election Commission, Nirvachan Sadan, New Delhi).

adjudicated through post-election petitions in the Courts, there remained a sizeable gap between the Model Code and the reality of electoral behavior, which the Election Commission could do little about.⁴ In the shadow of rising concern in the 1980s about expanding electoral corruption, there were thus increasing calls to change this. The Dinesh Goswami Committee on electoral reform, appointed by V. P. Singh in 1990, thus noted the Code's weaknesses and suggested that it be given statutory backing and thus be made legally enforceable. But little was subsequently done along these lines.

What brought the Code—and the discussion of an electoral morality that transcended everyday politics—into unprecedented prominence in the early 1990s, however, was the appointment of T. N. Seshan as Election Commissioner.⁵ For it was Seshan who not only sought to enforce the Model Code in unprecedented ways, but also brought it into public consciousness as a symbol of the underlying notion that elections required a different morality from everyday politics. As Seshan implied in a 1994 article in *Blitz* (entitled “I Have a Dream”), the power of the Election Commission derived from its constitutional position as the apolitical upholder of this morality. At the heart of this morality was the protection of the autonomous free choice of the individual, rooted in “the dignity of the individual, the inner strength of human character, and the courage to accept and do only that which a man in his conscience believes to be correct.” But this was under significant and ongoing threat in India, he said, from the massive encroachment into elections of the coercive and corrupt forms of politics that increasingly defined much of Indian life. “Coercion of any kind—mental, economic, political, intellectual—is a form of violence and should find no place in any democracy.”⁶ Seshan thus cast the Election Commission as the protector of the people's will against such coercion. Rooted in the conscience of the individual, the people's sovereignty thus stood, in a sense, outside everyday politics, and it was the duty of the Election Commission to protect this, almost as a religious principle. It is little wonder that, for many of Seshan's supporters, this took on clear religious connotations. As the Madhya Pradesh state president of the All-India Small Newspapers Association later wrote to Seshan (in a book of letters to Seshan from private citizens preserved at the Election Commission): The

⁴ India's system of dealing with electoral law violations through petitions filed after elections dates back to the introduction of British-based electoral law in 1920. Such cases were initially tried by special election tribunals, but these were abolished in the 1950s and petitions went directly to the high courts. The importance of this system is suggested by Rajeev Dhavan's observation in 1996 that “Indian democracy is visited with much greater post-electoral disputes than any other country in the world.” But courts were constitutionally barred from hearing disputes during the period of election campaigns themselves, and judicial resolution of electoral charges thus generally occurred long after elections were over. The Election Commission was given oversight of elections during “electoral time” itself. See Rajeev Dhavan, “Whither Indian Democracy?” *The Hindu*, 26 April 1996. For some larger discussion of this election law system, see also David Gilmartin, “Election Law and the ‘People’ in Colonial and Postcolonial India,” in Dipesh Chakrabarty, Rochona Mazumdar, and Andrew Sartori, eds., *From the Colonial to the Postcolonial: India and Pakistan in Transition* (Delhi: Oxford University Press, 2007).

⁵ Seshan was initially appointed as the sole Election Commissioner. In 1993, the Government sought to limit his power by appointing two additional Election Commissioners, M. S. Gill and G. V. G. Krishnamurthy, with Seshan then assuming the title of Chief Election Commissioner. Seshan, however, resisted this and went to the courts to prevent having to cede any authority to the other two Commissioners, though the courts eventually decided against him in 1995, making it necessary for EC policy from that time onward to be confirmed by a majority vote of the three Commissioners.

⁶ *Blitz*, 29 January 1994.

“Chief Election Commissioner, in a way, is God to democracy,” seeing to it that the Election Commission performs the “divine duty assigned to it in this mundane world.”⁷ The intersection of transcendent, sovereign power (the “people”) and the mundane power of everyday politics (the “politicians”) thus defined, in this framing, the structural order in which the Election Commission operated.

This of course hinged on a view of elections as a special time in which the normal operation of mundane politics was subject to special forms of control in the name of higher principle. Seshan’s efforts to reinvigorate the Model Code thus depended in critical ways on his ability to mark off such time by defining the special powers of the EC associated with it. First and foremost, of course, this depended on the EC’s assertion of transcendent authority vis a vis the government during election campaigns. Though this power was rooted in the constitution, it had always been a matter of some dispute. Two specific issues were of paramount importance in this regard during Seshan’s tenure: the power of the EC to commandeer and control staff for special electoral work during election campaigns, and the power of the EC to set with full discretionary authority the time parameters of the election campaigns during which its special powers (and the Model Code) would be in force.⁸

Both of these issues prompted sharp dispute between the EC and the Union Government in the 1990s, but both were ultimately resolved in the EC’s favor. With respect to staff, the EC’s power was rooted in Article 324 of the Constitution, which required the President and the State Governors to “make available to the Election Commission such staff as may be necessary” for the management of elections. But a central question remained as to whether the Central and state governments would retain the power to exert bureaucratic discipline over this staff during election campaigns, or whether the EC’s independent power over them during “electoral time” would be complete. Seshan demanded that for the period of campaigns, all election workers, from whatever government they were on loan, should come under separate and direct EC discipline. But in 1993, when both central and (some) state governments resisted this, Seshan provoked a crisis by threatening to postpone elections until the government backed down. The Government’s failure to recognize the EC’s full constitutional right to command staff was, Seshan said, “an open attempt to subjugate the EC under the executive, [which] if allowed to go unchallenged will destroy the very roots of India’s democracy.”⁹ Though it took the intervention of the courts, the EC ultimately gained victory in this, thus defining clearly in administrative terms the shift in normal power

⁷ Letter, Rajendra Agal, State president, All-India Small newspapers Association, Bhopal, to T. N. Seshan, 24 May 1996. Scrapbook of letters (1996), Library and Resource Centre, Election Commission, Nirvachan Sadan, New Delhi.

⁸ Another major issue of dispute with state governments during Seshan’s tenure was the issuing of photo identity cards for the verification of voter identities. Though this was less connected to the EC’s constitutional position than the other issues discussed here, it was an issue of long-running tension as Seshan threatened to postpone elections when state governments claimed inability to comply with the EC’s directives on this.

⁹ *Illustrated Weekly*, 14-20 August, 1993.

relations that “electoral time” entailed.¹⁰ A similar confrontation marked the delineation of the specific parameters of electoral time, during which the EC’s Model Code of Conduct would be in effect. When did the special time associated with elections kick in? Though this period had previously been opened by the official notification of elections (usually less than a month before the beginning of polling), Seshan argued now that this time should begin with the official announcement of the date of elections (which notified the parties and the Government that the election would be coming). Though some politicians and government officials strenuously objected to this, and took the EC to Court over it, in the end, once again, the Election Commission’s interpretation prevailed.¹¹

The EC thus used the courts to underscore the Constitutional foundations of its special powers during “electoral time.” But the substance of its reorientation of political behavior during this time lay in the new levers of enforcement that it used, against government and politicians alike, to gain compliance with the Model Code of Conduct. Compliance with the Code was, of course, technically voluntary. The Code had no force of law (except insofar as many of the Code’s provisions were also contained in the Representation of the People Act of 1951 and could be litigated through petitions once

¹⁰ Full resolution of this did not occur until after Seshan’s tenure, when the Supreme Court in 2000 gave its approval to an agreement worked out between the EC and the Government of India, which essentially accepted the EC’s position. See *Election Commission of India v. Union of India and others*. SC writ petition #606 of 1993. *Landmark Judgements on Election Law*, v. III (New Delhi: Election Commission, 2000) pp. 35-59. Conflict on this issue had come to a head when, after a government announcement that normal government disciplinary protocols would continue for workers doing election work, the EC threatened in August 1993 to postpone an election (in Maharashtra) until “such time as the present deadlock, which is solely the making of the Government of India, is resolved.” This led to a court challenge by Sharad Pawar and an agreement to let EC authority continue pending a decision. Before its final resolution, however, Seshan and Pawar clashed again in 1995 on this same issue. After the poll in that year for the Maharashtra Assembly, Pawar criticized the EC’s overzealous enforcement of the Model Code and threatened to investigate the “excesses” of electoral personnel. When Seshan then threatened to stop the counting of votes until Pawar withdrew this threat, Pawar backed down and recognized the EC’s sole right to review and discipline the election conduct of officials. *Statesman*, 15 February 1995; *Deccan Chronicle*, 16 February 1995.

