



**SOME OBSERVATIONS ON PROVISIONS OF ARTICLE
329 OF THE INDIAN CONSTITUTION: A CASE STUDY OF
1951**

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Abstract:

This is an appeal from an order of the Madras High Court dismissing the petition of the appellant praying for a writ of certiorari. The appellant was one of the persons who had filed nomination papers for election to the Madras Legislative Assembly from the Namakkal Constituency in Salem District. On the 28th November, 1951, the Returning Officer for that constituency took up for scrutiny the nomination papers filed by the various candidates and on the same day he rejected the appellant's nomination paper on certain grounds which need not be set out as they are not material to the point raised in this appeal. The appellant there upon moved the High Court under Article 226 of the Constitution praying for a writ of certiorari to quash the order of the Returning Officer rejecting his nomination paper and to direct the Returning Officer to include his name in the list of valid nominations to be published. The High Court dismissed the appellant's application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of the provisions of Article 329 (b) of the Constitution. The appellant's contention in this appeal is that the view expressed by the High Court is not correct, that the jurisdiction of the High Court is not affected by Article 329 (b) of the Constitution and that he was entitled to a writ of certiorari in the circumstances of the case.

Bench of M. Patanjali Sastri, Chief Justice, S. Fazl Ali, Mehrchand Mahajan, B.K. Mukherjea, S.R.Das and N. Chandrasekhara heard the Aiyar N. Rajagopala Iyengar, Advocate for Appellant. R. Ganapathi Iyer, Advocate for the First Respondent. M. C. Setelvad, Attorney-General of India along with G.N. Joshifor the Union of India.

Key Words: Attorney-General, Returning Officer, appellant, Legislative Assembly

Introduction:

The Judgement of the Court was delivered by Fazl Ali. The arguments on which the judgment of the High Court is assailed are two-fold : (1) that the conclusion arrived at by the High Court does not follow from the language of Article 329 (b) of the Constitution, whether that Article is read by itself or along with the other Articles in Part XV of the Constitution ; and (2) that the anomalies which will arise if the construction put by the High Court on Article 329 (b) is accepted, are so startling that the Courts should lean in favour of the construction put forward on behalf of the appellant. The first argument which turns on the construction of Article 329 (b) requires serious consideration, but I think the second argument can be disposed of briefly at the outset. It should be stated that what the appellant chooses to call anomaly can be more appropriately described as hardship or prejudice and what their nature will be has been stated in forceful language by Wallace, J., in *Sarvothama Rao v. Chairman, Municipal Council, Saidapet*, in these words: “I am quite clear that any post-election remedy is wholly inadequate to afford the relief which the petitioner seeks, namely, that this election, now published, be stayed, until it can be held with himself as a candidate. It is no consolation to tell him that he can stand for some other election. It is no remedy to tell him that he must let the election go on and then have it set aside by petition and have a fresh election ordered. The fresh election may be under altogether different conditions and may bring forward an array of fresh candidates. The petitioner can only have his proper relief if the proposed election without him is stayed until his rejected nomination is restored, and hence an injunction staying this election was absolutely necessary, unless the relief asked for was to be denied him altogether in limine. In most cases of this kind no doubt there will be difficulty for the aggrieved party to get in his suit in time before the threatened wrong is committed; but when he has succeeded in so doing; the Court cannot stultify itself by allowing the wrong which it is asked to prevent to be actually consummated while it is engaged in trying the suit.”¹

These observations however represent only one side of the picture and the same learned Judge presented the other side of the picture in a subsequent case *Desi Chettiar v. Chinnasami Chettair* in the following passage

“The petitioner is not without his remedy. His remedy lies in an election petition which we understand he has already put in. It is argued for him that remedy which merely allows him to have set aside an election once held is not as efficacious as the one which would enable him to stop the election altogether; and certain observations at page 600 of *Sarvathama Rao v. Chairman, Municipal Council, Saidapet* are quoted. In the first place we do not see how the mere fact that the petitioner cannot get the election stopped and has his remedy only after it is over by an election petition, will in itself confer

¹ AIR Comm. Const of India, Art. 329 Note 2; Art. 226, N. 26
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on him any right to obtain a writ. In the second place, these observations were directed to the consideration of the propriety of an injunction in a civil suit, a matter with which we are not here concerned². And finally it may be observed that these remarks were made some years ago when the practice of individuals coming forward to stop elections in order that their own individual interest may be safeguarded was not so common. It is clear that there is another side of the question to be considered, namely, the inconvenience to the public administration of having elections and the business of Local Boards held up while individuals prosecute their individual grievances. We understand the election for the elective seats in this Union has been held up since 31st May because of this petition the result being that the electors have been unable since then to have any representation on the Board and the Board is functioning, if indeed it is functioning, with a mere nominated fraction of its total strength; and this state of affairs the petitioner proposes to have continued until his own persona grievance is satisfied.” These observations which were made in regard to elections to Local Boards will apply with greater force to elections to Legislatures, because it does not require much argument to show that in a country with a democratic Constitution in which the Legislatures have to play a very important role, it will lead to serious consequences if the elections are unduly protracted or obstructed. To this aspect of the matter I shall have to advert later, but it is sufficient for the present purpose to state firstly, that in England the hardship and inconvenience which may be suffered by an individual candidate has not been regarded as of sufficient weight to induce Parliament to make provision for immediate relief and the aggrieved candidate has to wait until after the election to challenge the validity of the rejection of his nomination paper, and secondly, that the question of hardship or inconvenience is after all only a secondary question, because if the construction put by the High Court on Article 329 (b) of the Constitution is found to be correct, the fact that such construction will lead to hardship and inconvenience becomes irrelevant. Article 329 is the last Article in Part XV of the Constitution, the heading of which is “Election”, and it runs as follows “Notwithstanding anything in this Constitution (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court; (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.” In construing this Article, reference was

² Philosophy of democratic elections which Sir Winston Churchill vivified in words. “At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper no amount of rhetoric or voluminous discussion can possible diminish the overwhelming importance of the point.”

made by both parties in the course of their arguments to the other Articles in the same Part, namely, Articles 324, 325, 326, 327 and 328. Article 324 provides for the Constitution and appointment of an Election Commissioner to superintend, direct and control elections to the Legislatures; Article 325 prohibits discrimination against electors on the ground of religion, race, caste or sex; Article 326 provides for adult suffrage; Article 327 empowers Parliament to pass laws making provision with respect to all matters relating to, or in connection with, elections to the Legislatures, subject to the provisions of the Constitution; and Article 328 is a complimentary Article giving power to the State Legislature to make provision with respect to all matters relating to, or in connection with, elections to the State legislature. A notable difference in the language used in Articles 327 and 328 on the one hand, and Article 329 on the other, is that while the first two Article begin with the words “subject to the provisions of this Constitution”, the last Article begins with the words “notwithstanding anything in this Constitution”. It was conceded at the bar that the effect of this difference in language is that whereas any law made by Parliament under Article 327, or by the State Legislatures under Article 328, cannot exclude the jurisdiction of the High Court under Article 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for in Article 329. Now, the main controversy in this appeal centres round the meaning of the words “no election shall be called in question except by an election petition” in Article 329 (b), and the point to be decided is whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, “no election shall be called in question.” The appellant’s case is that questioning something which has happened before a candidate is declared elected is not the same thing as questioning an election, and the arguments advanced on his behalf in support of this construction were these : –

(1) That the word “election” as used in Article 329 (b) means what it normally and etymologically means, namely, the result of polling or the final selection of a candidate

(2) That the fact that an election petition can be filed only after polling is over or after a candidate is declared elected and what is normally called in question by such petition is the final result, bears out the contention that the word “election” can have no other meaning in Article 329 (b) than the result of polling or the final selection of a candidate

(3) That the words “arising out of or in connection with” which are used in Article 324 (1) and the words “with respect to all matters relating to, or in connection with” which are used in Articles 327 and 328, show that the framers of the Constitution knew that it was necessary to use different language when referring respectively to matters which happen prior to an after the result of polling, and if they had intended to include the rejection of a nomination paper within the ambit of the prohibition contained in Article 329 (b) they would have used similar language in that Article and

(4) That the action of the Returning Officer in rejecting a nomination paper can be questioned before the High Court under Article 226 of the constitution for the following reason: Scrutiny of nomination papers and their rejection are provided for in section 36 of the Representation of the People Act, 1951. Parliament has made this provision in exercise of the powers conferred on it by Article 327 of the Constitution which is “subject to the provisions of the Constitution”. Therefore, the action of the Returning Officer is subject to the extraordinary jurisdiction of the High Court under Article 226. These arguments appear at first sight to be quite impressive, but in my opinion there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word “election” in Article 329 (b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In *Srinivasalu v. Kuppaswami*, the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term “election” may be taken to embrace the whole procedure whereby an “elected member” is returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan, J., expressed his agreement in *Sat Narain v. Hanuman Parshad*; and I also find myself in agreement with it. It seems to me that the word “election” has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature.

The use of the expression “conduct of elections” in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329 (b). That the word “election” bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in *Halsbury’s Laws of England* in the following passage¹ under the heading “Commencement of the Election”:- “Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is “reasonably imminent”. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day effort any criterion. The election will usually begin at least earlier than the issue of the writ. The

question when the election begins must be carefully distinguished from that as to when “the conduct and management of” an election may be said to begin.

The question as to when a particular person commences to be a candidate is a question to be considered in each case.” The discussion in this passage makes it clear that the word “election” can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process. The next important question to be considered is what is meant by the words “no election shall be called in question.” A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329 (b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it. The construction before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely,

(1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made

(2) there should an executive charged with the duty of securing the due conduct of elections

(3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites, Article 324 with the second and Article 329 with the third requisite. The other two Articles in Part XV, viz., Articles 325 and 326 deal with two matters of principle to which the Constitution-framers have attached much importance. They are prohibition against discrimination in the preparation of, or eligibility for inclusion in, the electoral rolls, on grounds of religion, race, caste, sex or any of them and adult suffrage. Part XV of the Constitution is really a code in itself providing the entire ground-work for enacting appropriate laws and setting up suitable machinery for the conduct of elections. The Representation of the People Act, 1951, which was passed by Parliament under Article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various Legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with “the qualifications and disqualifications for membership,”

The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.” The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Limited* and has been re-affirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant Co.*, and *Secretary of State v. Mask and Co.*; and it has also been held to be equally applicable to enforcement of rights³. it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument, however, is completely shut out by reading the Act along with Article 329 (b). It will be noticed that the language used in that Article and in section 80 of the Act is almost identical, with this difference only that the Article is preceded by the words “notwithstanding anything in this Constitution.” I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress. It may be stated that section 107 (1) of the Representation of People Act, 1949 in England in drafted almost in the same language as Article

³ see *Hardutra v. Official Assignee of Calcutta*.

329 (b). That section runs thus “No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return presented in accordance with this Part of this Act.” It appears that similar language was used in the earlier statutes, and it is noteworthy that it has never been held in England that the improper rejection of a nomination paper can be the subject of a writ of certiorari or mandamus. On the other had it was conceded at the bar that the question of improper rejection of a nomination paper has always been brought up in that country before the appropriate tribunal by means of an election petition after the conclusion of the election. It is true that there is no direct decision holding that the words used in the relevant provisions exclude the jurisdiction of the High Court to issue appropriate prerogative writs at an intermediate stage of the election, but the total absence of any such decision can be accounted for only on the view that the provisions in question have been generally understood to have that effect.

. These rules, however, do not affect the main argument. I think it can be legitimately stated that if words similar to those used in Article 329 (b) have been consistently treated in England as words apt to exclude the jurisdiction of the Courts including the High Court, the same consequence, must follow from the words used in Article 329 (b) of the Constitution. The words “notwithstanding anything in this Constitution” give to that Article the same wide and binding affect as a statute passed by a sovereign Legislature like the English Parliament. It may be pointed out that Article 329 (b) must be read as complementary to clause (a) of that Article. Clause (b) bars the jurisdiction of the Courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329 (b) ousts the jurisdiction of the Courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the Legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High court under Article 226 of the Constitution.

Conclusion:

Having regard to the important functions which the Legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. In conformity with this principle, the scheme of the election law in this country is that no significance should be attached to any thing which does not affect the “election”; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the “election” and enable the person affected to call it in question.



REPRESENTATION AND INCLUSIVITY IN THE ELECTORAL SYSTEM

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Abstract:

Representation and inclusion in the electoral system means indirect participation in forming the government by the people. Sixteenth President of the United States America Abraham Lincoln said that “Democracy is the Government of the people, by the people and for the people.” It appears that people’s participation has very crucial role play in every electoral democracy. If we look at representation and inclusion on broader sense then the representation of men and women of every section should be ensured in it. But since the third gender has been recognized as a gender on the globally, now transgender is also required to include representation in political justice. Judicial decision given by the Supreme Court of India and the Rights of Transgender Act, 2019 has increased the scope of representation and inclusion. Through this article, we will try to know whether there presentation and inclusion of people through election method in India is actually done or still have some shortcomings.

Key words *Representation, Inclusion, Electoral Democracy, Political Justice, Transgender.*

Introduction

Our country is based on federal structure system. The most essential characteristics is federal structure is there are two level of government runs together one is central government and other is state government.

¹ A new level of government was created by 73rd and 74th constitutional amendment which ensured public participation through Panchayat and municipalities. The framers of the Constitution had a dream

¹ Constitution of India, Pandey J.N., Central Law Agency, Allahabad.

that people participation is necessary in governance which comes true at root level through this constitutional amendment. One thing is similar in all three level of government is that the representatives elected by the public, represent them in the government on their behalf. And this representation has been possible only through the election system.

We start this article with a general question whether we can imagine democracy without election? This question speaks on the need for representation in government of a large democracy. But there is a difficulty in this that not all citizens can participate in the government's decision in a direct way so the public represents itself through the representative he has chosen. Thus, in most policy and administrative matters of the government, the role of the public is very limited. In this arrangement where all major decisions are taken by elected representatives, the method by which people elected their representative becomes very important.²

Historical Development of Election in India

General election was held in British India between October and late November 1926 to elect member of the imperial legislative council and provincial assemblies. Swaraj party was the first place in this election, which was founded on 1 January 1923 by Deshbandhu Chittaranjan Das and Moti Lal Nehru. The leader of this party was Motilal Nehru. Swaraj Party got 38 seats which was the largest party in this election. At number two was the Nationalist Party whose leader was Pandit Madan Mohan Malaviya, this party got 22 seats. The third place was the central Muslim and allies who got 18 seats. Apart from this, many other independent and Europeans parties also contested the election.³

If we look at this election, then we saw that later a group of this party that was swaraj party turned into the Indian National Congress and National Muslim allies turned into League. Even after this, many elections were held, but out of them, the election of the provincial assemblies of 1946 was important. The right to vote in this election was given to some special educated people and to a particular extent to the only those people who have holding property. Around 28 percent of the entire adult population was considered capable of participating in voting, while about four crore 10 lacs people were able to vote among the areas under British India. In this election, the Congress Party and the Muslim League contested the election.⁴

Congress party performed very well in general seats in the state by state while the league won a huge victory in Muslim seats in the states who contested on the only issue of a separate country for Muslims. For example, in Bengal province, League won 114 seats out of 119 seats reserved for Muslim League. Out of a total of 228 seats in the United Province, Congress won 153

² The Wire.

³ Jain MP, Indian Constitutional law, Lexis Nexis Publication, Gurgaon, 7th Edition

⁴ रामचंद्र गुहा, भारत गांधी के बाद दुनिया के विशालतम लोकतंत्र का इतिहास page-34

seats and formed government. But a big defeat was also hidden behind this victory of the Congress. Sixty six seats were safe for Muslims in the state, out of which 54 seats were won Muslim League and clarified the gesture of Muslim public opinion. Overall, the Congress got 80.9 percent votes in the general constituency, while the Muslim League got 74.7 percent votes in safe seats for Muslims.⁵

First General election in India 1951- 1952

The first Indian general election was held on between 1951 and 1952. This election laid the foundation of the world's largest democracy and it started Democratic Governance in new independent India. The first general election was a difficult task because of vast and diverse population of India. Many of whom were illiterate and unfamiliar with the concept of voting. Provisions from Article 324 to 329 have been made in Part 15 of the Indian Constitution to conduct independent and fair elections. Article 324 talks of directing and control of the Superintendent of Elections to be vested in the Election Commission.⁶ Using the powers of this article, an independent and fair Election Commission was established in India, the first Chief Election Commissioner was Sukumar Sen. Article 326 ensures elections the Lok Sabha and the Legislative Assembly on the basis of adult suffrage. Universal adult franchise was a big challenge for India. While there was universal adult franchise in very few countries of world, India which had just become independent and decided to give universal adult suffrage to 175 million people. Western countries were very surprised at this because the country which has just become independent and dealing with many problems, how can he do so. For example, in Western countries, the first adult suffrage was given to Men who had assets and then workers and then women. America gave adult franchise to all its adult citizens in 1965. Using the constitutional powers, the Parliament of India passed the Representation of the People Act, 1950 which provided matters related to the preparation of voter list of voters, the eligibility of voters. Report on the first General election in India.⁷

The elections were held based on universal adult franchise with all those 21 year of age attend or older having the right to vote. The total number of voters in rolled in the whole of India excluding Jammu and Kashmir was approximately, 173 millions of these, approximately 45% were women voters. As much as 49% of total population was enrolled as voters. Major political parties were Indian National Congress, Communist Party of India, the Socialist Party and Bharatiya Jan Sangh. Many problems came out from this first general election, due to which all the citizens of the country could not be

⁵ रामचंद्र गुहा, भारत गांधी के बाद दुनिया के विशालतम लोकतंत्र का इतिहास page-35

⁶ Pandey JN, The Constitutional law of India, Central Law Agency, Allahabad 48th Edition 2018

⁷ Dawn to earth available at <https://downtoearth.org.in>

represented and included. And they were taken as challenges. These challenges are -

- Most of the voters were poor illiterate and came from rural areas and had no experience of election. There was much skepticism about such an electorate being to exercise its right to vote in a politically mature and responsible manner.
- Many eligible voters could not be included in the electoral rolls despite much effort on the part of the election commission because of ignorance and apathy of the common voter. Inexperience and poor organisation of the governmental machinery in some of the states is responsible for inadequate electoral roll.
- According to the report by Sukumar Sen after the election where over a large number of women voters had been enrolled in some states not by their own names but by the description of the relationship they bore their male relations, e.g. as the mother of so and so are the wife of so and so this was because of local custom dictated that women do not disclose their proper name to stranger.
- The election commission had to issue firm instruction that as the name of an elector was an essential part of his or her identity. The correct name must be included in the election roll and that no elector should be enrolled unless sufficient particulars including the name were given. If a woman did not give her proper name she was not to be registered as a voter.
- As a result the names of nearly two to three million out of a total of nearly 80 million women voters in the country were unable to be registered as they failed to disclose their proper name and these women could not exercise their vote.
- The election commission also faced a major problem with regard to the displaced person who had migrated from Pakistan in the wake up partition West Bengal Punjab Delhi and to some extent in Assam. These migrants constituted a considerable floating population and it was very difficult to register those of them that were eligible for registration under the law.⁸

Apart from all of these problems our first general election had been completed and the voter turnout for the elections was 45.7 percent. The number of invalid votes was as low as 3 to 4 percent. The people demonstrated their ability to vote with knowledge even though the majority of them were illiterate. The participation of women was significant with 40% of the eligible women voter exercising their vote.

The Indian National Congress contested 472 seats and won 364 a stupendous majority of the seat of the Lok Sabha. Many general elections and State assemblies elections were held after this election. In which the participation of women and men was considered a symbol of representation. In

⁸ Report on first general election in India 1951-52.

order to further strengthen the representation and inclusion, the age of voting is decreased from 21 years to 18 years by the Sixty One Constitutional Amendment in 1998. In its election report published by the Election Commission of India, it has been informed that 96.8 crore voters were registered in the 2024 general election in the world's biggest democracy. Over 2.63 crore new elector have been included in the electoral roll out of which around 1.41 crore are female electors which surpassed the newly enrolled male voter 1.22 crore by over 15%. More than 2 crore young electors, spanning the 18 to 19 and 20 to 29 age group have been added to the electoral roll.

A commendable effort has been made to support person with disability by flagging around 88.3.25 lacs Person with disability in the electoral roll, ensuring, accessibility and inclusivity on polling day. Special endeavors have been under taken to achieve 100% registration of particularly vulnerable tribal group making the electoral roll the most inclusive to date.⁹

But even after so many years, a community of our country could not ensure its participation in the government, it was a transgender community. Meanwhile in the case of NALSA Vs Union of India¹⁰ by the Honorable Supreme Court recognised transgender individual as third gender in 2014, significant steps have been taken to ensure the community's political rights. One of these was the election commission introduce the other gender category in voter registration form. However transgender individual is still in counter bureaucratic hurdle and societal discrimination.

The Transgender Persons (Protection of Rights) Act, 2019, passed in India, aims to protect the rights and welfare of transgender individuals, prohibiting discrimination in areas like education, employment, and healthcare, while also recognizing their identity and self-perception.¹¹

Despite judicial decision and legal protection, only 27.08 percent transgender participates in the entire states and union territories in 2024 Lok Sabha elections. Despite more than 48000 transgender individual registering by March 2024 up from 39683 in 2019. It is a small fraction of India's actual transgender population estimated to be around 4,88,000 according to the now outdated 2011 census.

Conclusion

In India, through election method, the inclusion and public representation in the government is increasing continuously. The Parliament and judiciary of our country have contributed a lot in this. Today every caste, community, women, transgender, and the representation of Scheduled Castes and Scheduled Tribes have increased to a great extent, crossing all the bad ones in its way. According to data published by Election Commission in 2024 Lok Sabha elections total 97,97,51,847 electors in 2014 as compared to

⁹ Sharma Brijkishore, *The Constitution of India (An introduction)*, PHI Pvt Ltd., Delhi 10th Edition, 2014

¹⁰ National Legal Services Authority v. Union of India, AIR 2014 SC.

¹¹ Inclusive Electoral Processes, available at <https://www.unwoman.org>.

91.19,50,734 in 2019 increased in Total electors in 2024 over 2019 was 7.43%. ECI Releases granular data of Lok Sabha election 2024 and 4 simultaneous state Assembly election 26 Dec. 2024. 476311240 women electors out of 979,7,51, 847 in 2019, 48.62% female electors in 2024 compared to 48.09% in 2019, 48,272 registered third gender electors in 2024 compared to 39075 in 2019, increase of 23.5% over the five year plan. 90, 28,696 registered PWD electors in 2024 compared to 61, 67,482 in 2019. 27.09% transgender voters voted in Lok Sabha election 2024 compare to 14.64% in 2019 almost a double.



ELECTORAL LAWS AND REFORMS: BALANCING REPRESENTATION, TRANSPARENCY, AND FAIRNESS

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Abstract:

Three key components are needed for India's democratic consolidation and constructive, forward thinking change: electoral politics, social political justice, and inclusive public policy. The contemporary power-politics of today require electoral fairness. Changes that would safeguard the electoral system's core components, which are a crucial component of democracy's basis, must be implemented in order to prevent the democratic framework from eroding. One approach to bring about social change is through politics. Since justice in a democracy is administered through the political system, it is important to recognize that electoral politics is essential to a democracy's existence. Timely reform of the electoral system's legal foundation is required. This paper looks at India's current election system as well as the necessity for "electoral reforms" in light of the dangers to Indian democracy posed by the "criminalization of politics." A robust electoral system that allows for the transparent and unafraid expression of the goals, wishes, demands, requirements, and voice of the people the voters is essential to upholding democratic values. A robust electoral system is a tool required to fortify India's democratic framework, and in order to do so, prompt changes are required that would uphold both the principles outlined in the Indian Constitution and provide fairness to the populace.

Key Wors: electoral system, criminalization, Indian Constitution

Introduction:

Definition of Electoral Reforms Indian electoral reforms are systematic changes in laws, regulations, and institutional structures with the aim of making the electoral process more fair, transparent, and efficient. A few of the problems of top priority like criminalization of politics, electoral malpractices,

ease of accessibility to voters, financing of politics, and voting machinery have been addressed by the reforms. Reforms have been made over the years in the form of the introduction of Electronic Voting Machines (EVMs) in 2003, the introduction of NOTA (None of the Above) in 2013, and the 2024 Supreme Court order against Electoral Bonds. The Election Commission of India (ECI), acting under the power conferred by Article 324 of the Constitution, has been the central agency to implement these reforms, thus making the world's largest democracy function with honesty and credibility. Relevance in Consolidating Democracy Elections are the bedrock of representative government, and in a country as big and diverse as India, their legitimacy is an ongoing challenge. Electoral process reforms are not just about regulations; they are about reclaiming the confidence of the public in the government system. Over the last few years, growing concerns with the role of crime in politics, non-transparent money mechanisms, and disenfranchisement of the electorate have raised immediate questions about the fairness of electoral processes. Objective of the paper is to examine the influence of major election changes on the integrity of India's democratic process, with an emphasis on transparency, voter rights, and political accountability and to examine how the Election Commission of India (ECI) and the courts shape electoral policy and ensure free and fair elections.

Elections In India

Indian elections are the bedrock of its democratic system, giving citizens the constitutional right to elect their representatives to government at various levels. Governed mainly by the Representation of the People Act, 1951, and administered by the Election Commission of India (ECI) under Article 324 of the Constitution, Indian elections are conducted at three levels: Parliamentary (Lok Sabha and Rajya Sabha), State Legislative Assemblies, and Local Bodies (Panchayats and Municipalities). The first general elections were conducted in 1951–52, the beginning of the world's largest democratic exercise.¹

India employs a first-past-the-post (FPTP) electoral system for the Lok Sabha and Legislative Assembly elections, whereby the candidate receiving the most votes is declared the winner.² Over time, various reforms, including Electronic Voting Machines (EVMs) introduced in 2003, the Voter Verified Paper Audit Trail (VVPAT) established in 2013, and the implementation of the NOTA (None of the Above) option in 2013, have significantly improved electoral transparency and credibility. Nonetheless, issues remain, such as the criminalization of politics, voter suppression, electoral malpractices, and non-transparent political financing. In the case of *Public Interest Foundation v. Union of India*³, the Supreme Court mandated that political parties must reveal the criminal histories of candidates to address the issue of criminalization in politics. Furthermore, the Supreme Court's ruling in 2024, which nullified the Electoral Bond Scheme, sought to promote transparency in political donations.⁴

In spite of all the obstacles encountered, the Indian electoral process has demonstrated resilience, evolving through technology and judiciary actions to safeguard the purity of democratic values. India's election process is a monumental democratic initiative, with a total of over 900 million electors during the 2019 general election, moulding India's political dynamics.

Electoral Laws In India

Part XV of the Indian Constitution deals with elections. It has six articles (Articles 324–329). Articles 243K and 243ZA of the Indian Constitution mandate elections for local entities such as Gram Panchayats and Municipalities, which are overseen by state election commissions.

Aside from this, there are a number of legislations related with the election process in India which are as follows-

1. Representation of the People Act, 1950
2. Representation of the People Act, 1951
3. Indian Penal Code, 1860
4. The Delimitation Act, 2002
5. The Election Commission (Conditions of service of Election Commissioners and Transaction of Business) Act 1991
- 1951–52, the beginning of the world's largest democratic exercise.
6. The Parliament (Prevention of Disqualification) Act, 1959
7. The Presidential and Vice-Presidential Elections Act, 1952

The concept of free and fair elections encompasses several stages, including constituency delimitation, electoral roll production, revision, and modification. The concept of free and fair elections emphasizes political liberty and equality. The voting process does not bind individuals, limiting their personal rights, social and political liberty, and freedom of thought and choice. Voting should not be influenced by party affiliation, religion, caste, creed, gender, language, or corruption. Free and fair elections are essential for democratic governance.

These eight standards define an ideal.⁵ While most nations fall short, meeting additional benchmarks ensures that elections truly reflect popular desire-

1. Citizens are able to register to vote.
2. Voters have access to reliable information
3. Citizen can run for office
4. All voters have access to a polling place
5. People can vote free from intimidation
6. Voting is free from fraud
7. Ballots are counted accurately and the correct results are announced
8. The results of the election are respected.

Issues And Challenges Regarding Current Situation in Election

India confronts several hurdles in conducting successful and efficient elections, including the following: ⁶

1. Booth capture

Despite advancements, voters continue to face intimidation and violence at polling places.

2. Misusing government machinery

Despite laws prohibiting the use of government equipment during elections, the ruling party often uses it for advertising and other reasons to get votes. The ruling party and its candidates benefit unfairly from available resources.

3. Muscle Strength

One of the grounds for criminality in the electoral system is the use of muscle power, which includes intimidating voters, employing violence, harassing them, and removing them from the voting booth.

4. Code of Conduct violation

Codes of conduct are guidelines that candidates should abide by, but they are easily broken. In practice, candidates are seen offering freebies, free electricity, free commodities, free water, and unfairly promoting their accomplishments to others. Threats are also sent among themselves, and unlawful use of public spaces and loudspeakers are among the problems that need to be resolved.

5. Non-Voters

Even among the well-educated upper class, there are still some persons who are unwilling to cast a ballot.

6. Hate speech and casteism

In order to get votes, political parties purposefully favour particular castes or groups. Voters choose candidates based on their caste, disregarding their qualifications and qualifications. Caste turns becomes the deciding factor for a candidate, which ultimately widens the divide between members of various castes.

7. Faith and Communalism

Some political parties offend members of other religions in order to win over others. This causes tension in society because elections are not for that purpose, and secularism, constitutional rights, and religious beliefs are completely disregarded when making such speeches.

8. Disbarring the funding limit

By accepting large anonymous donations, many politicians circumvent the financial cap on their rallies and campaigns, which is unjust to the others once more. Politics' lack of morality

9. Lack of moral in politics

Self-sacrifice, their sincere duty to the nation, service to others, inspiring others, democratic standards, and voters are all long gone in the corrupted

mindsets of political parties and their candidates. The voting system becomes more criminalized as a result.

Election and Electoral Laws

Article 324 of the Constitution established an independent Election Commission of India, which is responsible for overseeing, directing, and controlling the creation of electoral rolls for the President and Vice-President of India, as well as Parliament and State Legislatures, and conducting elections. According to Articles 243 K and 243 ZA, The Representation of the People Act of 1950⁸ and the Representation of the People Act of 1951⁹ include regulations that regulate the conduct of elections to Parliament and State Legislatures. The development and updating of electoral records are the main topics covered under the Representation of the People Act of 1950. Under Section 28 of that Act, the Central Government, in consultation with the Election Commission, created the Registration of Electors Rules 1960, which are comprehensive regulations that cover all facets of creating electoral rolls, including their regular updating and revision, adding eligible names, removing ineligible names, correcting particulars, etc.

The Bharatiya Nyaya Sanhita, 2023 has sections specifically addressing election-related offenses-

1. 175 - Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.¹⁰

171H.- Illegal payments, in connection with an election.-Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees: Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.
11

171-I.- Failure to keep election accounts -Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.¹²

Enacting criminal measures that coincide with the constitutional and legislative requirements related to elections elegantly achieves the optimal

balance of rights and obligations, as well as the balance of structure and safety. Nevertheless, despite the severe penalties, the rival candidates have consistently tried to bring shame to the Indian democracy by engaging in corrupt and unlawful activities. Winning an election entitles the victor to membership in Parliament or the Legislative Assembly, which confers a sort of VIP status on the victor. Elections are the only means of accessing the power sector, where decisions of national or state importance are made, and they are a means of being a part of the machinery that makes the policies to run a nation or state.

Criminalization of Politics

Criminalization of politics is the biggest issue facing Indian democracy, aside from the specter of terrorism, pervasive social inequality, intercommunal conflicts, extreme economic inequality, and the monster of poverty. Concern has occasionally been raised about this annoying cancerous development that might end anger Indian political politics.¹³ The Eleventh Lok Sabha had around forty members facing criminal charges, while the state legislatures had seven hundred members with comparable backgrounds, as noted by former election commissioner Sri G.V.C. Krishnamurthy.¹⁴

In *K. Prabhakaran v. P. Jayarajan*¹⁵, the Honourable Supreme Court stated that the disqualification clause in section 8(3) of the Representation of People Act was implemented to avoid making politics a crime. In his majority opinion, Chief Justice R.C. Lohati noted:

“Those who break the law should not make the law. Generally speaking the purposes sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house – a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a hold barred and have no reservation from indulging into criminality to win success at an election.²⁵ It also noted that disqualifying persons with criminal record or those with dubious distinction is a very complex issue and efforts should be made to prevent persons with criminal background from contesting the elections.”¹⁶

For the purposes of the Representation of the Peoples Act of 1951¹⁷, corrupt practices are:

1. bribery;
2. undue influence;
3. an appeal to vote or not to vote made by a candidate, his agent, or anyone else with the candidate's or his election agent's permission on the basis of his race, religion, caste, community, language, etc.
4. Encouragement or an effort to encourage animosity or hostility among India's many social strata based on caste, religion, race, community, or language;
5. Promotion, commission, or exaltation of the sati practice;

6. Publishing a false or defamatory statement of fact by a candidate, his agent, etc.;
7. Hiring or acquiring a vehicle or vessel for the free transportation of voters;
8. Authorizing or causing expenditures to exceed the amounts specified in Section 77;
9. Getting or obtaining any assistance from a government employee;
10. Booth capturing by a candidate, his agent, or another individual.

Bribery as a corrupt practice

(A) Any gift, offer or promise by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, of any qualification, to any person whomsoever, with the object, directly or indirectly, or inducing

- a) a person to stand or not to stand, or to withdraw or not to withdraw from being, a candidate at an election, or
- b) an elector to vote or refrain from voting at an election, or as a reward to
 - i) a person for having so stood or not stood, or having withdrawn or not withdrawn his candidature, or
 - ii) an elector for having voted or refrained from voting.

(B) The receipt of, or agreement to receive, any qualification, whether as a motive or a reward

- a) By any person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or refraining from voting or any candidate to withdraw or not to withdraw his candidature

At all costs, criminals' involvement in election politics must be prevented. It will completely ruin the system if it is not verified. Given the circumstances and facts covered thus far in this essay, it is imperative to realize that a comprehensive overhaul of the electoral system is now urgently needed. Occasionally, it has been observed that the deficiencies in the current electoral law system allow offenders to escape punishment. The CBI report to the Vohra Committee states that crime syndicates have taken on a life of their own in India, with muscular men becoming the norm even in smaller towns and governing regions.

Proactive role of Judiciary

In January 2015, Anoop Baranwal¹⁸ filed a PIL on the ground that the current system for appointing members of the Election Commission of India (ECI) is unconstitutional. He contended that the Executive enjoys too much power to make appointments, which has degraded the ECI's independence over time. The committee will provide recommendations to the President on Election Commission appointments until Parliament passes a separate statute on the topic. On January 2, 2018, the Ministry of Finance released a notification introducing the Electoral Bond Scheme, 2018. After this period, the money is transferred to the Prime Minister's Relief Fund.

In early 2021, ADR approached the Court seeking a stay on the scheme prior to the 2024 General Elections. The Bench ruled that the Scheme

infringed voters' access to knowledge under Article 19(1)(a) of the Constitution. The Court also instructed that the selling of electoral bonds be halted immediately. SBI was instructed to provide the ECI with information on the Electoral Bonds acquired between April 12 and April 30, 2019. This will include information about the purchaser as well as whose political parties received the bonds. Furthermore, the Court directed the ECI to post them at the portal given by SBI on its official website within one week of receipt by March 13, 2024.¹⁹

Electoral Appeals Case

In *Abhiram Singh v Commachen*²⁰, Commachen, the opposing candidate in the 1990 Bombay High Court election, successfully challenged Abhiram Singh's election to No 40, Santa Cruz Constituency for making communal comments during the campaign.

While hearing the appeal, a three judge Supreme Court panel stated that the content, breadth, and definition of "corrupt practice" under S. 123 should be reviewed and resolved by a five-judge constitutional court.

The court had to decide how to interpret the pronoun "his" under the provision and whether it just applied to candidates for office or if it also applied to voters. Simply put, did the section cover a wider range of appeals based on voters' religion (caste, language, community) or did it only cover statements like "I am a Hindu, so vote for me" (a positive appeal on the candidate's identity) and "My opponent is a Muslim, do not vote for him" (a negative appeal on the opponent's identity)? By a decision of 4:3, the Court ruled that, in accordance with Section 123(3), appealing to the voters' and any candidate's ascriptive identities is a "corrupt practice." The ECI prepared a handbook on EVMs and VVPATs following Subramanian Swamy. According to this manual's Regulation 16.6, each Assembly Segment or Constituency must have one randomly chosen polling place undergo obligatory VVPAT slip verification. The Court raised the required VVPAT verification from one to five voting places in each Assembly Segment in *N Chandrababu Naidu vs. Union of India*, which was decided nearly seven years later.

Conclusion:

Elections that involve a series of steps from nomination filing to results announcement are an essential part of democracy. However, free and fair elections serve as the foundation for a robust democratic life and serve as a barometer for assessing its health. Since the electoral administration is tasked with running the election, it must be free from excessive pressure from the legislature or the government. The only way to guarantee that fraudulent electoral practices are reduced, if not completely eradicated, is through independent election apparatus. The so-called political elite in the nation is frequently held nearly solely responsible for the current situation. The political class, however, does not exist in a vacuum; rather, it develops and changes as a result of society as a whole. As a result, society as a whole of which we are

all a part cannot avoid accountability for the current situation. Clear thinking, logical analysis, and reasonable aims must be the foundation of any serious consideration of election changes. There will always be opportunities, and it is simpler to create campaigns and events that meet the needs if the objectives are defined.