¹¹ *Union of India v. Harbans Singh Jalal and others*. *Landmark Judgements on Election Law*, v. IV (New Delhi: Election Commission, 2006) pp. 394-97. The EC ultimately agreed to a clause that the announcement of the date of election (from which announcement the Model Code would go into effect) would not normally be more than three weeks prior to the official notification of the elections, but otherwise, the EC essentially got what it wanted. Here also, this was an issue that was marked by a number of well-publicized clashes between the EC and the Government. Perhaps the most publicized was a conflict in March 1994 between Seshan and the Congress CM of Andhra Pradesh, Vijayabhaskara Reddy. Seshan had informed Reddy that his announced tour of Kurnool district in March 1994 would be a violation of the Model Code since the date of a by-election for the Kurnool assembly constituency (to be held in May 1994) had already been announced in early March. Reddy subsequently cancelled his tour, but complained to the Center that Seshan was extending the scope of his authority and usurping normal government authority. *Times of India*, 8 March 1994. Reddy subsequently filed a petition with the court, leading to an SC judgment temporarily constraining Seshan from acting against Model Code violations until the parameters of the time frame surrounding the EC’s control over elections was clarified. “T. N. Seshan Reined In,” *India Today*, 30 April 1994. This was, in fact, an important incident leading to the subsequent announcement of government plans to introduce a constitutional amendment in the summer of 1994 to limit the powers of the EC more broadly (though these plans later collapsed, amidst considerable government embarrassment). In the end, the EC prevailed on the dates for the invocation of the Model Code.

elections were over). But Seshan nevertheless deployed a number of new levers of discipline to enforce the Code during real “electoral time.” Perhaps most important, he found that the EC’s power to set the dates of elections could be used to “punish” violations of the Code through threats of canceling or postponing election dates when the EC’s authority was defied, a power that, again, was not entirely new, but that Seshan used in unprecedented and activist ways. Early on in his tenure as Election Commissioner, Seshan thus stopped several election campaigns in midstream to make it clear to the government that he would not tolerate extensive Model Code violations. This was particularly effective in undercutting the use of various levers of undue influence by the government in power. Many CECs before Seshan had tried to limit the power of the sitting government over elections, and such restrictions were embodied in the earliest versions of the EC’s Model Code.¹² But Seshan gave these new significance. Like Election Commissioners before him, he thus sought to constrain the use of official machinery, personnel or vehicles for election work. But he also gave new force to restrictions on the announcement or undertaking of any government policies during election campaigns that might be construed as government attempts to use its power to unduly influence the voters. Government largesse of any sort, which could be interpreted as an attempt to sway votes, was, as Seshan made clear, open to close EC scrutiny during election campaigns.¹³ Policy initiatives intended to appease particular constituencies were not to be allowed. He thus stopped a by-election in Ajnala (Punjab) on the grounds that a state government promise during the election period to include dalit Christians on the list of scheduled castes represented a violation of the Model Code.¹⁴ In an even more highly-publicized case, he cancelled in April 1993 a by-election in the Kalka constituency of Haryana on the grounds that the Congress had violated the Model Code by announcing new development schemes after the election had been announced.¹⁵ In 1994, he went so far as to suggest that the Prime Minister should dismiss two ministers whom he accused of using policy promises to corruptly influence the pending Andhra Pradesh and Karnataka state elections,¹⁶ and he added to this a directive that all touring by Government Ministers in areas in which elections had been announced should be avoided, so that even the temptation to exercise improper government influence could be averted.¹⁷

¹² Some of the most dramatic examples of this came from the 1989 general election immediately preceding Seshan’s appointment, when the EC, then under R. V. S. Peri Shastri, had ordered repolling in the Prime Minister’s own Amethi constituency.

¹³ Seshan thus called into question all the free distribution programs which had been long been a staple of some forms of Indian campaigning. See Saha, *Elections Model Code of Conduct*, pp, 16-19.

¹⁴ *Blitz*, 28 May 1994.

¹⁵ *Times of India*, 4 July 1993

¹⁶ In fact, Narasimha Rao did not dismiss the two ministers, but he was clearly chastened by the negative publicity generated by Seshan’s charges. Seshan accused Welfare Minister Sitaram Kesri of announcing during the election campaign a government commitment to institute reservations for Muslims, and Food Minister Kalpnath Rai of hiking sugar quotas on the eve of the provincial elections. See “Verdict: Guilty,” *Sunday*, 4-10 December 1994.

¹⁷ *Tribune*, 4 February 1994; *Hindustan Times*, 4 February 1994. *The Tribune* responded to this by observing that when statewide elections were held, Ministers would be in apparent violation even if they stayed in the state capital (excepting, of course, the newspaper added tongue-in-cheek, in Punjab and Haryana, where the capital [Chandigarh] was not actually part of the state.) This was the order of which Andhra CM Vijayabhaskara Reddy fell afoul, as noted in note #9 above.

Nor were such restrictions confined to the ruling party. Seshan was equally active in publicly monitoring Model Code violations by opposition parties as well. This covered in part the technical issues of electioneering, such as the use of vehicles, meeting places, loudspeakers (and, in general, to the control of election expenses¹⁸). In January 1994, for example, Seshan issued interpretive ordinances under the Model Code instructing state governments to take action against political parties or persons guilty of defacing the walls of buildings during elections, and required parties to remove their posters after elections and whitewash the walls. No graffiti, posters, hoardings or banners were in any case permitted on any public property (except where specifically allowed by local law). Loudspeakers were prohibited without permits, and were banned on moving vehicles before 8 am in the morning or after 7 pm in the evening. No meetings were to be allowed in the rural areas after 11 pm, or after 10 pm in the cities.

Such rules were supplemented also by EC attempts to police the parties for violation of the Model Code's strictures against any appeals "to caste or communal feelings for securing votes."¹⁹ To give teeth to this, Seshan issued an ordinance claiming EC authority to "derecognize" any party that blatantly violated the Model Code under the terms of the 1968 Election Symbols Ordinance, a clear expansion over any EC authority that had previously been asserted.²⁰ This was backed up in December 1994 with an EC request to all the parties to submit their manifestos to the EC so that they could be vetted to make sure that there were no violations of these guidelines.²¹ Complaints about this were in fact loud among the parties, and Seshan backed off any direct action against the parties along these lines. But the threat was a potent one. All the parties faced increasing scrutiny as Seshan appointed a range of "special observers" to watch not only the electoral rhetoric of parties during their campaigns, but also to review on an ongoing basis their electoral expenditures. These were supplemented by special videographers who were sent by the EC to each constituency to film "critical election events." The reports of such observers were, according to one newspaper account, sent back to the EC Headquarters and reviewed at "a control room" with "an officer in charge of each state."²²

¹⁸ Monitoring of legal limits on election expenses had long been a hit or miss proposition in Indian elections. Under Seshan, the EC took unprecedented steps to require the reporting of expenses and to enforce these limits, though probably still with limited success. This was greatly complicated in 1996, when the Supreme Court ruled that political parties could be held accountable for expenses as well as individual candidates. For an overview, see *India Today*, 31 March 1996.

¹⁹ Beyond this, candidates were enjoined in the Model Code to avoid any activity "which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic." Election Commission, *Model Code of Conduct for the Guidance of Political Parties and Candidates* (New Delhi: Election Commission, 2007).

²⁰ *The Statesman*, 17 February. For an editorial slamming this ordinance, see also: "By the Grace of Seshan," *Indian Express*, 18 February 1994. The 1968 Election Symbols Ordinance had originally empowered the EC to rule on the claims of political parties to the use of particular symbols, an authority that had grown out of their adjudication of the great split in the Congress in the late 1960s.

²¹ Amid much criticism, Seshan eventually backed off from this request. *Telegraph*, 29 December 1994.

²² Javed Ansari, "The Unsparring Rod," *India Today*, December 15, 1994.

Perhaps most important, however, in putting teeth in these measures was the barrage of publicity which, under Seshan, came to accompany all of the EC's actions. Whatever the new levers of institutional pressures that Seshan was able to apply to both the government and the parties, much of his influence hinged on his unprecedented use of publicity to force the government and the parties to publicly acknowledge the Model Code's moral force. His policies were in fact predicated in largely new ways on using India's increasingly vibrant public sphere as a framework for giving his policies force. Having agreed in principle to the appropriateness of a Model Code of Conduct for elections, few politicians wanted to be put in a public position of openly defying the Code (however much they might try less publicly to circumvent it). And Seshan made sure of this, continuously issuing press releases and tirelessly touring the country, speaking to groups eager to hear his commitment to make the politicians toe the line. "He is in the headlines," one columnist noted, "at least three times a week."²³ Seshan's aim was in fact to combine threats of external sanctions (such as the postponement of elections) with publicity that forced politicians to internalize many of the norms of electoral behavior that the Code embodied. By thus keeping the Model Code in the constant eye of public attention, Seshan was able to project an image of elections as a moment of special moral discipline—a moment when politics as usual had to be controlled to protect that critical window when the people's sovereignty came to earth.

T. N. Seshan and Debate on the Conduct and Meaning of Elections

By the mid-1990s Seshan's policies had influenced significantly the culture of elections in India, and, perhaps more importantly, made the public far more aware than previously of the Election Commission's role in India's democratic life. But his actions also raised a storm of controversy that focused not only on the specifics of his actions, but also brought into public discussion the underlying principles on which democracy was based. The public controversies surrounding Seshan's policies in the 1990s thus open an extraordinary window for examining conflicting ideas in India on the structure and meaning of elections, and on the relationship between law, politics, and Indian culture. They provide the historian with perhaps the most important debate since independence about how Indians perceived the meaning of popular sovereignty with respect to elections.