References:

1. Public Interest Foundation vs. Union of India,(2018) 18SC C214.
2. Representation of the People Act, 1951.
3. AIR2018SUPREMECOURT4550
4. Supreme Court of India, Association for Democratic Reforms v.Union of India, 2024SCC Online SC 84
5. Ms.Bhateri,Efficacy of Free and Fair Elections in India: A Comprehensive Study ,IJSRD
6. Hardeep Kaur, Electoral Reforms inIndia Challenges, 3Int'l J.
7. India Const. arts. 243K, 243ZA.
8. Representation of the People Act, 1950, No. 43,Acts of Parliament, 1950 (India).
9. Representation of the People Act, 1951, No. 43,Acts of Parliament, 1951 (India).
10. Bharatiya Nyaya Sanhita, 2023, § 175, No. 45,Acts of Parliament, 2023 (India).
11. Bharatiya Nyaya Sanhita,2023, § 171H,No. 45,Actsof Parliament, 2023 (India).
12. Bharatiya Nyaya Sanhita, 2023, § 171I, No. 45,Acts of Parliament, 2023 (India).
13. Vohra Committee Report on Criminalisation of Politics, Ministry of Home Affairs, Government of India (1993).
14. Rabi Roy,Electoral Reforms:Need of the Hour,13Pol.India7,8(1998).
15. K. Prabhakaran v.P.Jayarajan,(2005)1SCC754 (India).
16. LARRDIS,The First Report of the Ethics Committee of Rajya Sabha,XLVJ.Const.& Parl.Stud.21,23–24 (India).
17. Representation of the People Act, 1951, § 123, No. 43,Acts of Parliament, 1951 (India).
18. Anoop Baranwal Vs. Union of India 2023 INSC 190
19. Association for Democratic Reforms v Union of India 2024 INSC 113
20. 1996 SCC (3) 665
21. The Representation of the People Act, No. 43 of 1951, § 12
22. [2016] 3 S.C.R. 865
23. N.Chandrababu Naidu & Ors.v.Union of India& Anr.,(2019)15SCC377



NONE OF THE ABOVE (NOTA): A STEP TOWARDS DEMOCRATIC REFORM AND VOTER EXPRESSION

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INTRODUCTION

The process of selecting candidates for elected public office is called an election. Elections originated in the western world when democratic government began to take shape on a daily basis in North America and Europe in the 17th century. Of the 195 countries in the world, India is one of the most democratic. According to the 2011 census, India's total population is 1,210,854,977 including 623,724,248 males and 586,469,174 females and 4,88 lakh transgenders. According to the Election Commission of India, 97,97,51,847 voters were registered to vote in the 2024 general election, a rise of 8% voters from the 2019 general election. Since elections show how involved citizens are in public affairs, they are the foundation of democracy. On January 25, 1950, the Election Commission of India was established as a constitutional body under Article 324 of the Indian Constitution. According to the constitution, the election commission to be either a single member or multi-member body depending upon the requirements time to time. The Election Commission of India conduct the election for offices of President and Vice President of India, Lok Sabha and Rajya Sabha State Legislative Assemblies and State Legislative Councils. Any vacancy caused due to death or resignation of any member must be filled within 6 months of the incident of such a vacancy. The electoral system used for the lower houses of parliament is first past the first post, meaning that the candidate who receives the most votes wins. Every two years, elections are held for the Rajya Sabha, the higher chamber of parliament. The state legislative assembly uses proportional representation to elect these members of the upper house indirectly.

ELECTORAL PROCESS IN INDIA

From the parliamentary elections to the presidential election polls, India's electoral process is conducted on a regular basis. The electoral process adheres to the rules of the constitution, which are occasionally reinforced by laws passed by the legislature. The People Act of 1950 is reflected in these legislation. The following subprocesses are essentially part of the election process. Constituency formation, nomination filing, scrutiny, election campaign, polling, vote counting, results announcement, filing of an account of election expenses, and election disputes. Elections are an essential component of politics in a democracy, and India is one of the biggest democracies in the world. The foundation of any democracy is free and fair elections. In India, the rules governing the electoral process are frequently changed for the benefit of democracy.

NONE OF THE ABOVE (NOTA)

In 1975, Justice Bhagwati said that: Democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man. only if it brings about a participatory democracy in which every man, however lowly or humble he may be, should be able to participate on a footing of equality with others.

¹ This statement underscores the necessity of equal and active participation in democracy, highlighting that NOTA's current ineffectiveness undermines this ideal by failing to provide a meaningful choice for voters dissatisfied with all candidates, thereby not truly empowering every citizen.

In the year 2009 Supreme Court of India requested the Election Commission of India to offer the voter —none of the above— option on the ballots. Initially the government had opposed later through *People's Union for Civil Liberties v. Union of India &Anr.*,² Supreme Court in its order in favour of NOTA said that it was “extremely important in a democracy” that voters could reject a candidate in election in secrecy. “When the political parties will realize that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity,” the SCI had said in its verdict. The Court also observed that at present a voter who disapproved of the candidates expressed his or her dissatisfaction mainly by not voting, which gave an opportunity to “unscrupulous elements to impersonate the dissatisfied voter and cast a vote, be it a negative one.”³ Also, the SCI stated that the negative vote would give a clear signal about voter disapproval. Giving the example of the Abstain choice in the form of a button for Parliamentarians to vote, the verdict stated that NOTA button was the same, as “the voter is in effect saying that he is abstaining from voting since he does not find any of the

¹ *KanwarLal Gupta v. Amar Nath Chawla &Ors.*, MANU/SC/0277/1974.

² 2013 SC 161.

³ *Id.* at 45-46.

candidates to be worthy of his vote.”⁴ Accordingly the election commission of India provide it a button in electronic voting machine as NOTA. This initiative was taken by the Supreme Court to increase the participation in the voting. The election commission clarified that votes cast as NOTA are counted but they are considered as invalid vote so the NOTA votes are not going to change the outcome of election. In 2014 general election the percentage of NOTA hold 0.99% percent of the total votes casted. The voting machines used in India doesn't have any mechanism to identify the authenticity of the voter. Even the voters list is not updated at regular interval this may lead to fake voting where in place of a genuine voter some fake voter will cast the vote.

The objective of this article is to examine the issues and challenges surrounding NOTA under following ways:

- To examine the pattern of NOTA in our country
- To find out whether NOTA is serving its intended purpose

INTERNATIONAL PERSPECTIVE ON FREE AND FAIR ELECTION

Free and fair elections are the foundation of a democratic system. For the success of democracy and electoral process, it is essential that the elections should be free and fair. First, every aspiring candidate should have unfettered freedom to offer himself or herself as a candidate for election and to conduct the election campaign in his or her own way so long as it is within the limits of the law. Second, every voter should be free to vote as he or she likes without any fear of consequences and without being unduly influenced by anyone by improper incentive or pressure of any kind. Third, the secrecy of the voter's preference for any candidate should be maintained. Fourth, the election machinery should function honestly and impartially at every stage.⁵ The election provides wider opportunities to represent the choices to the citizens of the country to choose the candidate to manage their affairs.⁶

Article 21 of the Universal Declaration of Human Rights (UDHR) of 1948⁷ contained the main legal international standards instruments for democratic elections which provided that:

- “1) *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
- 2) *Everyone has the right of equal access to public service in his country.*
- 3) *The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal*

⁴ *Id.* at 46.

⁵ P. Rathnaswamy (2004). Electoral reforms: Law and Institutions of India and World. New Delhi: Book Well. p.22

⁶ J. Stephen Wayne (2013). Is this any way to run a Democratic Elections. Washington DC: FourthEdition, CQ Press A Division of SAGE. pp.252-253

⁷ Article 21 of the Universal Declaration of Human Rights of 1948

suffrage and shall be held by secret vote or by equivalent free voting procedures.”

Article 25 of the UN International Covenant for Civil and Political Rights (ICCPR of 1966⁸) also provided that the eight democratic principles such as:

- “(1) periodic elections*
- (2) universal suffrage*
- (3) equal suffrage*
- (4) right to stand for public office*
- (5) right to vote*
- (6) secret ballot*
- (7) genuine elections and*
- (8) free expression of the will of the people”*

So, it is necessary for election management bodies and other public authorities to be enforced neutrality of law, fair legal provisions and good will.

[VI] LEGISLATIVE RESOLUTIONS PERTAINING TO THE ELECTORAL REFORMS

Result of *Dr. Subramanian Swamy v. Election Commission of India*⁹ yielded in introduction of the Electronic Voting Machines (henceforth, EVMs), the ECI contemplated the introduction of a paper trail of the vote that was pilot tested. This new system of Voter-Verified Paper Audit Trail (VVPAT) was first implemented in a bye-election in the 51 Noksen Assembly Constituency of Nagaland. About 8 of 543 parliamentary constituencies as a pilot project in Indian general election of 2014, VVPAT is implemented in Lucknow, Gandhinagar, Bangalore South, Chennai Central, Jadavpur, Raipur, Patna Sahib and Mizoram constituencies.¹⁰ The SCI noted that the paper trail provided verification to the voter of his or her vote and was indispensable for free and fair elections. The Court also observed that voters' confidence in EVMs would be “achieved only with the introduction of the “paper trail”. The Election Commission of India has implemented the option of “none of the above” (NOTA) voting option in EVM machines for five States polls starting from November 2013. The main objective of the NOTA option is to enable electors who do not wish to vote for any of the candidates to exercise their right not to vote for any candidate without violation of the secrecy of their decision. However it does not mean that if 'NOTA' gets highest votes, then the election will be conducted again, rather even in that case, the candidate with the highest votes will be treated as an elected candidate.¹¹

Right to Reject or NOTA (None of The Above)

⁸ Article 25 of the UN International Covenant for civil and political rights (ICCPR of 1966)

⁹ 2013 SC 9093, 406.

¹⁰ Data collected from personal visit of the ECI. New Delhi on 10.06.2013

¹¹ K. Neelima. Electoral Reforms in India: Perceptions of Supreme Court and Law Commission 3 *Amity International Journal of Juridical Sciences* 66-74 (2017).

The Supreme Court, in *People's Union for Civil Liberties v. Union of India*¹² upheld the constitutional right of citizens to cast a negative vote in elections. From a constitutional point of view, this judgment is important as it further underscores the centrality of Article 19(1)(a) to election disputes. In this case the constitutional validity of Rules 41(2), (3) and 49-O of the Conduct of Election Rules, 1961, was impugned. Both sides agreed on the fact that the combined effect of these rules was that persons who did not vote in elections were recorded (by the presiding officer) as having not voted. The petitioners argued that this was a violation of the right to secret balloting, protected by Articles 19(1)(a) and 21 of the Constitution. Relying upon *Kuldip Nayar v. Union of India*,¹³ the State raised a preliminary objection on the ground that since voting was not a fundamental or constitutional right, but only a “statutory right” brought into existence by the Representation of Peoples Act, this wasn’t an Article 32 fundamental rights petition in the first place. Rejecting this contention, the Court distinguished between the “right to vote” and the “freedom of voting as a species of the freedom of expression”. This is what explained the Court’s earlier discussed decisions in *PUCL v. Union of India*¹⁴ and *Association for Democratic Reforms v. Union of India*,¹⁵ where the right to know the antecedents of politicians had been brought within the ambit of Article 19(1)(a) as part of the “right to know”. The Court then found that in a system of direct elections, secrecy was essential in order to ensure the effectiveness of the vote – that is, elections could not be free and fair unless secrecy was maintained (that much is logical; naturally, the only way of preventing bribery, coercion and post-election reprisals is secrecy). Further, since the freedom to vote naturally included the freedom not to vote, it would be arbitrary to extend secrecy to one and not the other. It buttressed its argument by invoking *Indira Nehru Gandhi v. Raj Narain*¹⁶ and *Kihoto Hollohani v. Zachillhu*¹⁷ for the unexceptionable proposition that an effective democracy functioning through periodic fair and free elections is part of the basic structure of the Constitution. In addition, the act of not voting was as much a positive exercise of free expression under Article 19(1)(a) as was voting itself, and so deserved similar levels of protection. The Court therefore directed the Election Commission to introduce a “None of the Above [NOTA]” option into the Electronic Voting Machines. The Supreme Court further held that the provisions of Rule 49-0 under which an elector not wishing to vote for any candidate had to inform the Presiding Officer about his decision, are ultra vires Article 19 of the Constitution and Section 128 of the Representation of the People Act, 1951. As per the provisions of clause (a) of Rule 64 of Conduct of Elections Rules, 1961, read with section 65 of the

¹² (2013) 10 SCC 1

¹³ (2006) 7 SCC 1

¹⁴ (2003) 4 SCC 399

¹⁵ (2002) 5 SCC 294

¹⁶ AIR 1975 SC 865

¹⁷ 1992 SCR (1) 686

Representation of the People Act 1951, the candidate who has polled the largest number of even if the number of electors opting for NOTA option is more than the number of votes polled by any of the candidates, the candidate who secures the largest number of votes has to be declared elected. Under the provisions of Section 53(2) of RP Act, if the number of contesting candidates is equal to the number of seats to be filled, the Returning Officer has to declare all the contesting candidates to be duly elected.

[VII] ELECTORAL REFORMS SUGGESTED BY LAW COMMISSION OF INDIA

The law Commission of India on 12 March, 2015 submitted its Report to Justice Shri A. P. Shah, Chairman of Law Commission of India said the Report has come after due consideration and deliberations with the stake holders including of register national and state political party and extensive and in-depth.¹⁸

Compulsory Voting: The Law Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly undesirable for a variety of reasons described above such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

NOTA and the Right to Reject: The Law Commission currently rejects the extension of the NOTA principle to introduce a right to reject the candidate and invalidate the election in cases where a majority of the votes have been polled in favour of the NOTA option.

This is premised on the fact that,

- First, the underlying premise of the Supreme Court's decision in NOTA was the importance of safeguarding the right to secrecy, and this secrecy rationale does not pre-empt the right to reject.
- Second, good governance, the motivating factor behind the right to reject, can be successfully achieved by bringing about changes in political horizontal accountability, inner party democracy and decriminalization.

However, the issue might be reconsidered again in the future.

The Right to Recall: The Law Commission is not in favour of introducing the right to recall in any form because it can lead to an excess of democracy, undermines the independence of the elected candidates, ignores minority interests, increases instability and chaos, increases chances of misuse and abuse, is difficult and expensive to implement in practice, especially given that India follows the first past the post system.

PARLIAMENT & STATE ASSEMBLIES HAVE A NOTA PRIVILEGE ALREADY

- 1) **Constitutional interpretation of the "NOTA" judgment is based on *Lily Thomas v. Speaker, Lok Sabha*¹⁹**

¹⁸ Report No. 255 on "Electoral Reforms" to the Union Law and Justice Ministry.

¹⁹ (1993) 4 SCC 234

“Voting is a formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question” and that “right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well”.

The Practice and Procedure of the Parliament for voting provides for three buttons: viz., a) **AYES**, b) **NOES**, and c) **ABSTAIN**

A member can abstain or refuse from expressing his opinion by casting vote in favour or against the motion by using one of these buttons. Therefore, it can be seen that an option has been given to the members to press the ABSTAIN button.

RECENT DEVELOPMENTS AND STATISTICAL INSIGHTS

In the 2024 Lok Sabha election, Indore in Madhya Pradesh received the second-highest number of NOTA votes, with 2.18 lakh votes across India.²⁰ A high number of NOTA votes suggests a significant level of dissatisfaction among voters with the candidates presented by the political parties. Voters may feel that none of the candidates are worthy of their vote, prompting them to choose NOTA as a form of protest. Indian voters seem to be using NOTA not just to show their disapproval of the candidates in the fray but to express their protest against many things they perceive wrong in the political system.²¹ The high NOTA count can be seen as a demand for better candidates. Political parties might need to reconsider their candidate selection process, understanding that voters are unwilling to settle for subpar options. Yet, NOTA has made no difference regarding criminality; the number of candidates with criminal cases has increased. Unfortunately, it turned out to be a "toothless tiger." It merely provided a platform to express dissent or one's anger for political parties to take note and nothing more.

However, as per the report, at least 251 (46 percent) of the 543 newly elected Lok Sabha members have criminal cases registered against them, and 27 have been convicted.²² It clearly suggests that political parties are not deterred by the potential loss of votes to NOTA. They continue to nominate candidates with questionable backgrounds, possibly due to the belief that these candidates have local solid support or the ability to win elections despite their criminal records. This report directly indicates that the purpose behind the implementation of NOTA in EVM or providing the right not to vote has no use.

What is the rationale behind denying the right to vote due to its ineffective implementation in India? Because the candidate who got the 2nd highest vote other than NOTA declared they won, NOTA has no legal consequence attached to it, as even if the highest number of votes in a seat are polled for NOTA, the second most successful candidate wins.

²⁰ The Indian Express (Online Edition India), (last visited March 19, 2025).

²¹ VrVachana & Maya Roy, NOTA and the Indian Voter, Research Gate

²² Business Standard, <https://www.business-standard.com/elections> last visited March 18, 2025)

NOTA was designed or implemented as a symbolic option for voters to express their dissatisfaction with the candidates presented by political parties. It majorly serves as a protest vote rather than a vote for an alternative candidate. The “None of the Above” (NOTA) option is seen as a concept that serves no practical purpose in elections, as it allows voters to indicate their dissatisfaction with the candidates on offer without this choice having any real effect on the outcome. It acts merely as a symbolic gesture of protest, lacking any provision for proposing alternative leaders or policies. Casting a vote for NOTA doesn't contribute to electing a different candidate, nor does it directly influence the mechanics of governance. Instead, it merely underscores the existence of voter dissatisfaction within the structure of the election process. For a democratic country it is very important to recognize their negative voting or NOTA efficiently.

What solution should be suggested to ensure that NOTA achieves its electoral significance in elections? There are two approaches to solve this issue and ensure that the democratic relevance, like the right not to vote, is protected.

A. Re-Elections

First, if NOTA receives a higher vote, there should be re-election criteria, and it should be done in a fixed period of time so that imbalance does not create in the system. In the re-elections, parties should appoint a new candidate rather than the previous one who received the second highest vote. This will give people more options to choose another candidate if they are unsatisfied with the one who got the second-highest votes. The current criteria, where if NOTA (None of the Above) wins or gets the highest number of votes, the candidate with the second-highest number of votes is declared the winner, is totally unacceptable. It makes the right not to vote or the purpose of NOTA useless. The injury caused to the public is extremely large and continues to date, as the right to reject is an integral part of Article 19.²³ Still, the Centre and ECI did nothing to declare the election result invalid and hold a fresh election if maximum votes were polled in favor of NOTA.²⁴ The Supreme Court is considering a petition for re-polling in areas where NOTA receives the majority, citing electoral reform recommendations for fresh elections if no candidate secures over 50% of the votes, including NOTA.²⁵ In short, if NOTA receives the highest votes, re-election should occur with new candidates, rather than the current system where the candidate with the second-highest votes wins, asserting that this undermines the purpose of NOTA as a meaningful voting option for expressing dissatisfaction.

B. Disqualification Clause

²³ Constitution of India, art. 19.