It was in fact the relationship between everyday politics (and politicians) and the ideal of democracy that lay at the heart of debate about these electoral issues. Suspicion of unadulterated politics—and politicians—underlay Seshan's most basic actions as Chief Election Commissioner. Politics were critical to elections, as almost all Indians realized, and yet, in acting on this suspicion Seshan tapped into a deep—and growing—vein of popular uneasiness with India's politicians—that, some would say, went to the

²³ Praful Bidwai, "The Self-Styled Galahads," *Frontline*, 30 December 1994. Many in fact sharply criticized Seshan as a publicity hound. As Bidwai put it, "...whether on account of his *obiter dicta*, his innumerable press conferences, inane Rotary Club speeches or pompous pronouncements at schools and colleges, ... he never misses an opportunity to run down politics and politicians while building a base for a new kind of politics of his own."

roots of democracy itself. Popular suspicion of politicians goes well back into India's history. But the specific timing of Seshan's emergence was a product of the distinctive circumstances of the early 1990s. The general elections of 1989 and 1991 represented, at least in the perceptions of many Indians, perhaps the nadir of Indian electoral experience with respect to electoral corruption. There are, of course, few means for actually measuring whether these elections were in fact more corrupt than earlier ones, or for measuring the degree to which growing public perceptions of corruption may have reflected in part by high-caste mistrust of new forms of lower-caste politics. But there is little doubt that such perceptions existed, fueled by the proliferation of stories about electoral intimidation—about “money and muscle power,” to use the terminology of the day—that suffused the press and public discussion in this era. An example reported from the newspapers in 1991 captured this in exemplary fashion. As a reporter for the *Indian Express* described the situation in Etah district in U.P. preceding the 1991 elections, the local candidate of Mulayam Singh Yadav's Samajwadi party (having recently switched from Congress-I) hardly even bothered to campaign. Instead, he toured the constituency in a convoy of jeeps filled with supporters armed to the teeth. “Mr. Singh apparently doesn't believe in approaching the electorate with folded hands for their votes,” the newspaper reported. And as to actually campaigning, one of the candidate's supporters put it succinctly: “Dadda ko is ke kya zaroorat padi he?” he said. “Woh toh yahan ke malik hai.”²⁴ This was a world in which the concept of the common man as the ultimate source of sovereignty seemed far removed from the actualities of either elections or political life. How far such reports of rural politics may have been caricatures it is impossible to know, but there is little doubt that stories of this sort were widespread, and they exerted a powerful influence on the consciousness of urban, literate classes and shaped significantly how “normal politics” in India were increasingly perceived.²⁵

Suspicion of politics, which was particularly pervasive in the urban middle class in India, thus played a prominent part in shaping popular reaction to many of Seshan's actions. “The passion, almost always positive, [Seshan] arouses in the educated middle class is awesome,” *The Tribune* wrote in 1994, “as awesome as his energy to think of new ways to hobble all the political villains.”²⁶ This shaped the adulation that Seshan garnered on his ubiquitous speaking tours, particularly among urban youth. As one of Seshan's supporters wrote to him, “People have started hating the politicians and the present political parties. They are deemed to be a group of dacoits who change their faces, their dresses and their parties at the slightest pretext to loot the country and fill their own pockets...” For such people, Seshan provided an inspirational focus. There is “no dearth of right-thinking people” in the country, this supporter declared, but they are “waiting for an organization where they can see a ray of hope for their beloved nation.”²⁷

²⁴ *Indian Express*, 8 May 1991.

²⁵ We should of course be wary of accepting such accounts of popular politics at face value. For a discussion of Yadav politics from a quite different perspective, see Lucia Michelutti, “‘We (Yadavs) are a Caste of Politicians’: Caste and Modern Politics in a North Indian Town.” *Contributions to Indian Sociology*, 38, no. 1-2 (2004), pp. 43-72. The point here is the widespread image of such politics in the English-language press.

²⁶ *Tribune*, 4 February 1994.

²⁷ S. A. Kidwai, Lucknow, to Seshan, 14 May 1996. Scrapbook of letters, Library and Resource Centre, Election Commission, Nirvachan Sadan, New Delhi.

VIKAS' WINDOW



Seshan's activist mobilization of the Election Commission seemed to give this to them. In fact, as *Times of India* columnist Jug Suraiya put it, Seshan had emerged in this context as a kind of middle class hero, drawing power from a widespread sense of frustration with an electoral system that was, in their estimation, slipping away from popular control, a trend "the common citizen feels himself powerless to combat." "The office of the CEC," Suraiya noted, "largely out of the ken of the average citizen before Mr. Seshan strapped on his verbal guns, has been metamorphosed into a locale of the imagination as compelling as the American Wild West mythicised by Hollywood." The very image of the common politician as an enemy of civilizing democratic values empowered an image of Seshan, illustrated graphically by a cartoon in *Blitz*, as the "corrupt" politician's avenging shadow, a hero always ready, in the name of the "people," to call the politician to account [cartoon 2]. This image, as Suraiya suggested, was like that of the American movie hero "Dirty Harry" (which, as Suraiya noted, had its powerful analogs in Bollywood cinema during this era).²⁸ And it captured the longing for order and control that underlay the popularity of many of Seshan's policies.

Such adulation, of course, also spawned its critics. It is little surprise in this context that some observers saw the popularity of Seshan's policies as a reflection not simply of disillusionment with political corruption but as a political danger to democracy itself. If Seshan embodied the power of the law (as against the self-interest of power-hungry politicians), he was also a figure, as the *Blitz* cartoon suggests, ready to wield the Model Code not just as an instrument of political and legal restraint, but as an instrument of power, and one that could potentially threaten not only the corrupt politician (and his "election malpractices"), but *all* real politics. After all, Seshan appears in this cartoon as nothing but a shadowy copy of the corrupt politician he is threatening. Many commentators were thus quick to criticize many of Seshan's actions, some labeling him a self-aggrandizing megalomaniac who seemed to see the Election Commission as above *both* politics *and* law. If the pervasively corrupt nature of Indian politics was the problem, then, as Mani Shankar Aiyar observed, many of "Seshan's millions of fans would privately answer: Why have politicians at all? Why not hand over the works to the CEC and leave it to him to run the show?"²⁹ Indeed, a cartoon in the *Hindustan Times* in 1996 featured an image of Seshan, typically seated before a camera, finding all aspects of politics objectionable and simply substituting his own authority for that of all the politicians and parties [cartoon 3]. In a series of articles in the *Statesman*, A. G. Noorani, a constitutional law expert, lambasted Seshan for ignoring the law itself in his attempts to control elections, abusing the balance of power embodied in the constitution.³⁰ And Praful Bidwai captured a prominent strain in opinion on Seshan with a bitter personal attack, suggesting that Seshan's only credentials before coming to the

²⁸ Jug Suraiya, "Seshan: The Hero as 'Dirty Harry,'" *Times of India*, n.d. (February 9 or 10? 1994). Suraiya mentioned in particular the film, *Ardh Satya* ("Half Truth") from 1983. Jug Suraiya was a prominent political commentator known for his humorous essays.

²⁹ Mani Shankar Aiyar, "Random Ramblings," *Sunday*, 5-11 March 1995.

³⁰ A. G. Noorani, "Seshan's Games – I: Assuming Legislative Powers," and "Seshan's Games – II: Acting Beyond His Powers," *The Statesman*, 31 March 1994 and 1 April 1994. "What we have been witnessing," he wrote, "is sheer abuse and aggrandizement of powers by a holder of high constitutional office. Whatever good Mr. Seshan has done...., the threat he poses to the rule of law by his conduct and to the decencies of public life by his utterances brook no underestimation."