²⁴ Available at: <https://barnbench-nlul.refread.com/news/litigation/election-nullified-nota-gets-maximum-votessupreme-court-election-commission> (Last visited March 21, 2025)

²⁵ Available at: <https://barnbench-nlul.refread.com/news/plea-supreme-court-seeks-re-polling> (Last visited March 21, 2025)

Implementing a disqualification clause linked to the NOTA (None of the Above) option in Indian elections could significantly enhance electoral integrity. If NOTA receives the highest votes and exceeds a threshold (e.g., 25% of total votes), all current candidates would be disqualified from contesting in the subsequent re-election. This would necessitate a fresh election with new candidates, compelling political parties to field individuals more aligned with public sentiment and less likely to have criminal backgrounds, thereby addressing voter dissatisfaction. Such a measure promotes cleaner politics, discourages the perpetuation of controversial candidates, and ensures that elected representatives genuinely reflect the electorate's will, enhancing overall democratic accountability and participation. But it must be assured that it complies with the principles of equality, the right to contest elections, and democratic reform to justify fair election representation. Such a reform would not only address voter disillusionment but also enhance the overall integrity and effectiveness of the electoral process.

By implementing this change, we can ensure that voter dissatisfaction leads to tangible consequences, marking a shift towards cleaner and more representative politics. It's time to ensure that NOTA effectively safeguards our democracy and contributes to elevating the quality of governance in India. It's time to transform NOTA from a symbolic protest into a powerful tool for electoral change, safeguarding our democracy and elevating the quality of governance in India. By giving teeth to NOTA, we ensure voter dissatisfaction translates into real consequences, compelling political parties to present better candidates.

The implementation of this rule would have a significant effect. It may improve the quality of the candidates put up for elections by political parties and ensure that better-quality candidates contest elections.

CONCLUSION

Introducing NOTA in the electronic voting machines is no doubt a major step in introducing electoral reforms, bringing it closer to the end democracy seeks to achieve, however its true effect and purport can be realized only when it is allowed to be used in its complete and free sense i.e. not only the right to register a negative vote but also the right to reject. As of today right now, the conversation around NOTA continues, reflecting its evolving role in India's largest democracy. However, the current implementation of NOTA has highlighted its inadequacy in bringing about significant electoral reform. However, its effectiveness remains debated, with calls for reforms to make it a more decisive tool in the democratic process. To elevate NOTA from being a mere symbolic protest to a powerful tool for democratic accountability, it is imperative to bring about robust changes. One effective measure could be the introduction of a disqualification clause for all candidates if the NOTA votes exceed a certain threshold. This would compel political parties to prioritize integrity and public sentiment in selecting candidates.



FREE AND FAIR ELECTION AND INDIAN DEMOCRACY: ISSUES AND CHALLENGES

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Abstract:

“Democracy” and “free and fair elections” are inseparable twins. For democracy to succeed, free and fair elections are crucial, necessitating their conduct in our democratic country. Free and fair elections serve as the medium through which the people’s attitudes, values, and beliefs about their political environment are reflected. Elections empower the populace to establish a government with the constitutional right to govern those who elect it. They represent the central democratic procedure for selecting and controlling leaders. Elections allow the people to express their trust in the government periodically and change it when necessary. They symbolise the people's sovereignty and legitimise the government’s authority. Consequently, free and fair elections are indispensable for the success of democracy. In a parliamentary democracy, free and fair elections are mandated by our Constitution. However, today’s elections face challenges due to the significant amounts of money required for campaigns, and candidates often need strong influential backing to secure victory. Major defects in the electoral system in India include the influence of money, muscle power, the criminalisation of politics, poll violence, booth capturing, communalism, casteism, non-serious independent candidates, false election promises, freebies, and more. Today, the need for electoral reforms emerges due to the growing deterioration in electoral politics. There is an urgent need to strengthen the electoral system of our country to realise the true potential of a well-functioning democracy.

Keywords: Democracy, Free and Fair Election, Representative Government, Corrupt Practices, Electoral Reforms.

Introduction

Long ago, former President of the United States Abraham Lincoln stated, “Democracy is a government of the people, for the people, and by the people.” The term ‘democracy’ originates from the Greek word *demokratia*, which means “rule of the people.” It is derived from two words: *demos*, meaning “people,” and *kratos*, which refers to “power.” In a democracy, the power rests with the people. This interpretation is based on the experiences of governments in several Greek city-states, notably Athens. Today, democracy is defined as a form of government in which the supreme power is vested in the people and exercised by them directly or indirectly through a representation system, usually involving periodic free elections. When you examine the definitions of democracy, as suggested above, you will find that most of these definitions portray democracy as a government run by elected representatives.

The term “democratic” denotes the concept of free and fair elections, which extends to the initial stages, like setting electoral district boundaries, reviewing and updating voter registration lists, and similar activities. Free and fair elections embody both political equality and individual liberty. In the context of electoral issues, it primarily means that individuals are not subjugated to others during the electoral process, ensuring personal liberties, political freedom, and social freedom while adhering to legal standards in thought and decision-making. One is not subject to party, caste, creed, religion, language, sex, or discipline while exercising his right to vote, nor is he subject to any prohibitions on corrupt or illegal acts. Consequently, free elections are seen as the foundation of a democratic system of governance. Several unfavourable aspects of the electoral environment deteriorated over time. In the first two stages after implementing the model code of conduct, money power has been utilised so openly that seizures of unaccounted wine, cash, narcotics, and bullion have occurred.

The Indian Constitution vests power in the people of India and it is exercised by their elected officials. Among the basic features of democracy, universal adult suffrage, free, equal and periodic elections and autonomous electoral machinery are considered the most popular. Universal adult suffrage is guaranteed by the Constitution of India by stating, pursuant to Article 326, that any individual who has reached the 18 years of age and is not otherwise excluded (for reasons of non-residence, insolvency of mind, crime or corrupt legal practise) has the right to be registered as a voter.

The Constitution does not expressly declare the fundamental right to vote of its people, but that fundamental right has nevertheless been considered to be an integral part of the right to freedom of speech provided for in Article 19(i)(a) of the Constitution. Thus, the right to be enrolled as an elector in the electoral

¹Thomas J., Templin T., Cohen M., Schoder D., Joseph L, Wigley S. (2019). The relationships between democratic experience, adult health, and cause-specific mortality in 170 countries between 1980 and 2016: an observational analysis, *The Lancet*, 393(10181),1628-1640

roll and the freedom of speech guaranteed jointly under Article 19 form the basis of the constitutional right of the citizen to vote.

The conduct of free and fair elections relies heavily on the effectiveness of three elements that form a triangle. They are: (i) the electorate is neutral and impartial; (ii) the political parties and candidates; and (iii) the electoral mechanism used to administer elections should be able to inspire confidence that elections are administered and conducted in a fully non-partisan spirit and that the machinery is free from extraneous pulls and pressures. Elections are, in fact, at the centre of the democratic process and are seen as the oxygen of democracy. Without fairness, an election loses its purpose and meaning; the electoral process's fairness and legitimacy are crucially dependent on the electoral machinery's efficacy, impartiality and adequacy. The core of democracy is elections. They empower individuals to choose their political leaders and then keep them accountable. But they must be free and equal for elections to serve their vital purpose. Only having an election is not enough: an election cannot be considered "free and fair" if the votes are not counted properly or if people are excluded from voting.²

The election may be held in different ways. All democratic nations hold elections. However, most of the non-democratic nations even hold various types of elections. How can we tell whether democratic elections are distinct from other kinds? There have been several discussions about similar cases. These cases include elections, yet they cannot be called democratic elections. Therefore, everyone should have the option to choose. This implies that each person should have options from which to choose. The candidates and the prices should be free to participate in elections and provide voters with viable options. Then, the alternative is displayed at regular intervals. The elections should occur every two years. People's favoured candidates should be selected. Additionally, elections must be handled freely and fairly, allowing the electorate to choose freely. It may seem simple, with simple circumstances. Nonetheless, there are several countries where these may still need to be met. Several studies have examined the application of these parameters to elections in their country.³

The founders of the Republic envisioned a representative parliamentary democracy, as India's polity should reflect its values, needs, and history. They also envisioned non-discriminatory and equitable involvement for all adults in this democratic process. Choosing people's representatives through universal adult franchise and fair, free elections was aimed at benefiting them. The universal adult franchise represented an ambitious and daring political

² Bishop, S., &Hoeffler, A., Free and fair elections: A new database,*Journal of Peace Research*, (2016) 53(4), 608-616.

³ Collier P., Hoeffler A., Do Elections Matter for Economic Performance?, (2015) 77(1), 1-21, Visited on 24/03/2025.

experiment and a testament to the founders' unwavering trust in the nation's vast populace and inherent potential wisdom.⁴

These elections have been successful and are generally regarded as fair and accessible. However, the experience also revealed many distortions, some of which were quite serious, raising deep concerns in various circles. There are mentions of an unhealthy influence of money, the use of brute force, and even mafia involvement, along with issues of criminalisation, communalism, and corruption and casteism.⁵

For elections to express the electorate's will, they must be 'free and fair'. 'Free' means that all those entitled to vote have the right to be registered and to vote and must be free to make their choice. In India and South Africa, every citizen over 18 is entitled to vote. An election is considered 'free' when you can decide whether to vote and vote freely for the candidate or party of your choice without fear or intimidation. A 'free' election is also one where you are confident that who you vote for remains your secret. 'Fair' means that all registered political parties have an equal right to contest the elections, campaign for voter support and hold meetings and rallies. This gives them a fair chance to convince voters to vote for them. A fair election is also one in which all voters have an equal opportunity to register, where all votes are counted, and where the announced results reflect the actual vote totals.

Issues and Challenges to Free and Fair Election

Once the Winston Churchill said that "At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

This fundamental principle, however, has become skewed with the deteriorating standards of ethical and moral propriety of India's parliamentary democracy. Having legislators with tainted backgrounds in our electoral and political process is against the principle of free and fair elections as is embodied in our Constitution. Elections are not conducted under ideal conditions due to the substantial funds needed and the considerable muscle power required to secure victory. The primary issues affecting India's electoral system include financial influence, physical intimidation, politicisation of crime, electoral violence, booth capturing, communalism, casteism, false election promises, distribution of freebies and the presence of non-serious and independent candidates. The significant defects that create hurdles in conducting free and fair elections are as follows:

Criminalisation of Politics (Muscle Power): According to data from the Association for Democratic Reforms (ADR), 46 percent of MPs elected in the 2024 Lok Sabha elections (251 out of 543) have pending criminal cases against

⁴Sterck O., Fighting for Votes: Theory and Evidence on the Causes of Electoral Violence, *Economica*, (2019) 187, 347, (844–883)

⁵Kwaku G., Do Fairer Elections Increase, the Responsiveness of Politicians? *American Political Science Review*, pp. 1-17

them, with 31 percent (170) facing serious criminal offenses, including murder, attempted murder, and crimes against women, to name a few. The corresponding figure for the 17th Lok Sabha was 233 (43 percent) for criminal charges, which included 159 (29 percent) facing serious criminal charges. Thus, the tsunami of criminalisation in politics, far from ebbing, is only rising. This troubling trend is a cause for concern. One must not forget George Bernard Shaw: “Power doesn’t corrupt men; fools, however, if they gain a position of power, corrupt power.”⁶

In *Lily Thomas and others vs. Union of India and others*⁷, the Supreme Court of India ruled that any MP, MLA, or MLC convicted of a criminal offense and sentenced to a minimum of two years in prison would lose their membership in the house immediately. Furthermore, on August 27, 2014, in *Manoj Narula vs. Union of India and others*,⁸ the Constitution Bench addressed the qualifications of our Parliamentarians and observed that the entry of criminals into politics must be restricted at all costs. It is the duty of the Prime Minister and Chief Ministers not to appoint ministers against whom a criminal court has framed charges.⁹

Violence, pre-election intimidation, post-election intimidation, victimisation, and most of the riggings of any type, both silent and violent, are mainly the products of muscle power. These are prevalent in many states of the country, and this cancerous disease is slowly spreading throughout the country. The criminalisation of politics and the politicalisation of criminals, freely indulged in now, are like two sides of the same coin and are mainly responsible for the manifestation of muscle power at elections.¹⁰ By using violence, the criminals can achieve success at elections for their benefactors.

Criminals enter politics to gain influence and ensure that cases against them are dropped or not pursued. They can succeed in the political arena because of their financial clout. Political parties tap into criminal funds and provide them with political patronage and protection.¹¹ Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes, often at gunpoint. Voters in many parts in the country are forced to vote for the local strongman. Tickets were given to the candidates with criminal records, even by the National Party. All these instances reported time and again show

⁶Rai, Shashank, *25 Years of Strengthening Indian Democracy*, <https://adrindia.org/content/electoral-reforms-idea-whose-time-has-come-indian-politics>, visited on 24/03/2024.

⁷ (2013) 7 SCC 653

⁸ (2014) 9 SCC 1

⁹13th Annual National Conference on Electoral and Political Reforms, Panjab University, Chandigarh, on 30th April, 2017, <https://adrindia.org/sites/default/files/Criminalization%20of%20politics.pdf>, Visited on 25/03/2025

¹⁰Sundriyal, R. B. and Dighe, Sharde (Ed. 1997). *Electoral Reforms*, New Delhi: Shree Publishing House, p.122.

¹¹ Kaul Summer (2002), *Who wants to cleaner Electoral System? Not the Politicians*, Parliamentary Affairs, August, Bangalore, p. 13

that democracy in India has largely failed to be what it was meant to be because the electoral system has been perverted. Our politics have been corrupted because the corrupt and criminals have to enter it.¹² The criminalisation of politics has become an all-pervasive phenomenon.

Money Power: Money plays a central role in elections nowadays. Election requires money not only to distribute it illegitimately to influence voter choices but also fulfill the legitimate expenditures required to fight an election in large and big constituencies of India. Even if we consider fighting an election is a legitimate manner then also requires visiting hundreds of villages, meeting thousands of people and employing. Money power plays in our electoral system, seriously affecting the working of periodic elections. A prospective candidate in each constituency has to spend millions of money towards transport, publicity and other essential items of election campaign. In recent years the election expenses have increased beyond any limits due to the desire on the part of every political party to spend more than their rivals in the fray. The elections were not as costly in 1952 as they have become today. Political leaders and workers considered it unethical to work with a desire for any reward. But scenario now has changed. The elections in Indian polity are becoming increasingly expensive and the gap between the expenses incurred and legally permitted is increasing over the years.

Money is central to the issue of political corruption in India, and political parties are suspected to be the largest and most direct beneficiaries. Corruption in elections reduces accountability, distorts representation, and introduces asymmetry in policymaking and governance. On 24th February 2025, Mr. Kapil Sibal writes in the Indian Express that the major flaw in the laws relating to elections is that though candidates are subject to a maximum ceiling of election expenses, no such ceiling applies to the costs of political parties. The result is that apart from candidates spending money beyond the maximum prescribed, which they do not naturally declare to the Election Commission, the political parties, especially those flush with funds, use their money power so that the electoral process becomes an uneven playing field. Those of us who, beyond our borders, tell the world that our democracy is thriving just because an election has taken place are indeed aware of how electoral victories are manipulated through sheer money and power.¹³

In a remarkable judgement, a bench headed by Chief Justice M.C. Chagla of the Bombay High Court in 1957 had issued an early warning to Parliament about the great danger inherent in permitting companies to make contributions to the funds of political parties, which may “ultimately overwhelm and even throttle democracy.” In this case, the Tata Iron and Steel Co. Ltd. had

¹² Reddy, K. Ishwara, Electoral Reforms in India - Issues and Recent Reforms, *International Journal of Humanities and Social Science Invention*, Volume 3 Issue 8, August. 2014, PP. 26-29.

¹³ Sibal, Kapil, Root for free and fair elections, value democracy, *Indian Express*, 24 Feb 2025, <https://www.newindianexpress.com/opinions/2025/Feb/23/root-for-free-and-fair-elections-value-democracy>, visited on 24/03/2025.

originally approached the Bombay High Court to amend its memorandum of association to include making contributions to political parties. In the appellate proceedings, the Court noted that “Democracy in this country is nascent and it is necessary that democracy should be looked after, tended and nurtured so that it should rise to its full and proper stature” and any “proposal or suggestion which is likely to strangle that democracy almost in its cradle must be looked at not only with considerable hesitation but with a great deal of suspicion.” The court also observed that “any attempt on the part of anyone to finance a political party is likely to contaminate the very springs of democracy. Democracy would be vitiated if results were to be arrived at not on their merits but because money played a part in the bringing about of those decisions. The form and trappings of democracy may continue, but the spirit underlying democratic institutions will disappear. History of democracy has proved that in other countries democracy has been smothered by big business and money bags playing an important part in the working of democratic institutions and it is the duty not only of politicians, not only of citizens, but even of a Court of law, to the extent that it has got the power, to prevent any influence being exercised upon the voter which is an improper influence or which may be looked at from any point of view as a corrupt influence.”¹⁴

The latest government-led legislative reform has been the finance minister's introduction of electoral bonds, which were mentioned in his 2017 budget speech. The necessary legislative amendments to the Income Tax Act, 1961, Reserve Bank of India Act, 1934, and the Representation of Peoples Act, 1951, were made vide the Finance Act 2017.¹⁵ An electoral bond is intended to be a bearer instrument with limited validity. It is intended to protect the identity of the donor and, at the same time, ensure that banking channels are used for their purchase. The donor will get a deduction, and the recipient political party will get the consequent tax exemption, provided returns are filed by the political party. The bonds will be issued in multiples of Rs. 1,000, Rs. 10,000, Rs. 1 lakh, Rs. 10 lakh and Rs. 1 crore and will be available at specified State Bank of India branches. However, it must be noted that the introduction of the electoral bonds scheme is part of what appears to be a growing trend away from transparency and accountability, two values already sparse with Indian political parties.

It is important to consider what the possible sources of political finance are. In the Indian context, considerable stress has been placed on the pre-existing entrenchment of candidates running campaigns on illegally acquired and illegally retained unaccounted wealth or black money.¹⁶ Donors to political campaigns can demand favourable laws and policies, favourable government contracts, and exceptionalism in law enforcement as returns on their investments (often referred to as a “quid pro quo”). This would also mean that

¹⁴ *Jayantilal Ranchhoddas Koticha vs. Tata Iron & Steel Co. Ltd.*, (1957) 27 Comp Cas 604

¹⁵ Sections 11, 135, and 137 of the Finance Act, 2017.

¹⁶ Rajeev Gowda & E. Sridharan, “Reforming India’s Party Financing and Election Expenditure Laws,” 11(2) *Election Law Journal* 226, 232-235 (2012).

contributors with greater economic power can disproportionately influence political outcomes more than other citizens. Whether or not such transactions and relationships amount to corruption, permitting them is problematic as it allows money power to directly determine legal rules that could otherwise be formulated with broader concern for all the members of an electorate. Lobbying for such advantageous laws can redistribute advantages to particular groups instead of allocating them more fairly and productively. Such issues deserve to be viewed as problematic for any meaningful political equality.¹⁷ At worst, they can be seen to involve dangerous pressures on elected officials to deviate from their mandate for the private interests of donors.