18.4.96



EC, had been as a sycophant and a bureaucratic infighter under Rajiv Gandhi. He rules the EC, Bidwai said, “like a *jagirdar* or *mansabdar* from the last decadent days of the Mughal or Maratha empires,” taking advantage of the sympathies of elites who longed for “order at any cost, for authoritarian solutions, for fascistic assertion of narrow legality, for the Benevolent Dictator who will restore order.”³¹

Others were far less sweeping in their critiques of Seshan, recognizing that discussion of the EC’s policies had to be grounded in an understanding of them not as an effort to control all politics, but rather in relationship to the EC’s authority over the special time that elections represented. Yet even here, many were clearly uncomfortable with Seshan’s methods. After all, the Model Code, as originally developed, was a document rooted in the *consent* of the political parties—and in a realization among the parties of the mutual benefits deriving from a common code of electoral restraint that was morally applicable to all, and that could allow the opposition, at least potentially, to hold the Government in power to the same electoral standards that applied to other parties. The importance of this ideal was captured clearly in a newspaper column by a former EC head, Shyam Lal Shaktidher (CEC: 1977-1982) in 1994. In sharp contrast with some other critics, Shaktidher praised Seshan’s personal commitments, his motives and his integrity. But he nevertheless called him sharply to task for the way that he had sought to wield the Model Code, not primarily through moral suasion, but as a blunt instrument. It was laudable, Shaktidher wrote, that Seshan was fighting for honesty and propriety in elections. “But, what Mr. Seshan must understand is that honesty, truth, ethics are all relative terms. These are man-made virtues and it is not up to any individual to decide on the violation of any of those virtues. It is impossible to bind any individual, leave alone political parties, to codes and rules. Honestly speaking, it is impossible for any man to try to reform another man.”³²

Consent, Shaktidher implied, was at the very heart of the electoral system, and it could not be manufactured by using the Model Code as a club to threaten the politicians, as Seshan had seemed inclined to do. Indeed, Shaktidher’s comments built on the assumption that it was, in the end, only through the people’s vote that the power of politicians could, in practical terms, be constrained. Yet, Seshan’s policies (and the Model Code itself) in fact raised more complicated questions. In implicit contrast with the assumptions of Shaktidher’s comments, Seshan’s policies were based on the assumption that the nature of Indian politics itself *required* an externalized framework of

³¹ Praful Bidwai, “The Self-Styled Galahads,” *Frontline*, 30 December 1994. Bidwai was a senior editor at the *Times of India*. Bidwai’s take was that Seshan’s unusual power as EC had come from the BJP and the Congress alternately appeasing and colluding with him. “Indeed, Seshan in true Bonapartist fashion has taken advantage of the somewhat unstable balance of political power obtaining since 1991, and shamelessly imposed his own agenda upon a stumbling Government, often unsure of itself.” Though Seshan had thus tried to configure himself as above political influence, he was in fact deeply complicit with it. The false populist pretension in Seshan’s stances was suggested, Bidwai noted, when, in 1993, Narasimha Rao had tried to rein Seshan in by appointing two additional Election Commissioners. Seshan complained of this bitterly, casting himself as a champion of the people in the face of attempted Government intimidation. But in fact, as Bidwai noted, this was an approach to manipulating the EC that Seshan himself had recommended to Rajiv Gandhi in the late 1980s when Rajiv had sought to rein in the then Election Commissioner, R. V. S. Peri Shastri.

³² *Sunday Observer*, 27 February-5 March, 1994.

legal restraint, since coercive forms of authority were endemic to Indian social and political life. This was not merely a product of middle class fantasies and fears about corrupt politicians, but embodied assumptions embedded in the very structure of electoral law as long interpreted in post-election cases in the courts. Seshan's emphasis on publicity could be taken in part as an effort to encourage internalized acceptance of the standards of the Model Code by holding those who violated it up to public criticism. But equally—or perhaps even more—important was his assumption that free voter consent in India was impossible without external legal constraints on the operation of “normal” politics during electoral time.

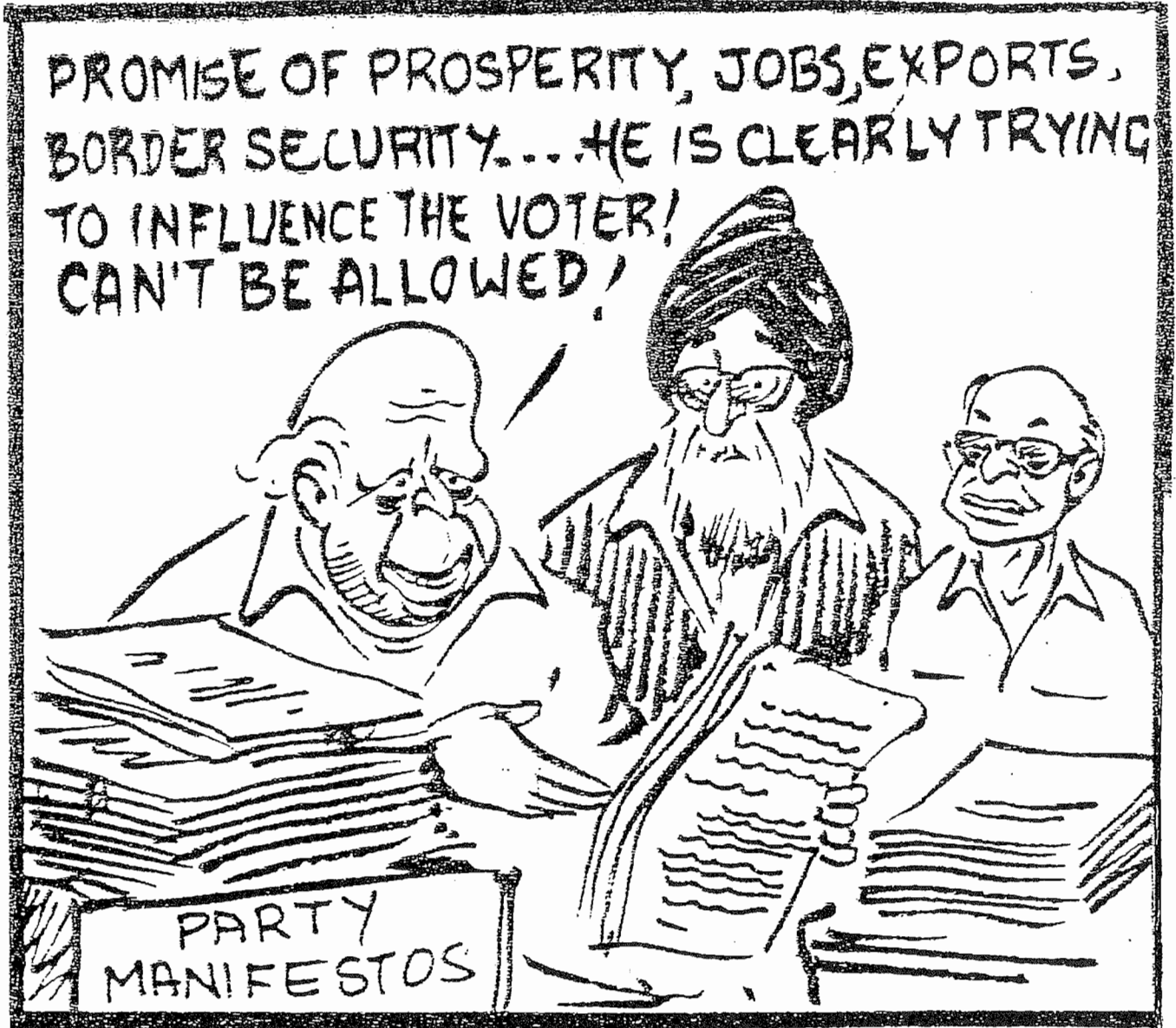
What was new in Seshan's policies was thus not the underlying assumption that free voter consent and external legal intervention in election processes were fully compatible; rather, what was new was the highly public—and executive—form of Seshan's interventions during “electoral time” itself. Some thought that the Election Commission should limit its control over elections to policing the most blatant forms of voter coercion, such as violent intimidation and booth-capturing. “We the voters are not nursery children,” one columnist said, “who require to be led by the EC's grandfatherly hand.”³³ But many others accepted that the dangers to free voting and “consent” were manifold, both in terms of government manipulation of largesse, patronage and policy promises and in terms of public appeals to narrow religious, caste, and linguistic identities that undermined the emergence during election campaigns of an arena of open discussion in which voters were capable of exercising their free rational discretion. The key to many of the debates on Seshan's policies related to the methods by which the EC sought to give teeth to the disciplining of “electoral time,” by asserting unprecedented controls both over Government's potentially coercive prerogatives and over potentially dangerous communal speech, during “electoral time” itself.

For many in the Opposition, of course, it was Government manipulation of its powers to buy off voters that represented the most serious threat of all to free elections, and it was here that the EC's interventions were most critical. Opposition leaders therefore widely congratulated the EC in the early 1990s on its expanded efforts to rein in government election-eve giveaways and promises, even as election campaigns were ongoing. But here too, many commentators were uncomfortable. The problem for many lay in the degree to which Seshan's executive enforcement of the Model Code seemed to go beyond the control of electoral abuses to substitute the EC's unelected authority for that of the elected government during election time, which seemed to mock the very principles of representative government. As the *Times of India* editorialized after Seshan tried to prevent the launching of a government cotton export program during the 1996 campaign, “The Code of Conduct is not license to freeze normal governance.”³⁴ More

³³ K. V. Chacko, “Towards Freer Poll,” *Hindustan Times*, 22 April 1996.

³⁴ Editorial, “Decoding the EC,” *Times of India*, 12 April 1996. Nor, they noted, could the argument that a government policy might benefit a particular section of the population be adequate, by itself, to justify EC prohibitions on the articulation policy during “electoral time.” After all, as the newspaper observed, “...all policy decisions mean gain to one section and loss to another, regardless of whether elections are held or not.” In this case, the timing of the programs in question was clearly dictated, the *Times* argued, not by the election cycle, but by movements in commodity prices (and indeed the courts agreed and ultimately stepped in to freeze the EC's directives in this case).

CARTOON 4



Times of India 24/4/96

importantly, the logic of EC efforts to police Government policy directives threatened, in the eyes of some, the forms of political debate necessary to free choice. As a cartoon in the *Times of India* the next week sarcastically implied, overzealous EC enforcement of its strictures on government efforts to “influence” the voters could easily make a mockery of the whole process of electoral campaigning, since policy debates and attempts to “influence” the voters were, in the end, inseparable. This is, after all, what electoral campaigns were all about [cartoon 4]. As these debates suggested, the difficulties in drawing bright boundaries between the unfair, and potentially coercive, manipulation of the Government’s policy levers, and the protection of vigorous policy debate, highlighted the underlying contradictions in the whole effort to control normal political “influence” during election campaigns.

Similar debates swirled also around Seshan’s efforts to control communal rhetoric during “electoral time.” In fact, legal limitations on electoral speech relating to religion, caste, language, and community were also nothing new in India, for these limitations too dated back to the Representation of the People Act, and had long been extensively litigated in the courts in post-election petitions. But regulation of electoral rhetoric through post-election court cases had hardly been entirely effective, a fact many were extremely sensitive to in the post-Ayodhya years of the 1990s. “It is well-known,” the *Deccan Herald* thus wrote in 1994, that, in spite of the law, past “election campaigns have been highly vitiated by appeals to religion, caste, race, creed, community and language.”³⁵ Some thus saw EC efforts to underscore these restrictions through explicit executive enforcement of the Model Code during campaigns as an important advance for the “purity” of elections. Some suggested that Seshan’s obsession with “cleaning up” the electoral environment (“Walls are to be kept clean of posters; graffiti is outlawed; loudspeakers are to be abated”), reflecting his background as an Environment Ministry bureaucrat at an earlier stage in his career, had simply been extended, as a cartoon in the *National Herald* suggested, to cleaning up the political “air.”³⁶ [cartoon 5]. Others, however, saw the EC’s intervention into this realm as a far more insidious challenge to democratic principles, marked, again, by impossible contradictions. As one commentator noted, it was ridiculous to think that the EC could act as an “ideological ombudsman” in Indian politics when the Supreme Court itself (which had handed down several controversial rulings on electoral appeals to Hindutva in the 1990s) could not lay down clear standards.³⁷ Such arguments in fact became particularly pointed when, during the

³⁵ Editorial, “Welcome Step,” *Deccan Herald*, 30 December 1994.

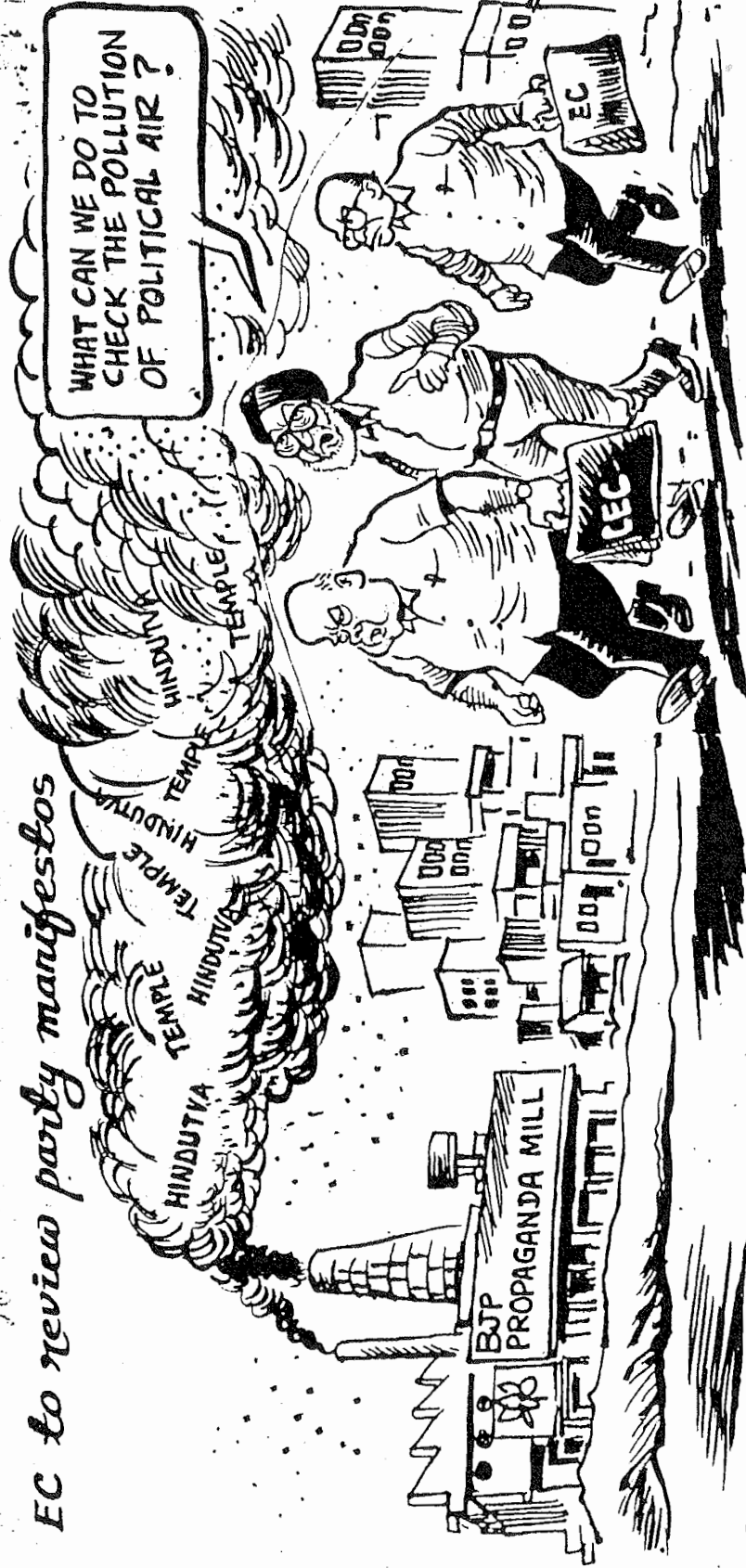
³⁶ Mani Shankar Aiyar, “Cleaning the Augean Stables: Let’s Start with the Election Commission,” *Sunday*, 11-17 1996.

³⁷ Swapan Dasgupta, “Theme Songs of 1996,” *The Hindu*, 20 April 1996. The most important decision was the 1995 SC ruling, arising from a series of election cases appealed from the Bombay high court, upholding the legality of electoral appeals to Hindutva. (*Ramesh Yeshwant Prabhu v. Prabhakar Kashinath Kunte and others*, SC appeal, AIR 1996 SC 1113). But this was associated with several other decisions in the 1990s, which had left the law relating to religious appeals in elections in flux (including the landmark decision in *S. R. Bommai and others v. Union of India*, AIR 1994 SC 1918, which asserted that “secularism” was part of the “basic structure” of the Indian constitution). As Rajeev Dhavan wrote in a column in April 1996, for the EC to establish clear standards when the courts could not was hopeless: “The Hindutva judgment has left behind a debris of questions—both on the issue of the appeal to religion and the equation of ‘Hindutva’ with Indianisation as well as the extent to which candidates can benefit from party

NATION OF MEN AND
20/2/98

Tit for tat

EC to review party manifestos



PARESH

1996 election campaign, the EC tried to censor the language of a BJP statement read on Doordarshan. The BJP, of course, objected to this as a fundamental challenge to free speech and fundamental rights.³⁸ But even many of the BJP's critics (and secularist critics of Hindutva) argued that the effect of Seshan's heavy-handed efforts to enforce the Model Code was less to control and purify electoral rhetoric (and prevent appeals to religion from coercing the free, rational choice of the voters) than it was to raise sympathy for the BJP and to vitiate debate on what were in fact central differences between the parties. "It is preposterous," one commentator thus noted, "to bowdlerize a theme [Hindutva] which has dictated the fault-line of contemporary politics."³⁹ Drawing clear boundaries around what speech was permissible during an election campaign, and how this could be distinguished from "normal" speech, thus proved just as difficult than drawing lines around permissible government policy pronouncements.