Political scientist Milan Vaishnav analysed this issue and found that a lack of information and awareness regarding candidates' criminality was not a binding constraint. More likely causes involved the lack of probity in political finance and the failure of successive governments to carry out basic governance tasks.¹⁸

Elections in India are so far from the common man. Only those who have a lot of money can participate in elections as candidates because today, the vote is not a means of public opinion; rather, it is being purchased. It is time for a structural change in the entire electoral process. The Election Commission and the Government should ensure that the cherished dream of our forefathers for free and fair elections, being a fundamental structure of the Constitution, is realised.

Misuse of Government Machinery: It is generally complained that the government in power at the time of election misuse official machinery to further the election prospects of its party candidates. The misuse of official machinery takes different forms, such as the issue of advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing, etc. The misuse of official machinery in the ways mentioned above gives an unfair advantage to the ruling party at the time of elections. This leads to the misuse of public funds for furthering the prospects of candidates of a particular party.¹⁹

Distribution of Freebies: Promises of freebies such as colour TVs, mixer-grinders, laptops, etc., are part of a political party's election manifesto but are, in substance, a bribe or inducement under Section 123. Thus, the appellant argues that the promise of this nature indeed induces the voters, thereby affecting the level playing field between the candidates, which in turn disrupts a free and fair election.

¹⁷ David A. Strauss, Corruption, Equality, and Campaign Finance Reform, 94 *Columbia Law Review* 1369 (1994); Nicholas Stephanopoulos, "Elections and Alignment," 114 *Columbia Law Review* 283, 337 (2014).

¹⁸ Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics*, Yale University Press, 2017, Ch.7.

¹⁹ Singhvi, L.M., *Elections and Electoral Reforms in India*, New Delhi: Sterling Publishing House, (1971) p.165.

promises in the manifesto do not amount to bribery is completely baseless and finds no support in the statute's plain words or in decided case laws. The statute very clearly includes a “promise” within its ambit, and an unconstitutional promise clearly falls foul of the language of Section 123 of the RP Act. Such ‘freebies’ are, in form, part of an election manifesto but, in substance, are bribes or inducements under section 123. If such practices are permitted, then the manifesto does indirectly what a candidate cannot do directly.²⁰ It is further pointed out that the promise of distribution was made at the time of elections and not after, and instead of focusing on basic necessities, it was on free distributions which indicates that the promise of free colour televisions, grinders, mixies, laptops, gold etc., was only made as an electoral bribe to induce voters.²¹

These bad practices are rampant during elections; therefore, the Election Commission of India, in the direction of the Supreme Court, formulated several toothless guidelines relating to the distribution of freebies, which have no binding force. These guidelines run as the Constitution, under Article 324, mandates the Election Commission to conduct elections inter alia to the Parliament and the State Legislatures. Having due regard to the above direction of the Supreme Court and after consultation with the Political Parties, the Commission, in the interest of free and fair elections, hereby directs that Political parties and candidates while releasing election manifesto for any election to the Parliament or State Legislatures, shall adhere to the guidelines:

- i. The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code of Conduct.
- ii. The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare in election manifesto. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.
- iii. In the interest of transparency, level playing field and credibility of promises, it is expected that manifesto also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.²²

False Election Promises: These days, one of the most debatable issues relates to false election promises made without the intention of fulfilling them. Voters are innocent individuals, and they mostly cast their votes based on perceptions or sentiments along the lines of caste, religion, or party affiliation. Very few

²⁰S. *Subramaniam Balaji v. Government of Tamil Nadu* (2013) 9 SCC 659.

²¹*Ibidem*

²²Model Code of Conduct, ECI

people consider development, education, and employment issues. During elections, political parties make numerous promises to fulfil once they come to power, but these promises remain unfulfilled even after their five-year tenure. Similar promises are again made in the next election, and people are cheated. In India, there is no single legal mechanism to enforce these promises, nor any system to hold politicians accountable for their unfulfilled, false election promises.

seldom swayed by manifesto promises, thus signifying the apparent irrelevance of election manifestos and their contents.²³ This argument is also in line with judicial reasoning on this topic. In *ANZ Grindlays Bank*, for example, the Delhi High Court observed that it is common knowledge among voters and political parties that manifestos often contain unachievable and unfulfillable promises.²⁴ Similarly, Lord Denning felt that not all voters are affected by the manifesto's promises, and some do not even care to read it.²⁵ While this argument might sound appealing, it fails when applied to the ground reality because it grossly underestimates the impact of campaign promises on voting choice.

On the other hand, in a diverse country like India, it would be equally dangerous to suggest that poll promises are absolutely irrelevant in the absence of strong evidence supporting such a stance. In fact, while the Supreme Court has refused to make election manifestos legally binding, it has accepted, in principle, that promises of doles and freebies during campaigns do have an effect on voters and can put the fairness of the electoral process in danger.²⁶ An analogy can be drawn between misleading electoral promises and false advertising. This comparison is possible simply because a political party would intend to “sell” its “product” to the voters in the “political market” by showcasing the policies that they would adopt if voted to power, much like companies advertise the possible benefits a consumer receives by buying its product. In the case of misleading advertising, the laissez-faire argument proceeds on the basis that consumers would choose not to buy a product in future if it does not conform with the description shown in the advertisement.²⁷ However, false information offered through deceptive advertisements can induce consumers to make incorrect choices, thus showing the need for regulation.²⁸ Therefore, it becomes necessary to outline the extent to which politicians should be protected and when they should be held accountable for

²³ Swapan Dasgupta, ‘*The manifesto and its total irrelevance in elections*’ (NDTV, 19 March 2014)

²⁴ *ANZ Grindlays Bank Plc. v. The Commissioner, Municipal Corporation of Delhi* 1995 SCC OnLine Del 376.

²⁵ *Bromley London Borough Council v. Greater London Council* (1983) 1 A.C. 768.

²⁶ *S. Subramaniam Balaji v. Government of Tamil Nadu* (2013) 9 SCC 659.

²⁷ O Charles J Walsh and Marc S Klein, ‘From Dog Food to Prescription Drug Advertising: Litigating False Scientific Establishment Claims under the Lanham Act’ (1992) 22(2) *Seton Hall Law Review* 389, 399.

²⁸ *Ibidem*

their false election promises. The judiciary and parliament must formulate guidelines and enact laws to uphold the promises made during elections.

Conclusion

In a democracy, the public is the most powerful entity. Suppose the public does not vote in favour of criminals, dishonest and corrupt politicians who wish to purchase their votes by money or muscle power. In that case, everything shall function nicely, and democracy will shine in the dark spectrum of the hitherto corrupt and criminalised political system. So, though the EC is working hard in this direction, but it cannot succeed unless all political parties and voters realize their responsibility. Finally, there should be a proper mechanism, fully functional and fully equipped to fight any triviality. The Supreme Court of India needs to take more serious notes on issues affecting free and fair elections, and some different mechanisms must be adopted so that politicians do not continuously engage in corrupt practices and adhere to constitutional norms.

We should realise that citizenship is more than voting or making the system accountable. Many people tend to regard democracy as a system where literally everything is allowed. And every person has the freedom to do whatever one desires. This often leads to complete chaos that devastates the order of society rather than improving it. In that way it leads to the opposite effects of democracy. A citizen has to accept that freedom is never absolute. If you have a right to do certain things, you also have the responsibility to ensure that your actions do not infringe upon the rights of others.

On the other hand, there is a pressing need to ensure that parties are legally compelled to keep their word since the normal political processes are often insufficient and imperfect in achieving this goal. Based on a combined reading of Articles 19(1)(a) and 21, this essay has tried to fill this legal vacuum by identifying the right of a voter to make an informed choice during voting. This observation, coupled with the view that misleading promises interfere with the exercise of this right through the propagation of false information, leads to the inference that the basis for making such poll pledges binding can, in fact, be located in the Constitution itself.



ELECTION REFORMS IN INDIA VIS-A-VIS CRIMINALIZATION OF POLITICS

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Like any system of government. No electoral system can also be regarded as perfect, forever. The electoral system in India is no exception either. It is own shortcoming too, and electoral reforms to remove of rectify those drawback are always an ongoing process. Some of the burning issues about which the people of the country at large, well-meaning intelligentsia, political thinkers, political parties and candidates are feeling concerned, or thinking aloud, are proposed to be discussed briefly as hereunder, before concluding this book.

Criminalisation of Politics:

The whole nation is seriously concerned about the criminalization of politics. An unholy nexus between politicians and criminals is not new, as several politician have taken the help of criminals for rigging elections in their favour. Their muscle power has been misused for capturing booths on the day of poll and even for intimidating voters from coming to polling stations. The post-election victimisation or violance perpetrated on voters, particularly, those belonging to weaker sections of the society, who dared to defy the local mafia in the matters of exercise of their franchise, is also not something unheard of,. Even the Vohra Committee set up by the government under the them Home Secretary to the Government of India, Shri NN Vohra, has confirmed this politician-criminal nexus in its Report (popularly known as Vohra Committee Report) submitted on 5 October, 1993. But what has caused the real concern and anxiety to all is, what may be called, the politicisation of criminals. In the early stages, criminals lent their muscle power to politicians in exercretion of a favour in return from those politicians or for money. Eventually, these criminal element realized that if they could make others win

because of their muscle or gun power and criminal acts, they themselves could also win elections and enter legislatures to put an end to their dependence on others. Unfortunately, the current trend, therefore, is the desire of criminals and anti-social elements to join the electoral battle, not only to enjoy the privileges, but also to perpetrate their nefarious activities. In many cases, they have won the electoral battle too. Some social or apolitical organisations have conducted research in some of the states, notorious for criminalisation of politics or politicisation of criminals. They have come out with graphic details of criminal cases in many cases, of heinous crimes, like murder, dacoity, rape, extortion and so on, pending against several legislators in different counts of law.

Though the parliament is still to intervene and take some remedial measure to eradicate this malaise from our electoral system, the Supreme Court has meanwhile rendered some judgments of far reaching significance having telling impact on decriminalization of politics to some extent. Firstly, the Supreme Court has ordained in the case of people's Union for Civil Liberties that all candidates contesting elections to Parliament and state legislatures must disclose their criminal antecedents, if any, by filing an affidavit along with their nomination papers furnishing details of their convictions in the past and also of the criminal cases pending against them in which the courts have taken cognizance. They have also to furnish details of their assets and liabilities so that electors may make an informed choice.

They cannot also suppress any information by leaving any column blank in the affidavit. By another judgment in July 2013 in the case of Lily Thomas, the Supreme Court has struck down 8 (4) of 1951 Act which earlier provided that if a sitting member of the Parliament or state legislature was convicted by a court, there was no disqualification for three months and if an appeal was filed against the conviction, disqualification was not attracted till the disposal of the appeal. In yet another landmark judgment announced by the Supreme Court in September 2013 in case of people's Union for Civil Liberties, the court has given the right to electors to express in secrecy their disapproval of all the candidates in the fray by pressing an appropriate button on the electronic voting machine that he does not wish to vote for any of the candidates.

But so long as the Parliament does not act and take some proactive steps to amend the law on the lines suggested by the Election Commission, Law Commission and the Second Administrative Reforms Commission, the real malaise may not be eradicated from our electoral system. An alternative remedy suggested by some well-meaning people is that the political parties should themselves make an introspection and refuse to give tickets to those who are known for their involvement in crimes, as political parties cannot profess ignorance or lack of awareness of the antecedent of the candidates of the candidates set up by them. But regrettably, the statistics in relation to the last general election to the House of the People in 2009 and certain legislative assemblies in 2010 to 2013 speak otherwise. As per the reports published by

some of the election- watch organization, as many as 164 (30%) out of the 543 members of the fifteenth House of People have declared criminal cases against them. The position in some of the existing state legislatures is more alarming.

Emergence of New India:

The Supreme Court, on 10 July, 2013 delivered a verdict in regard to convicted MPs and MLAs. This judgment, which can be regarded as a landmark one in recent times, has ruled that a convicted elected representative cannot continue in office and that the conviction will lead to instant disqualification of the elected representative. The safeguard provided under Section 8 (4) of the Representation of the People Act, 1951 have been struck down and declared ultra vires of the Constitution. The Supreme Court has held that there cannot be two separate laws for elected representatives and contesting candidates. Later, the next day, the Allahabad High Court gave another judgement whereby no political party can hold caste rallies. This verdict too is another landmark judgment but it has ignited a party can hold caste rallies. The verdict too is another landmark judgment but it has ignited a debate. If we go by this judgment of Supreme Court, it will affect the prospects of more than 30 per cent convicted MP's and MLA's in the Parliament and state assemblies.

De-Criminalization of Politics:

The judgment in Lily Thomas case has come at a very critical juncture and against the backdrop of major problem of criminalization of politics. Figures indicate that 1448 of India's 4835 MPs and State Legislators have criminal cases against them that include serious charges like murder, rape and kidnapping. The Supreme Court verdict has been heralded by all political Parties as a cleansing process of democracy. As per the verdict, persons who have been convicted for more than two years will stand disqualified from July 10, 2013 onwards as mandated by law laid down by the Supreme Court. The Judgment, however, protects sitting MPs and MLAs, who stand convicted for more than two years.

Earlier, a controversy had arisen relating to the Right to information for citizens to know about public functionaries, including their criminal and educational background. In the Union of India Vs. Association for Democratic Reforms and other. The Supreme Court held that the Right to Information of the citizens was to be derived from the constitutional right of freedom of speech and expression. The Representation of People Act was amended. Section 33(A) was introduced requiring a candidate to furnish information, where he is accused of an offence punishable with an imprisonment of two years more. It was believed that this would take care of excluding criminals from becoming MPs and MLAs as the citizens would not vote such people to power. However, it appears that this object has not been achieved. We have yet another historical judgment in this discourse on cleansing politics-the right of criminals to vote. The Supreme Court in Chief Election Commission Vs. Jan Chaudhary Held:..... to vote is a statutory right. It is a privilege to vote.

Which can be taken away. In that case the elector would not be qualified. Even if his name is on the elector roils.

The name is not struck off, but the qualification to be..... and elector and the prefege by virtue of the provision of Section 62 (5) of the 1951 Act is not an elector and is election to house of people or the Legislative Assembly of State....."

Indisputably, implementation of these judgment will result in a paradigm shift in the course of politics. Criminalisation of politics may be relegated to historical text.



THE ROLE OF THE ELECTION COMMISSION IN ELECTORAL DEMOCRACY

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Introduction:

The Election Commission (EC) is pivotal in ensuring free and fair elections, which form the cornerstone of any democratic system. Electoral democracy upholds the legitimacy of governance by allowing citizens to choose their representatives through transparent and impartial elections. As an independent body, the EC regulates electoral activities, safeguards voter rights, and maintains public trust in the electoral system. In India, the world's largest democracy, the Election Commission of India (ECI) plays a crucial role in sustaining this process. Established under Article 324¹ of the Constitution, the ECI is entrusted with the superintendence, direction, and control of elections to Parliament, State Legislatures, and the offices of the President and Vice-President. By ensuring the integrity, transparency, and inclusiveness of elections, the ECI strengthens democratic principles and protects the sovereignty of the people. However, it also faces challenges in maintaining its independence and credibility, highlighting the continuous need for reforms and vigilance in electoral governance. Nowadays Advocates like Mahmood Pracha etc. and Political Parties like Congress, the Samajwadi Party, Aam Aadami Party and people too have lost their faith in the EC. This is a serious issue and EC must work for their faithfulness.

Constitutional Mandate and Structure of the Election Commission

The Election Commission is an autonomous constitutional authority entrusted with the responsibility of administering elections to the Parliament, State Legislatures, and offices of the President and Vice President of India.

¹ Constitution of India, Art. 324.

Established under Article 324 of the Constitution of India, the Commission enjoys independence and autonomy to prevent executive interference in electoral affairs. It has the power to direct, control, and prepare for elections, ensuring they are conducted in a free and fair manner.² Initially a single-member body when established on January 25, 1950, it evolved into a multi-member body in 1989 to enhance its capacity to manage India's vast electorate. The Commission comprises a Chief Election Commissioner (CEC) and two Election Commissioners, appointed by the President of India, with their tenure and conditions of service designed to insulate them from executive interference. This constitutional framework verifies the ECI's autonomy, positioning it as a guardian of democratic integrity.

Key Functions in Electoral Democracy

The ECI's primary role is to ensure that elections reflect the will of the people through a transparent and impartial process. One of its critical functions is the preparation and periodic revision of electoral rolls, ensuring that every eligible citizen is registered to vote. The introduction of Electoral Photo Identity Cards (EPICs) has significantly reduced voter impersonation, enhancing the credibility of the electoral process. M.P. Mr. Rahul Gandhi asked in Parliament EC is not working fair why this institution does not show Identity of the voter as they are voter in many states like Delhi, Maharashtra, etc., and also the question on EVM Machine. Additionally, the ECI oversees the delimitation of constituencies based on the Delimitation Commission Act, ensuring equitable representation across India's diverse regions. Another vital function is the enforcement of the Model Code of Conduct (MCC), a set of guidelines that regulates the behavior of political parties and candidates during elections. While the MCC lacks statutory backing, the ECI's authority to enforce it stems from its constitutional mandate, enabling it to curb electoral malpractices such as vote-buying and misuse of state machinery. The Commission also manages the logistics of elections, including scheduling, scrutiny of nominations, and allocation of election symbols to political parties, ensuring level playing.

The ECI's quasi-judicial powers further strengthen its role. It adjudicates disputes related to the recognition of political parties and the allocation of symbols, and it advises the President and Governors on post-election disqualification of legislatures. These functions collectively ensure that electoral democracy in India operates within a framework of fairness and accountability.

I. Strengthening Inclusivity and Participation

A hallmark of the ECI's contribution to electoral democracy is its emphasis on inclusivity. Through initiatives like the Systematic Voters' Education and Electoral Participation (SVEEP) program, the ECI has worked to increase voter awareness and turnout, particularly among

² Its role extends beyond merely conducting elections to fostering political equality and ensuring that elections reflect the true will of the people.

marginalized groups such as women, youth, and persons with disabilities. The 2019 Lok Sabha elections, with a voter turnout of 67%, exemplify the success of these efforts in mobilizing India's electorate. By adopting technological innovations like Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trails (VVPATs), the ECI has enhanced transparency and public trust in the voting process. But nowadays Senior advocates of the Supreme Court Like Mahmood Pracha and Political Parties too have questions about these EVMs.

II. Challenges to Independence and Credibility

Despite its achievements, the ECI faces significant challenges that test its role in electoral democracy. The lack of transparency in the appointment of Election Commissioners, determined solely by the executive, raises concerns about its independence. Critics argue that this process risks political bias, undermining the ECI's impartiality. Moreover, allegations of Electronic Voting Machine tampering and delays in addressing electoral violations have fueled public skepticism about the Commission's efficacy. The ECI also struggles with limited enforcement powers. While it can issue directives under the MCC, it lacks the authority to impose stringent penalties for violations, relying instead on moral persuasion or referrals to judicial bodies. The rising criminalization of politics, coupled with the influence of money and muscle power, further complicates the ECI's task of ensuring free and fair elections.

III. Regulating Political Parties and Candidates The EC is responsible for registering political parties and ensuring that they comply with electoral laws. It also monitors the conduct of candidates during campaigns, addressing issues such as hate speech, misinformation, and violations of the model code of conduct.

IV. Resolving Electoral Disputes The EC acts as a quasi-judicial body to resolve disputes related to elections, such as allegations of electoral fraud or irregularities. Its decisions are critical in maintaining public trust in the electoral process. The EC acts as an arbiter in electoral disputes, addressing grievances related to voter registration, candidate eligibility, and election results. It has the authority to investigate complaints, impose penalties, and even annul elections in cases of significant irregularities.

This judicial function reinforces the credibility of the electoral process.

Promoting Transparency and Accountability By overseeing the entire electoral process, the EC ensures that elections are conducted transparently and that results are accurately reported. This accountability is essential for maintaining the legitimacy of elected governments.

Voter Registration and Education

The EC plays a crucial role in maintaining an accurate and inclusive voter registry. It ensures that all eligible citizens are registered to vote and that the electoral rolls are regularly updated to reflect changes in demographics. Additionally, the EC undertakes voter education initiatives to inform citizens

about their voting rights, the importance of participation, and the electoral process itself. This helps to increase voter turnout and engagement.

Challenges Faced by the Election Commission

Despite its critical role, the EC faces several challenges in fulfilling its mandate:

- i. **Political Interference** In some democracies, the independence of the EC is undermined by political interference, which can compromise the fairness of elections.
- ii. **Technological Vulnerabilities** The increasing use of technology in elections, such as electronic voting machines (EVMs) and online voter registration, has introduced new risks, including cyberattacks and technical failures.
- iii. **Ensuring Inclusivity** Ensuring that marginalized groups, such as women, minorities, and persons with disabilities, can participate fully in the electoral process remains a significant challenge.
- iv. **Combating Misinformation** The rise of social media has made it difficult for the EC to combat the spread of misinformation and fake news during elections.

Role in Ensuring Electoral Integrity

The credibility of an electoral democracy depends on the integrity of its elections. The Election Commission plays a vital role in preventing malpractices such as vote-buying, booth capturing, and voter intimidation. By deploying central observers, establishing voter awareness programs, and leveraging technology in electoral processes, the EC enhances transparency and accountability.³

Significance of the Election Commission in Electoral Democracy

The EC is indispensable to the functioning of electoral democracy. By ensuring that elections are conducted fairly and transparently, it upholds the principle of popular sovereignty and reinforces public trust in democratic institutions. A robust and independent EC is essential for preventing electoral malpractices and ensuring that the voice of the people is accurately reflected in the outcome of elections.

Conclusion

The Election Commission is a vital institution in any democracy, serving as the guardian of free and fair elections. Its role extends beyond merely conducting elections to fostering political equality and ensuring that elections reflect the true will of the people. It is a symbol of trust, fairness, and accountability in the democratic process. By upholding the principles of free and fair elections, the EC strengthens the foundations of democracy and empowers citizens to shape their collective future. Strengthening the EC's

³ Voter education initiatives are critical for fostering informed participation, as highlighted by the International Institute for Democracy and Electoral Assistance (IDEA).

autonomy and implementing further electoral reforms can bolster democratic governance and enhance public trust in the electoral process.

The Election Commission of India stands as a linchpin of the country's electoral democracy, balancing constitutional authority with practical innovation to uphold the democratic process. Its efforts in voter education, technological adoption, and enforcement of electoral norms have earned it global recognition as a model institution. However, to sustain its credibility, the ECI must address challenges related to its independence, enforcement capacity, and public perception. Strengthening its legal framework and ensuring greater transparency in its functioning will enable the ECI to continue safeguarding India's democratic ethos in an increasingly complex political arena.

References:

Institutional Sources

1. **Association for Democratic Reforms.** (2022). *Report on Criminalization of Politics in India*. New Delhi: ADR.
2. **Election Commission of India.** (2016). *Manual on Electoral Rolls*. New Delhi: ECI.
3. **Election Commission of India.** (2019). *Model Code of Conduct for the Guidance of Political Parties and Candidates*. New Delhi: ECI.
4. **Election Commission of India.** (2019). *Statistical Report on General Elections, 2019*. New Delhi: ECI.
5. **Election Commission of India.** (2020). *Handbook for Candidates*. New Delhi: ECI.
6. **Election Commission of India.** (2020). *SVEEP: A Journey Towards Voter Awareness*. New Delhi: ECI.
7. **Election Commission of India.** (2021). *EVM and VVPAT: Status Paper*. New Delhi: ECI.
8. **Election Commission of India.** (2020). *Handbook for Returning Officers*. Government of India.
9. **European Commission.** (2021). *Cybersecurity in Elections: Strategies for Building Resilience*.
10. **International Institute for Democracy and Electoral Assistance (IDEA).** (2014). *Electoral Management Design: The International IDEA Handbook*.
11. **United Nations.** (2017). *Promoting Inclusive Electoral Processes*.
12. **United Nations Development Programme (UNDP).** (2018). *Enhancing Voter Participation*.
13. **Council of Europe.** (2017). *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy*.

Legal Sources

14. **Constitution of India, 1950.**
15. **Constitution of India,** Article 324.
16. **Constitution of India,** Article 324(2).
17. **Constitution of India,** Articles 103 & 192.
18. **Delimitation Act, 2002,** Section 4.
19. **Election Commissioner Amendment Act, 1989.**
20. **Representation of the People Act, 1950,** Section 13B.

21. **Representation of the People Act, 1950**, Section 21.
22. **Representation of the People Act, 1951**.
23. **Representation of the People Act, 1951**, Section 29A.
24. **Representation of the People Act, 1951**, Section 100.



COLLEGIUM SYSTEM AND DEMOCRACY IN INDIA

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Abstract:

Liberty to speak is not merely a slogan, but a foundation on which any democratic setup rests with all, effectiveness, respectfulness, and aliveness. Democracy takes its lungfulmainly with the right to speech and expression where every citizen is under constitutional mandatesauthorized to observe the edifice of governance, criticize the strategies, and propose improvement of standards for transparent, smoother, and accountable functioning of the government. We have been privileged that in Independent India the judiciary has played its role as the protector of democracy and proved itself asthe most dependable wing among the other two wings of the government, i.e., Legislative and Executive. Tactlessly, in the present time due to its fallen grace and loss of credibility judiciary itself becomes the subject matter of public criticism under democracy, where condemnation of the collegium system becomes the fashion without appropriate thinking over the issue.

Key Words: collegium, judicial governance, democracy

Introduction:

The recent two matters, one concerning the definition of the attempt to rape decided by the Allahabad High Court, and the second associated with huge currency in the house of a judge of Delhi High Court, become the talk of the town. These issues are examples only, rather it has become a habit on social media to criticize the judiciary, particularly the collegium system of judicial appointments.

Nowadays, in the arena of judicial governance, the recent past experiences are compelling us to remark that the judiciary which has been the pride and glory of this country is losing its grace and it is no longer a hidden fact that the ethical health of our judiciary is steadily deteriorating. With the

rise of cases of unbecoming behavior of judges and their compromising decisions, the objection against the system of judicial appointment is on the trek. Misuse of judicial power, partiality, unfairness, favoritism, and uncontrolled dependency of the cases are rampant and become the news headlines. Hence, ensuring judicial accountability is a prerequisite of the time.

However, today at every unpleasant event in the judiciary or on unpopular decisions, the system of judicial appointment has been targeted. Where by switching social media accounts, one can see a downpour debating about the hitches in the judiciary and alleging that the collegium system is dishonest or corrupt. Certainly, there are some issues with the collegium, that must be addressed in the interest of justice and also to expand faith amongst the citizens, however, the question is whether the debate about the collegium should be a subject matter of social media, where barring a few most the person is not aware about the law, its technicality and even its effect on the society.

Against this background, an attempt is made under this paper to discuss and examine the spirit of democracy in the light of the appointment of judges in higher courts. The study also proposes to discuss the necessity of an accountability mechanism instead of replacing the collegium system.

Appointment System of Higher Judiciary

As per the constitutional mandates, every judge of the Supreme Court shall be appointed by the president of India after consultation with the Chief Justice of India along with other judges¹ and every High Court judge shall be appointed by consulting the Chief Justice of India, Governor of the State and Chief Justice of the concerned High Court.² The appointment of judges and Chief Justices until 1973 was done through the accurate wordings of the Constitution and there was no issue because a practice was developed to appoint a senior-most judge of the Supreme Court as Chief Justice of India. This story took a U-Turn in 1973 when the then Chief Justice of India was appointed by superseding three judges who were senior to him. History was also repeated in the year 1977 which gave birth not only to the clatter between the executive and the judiciary but also troubled the smooth practice of respecting the seniority. Over time the issue regarding the elevation of judges to the High Courts and the Supreme Court also comes under question on several occasions.

These incidents have put a finger against judicial transparency and accountability for a long time. Even, in 1958 the Law Commission of India in its 14th Report on the 'Reform of Judicial Administration' submitted that, "it is widely felt that communal and regional considerations have prevailed in making the selection of judges. The best talent among the judges of the High Courts has not always found its way to the Supreme Court. We are concerned that the views expressed to us have shown a well-founded and acute public

¹ See, Article 124 of the Constitution of India, 1950.

² See, Article 217 of the Constitution of India, 1950.

satisfaction at these appointments”. While this report was compiled at a time when the Executive had a significant role to play in judicial appointments, it is submitted that the position is somehow the same, even yet.

As per the existing law in India, it is run through a system that is properly called the “Collegium System” in which the appointment of judges of the Supreme Court is done by the President of India on the recommendation of the Chief Justice of India and four other judges of the Supreme Court. In this regard, the Constitution provides that the President will appoint Supreme Court judges in consultation with the Chief Justice of India and such other judges of the Supreme Court, as he may deem necessary.³ The Constitution does not tell anything about whose opinion will prevail if there will be any difference of opinion, or even what is the exact criteria for the selection of judges. Therefore, due to this ambiguity as well as the in-house mechanism in the appointment of judges of the higher judiciary, it has been always a matter of serious disputes not only in society but also in the courtrooms. The controversy in this regard started in 1982 with the matter of the appointment of High Court judges in the case of *S.P. Gupta v Union of India*.⁴ The main question before the court was, in the appointment of a High Court judge whose opinion amongst the various participants shall prevail?

In the instant case the, Apex Court opined that the meaning of the word ‘consultation’ in Article 214(2) was the same as the meaning of the word ‘consultation’ in Article 217 and Article 222 of the Constitution. The Government’s decision can be challenged only in the case of *mala fide* and irrelevant considerations. This means that the ultimate power to appoint judges lies within the jurisdiction of the Executive from whose dominance and subordination were sought to be protected. Further, the Supreme Court abdicated its power by ruling that the Constitutional functionaries had merely a consultative role and that the power of appointment of Judges “*solely and exclusively*” lies in the Central Government. By giving a literal meaning to the word ‘consultation’ in Articles 124(2) and 217(1) of the Indian Constitution, the majority of the judges held that the opinion of the Chief Justices of the Supreme Court and High Courts were merely consultative. Finally, the majority decision of this case declared the “primacy” of the Chief Justice of India’s recommendation on judicial appointments and transfers can be refused for cogent reasons and give the executive a superior position.

The above issue again came up for consideration before a Constitutional Bench in the case of *Supreme Court Advocates on Record Association v. Union of India*,⁵ in which the Apex Court by a 7:2 majority overruled the above case, holding that in the event of a conflict between the President and the Chief Justice of India concerning appointments of Judges, it

³See, Article 124 (2) of the Indian Constitution.

⁴ AIR 1982 SC 149

⁵. (1993) 4 SCC 441.

was the Chief Justice of India whose opinion would not only have primacy but would be determinative in the matter.⁶

Henceforward, the commencement of the proposal of appointment in the case of the Supreme Court must be by the Chief Justice of India and in the case of the High Court by the Chief Justice of the High Court, and for a transfer of Judge of the High Court, the proposal should be initiated by the Chief Justice of India. No appointment can be made without the conformity in the opinion of the Chief Justice of India, only in exceptional cases and for strong reasons; the views of the Chief Justice of India may not be taken into account on certain recommended names.

Consequently, the above case returns the power and gives the judiciary a dominating position concerning the transfer and appointment of Judges. Yet again, in *Inre Presidential Reference*,⁷ a Constitutional Bench unanimously held that the recommendation made by the Chief Justice of India on the appointment of Judges of the Supreme Court or High Courts without consultation process shall not be binding on the Government. The Supreme Court held that the Chief Justice of India should consult with a plurality of four senior-most Supreme Court judges to form his opinion on judicial appointments and transfers.

The decision requires consultation of the *Plurality of Judges* and the sole opinion of the Chief Justice of India shall not constitute “consultation” within the meaning of Articles 217 (1) and 222(1) of the Constitution of India. It was held that the Chief Justice of India should consult “a collegium of four senior-most judges of the Supreme Court” and made it clear that if “two judges give an adverse opinion the Chief Justice should not send the recommendation to the Government.” The Court also held that the President can send back the recommendation of the collegium but if the same names are proposed again then the President is bound to accept it.

It depicts from the last two judgments that the Indian Judiciary has to every end become its appointing authority and the executive primacy which was created by the S. P. Gupta case is finally superseded by the Chief Justice of India. It should be noted that if full authority to the judiciary is not good then even supremacy of the executive over the judiciary was also not a good choice. Therefore, the question arises whether the Judiciary is in any way answerable to the people. Undoubtedly the Second Judge case had tried to answer when the court remarked that “the Chief Justice of India and the Chief Justice of the High Court, being responsible for the functioning of the Courts,

⁶ The majority in this case, returns the snatched power of Chief Justice of India regarding judicial appointments and transfers. The court held that the Chief Justice of India only needs to consult two senior-most judges. The role of the Chief Justice of India is primal in nature because this being a topic within the judicial family, the Executive cannot have an equal say in the matter.

⁷. AIR 1999 SC 1.

have to face the consequence of any unsuitable appointment which gives rise to the criticism. Similarly, the Judges of the Supreme Court and the High Courts, whose participation is involved in the functioning of the Courts and the selection process bear the consequences and become accountable.”

Eliminattion of Collegium

While advocating in favor of the collegium system we should not and must not forget about the special power of the Indian Judiciary, because an act of criticizing or even asking any question, in several cases, the judiciary has taken a too strict stand against the person who has tried to criticize the judges or their judgments and punished under the Contempt of Court Act, 1971 on the charge of scandalizing the Court. The punishment given to Arundhati Roy's⁸ Justice Sabharwal,⁹ Justice Karnan,¹⁰ and even the controversy of

⁸ After the judgment of the Supreme Court in the famous dispute of Narmada Dam case, which ordered the concerned State Governments to raise the height of the Sardar Sarovar Dam upto 90 fit, there was a public protest outside the Supreme Court in which Medha Patkar, Advocate Prashant Bhushan and Arundhati Roy has participated for which a contempt petition was filed against them, alleging that they raised abusive slogans against the Court. The court held sentenced her to one day imprisonment and a fine of Rs. 2000. For detail, See, S.P. Sathe. “Accountability of Supreme Court”, p.1384, Economic and Political Weekly, 13th April, 2002 .

⁹ In this matter Justice Sabharwal passed the orders of sealing commercial properties in residential areas in Delhi when his sons had got partnership with leading shopping malls, to evidence that a documentary was published by the Mid-Day Journalist. These orders stood for their benefits. Yet no action was taken against him. It was only after the convictions of four Mid-Day journalists for contempt, by Delhi High Court, that the news got coverage in the mainstream media. This shows a fear in the media which has deterred them from investigation against corruption in judiciary

¹⁰ It was the first case in the history of Indian judiciary in which a sitting judge of a High Court was penalized under Contempt of Courts Act, 1971. In the instant case Mr. Justice Karnan of the Calcutta High Court, had written the letters to a range of dignitaries, including Prime Minister, Chief Justice of India, the Union Law Minister and various sitting judges, making allegations of corruption against several sitting and retired judges in the country. The Court had taken *suo motu* cognizance of Justice Karnan's letter in accusing members of the judiciary of nepotism, casteism and corruption when he served as a judge in the Madras High Court. He was subsequently transferred to the Calcutta High Court. On 1st March, 2017 an arrest warrant was issued against Justice Karnan for failing to personally appear before the court. He was asked to undergo the mental health checkup, which was denied by him. Finally the Supreme Court sentenced him to six months of imprisonment, holding him guilty of contempt of court.

advocate Prashant Bhushan¹¹ are clear examples of that. Further, even after the third judge case which required the Chief Justice to take cognizance of opinions of other judges, the distressing fear continued about the appointment of inappropriate judges, because of the possibility of the collegium system itself protecting the biases and favoritism, partiality, influential connections and personal likes and dislikes of either Chief Justice or any other influential judge. Due to the above reasons present collegium system faces countless criticisms not only from the government but also from society, particularly for its lack of transparency and accountability.

Taking into account these possibilities and continuous opposing voices against the collegium system, in the year 2014 the Ministry of Law and Justice comes into action. The robust voices commanded the 99th Constitutional Amendment Act, 2014, established the National Judicial Appointment Commission, and replaced the collegium system. To this end, a National Judicial Appointments Commission Bill, 2014 was introduced by Lok Sabha, and thereafter, the 99th amendment of the Indian Constitution makes some respective changes under Articles 124 (2) and 217 (1) of the Constitution. The newly inserted Articles 124-A and 124-B establish the National Judicial Appointments Commission.

As per the amended provisions of the Constitution, the Commission's composition comprised the Chief Justice of India as chairperson, and two senior-most judges of the Supreme Court, next to him, along with the Union Law Minister and two eminent members to be jointly chosen by the Prime Minister, the Law Minister and the Leader of Opposition, one of which is to belong to the category of Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities or women. It was said that the Commission shall based on ability, merit and any other criterion of suitability nominate and also recommend persons for the appointment.¹² This Commission was empowered to recommend names for the Appointment of Supreme Court Judge and Appointment and Transfer of High Court Judge.

It is submitted respectfully that this commission was introduced with a day-dream to provide a transparent selection procedure and thereby replace the

¹¹ In the instant case advocate Prashant Bhushan was found guilty of contempt of court by Justice Arun Mishra, in relation to his two twitter posts, in which firstly he criticized the role of previous four Chief Justices of the Apex Court and thereafter in his second post he again criticized the Chief Justice of India in relation to a photograph of him posing with a very costly bike without the mask while the announcement of compulsory wearing the same. It was decided by the Supreme Court that his both posts of Twitter account were not just his personal opinion but it also tended to shake the public confidence in the institution of judiciary, therefore was a contempt of court. For this offence he was charged with fine of one rupee, which was paid by him on the same day.