Indeed, Seshan's activism and publicity-consciousness brought to center stage popular debate that had rarely been heard in India on the very nature of the election process itself and its relationship to normal Indian political life. Many commentators, as we have seen, criticized the very idea that the EC could effectively hold the election process to a higher morality than existed in "normal" political life. And yet at the same time, most—and not just in the middle class—welcomed the discipline over electoral campaigns that Seshan's policies aimed toward, for his policies underscored that elections *were* different, that they were a time when the power of the common man, and his ultimate sovereignty, was also theoretically on display. This, of course, is not to say that even Seshan's strongest supporters believed that the EC's policies could completely transform the workings of politics during elections. Far from it.⁴⁰ Yet, the very idealism behind the Model Code was widely appealing, and few even of Seshan's strongest critics thus challenged the basic idea that there *should* be a special Model Code for elections in India, or that attempts to give it more weight and force were a good thing. This was because most recognized that, whatever the gap between ideals and reality, the Model Code underscored the fact that the electoral moment did in some ways transcend everyday politics, for it was the moment when, even amongst corruption and everyday

leaders and others making invidiously impermissible speeches as long as the active consent of the candidates is not proven." Rajeev Dhavan, "Whither Indian Democracy?" *The Hindu*, 26 April 1996.

³⁸ As L. K. Advani put it, comments simply referring to the Ram Mandir could in no way be interpreted as "violative of the Model Code as they are not directed against any religious faith or community." "Advani Flays EC Stand on BJP Broadcast," *Free Press Journal*, 22 April 1996. This may have been disingenuous, but it suggested how difficult it was to define such standards. Some observers in fact suggested that the EC's attempts to limit the BJP's Hindutva rhetoric may have actually helped to reinvigorate this as an issue in the 1996 elections.

³⁹ Swapan Dasgupta, "Theme Songs of 1996," *The Hindu*, 20 April 1996. An editorial in *The Pioneer* suggested the contradictions the EC faced. Rules were clearly necessary, they said, to prevent "free speech" from being abused by "unscrupulous communal elements." But at the same time, "it would also be a pity if in their zeal to sanitise elections, the courts and election authorities choke the healthy tradition in this country of a boisterous poll campaign where conflicting views and ideologies clash with each other for the approval of the people." *The Pioneer*, 18 April 1996.

⁴⁰ Many noted in fact the spotty character of the EC's influence in different constituencies. See, for example, "Rayalseema defies Mr. Seshan," *Hindu*, 3 December 1994. Even M. S. Gill, one of Seshan's fellow Election Commissioners, admitted that although probably 50% of the complaints about election abuses that the EC received were correct, they were only able to act on a fraction of these. Shivaji Sarkar, "The EC Can Bark But Can't Bite," *Financial Express*, 26 April 1996.

power, the people's sovereignty was on display. Yet, as debate on Seshan's policies made clear, the relationship of electoral time and everyday politics remained an ongoing matter of considerable tension.

The Experience of Cyclical Electoral Time

The impact of Seshan's policies on voters and politicians, and the controversies they aroused, were in fact measured in some ways less by concrete transformations of the political arena than by the ways that they brought the inevitable tensions between ideals and realities into popular consciousness and experience—and within a framework of cyclical electoral time. For politicians in particular, the contradictory political imperatives that the Model Code created were deeply felt. This was captured, for example, in a Laxman cartoon that simultaneously suggested the absurdity of expecting normal moral standards to change simply because an election had been called—and yet at the same time suggested the degree to which politicians had to contend with the fact that during election time something *was* undoubtedly different. Bribery was of course much in the news in the 1990s, an obsession embodied in the well-known image of Narasimha Rao accepting a suitcase filled with money. Yet, as this cartoon suggests, what self-respecting politician could be so gauche as to receive such a suitcase during the time when the whips of the Model Code were in effect? Where was morality? Wait until after the polls, the politician in the cartoon implies, and then I will accept the bribe [cartoon 6]. The absurdity, of course, in expecting a complete transformation in morality, based simply on the announcement of the election poll, is at the heart of the cartoon's humor. And yet, at the same time, the cartoon captures how self-conscious many politicians undoubtedly became in the face of Seshan's strictures. Politicians had to face, at least in their public self-presentation, the conflicting imperatives of power politics and moral idealism as they never had before. Seshan's policies were in fact particularly acute for those associated with the government.⁴¹ At no point was this more evident than in the summer of 1994 when Narasimha Rao's government proposed a constitutional amendment to curtail the EC's power, only to have to subsequently withdraw it in the face of considerable popular opposition.⁴² Frustration among

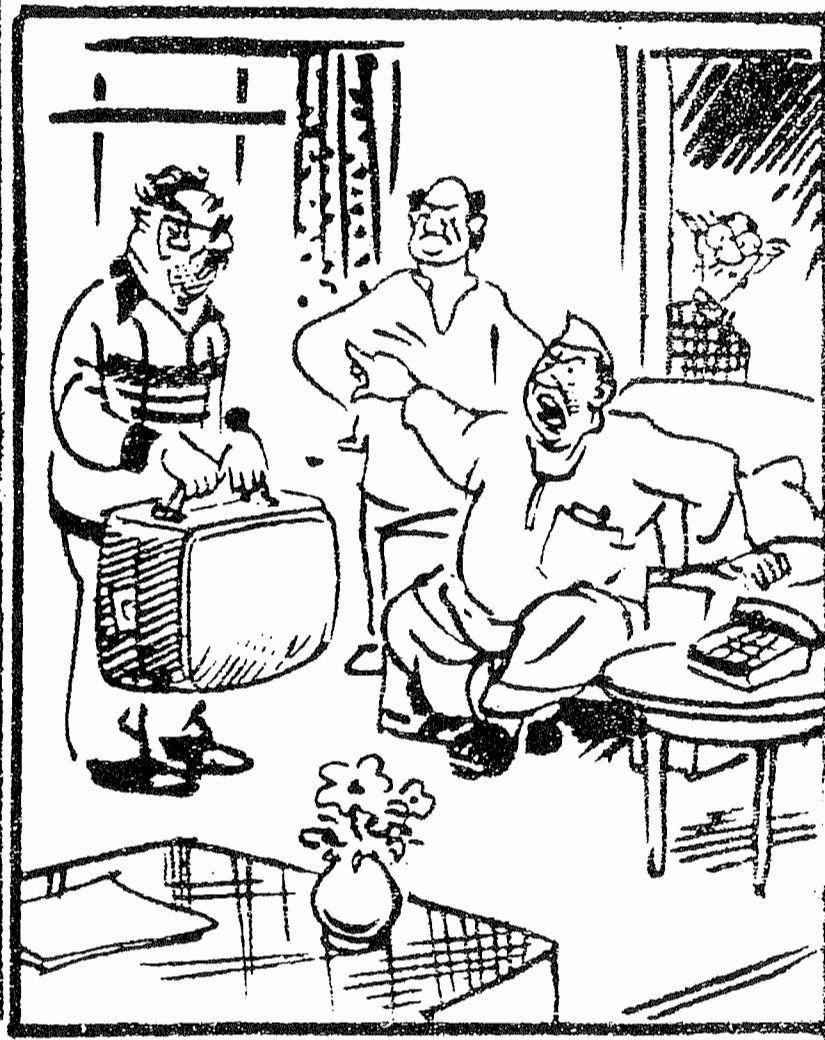
⁴¹ A clear example of this was the government's reaction to Seshan's announcement of his intention to review the state residency requirement for members of the Rajya Sabha. Rajya Sabha members were technically supposed to be residents of the states they represented, but the government had used safe Rajya Sabha seats to get important ministers, who otherwise might have had trouble getting elected, into Parliament. The most important of these was the Finance Minister, Manmohan Singh, who had been given a Rajya Sabha seat in Assam. With Seshan's announcement, Narasimha Rao thus suddenly had to scramble to make sure that Manmohan Singh, the most widely respected member of his cabinet, could be protected.

⁴² *Sunday*, 3-9 July 1994. The sense was, the magazine reported, that in withdrawing the measure the Government had been intimidated by the fear of widespread popular reaction in favor of Seshan. Part of the strategy, in fact, had been to give legal sanction to the Model Code, precisely so that its enforcement could be taken out of the EC's purview and given to the courts in post-election reviews. But when Seshan opposed this, some supporters of the government backed away from the proposal. All the parties, as another columnist reported, were by turns at odds with Seshan, and highly supportive of him, trying to cultivate him as a lever to use against others, and in the process struggling to develop a coherent position. C. P. Surendran, "A King-like Thing," *Illustrated Weekly*, 14-20 August 1993.

CARTOON 6

YOU SAID IT

by Laxman



Have you no moral code of conduct? Is this the time to offer it? Don't you know the polls are just round the corner?

government politicians in fact boiled over at times in boisterous scenes in parliament and in the provincial legislatures.⁴³ As one journal noted, “Narasimha Rao doesn’t really know how to deal with T. N. Seshan.”⁴⁴

But however acute for the government, these problems were hardly confined to politicians in positions of power. The degree to which Seshan’s policies in fact threw politicians from all sides of the political spectrum off balance, is suggested by an anecdote that appeared in the press about an attempted election tour in 1996 by Andhra TDP leader, Chandrababu Naidu. In the heat of an election meeting in Narasimha Rao’s own Nandyal constituency, Naidu responded to requests from the crowd by spontaneously declaring on the spot that if the constituency defeated Narasimha Rao, he would see to it that Nandyal became a separate district “the very next day” after the election. But the result was, as the newspaper put it, an instant “shock-reaction,” not from the crowd, but from the other party “leaders on the dais.” This was, they realized, a blatant violation of the Model Code. As the reporters present “rushed to the Telecom Centre to file the story,” Naidu was quickly taken hold of and unceremoniously told to recant: “Election rules do not permit me to promise you anything,” he said. “So I cannot do so. I shall settle all your grievances after the election.”⁴⁵ Such stories suggest both the absurdity and impossibility of truly separating electoral politics from the wider worlds of normal politics, for politicians could easily just say: “wait until after the elections...” But these anecdotes also suggest how self-conscious many politicians had become about the ideals embodied in the Model Code, however much they may in practice have been violated.

This tension was a matter not only for the politicians, but for individual voters as well. For Seshan, of course, the key to “electoral time” was that it implied new forms of behavioral *discipline*, whether internalized or imposed through external rules. This was the essence of the Model Code. But for the people such discipline was two-sided. On the one hand, if free individual *consent* lay at the heart of the notion of popular sovereignty, then protection of the individual against coercion lay at the very foundation of legitimate elections, and this required the assertion of a distinctive form of electoral discipline. This was essential to allow the voice of the “people” to emerge, for only legal discipline allowed the structural reversal implicit in the common man becoming “Sultan for a day” to occur. But this had a flip side as well. If elections were about the people’s sovereignty, then they were also a time of special danger, for this was the time when the people’s sovereignty became imminent. So if power was momentarily reversed, it was also important that the “people” themselves be specially subject to discipline during

⁴³ A good example of these frustrations comes from a newspaper report on the reactions of UP politicians to the EC’s directive that candidates needed to clean up their wall posters after the polling in each constituency or face EC sanctions. On one level the triviality of this is striking. And yet what is startling is how worked up over it many politicians became. This reached such a pass that when the Speaker of the UP Vidhan Sabha refused to allow legislative discussion of it, members of the Assembly, as the newspaper put it, “stormed the well of the house” and threw chairs at the Speaker’s podium. *Times of India*, 23 March 1994.

⁴⁴ *Sunday*, 16-22 January 1994.

⁴⁵ *Hindu*, 25 April 1996.

“electoral time.” EC policies, as *The Hindu* put it, introduced “elements of sobriety and sanity into electioneering.”⁴⁶ This was discipline that served a dual function.

Widespread press commentary made it clear that many people in fact experienced the new regime of Model Code enforcement in this contradictory mode. In the Kalka by-election of 1993, for example, Seshan banned all traffic and shut down the roads in order to more effectively control electioneering. Stories of stranded voters and disrupted lives filled the newspapers. People had seen “many elections,” interviewees told a reporter, “but none like this.”⁴⁷ The Goa provincial elections of 1994 were “straight out of Ripley’s ‘Believe it or Not,’” another reporter wrote. “Goa, where liquor usually flows almost as freely as water, went bone-dry for five days in November,” as the EC prepared for the vote.⁴⁸ As never before, Seshan transformed elections “into austere no-nonsense exercises.”⁴⁹ Coercive “money and muscle power,” may have been significantly constrained, but so were the lives of the people.

But though this discipline clearly prompted some resentment, it is also clear that it was associated also with a significant sense of popular empowerment. Many in fact lauded the fact that it now seemed to be the individual voter who mattered more than the Party or the politicians. As one columnist wrote, Seshan’s actions in enforcing restraints on political meetings, wall posters, commandeering of transport, etc., though perhaps arbitrary in many ways and open to critique, were nevertheless a clear sign to voters that it was not the parties or the politicians, but the individual voter who was at the heart of the meaning of elections. “Vast sections of people, who have become, in a manner of speaking, victims of election extravaganza,” he continued, thus welcomed the EC’s actions as a sign of their own empowerment.⁵⁰ Politicians themselves were forced to rely far less on loudspeakers and large-scale meetings and more on individual “door-to-door canvassing,” which put a premium on individual contact with candidates and elicited widespread praise from voters. In Karnataka, as one newspaper story reported, this had taken away the “sense of identity” of some political hangers-on and party workers, but for voters the story was different. “For the people of Karnataka,” the paper reported, “Seshan in nothing but a hero.”⁵¹ The final verdict, as *India Today* put it, came from “64-year old Ammanamma, a resident of Chenanhalli, a village bordering Ramnagram district [in Karnataka]: ‘I have heard the name Seshan. He has put an end to all the ugly posters and blaring loudspeakers. It’s the best thing to happen.’”⁵²

But if Seshan’s obsession with discipline underscored the importance of the individual, autonomous voter as, perhaps, a “Sultan for a day,” this hardly captured all

⁴⁶ *The Hindu*, 30 November 1994

⁴⁷ “Thousands Stranded as Seshan seals Kalka,” *Indian Express*, 18 July 1993. This was, in fact, a repoll after Seshan had cancelled polling in Kalka several months earlier after Government violations of the model code (see p. 7)

⁴⁸ *Frontline*, 16 December 1994.

⁴⁹ “Seshan is Watching,” *Sunday*, 20-26 November 1994.

⁵⁰ K. Govindan Kutty, “Falsehood as a Noun,” *Indian Express*, 12 March 1994.

⁵¹ *Telegraph*, 4 December 1994. The newspaper noted also that, at least in Karnataka, the problem was that many would-be party workers were unable to do door-to-door canvassing without “irritating” the voters.

⁵² *India Today*, 15 December 1994

the various meanings that election participants had commonly vested in elections in India. Indeed, many bemoaned at the same time the loss of a certain “festival” atmosphere that Seshan’s reforms seemed to have undermined, a vision of electoral culture embedded in popular understandings of elections as a *collective* enterprise, rooted perhaps in a very different sort of ritual cycle from that which shaped the EC’s view of elections. Some thus criticized Seshan’s strong emphasis on discipline as an abandonment of the vision of elections as “a simple and joyful exercise, as they were in the fifties and sixties,” an exercise defined as much by collective activity as by the individual act of voting.⁵³ This was, in fact, a tradition that had less to do with underscoring the individual’s autonomous freedom of choice (or, the people’s constitutional sovereignty) than it did with underscoring the affective bonds of reciprocity between leader and follower that had traditionally underlain kingship and patron-client authority in India. As public events, elections had long drawn on the ethos of public arena performances, such as Ram Lila, in which the bonds linking leaders and followers were morally/religiously reaffirmed.⁵⁴ But Seshan’s policies had clearly limited this aspect of electoral practices. “Gone are the electronic binges with gaudily decked up video *raths*, hi-tech *tamashas* and mammoth rallies attended by central leaders jet-setting from one part of the country to another,” one journal noted.⁵⁵

The potential importance of this was clearly captured in a critical commentary in 1996 by Swapan Dasgupta.⁵⁶ “Political activity in India has traditionally had a carnival-like atmosphere,” he wrote, “which is in keeping with national character. It has been so for more than a century, ever since Tilak created the Ganpati festival as an instrument of mass mobilization. By going against the grain of custom and imposing a regime of Brahminical austerity on electioneering, the EC has curbed spontaneity” and undermined this tradition.⁵⁷ EC policies that attempted to curb all government largesse in election campaigns, including giveaways of free food or saris that had long occupied an important place in electoral culture, could be interpreted from this perspective as deliberate efforts to undercut older cultural models of kingly authority rooted in public bonding between the people and their leaders.⁵⁸ Dasgupta’s reference to “brahminical austerity,” reflecting perhaps his awareness that Seshan was himself a Tamil Brahmin, linked this to older tensions within Indian culture, with Seshan’s overriding emphasis on discipline and control presented as a “brahminical” contrast to a presumably more kingly and populist model of public political transactions.⁵⁹ But Dasgupta’s critique went well beyond this

⁵³ K. V. Chacko, “Towards Freer Poll,” *Hindustan Times*, 22 April 1996

⁵⁴ See Sandria B. Freitag, *Collective Action and Community: Public Arenas and the Emergence of Communalism in North India* (Berkeley: University of California Press, 1989).

⁵⁵ “Seshan is Watching,” *Sunday*, 20-26 November 1994.

⁵⁶ Dasgupta was a prominent political columnist who held a Ph.D. in History from SOAS and taught briefly at Oxford. He subsequently became the Managing Editor of *India Today*.

⁵⁷ Swapan Dasgupta, “Theme Songs of 1996,” *The Hindu*, 20 April 1996.

⁵⁸ For a discussion of the continuing importance of such models in Indian politics, see Pamela G. Price, “Kingly Models in Indian Political Behavior: Culture as a Medium of History,” *Asian Survey*, Vol. 29, No. 6, (Jun., 1989), pp. 559-572.