¹² See, National Judicial Appointments Commission Act, 2014

collegium system of judges choosing judges. There is no doubt the collegium system has developed several serious flaws but this Act was also an attempt of executive and political encroaching upon the judiciary and a direct attack against the independence of the judiciary. Surprisingly, the composition of the commission included the judges, the Law Minister, and eminent persons chosen by the Prime Minister, the Chief Justice of India, and the leader of the opposition, which was a jumble of judicial and legislative jurisdiction into one address and therefore itself inconsistent with the doctrine of separation of power. It is interesting to note that this system was welcomed not only by the public but also by political parties who generally fight with each other on every issue. So anyone can presume why they supported this system and what was the intention behind that. Fortunately, within a short period, it was felt that the commission was against the spirit of the Constitution because it took away the pre-eminence of the collective judicial wisdom, and their collective recommendation could be vetoed or suspended by a majority of three non-judicial members. Finally, the validity of the National Judicial Appointments Commission was turned down in the case of *Supreme Court Advocate-on-Record v. Union of India*¹³ where the Constitutional Bench with a majority of 4:1 struck it down stating it to be *ultra-vires* to the Constitution. However, Mr. Justice J. Chelemaswar gave a dissenting judgment and held that the ever-rising pendency of cases warranted a “comprehensive reform of the system” and upheld the validity of the National Judicial Appointments Commission. Differing with the majority, he also said that the “primacy of the Chief Justice of India is not a basic structure of the Constitution and judiciary’s power over appointments was not the only means for the establishment of an independent and efficient judiciary.”

The dissenting opinion of Mr. Justice J. Chelemaswar is appreciable on the point that unfettered power should not be given to the Chief Justice of India, but to check his power how it can be suggested that power should be transferred to the Prime Minister or Chief Ministers or opposition leader to appoint or transfer any judge of the higher judiciary. In the medical field it has been rightly remarked that without knowing the pharmacology of the medicine, a physician cannot be a good doctor. Therefore, forgetting the well-established principle of separation of power will be just like suggesting a medicine for strengthening the health of any person without thinking over the issue of its working and the side effects of the medicine.

The Issue and Democracy

The above discussion reveals that the incidences of unbecoming behavior of judges, favoritism, corruption, and bias are growing in this country which is not only hampering the interest of justice but also putting the system of judicial appointments through collegium in question. We also experienced that a system that was introduced to remove the hitches of the collegium itself

¹³A.I.R. 1994 S.C. 268

proved problematic. As indicated earlier the National Judicial Appointment Commission was supported by almost all the political parties and the reason is obvious that they are willing to have a clutch over the judiciary. While exercising our democratic right to speech and expression and advocating against the collegium we should not forget that in a significant number of cases pending before the courts, there is the direct involvement of the government, and it needs no explanation of what would be the result of those cases, if the political leaders will appoint the judges of higher judiciary. We should also keep in mind that the independence of the judiciary in a democracy is of utmost importance because whenever we face any hindrance against our rights, we call the judiciary not the parliament. We must remember that out of the three wings of the government, only the judiciary can say 'No' to the parliament or the executive. That's why in our democratic setup even after some glitches the people's faith endures in the judiciary.

Concluding Observations:

If one inspects the system of the collegium with proper care and attention, he will find that the lack of transparency and accountability is the main issue with the hitches in the judiciary and not the collegium system itself. The judges who were proud and glorious of the administration of justice now the cases rampant against them. This bitter truth implies that judges are not dropped from heaven. Therefore, action must be taken to observe their conduct and behavior and accountability must be fixed against them. Undoubtedly it is the demand of the time. Considering the spirit of democracy this task should be debated at the proper forum and system and not on social media platforms. We should not jump to the conclusion that the unfettered right to criticize any judgment or any incident that occurs amongst the members of the judiciary on social media platforms will serve any purpose or change the scene. The author requests that, judges should not always claim to 'touch me not', but also feels that the independence of the judiciary must not be ignored. Therefore, thoughtful consideration of the nature of judicial work and its seriousness and independence suggests that they must be subjected to accountability and transparency rules through proper means.

It is also requested that for every mishappening in the judiciary, the collegium system must not be blamed, that may be a matter of indiscipline could be dealt with under accountability rules. To this end we can think of introducing the already pending bill i.e., the Judicial Accountability Bill, 2010 with its required changes. While criticizing the collegium we should keep in mind that the collegium is not like a listed wrongdoer so on every apprehension of crime can blame it and detain it in the name of prevention. To sum up it is requested that the issue of collegium is a thoughtful subject and its weakness may be removed through proper platform even democratically.



**EVOLUTION AND CHALLENGES OF INDIAN ELECTORAL
DEMOCRACY: A CENTURY OF REFORMS, INCLUSIVITY AND
INSTITUTIONAL DYNAMICS**

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Abstract:

India, the world's biggest democracy since 1947, holds elections for 969 million voters. This paper looks at how India's voting system grew from limited rights under British rule to full adult voting in 1950. It covers key laws, court decisions, and the Election Commission's work to keep elections fair. While tools like voting machines help, problems remain: many politicians have criminal cases, elections cost too much (100 crore average in 2019), and fake news spreads fast. Using court cases and data, it points out issues like unfair seat wins and suggests simpler fixes: stricter rules, spending limits, and better representation to improve democracy.

Keywords: Election, Democracy, Reforms, ECI, Constitution

Introduction: India is a Socialist, Secular, Democratic Republic and the world's largest democracy. The currently operating Indian nation state was established on August 15, 1947.

¹India's electoral democracy, enshrined in Part XV of the Constitution,² is a remarkable legal experiment in balancing diversity with representative governance. Its evolution from colonial-era restrictions to universal adult

¹“India election 2024: the world's largest democracy votes - Institute of Development Studies,” 2024.

²The Constitution of India, Art. 324-329-A.

franchise in 1950 reflects a century of legislative and judicial efforts to ensure free and fair elections.

With 969 million eligible voters in 2024—more than 10% of the global population—India conducts the world's largest democratic exercise.³ The Election Commission of India (ECI), as the primary institutional custodian, plays a crucial role in maintaining electoral integrity through legal and procedural safeguards.⁴⁵

This paper examines the historical and legal trajectory of India's electoral framework, focusing on key legislative reforms, constitutional mandates for inclusivity, and the institutional role of the ECI. It also critically analyzes persistent challenges that undermine democratic ideals, using jurisprudential analysis, case law, and empirical data to assess ongoing efforts and areas for reform.

Scholarly works on India's electoral democracy emphasize its scale and efficiency, while also critiquing structural weaknesses. McMillan (2012)⁶ praises the Election Commission of India (ECI) for managing 900 million voters in 2019, but highlights its limited enforcement powers. Quraishi (2014)⁷ describes the ECI as an “undocumented wonder”, though notes pre-1990s executive overreach. Jain (2024)⁸ discuss T.N. Seshan's 1990s reforms, which strengthened ECI's authority, though recent credibility concerns (2024 elections) suggest institutional fragility.

On electoral reforms, the Law Commission's 255th Report (2015)⁹ advocates for simultaneous elections and stricter party regulations. Sridharan & Vaishnav (2017)¹⁰ estimate Rs.30,000 crore spent in 2014 elections, exposing the influence of money in politics. Gilmartin (2009)¹¹ defends India's first-past-the-post (FPTP) system for stability, but critics argue it distorts representation (e.g., BJP's 37% vote share translating to 55% of seats in 2019).

³“About Election Commission of India,” <https://www.eci.gov.in/about-eci>.

⁴The Constitution of India, Art. 324.

⁵Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664: AIR 1972 SC 187.

⁶Alistair McMillan, “The Election Commission of India and the Regulation and Administration of Electoral Politics,” Vol-11, *Election Law Journal: Rules, Politics, and Policy* (2012).

⁷S.Y. Quraishi, *An Undocumented Wonder: The Great Indian*, Rupa, 2014.

⁸Anmol Jain, “Democracy and the Election Commission of India,” 2024

⁹“Law Commission of India Submits its Report (255th) on Electoral Reforms to the Ministry of Law & Justice,” 2015.

¹⁰Sridharan, E., & Vaishnav, M., “Election Finance in India: The Political Economy of Reform” in *Costs of Democracy: Political Finance in India* (Oxford University Press, 2017) 1.

¹¹Gilmartin, David, “One Day's Sovereign: The Indian Election of 1952 and the Making of Democracy” (2009) 29(2) *Comp Stud S Asia Afr & Middle East* 267.

Judicial precedents further shape electoral discourse. *Subramanian Swamy v. ECI (2013)*¹² upheld Electronic Voting Machine (EVM) reliability, while *ADR v. Union of India (2024)*¹³ struck down Electoral Bonds, reinforcing voter rights under Article 19(1)(a). These cases underscore ongoing legal debates on transparency and fairness in India's electoral process. Sadiq Ali¹⁴ (symbol disputes), Mohinder Singh Gill¹⁵ (repolling powers), ADR¹⁶ (candidate disclosures), PUCL¹⁷ (NOTA), and T.N. Seshan¹⁸ (institutional autonomy). In *Kuldip Nayar v. Union of India (2006)*¹⁹, the Supreme Court upheld the abolition of the secret ballot for Rajya Sabha elections, reinforcing transparency in voting. *Lily Thomas v. Union of India (2013)*²⁰ brought a significant change by mandating the immediate disqualification (The Representation of The People Act, 1951)²¹ of convicted MPs and MLAs, strengthening electoral integrity. The Model Code of Conduct (MCC) serves as a vital guideline for maintaining fair elections, though it lacks statutory backing. In *S. Subramaniam Balaji v. State of Tamil Nadu (2013)*²², the Court ruled that pre-election promises of freebies do not constitute corrupt practices under electoral laws. Lastly, *ECI v. Dr. Subramanian Swamy (1996)*²³ laid the foundation for electoral reforms by recognizing the importance of paper trail voting, eventually leading to the introduction of Voter Verified Paper Audit Trail (VVPAT) for greater transparency in the voting process. The Constitution (129th Amendment) Bill, 2024, along with the Union Territories Laws (Amendments) Bill, 2024, proposes the "One Nation, One Election" policy to synchronize Lok Sabha and State Legislative Assembly elections, excluding local body polls. The bill introduces Article 82A and

¹²Subramanian Swamy v. Election Commission of India, (2013) 10 SCC 500 : AIR 2013 SC 3512.

¹³Association for Democratic Reforms and Another v. Union of India and Others, (2024) 3 SCR 417 : 2024 INSC 209.

¹⁴Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664: AIR 1972 SC 187.

¹⁵Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405 : AIR 1978 SC 851.

¹⁶Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294 : AIR 2002 SC 2112.

¹⁷People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1 : AIR 2013 SC 3763.

¹⁸T.N. Seshan v. Union of India, (1995) 4 SCC 611 : AIR 1995 SC 852.

¹⁹Kuldip Nayar v. Union of India, (2006) 7 SCC 1 : AIR 2006 SC 3127.

²⁰Lily Thomas v. Union of India, (2013) 7 SCC 653 : AIR 2013 SC 2662.

²¹The Representation of the People Act, 1951, § 8 (India).

²²S. Subramaniam Balaji v. State of Tamil Nadu, (2013) 9 SCC 659 : AIR 2013 SC 407.

²³Election Commission of India v. Dr. Subramanian Swamy, (1996) 4 SCC 104 : AIR 1996 SC 1810.

amends Articles 82, 172, and 327 to align electoral cycles. Referred to the Joint Parliamentary Committee (JPC) for review, the bill aims to reduce election-related disruptions and expenses. However, it faces political and constitutional challenges, requiring a two-thirds majority for passage. The JPC's findings will shape the bill's future in Parliament.

Historical Evolution of India's Electoral System:

India's electoral system evolved from colonial-era restrictions to universal adult suffrage post-independence. Early British reforms, such as the Indian Councils Act, 1909 and the Government of India Acts of 1919 and 1935, introduced elections but with limited franchise and communal electorates.²⁴ By 1935, only 10% of the population (35 million people) had voting rights.

Post-1947, the Constituent Assembly rejected elitist restrictions and enshrined universal suffrage under Article 326,²⁵ ensuring voting rights for all adults not only on behalf of Property or propertied elite. The Representation of the People Acts (1951) laid the legal framework for elections, and the Election Commission of India (ECI) was established under Article 324.²⁶ The first general election (1951–52) saw 173 million voters participate, with a 45.7% turnout. Subsequent legal reforms, such as the 61st Constitutional Amendment (1988),²⁷ further expanded electoral participation by lowering the voting age from 21 to 18, adding 15 million voters by 1991. These legal milestones transformed India's electoral democracy, adapting to demographic shifts and ensuring broader representation.

Legislative Reforms in India's Electoral System

India's electoral framework has been strengthened through statutory reforms, judicial rulings, and technological advancements to enhance transparency and integrity.

- **Technological Advancements:** The 1996 RPA amendment mandated Electoral Photo Identity Cards (EPICs) to reduce impersonation. Electronic Voting Machines (EVMs) were introduced via the 1988 RPA amendment and upheld as valid in *Subramanian Swamy v. ECI (2013)*²⁸. VVPATs, mandated after *PUCCL v. Union of India (2013)*²⁹, were verified in 1.5% of polling stations in 2019 to boost trust.
- **Campaign Finance & Transparency:** Section 77 of the RPA³⁰ caps candidate expenditure (Rs. 95 lakh for Lok Sabha, 2024), but weak enforcement remains an issue. The Electoral Bonds scheme (2017), which

²⁴“Indian Councils Act (1909) & Government of India Act (1919),”

²⁵The Constitution of India, Art. 326.

²⁶The Constitution of India, Art. 324.

²⁷The Constitution (Sixty-first Amendment) Act, 1988.

²⁸*Subramanian Swamy v. Election Commission of India*, (2013), *supra*, at 2.

²⁹ *People's Union for Civil Liberties v. Union of India*, (2013), *supra*, at 2.

³⁰The Representation of the People Act, 1951, § 77 (India).

raised ₹12,000 crore by 2023, was struck down in *ADR v. Union of India (2024)*³¹ for violating transparency norms.

- **Judicial Oversight:** *Lily Thomas v. Union of India (2013)*³² struck down Section 8(4) of the RPA³³, disallowing convicted legislators from holding office. The NOTA option, introduced in *PUCL v. Union of India (2013)*³⁴, recorded 1.29% of votes in 2019.

Despite reforms, challenges persist, including financial influence, with 27% of 2019 candidates being crorepaties (ADR, 2019), highlighting disparities in political accessibility or wealth's electoral influence.

Inclusivity in India's Electoral Democracy

Inclusivity in India's electoral system, mandated by Articles 326 and 330–332 of The Constitution of India, has significantly expanded participation but not necessarily political power.

- **Universal Suffrage & Marginalized Groups:** Women's voter turnout rose from 37% (1951) to 67.2% (2019), nearing male parity (67.7%). SC/ST reservations secured 84 and 47 Lok Sabha seats, but caste-based voting persists.

- **Gender Representation:** Women MPs constituted only 14.4% of the Lok Sabha in 2019, with the Women's Reservation Bill (108th Amendment) still pending, reflecting legislative inertia.

- **Youth & Regional Inclusion:** The 61st Amendment (1988) enfranchised 18-year-olds, contributing to 66% youth turnout in 2019. Multilingual ballots (22 languages) enhance accessibility for diverse regions.

- **Challenges:** While overall voter turnout reached 67.4% in 2019, caste, gender, and economic disparities still limit true political representation, making inclusivity an ongoing challenge.

Institutional Dynamics of the Election Commission of India (ECI)

The Election Commission of India (ECI), vested with plenary powers under Article 324, serves as the custodian of free and fair elections, balancing autonomy and accountability.

- **Autonomy & Enforcement:** The *T.N. Seshan v. Union of India (1995)* ruling affirmed the ECI's independence, allowing it to issue 1,200 MCC violation notices in 2019. The SVEEP initiative boosted ST voter turnout by 10% (2014–19).

- **Technological Role:** The ECI deployed 1.74 million EVMs and 1.03 million VVPATs in 2019, upheld in *Kuldip Nayar v. Union of India (2006)*, reinforcing electoral transparency.

- **Limitations & Challenges:** Despite issuing MCC violations, only 15% led to disqualifications (ECI 2019) due to weak statutory backing. The 2023

³¹ Association for Democratic Reforms and Another v. Union of India and Others, (2024), supra, at 2.

³² Lily Thomas v. Union of India (2013), supra, at 2.

³³ The Representation of the People Act, 1951, § 8(4) (India).

³⁴ People's Union for Civil Liberties v. Union of India, (2013), supra, at 2.

CEC Act, which alters the Chief Election Commissioner's appointment process, is under scrutiny in *Anoop Baranwal v. Union of India (2023)*³⁵ for potential bias. Recent reports highlight 1,090+ MCC violations in Delhi 2025 elections, raising credibility concerns.³⁶

The ECI's evolution reflects its crucial role in electoral governance, yet institutional challenges persist, necessitating stronger legal safeguards and reforms.

Legal Challenges in India's Electoral Democracy

India's electoral democracy faces systemic threats, including criminalization of politics, excessive money influence, digital disinformation, and voter disparities.

- **Criminalization of Politics:** 43% of 17th Lok Sabha MPs (233/543) have criminal cases, with 29% facing serious charges (ADR 2023). Section 8 of the RPA disqualifies only post-conviction, a loophole upheld in *Manoj Narula v. Union of India (2014)*³⁷.
- **Money Power:** Candidates spent Rs. 100 crore on average in 2019, far exceeding RPA limits. Electoral Bonds raised Rs. 12,000 crore by 2023, with 95% coming from anonymous corporate donors, violating transparency norms (*ADR v. Union of India, 2024*).
- **Digital Disinformation:** 65% of voters encountered fake news during the 2019 elections, spread via WhatsApp's 900 million users (Oxford Internet Institute, 2019). The IT Act, 2000, lacks electoral provisions, limiting regulatory action.
- **Voter Disparities & Suppression:** Rural turnout (70%) exceeded urban (61%) in 2019, with 25% of rural voters reporting coercion (CSDS, 2019), violating Article 21 protections.

Despite judicial interventions, such as *ADR v. Union of India (2024)* striking down Electoral Bonds, legislative inaction continues to undermine electoral integrity.

Legal Strengths and Weaknesses in India's Electoral System

India's electoral democracy is a global success in scale and participation, with a 67.4% voter turnout in 2019, surpassing the U.S. (62.8% in 2020). Key strengths include ECI autonomy (Seshan, 1995) and technological reforms like EVMs and EPICs, reinforcing Article 19(1)(a) voter rights.

However, structural flaws persist:

- First-Past-The-Post (FPTP) distortions (BJP's 37% votes yielding 55% seats in 2019) affect representation.
- Criminalization of politics (46% of MPs face criminal charges, ADR 2024) undermines Article 14 equality.

³⁵ *Anoop Baranwal v. Union of India, (2023) 2 SCC 1.*

³⁶ PTI, "Delhi Assembly polls: Over 1,090 cases of violation of MCC registered" *The Hindu*, 2025

³⁷ *Manoj Narula v. Union of India, (2014) 9 SCC 1.*

- Model Code of Conduct (MCC) lacks statutory enforcement, with 85% compliance gaps (ECI 2023).

- Digital disinformation is poorly regulated, unlike the U.K.'s Electoral Commission model (Sridharan& Vaishnav, 2017).

While India excels in electoral logistics and voter engagement, financial opacity, digital threats, and weak enforcement mechanisms highlight the need for urgent legal and institutional reforms.

Conclusion:

India's electoral democracy has evolved over a century but requires legal reforms to uphold its constitutional ideals. Key recommendations include:

Amend RPA Section 8 – Disqualify candidates facing serious criminal charges (Bhartiya Nyaya Sanhita, 2023 - Sections 103(1), 64) to uphold Article 14 equality.