⁵⁹ Though Dasgupta did not use this language, the implication was that the Model Code could be seen as a sort of electoral *dharmashastra*, analogous to an assertion of brahminic norms for electoral behavior. It is perhaps worth noting in this regard that if Seshan’s policies did encourage a brahminical style of authority that was in tension with a kingly style of cultural leadership, this was nowhere more in evidence than in

to a critique of the way the EC's rules, however grounded in the supposed protection of free electoral choice, threatened to undercut the cultural foundations of political leadership that were central to democracy. Even the establishment of curfews on election meetings undercut critical aspects of an embedded Indian culture of political leadership, he suggested. "Popularity ratings of leaders are often measured by the extent to which they are late for public meetings. People in villages and small towns love the heady excitement of the 'imminent' arrival of a big neta."⁶⁰ This was an election culture, in other words, shaped far more by the collective cultural expectations linking leaders and populace together than by the legalistic notion of respect for individual voter consent that lay at the root of the Election Commission's Model Code.

Yet the question about the relationship of these traditions remains an open one. In some ways, of course, Seshan's vision was one aimed deliberately at undercutting the particular forms of local festival tradition that had supported the influence of local political leaders over their followers, including kingly styles of political influence that were, in the view of the Election Commission (and in the technical light of Indian electoral law), antithetical to the particular vision of the people's sovereignty embedded in the Indian constitution. And yet, to see these as completely opposing trajectories would undoubtedly be to overstate the case. For whatever the substance in Dasgupta's critique of the EC's approach, there is little doubt that the vision of elections as a special time, in cyclical and dialectical tension with the workings of everyday power and politics, was one shared both by the EC and by those who championed a campaign style rooted in older visions of Indian culture. As both Seshan's supporters and critics recognized, his championing of both political discipline and the Model Code had been cast in the popular imagination, at least in significant part, as a moral position with resonances linked to older visions of divine sovereignty, standing outside normal human affairs, and yet gaining special imminence at election time.⁶¹ The significance of the critical years of the early 1990s—and the debates that they engendered—is that they perhaps brought into public consciousness the relationship between the secular construction of popular sovereignty and the construction of Indian culture as never before.

Conclusion

The long-term impact of the transformations in the role of the Election Commission associated with T. N. Seshan's leadership remains difficult to judge. In fact, even during his tenure, Seshan's power waxed and waned in political interaction with the power of both the Courts and the Government. Seshan's independent authority was in

Seshan's home province of Tamilnadu. Seshan's relations were particularly strained with Jayalalitha's AIADMK, whose non-Brahman cultural style (though she was herself a brahmin) clashed utterly with Seshan's policies. Tensions with Jayalalitha reached their peak when Seshan published innuendoes in his autobiography that C. N. Annadurai's anti-Hindi agitations might have been in part encouraged by connections to the CIA. Relations between the CEC and the government in Tamilnadu were subsequently so strained that Seshan was at one point gheraoed at the Madras airport.

⁶⁰ Swapan Dasgupta, "Theme Songs of 1996," *The Hindu*, 20 April 1996.

⁶¹ For some discussion of this, and of issues of sacrality related to it, see Mukulika Banerjee, "Sacred Elections," *Economic and Political Weekly*, 42, 17 (April 28 - May 4, 2007).

some ways curtailed when, after a long-running court battle, he was forced in 1995 to accept shared authority with the two additional Election Commissioners who had been appointed by the government in 1993. But contrary to some projections, this in no way led to fundamental shifts in the EC's policies during Seshan's last year at CEC in 1996. In fact, there is considerable evidence to suggest that the shifts in the public presence of the Election Commission that Seshan's tenure brought have not been fundamentally reversed since that time. The EC has remained since the 1990s an important presence in popular consciousness, symbolizing a conception of the people's sovereignty that transcends the power of India's politicians.⁶²

What is most noteworthy about the controversies surrounding Seshan, however, is not so much the direct impact that he had on politics, but the debate his tenure sparked about the nature of Indian democracy. Though necessarily speculative, the "Seshan phenomenon" suggests areas of potential comparison of India's democracy with that of other democratic countries which it would be well worthwhile for scholars to explore further. Many other countries, of course, have elections run by ostensibly apolitical Election Commissions. But the most interesting comparisons arising from India's experience are, I think, with the United States (a country which, of course, does not have a similar type of Election Commission). What is most interesting are the comparative implications of the relationship between politics, the law, and popular sovereignty that an examination of the Seshan debate suggests. Though both India and the United States have political systems built on a deeply entrenched notion of popular sovereignty, the concept appears to operate in two very different ways.

What emerges most strikingly from the controversies surrounding Seshan's tenure are the assumptions about the relationship between law and government by consent that underlay his policies. India's electoral law was from the beginning founded on the assumption that the snares of social hierarchies and received authority represented an everpresent threat to the ability of the individual conscience to politically speak. This was the mind-set that shaped the thinking of India's constitutional founders. The revolutionary act of establishing adult suffrage in India (and vesting sovereign authority in the "people") required a structure of vigilant legal protections against India's entrenched social coercion if the people's sovereignty was to effectively function. This provided the legal foundations on which Seshan acted. And it was, as we have seen, at the heart of a distinct concept of "electoral time."

Seshan's actions nevertheless generated immense controversy for two basic reasons. The first had to do with the Election Commission's claim to stand "above" politics and regulate it at election time in order to protect the people's voice. For some this made Seshan a hero capable of taming the politicians in the larger apolitical interest of the people's sovereignty. But for others, it simply represented a political power grab compromising an apolitical structure of law. The problem thus lay in the executive

⁶² For a recent book that argues the distinctive importance in India's constitutional history of a notion of the people's sovereignty as a concept transcending the sovereignty of parliament, see Sarbani Sen, *The Constitution of India: Popular Sovereignty and Democratic Transformations* (New Delhi: Oxford University Press, 2007). Sen, however, does not discuss the Election Commission.

authority that Seshan asserted even as he acted in the name of the law. But the controversy surrounding Seshan derived from a second reason also that harked back to the basic contradictions in India's constitution. If the constitution defined an image of the voter in India as a person whose "free will" required legal protections, it also defined an image of free political competition and open debate rooted in an idealized notion of popular equality. Given this contradiction, Seshan thus appeared at once as a champion of the "people" and as an elite paternalist. In popularizing the Model Code in the public sphere, Seshan could be taken primarily as a champion of the internalization by Indian politicians of the principles of restraint that popular sovereignty and equality required. But as an executive authority, he seemed to operate with considerable contempt for how popular politics actually functioned. It is little wonder, therefore, that he was a figure simultaneously of unprecedented adulation and widespread suspicion.

The nature of these tensions, however, come into clearer focus if we compare the assumptions about the "people" shaping India's elections with those shaping elections in the United States. In the United States, popular sovereignty developed historically in a different direction. As a country that saw its identity in the late 18th and 19th century as rooted precisely in its rejection of aristocratic hierarchy, the American voter was not conceptualized by the constitutional founders as bound in a web of social hierarchy, but rather as defined by an idealized vision of individual autonomy. This was a voter whose conscience, in theory, needed no legal protections to find expression. Self-interest rather than community pressure was assumed to define the quintessential voter's approach to politics, so it was unthinkable that the voter would need a strong electoral law protecting the freedom of franchise against coercion and intimidation. Such an ideology was perhaps captured in its purest fashion in the discussion by de Tocqueville of democracy in America in the 1830s and 1840s. "The humblest individual who co-operates in the government of society acquires a certain degree of self-respect; and as he possesses authority, he can command the services of minds more enlightened than his own. He is canvassed by a multitude of applicants, and in seeking to deceive him in a thousand ways, they really enlighten him."⁶³ Here it is the free will of the voter that, in theory, tames the operation of "influence" rather than the other way around. It was wholly unnecessary, in such a view, that the law would need to be mobilized on a large scale to protect the free will of the voter from such "influence" and "deceptions" in order that a workable popular sovereignty could emerge.

In India, of course, notions of equality and personal autonomy also find a place in the ideals enshrined in the constitution. But the reality of political life could not merely be left to such ideals (for, as the very structure of the constitution made clear, these were ideals that had not yet been reached—and perhaps never would be). Forms of social hierarchy and received authority inherited from history maintained a far more potent hold on the popular mind. For this reason, the cyclical form of elections and "electoral time," was critical to capture the ideal of popular sovereignty operating in oscillating tension with the realm of "normal" politics. That this structure was marked by potential controversy is clear. But it can also be contrasted with the almost naïve assumption in the United States that elections can express a popular will with virtually no legal attention

⁶³ Alexis de Tocqueville, *Democracy in America*, v. 1 (New York, Alfred Knopf, 1985) p. 251.

to the forms of intimidation and coercion, “mental, economic, political, intellectual,” as Seshan put it, that are an inevitable part of the hierarchies of wealth and power that shape the modern world. While the assumptions underlying popular sovereignty in the United States may help us to understand the distinctive assumptions underlying India’s democratic system, looking at India’s system may also help us to understand many of the tensions implicit in our own.