Statutory MCC – Enact the Model Code of Conduct (MCC) into law under Article 324, addressing 85% compliance gaps (ECI 2023).

Campaign Finance Reform – Replace Electoral Bonds with public funding, capping party finances at 50 crore per party for greater transparency (ADR 2023).

Digital Regulation – Amend the IT Act, 2000, to penalize electoral disinformation, targeting 70% of fake news sources (Centre for the Study of Developing Societies 2023).

Inclusivity Measures – Enact the 108th Constitutional Amendment to reserve 33% of Lok Sabha seats for women, addressing the 14.4% representation gap (2019).

Implementing these reforms will strengthen electoral integrity, curb corruption, and ensure democratic fairness, aligning India's electoral process with its constitutional vision.



CHALLENGES TO THE ELECTORAL INTEGRITY IN INDIA: THE POLITICAL-CRIMINAL NEXUS

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Abstract

Electoral integrity means free, fair and transparent electoral process which is the very foundation of a democracy. This research paper discusses the philosophical reason why elections must be fair and elected lawmakers should have ethical values. This research paper explores the philosophical justification for fairness in electoral politics and emphasises the importance of ethical values in elected lawmakers. It analyses existing literature, and examines electoral data from recent elections to find the challenges India faces in electoral politics and their root causes. Many challenges in India compromise electoral integrity, and the intricate interplay of politics and crime is one of them. This article also investigates electoral funding and expenditure norms in terms of potential areas where financial considerations interact to influence the transparency and fairness of India's elections. This paper ends with some recommendations for improvements of electoral integrity in the country.

Key Words: Electoral Integrity, Indian Democracy, Political-Criminal Nexus, Criminalisation of Politics, Electoral Funding.

1. Introduction

Electoral integrity is widely recognized as the cornerstone of democratic governance, ensuring that elections are conducted in a free, fair, and transparent manner. Fair elections are essential to democracy, as they accurately reflect the will of the people and uphold the legitimacy of

democratic systems. However, when political ambition becomes intertwined with criminal elements, it can significantly erode these foundations, undermining the trust and stability that are vital to sustaining democratic governance. Laws exist to uphold justice, ensure order, and protect the common good. Persons entrusted with the creation and enforcement of laws must exemplify the moral integrity these laws demand. If individuals who violate the law become responsible for crafting it, the legitimacy of the legal system itself is compromised, and the very essence of democracy is threatened. This principle is rooted in the concept of justice articulated by thinkers like Plato, who argued that society's leaders must embody virtues such as wisdom and justice. He emphasised that rulers must possess a deep sense of moral responsibility to ensure the well-being of the state. Plato famously remarked, "He who is not a good servant will not be a good master" (Plato, 2016). However, people are not treated as servants and government as master in democracy but this statement can be interpreted as the idea that those who cannot abide by the laws should not be entrusted with governing others. Aristotle also said, "He who has never learned to obey cannot be a good commander" (Aristotle, 2013). John Locke, one of the architects of modern democratic thought, also underscored the importance of accountability in governance. Locke argued that the legitimacy of government arises from the consent of the governed and that rulers must respect the laws that bind both the people and those in power. When lawmakers break the law, they breach this social contract, losing the trust that underpins democratic authority. (Locke, 1997) Mahatma Gandhi, reflecting on the moral duties of those in power, stated, "The spirit of democracy cannot be imposed from without. It has to come from within." (Gandhi, 1934) This internal sense of responsibility is what separates true leaders from those who merely seek power. Lawbreakers, lacking this moral compass, are unable to genuinely serve the public interest. Thus, the role of lawmakers is not merely to enforce rules but to embody the values those rules represent. Lawmakers must first be subject to the laws, living as models of lawful conduct, to earn the respect and trust required to govern. Without this foundation, the integrity of the entire legal and democratic system is at risk.

For a country like India, which is called the 'mother of democracies' and boasting of the largest democratic setup in the world, this process of integrity starts with the elections as it firmly affects the stability of the government and the people's faith in democracy. The International Institute for Democracy and Electoral Assistance (IDEA) provides a more elaborate definition of *electoral integrity* which encompasses all the norms and practices that contribute to democratic elections within the standards of international standards and national laws for the entire election period (ADR, 2024). One of the most centrifugal and enduring impediments to electoral integrity in India is lack of political accountability and overreach by criminal elements through organised crime in politics what political analysts laud as the political-criminal nexus. It is a nexus with criminal elements and to the extent it allows criminals into

politics, subverts the tenets on which democracy is anchored. This is particularly troubling as there are figures, provided by organisations such as the Association for Democratic Reforms (ADR), that show the trend that a number of recently elected officials have been increasing consistently.

The paper proposes to explore the political-criminal nexus and the factors inhibiting the electoral processes in India. The article is organized in a way that first lays a foundation of the problem, starting with a definition of electoral integrity and its facets within the Indian scenario. A novel approach will be offered concerning the issue of how criminalisation penetrated into politics of the Republic of India with the recent patterns of connected information. The debate will cover the extent of which legal provisions are in place, including precedent-setting case law, existing laws and recommendations by different agencies. An emphasis will be placed on how the existing political structure and dynamics along with political crimes affect electoral democracy and all its interrelated components, and how and why this entrenched nexus exists, survive and sustain.

2. The Extent of Criminalisation in Indian Politics

The Vohra Committee provided a critical assessment of the links between criminal syndicates, politicians, and government officials, which had profound implications for governance and public policy in India. The committee's report uncovered how criminal elements increasingly influenced the political process by financing elections and forming ties with officials, effectively establishing a "parallel government." This nexus allowed for unchecked economic crimes and the misuse of public resources, leading to serious distortions in governance. In response, the report recommended the establishment of a dedicated agency to monitor and address these crime syndicate networks, facilitating cooperation among intelligence and enforcement agencies. Although initially confidential, the report prompted increased public awareness and subsequent reforms, such as stricter scrutiny of political candidates' backgrounds and financial dealings to curb "criminalisation of politics". (Vohra, 1993) The very high number of politicians in India with criminal records and corruption charges is a major threat to the principles of democracy. The information collected by the Association for Democratic Reforms (ADR) shows that there is a higher increasing trend in subsequent elections. A study of the candidates in the 2019 Lok Sabha elections indicated that of 539 winners, 233 (43%) had pending criminal cases against themselves. Even more disturbing, 159 (29%) of the elected Members of Parliament had more serious criminal offences declared, including offences of murder, conspiracy to murder, abduction, and offences against women. This is a huge rise from earlier elections which shows an incremental increase in the negative effects of politics. In the 2024 Lok Sabha Elections, number of MPs with criminal cases has increased again and reached to a new record of 46% .

Election Year	Total MPs	MPs with Criminal Cases	MPs with Serious Criminal Cases
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2009	543	162 (30%)	76 (14%)
2014	542	185 (34%)	112 (21%)
2019	539	233 (43%)	159 (29%)
2024	543	251 (46%)	170 (31%)

Table 1: Criminal Background of Elected MPs in Recent Lok Sabha Elections
 The data as given in Table 1 illustrates a clear upward trajectory in the proportion of MPs with criminal backgrounds over the past four general elections. This trend is particularly concerning when considering the increase in serious criminal cases, which has more than doubled in percentage terms from 2009 to 2024.

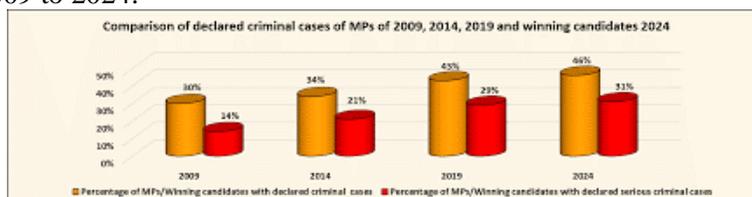


Figure 1: Trend of MPs with Criminal Cases in Lok Sabha Elections (2009-2024)

The distribution of Members of Parliament (MPs) with criminal records across states is disproportionately skewed. There are certain states that have persistently had a larger share of elected representatives with ongoing criminal cases, which seems to indicate particular local causes of such states of affairs. As in, during the elections of the year 2019, states like U.P, Maharashtra, and Bihar had an alarming percentage of the total elected Members of Parliament who had cases of criminal charges on record. This data reveals the structural nature of the problem, that candidates with criminal backgrounds are not outliers in Indian politics but that they are pervasive in Indian elections. Such a trend only indicates that the requisite measures, aimed at eradicating this socio-political evil, have not worked so well and may even point at the vicious cycle of criminality being left unchecked in this sphere.

The above-mentioned statistics are quite significant. A very high percentage of criminalised elected representatives ‘raises eyebrows’ over the integrity of the election process and the governance level and health of democracy within the Indian context. It points towards a troubling gap between the aspiration for clean and ethical governance and the reality of political representation in India.

Furthermore, the participation of Legislators in Legislatures against whom there are serious criminal charges, such as that of violent crimes, constitutes an assault on the tenets of law and democratic order. This poses a dilemma where the very persons empowered to draft the statutes of the nation are themselves accused of transgressing such laws – an occurrence that is likely to erode the citizen’s trust towards the legislative system as a whole. There is also an alarming trend in terms of how voters behave and how parties interact within the electorate.

Legal Framework and Judicial Interventions

The phenomenon of politics being criminalised has attracted considerable attention from both the legislators and the judiciary in India. The legal system related to this issue has developed over a long time. This portion outlines the important legal developments and their effectiveness in the fight against political crime. The role of the legal system is very crucial in guaranteeing unimpeded, equitable, free and fair electoral processes within a sovereign state. Apart from the Constitution, the Representation of People Act, 1950, the Representation of People Act, 1951, Conduct of Election Rules, 1961 and Symbol's Order, 1968 also deal with the electoral process. Section 171A to Section 171I of the Indian Penal Code, 1860 deals with electoral offences, now it will be enshrined in Section 169 to 177 of Bharatiya Nyaya Sanhita, 2023. Sections 8, 8(A), 29(A), 123 etc. of the Representation of People Act, 1951 are the important provisions that deal with the issue of criminalisation of politics.

The judiciary has also contributed to safeguarding the electoral integrity in India. One of the most significant judicial interventions was in the case of *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 (Basu and Chandra, 2024). In this pivotal ruling, the Supreme Court ruled that all candidates for elections should reveal their criminal history, financial standing, and education. This was an extraordinary ruling where it was held that voters are entitled to prior knowledge of the backgrounds of persons who seek to hold public office. This eventually resulted in the introduction of affidavits that candidates have to submit with their nomination papers explaining the situation to the voters.

Against this background, the Supreme Court has also been active in the fight against the problem of political criminalisation. In 2013, the Supreme Court of India in the case of *Lily Thomas v. Union of India*, AIR 2013 SC 2662 (Kumar, 2024) deemed invalid Section 8(4) of The Representation of the People Act that permitted convicted MPs and MLAs to hold their posts so long as they had appealed their conviction. This rule was important because it raised the stakes for the elected persons with criminal records, as it disqualified them immediately once they were convicted.

The *Public Interest Foundation v. Union of India*, AIR 2018 SC 4550 case is another significant milestone that took place in 2018 (Vaishnav and Hinton, 2024). The Supreme Court, in this particular case, also issued directions to political parties mandating the disclosure of criminal history of the candidates. This was done with a view to maximize transparency and furnish the voters with information that could put political parties with criminal candidates on the defensive explaining why such individuals had been selected. The issues raised by the topic has not only been addressed in the courts but has also benefited from Legal Developments in the form of appropriate legislation and commissions' reports. The Law Commission of India, in its 244th report, 2014, also took a bold step in addressing the issue of criminalisation of politics in India. They suggested establishing special courts for quick hearings of cases

facing politicians, declaring the submission of false affidavits as a basis for disqualification, and amending the Representation of People's Act, 1951 to prevent individuals facing serious charges before the court from standing for election.

The Election Commission of India has been equally instrumental in bringing into effect and enforcing this law. It has imposed a number of restrictions and issued various guidelines to facilitate adherence to the court's directives, inter alia, that candidates should publicize their criminal antecedents in the media during the campaign period. However, even if these significant changes have taken place in the law, there are other obstacles to their operationalisation. With the movement of courts in this galaxy, a particular case, for instance, in the case of politicians, the case lasts for decades and such individuals can still hold office. No practical mechanism has been developed to confirm the accuracy of the information contained in candidate affidavits, which also dilutes the relevance.

Further, there are still discussions on when the candidates facing a criminal charge should be disqualified from further engagements. For instance, some people want candidates that have criminal charges addressed at the framing of the charges, whereas others say this is likely to be misused by exposing candidates to factional and politically motivated cases. There is often a conflict between how one is treated based on the right of the presumption of innocence and other considerations that would seek to prevent such undesirables from holding office. The disqualification of candidates due to violence or the filing of sham suits against candidates has also remained a concern for the legislature. The Supreme Court in all its judgments has been looking at the issue and trying to find the middle ground by dealing only with the indictable offences or charges that have been brought before a court. A brief review of the practical outcomes of those legislative initiatives shows a kaleidoscopic picture. As there has been much awareness and even many discussions on the inclusion of criminality in politics, and, however, the statistics on the criminality of elected officials still show that things have not changed much in practice. This illustrates the gaps about which more needs to be done.

Both legislative and judiciary measures provide a framework to deal with the problem of criminality in politics in India. But their success depends on vigorous enforcement, quick justice, and change in the approach to politics. Since these measures have not yet outlived their objective, there is a need to monitor the existing measures and make appropriate changes regularly.

Impact on Electoral Integrity

The extensive fusion of politics and crime in India significantly distorts the electoral process in numerous ways, thus threatening the very essence of democracy itself. There exists a law enforcement paradox in this political setup, where the very people charged with enforcing the law and serving the public interest are the criminals themselves. This factor tends to decline the respect among people for the officials they elect and this respect wears down

every component of the democratic process. One of the most direct and apparent consequences of the interference of the nexus is the alteration of voter preferences. In many cases, the electorate has received a compromised set of candidates and some have even been convicted. This opportunistic behaviour, caused by a lack of options, often leads to what political scientists call ‘negative choice’, where voters select the least worst candidate as opposed to someone who truly understands and embodies their beliefs and principles. Furthermore, in certain contexts, especially in those with violent conflicts or weak states, it is often understood that criminals can protect the electorate or “make things happen” outside the law. This notion creates further challenges in making the decision to vote and results in elements of crime being sustained within the political arena.

The erosion of public trust in democratic institutions is perhaps the most insidious impact of this phenomenon. When citizens perceive their representatives as corrupt or criminally inclined, it leads to disillusionment with the entire democratic process. This disengagement can manifest in various ways, from decreased voter turnout to a general cynicism about the possibility of clean governance. A survey conducted by Lokniti-CSDS in 2019 found that nearly 45% of respondents believed that their vote had little to no impact on the quality of governance, a sentiment that was more pronounced in areas with a higher concentration of politicians with criminal backgrounds (Chhokar, 2024).

Statement	Agree	Disagree	No Opinion
Politicians with criminal records can still be effective leaders	28%	58%	14%
The presence of politicians with criminal backgrounds reduces my trust in government	72%	18%	10%
I would consider voting for a candidate with a criminal record if they promised development	35%	52%	13%

Table 2: Public Perception of Politicians with Criminal Backgrounds

The table above illustrates the complex and sometimes contradictory public perception towards politicians with criminal backgrounds. While a majority express distrust and disapproval, a significant minority still see such politicians as potentially effective or would consider voting for them under certain circumstances. The impact of the political-criminal nexus on electoral integrity also has broader implications for India's international standing and its soft power. As the world's largest democracy, India's ability to address this challenge affects its credibility in global forums and its capacity to promote democratic values abroad. International observers and democracy watchdogs have consistently highlighted the issue of criminalisation in Indian politics as a significant concern, potentially affecting foreign investment and international partnerships.

Furthermore, the entrenchment of criminal elements in politics creates barriers to entry for honest and qualified individuals who may be deterred from entering the political arena. This brain drain from politics deprives the nation of potentially transformative leaders and perpetuates a system where criminality and politics remain intertwined. The cascading effects of this nexus are felt across various sectors of society. It weakens the rule of law, as politicians with criminal backgrounds may interfere with law enforcement to protect themselves or their associates. It distorts economic policies and resource allocation, potentially leading to inefficient use of public funds and stunted development. In the long term, it can even shape social norms, normalizing the idea that criminality and political power go hand in hand. The political-criminal nexus poses a severe and multidimensional threat to electoral integrity in India. Its impacts range from the immediate distortion of voter choice and electoral processes to the long-term erosion of public trust and democratic values. Tackling this challenge is crucial not only for improving the quality of governance but also for preserving the very essence of India's democratic identity.

Root Causes and Perpetuating Factors

The persistence of the political-criminal nexus in India is not a simple phenomenon but the result of a complex interplay of historical, social, economic, and political factors. Understanding these root causes and the mechanisms that perpetuate this nexus is crucial for developing effective strategies to address the challenge. One of the primary historical factors contributing to this issue can be traced back to the post-independence era of Indian politics. As the country grappled with the challenges of nation-building and rapid socio-economic changes, power structures at local and regional levels often became intertwined with extra-legal elements. The breakdown of traditional social hierarchies and the emergence of new centers of power created opportunities for individuals with financial resources and local influence, regardless of the source of their power, to enter the political arena. The high cost of election campaigns in India is another significant factor perpetuating the political-criminal nexus. As elections have become increasingly expensive affairs, political parties often prioritize candidates who can self-finance their campaigns. This creates a natural advantage for individuals with substantial financial resources, including those acquired through illicit means. A study by the Centre for Media Studies estimated that nearly \$7 billion was spent on the 2019 Lok Sabha elections, making it one of the most expensive elections globally (Mehta and Vaishnav, 2024). This astronomical cost creates a high barrier to entry for honest candidates lacking personal wealth or strong financial backing.

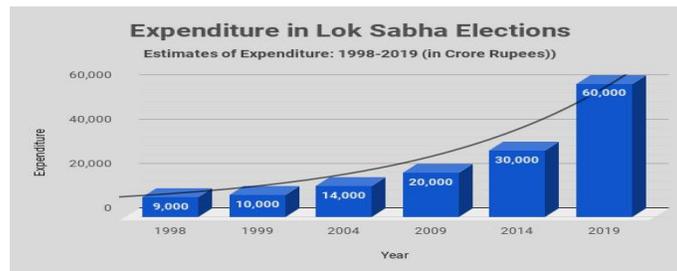


Figure 2: Estimated Election Expenditure in India (2004-2019)

The weakness of state institutions in certain regions of India also contributes to the perpetuation of this nexus. In areas where the formal state apparatus is weak or compromised, criminal networks often step in to provide parallel governance structures. These networks may offer protection, dispute resolution, and even basic services to local communities, creating a form of legitimacy that can be leveraged for political gain. This phenomenon is particularly prevalent in regions with a history of social unrest, economic underdevelopment, or weak law enforcement. The nature of India's electoral system, based on first-past-the-post voting, can inadvertently favor candidates with strong local influence and the ability to mobilize vote banks, even if through dubious means. In a fragmented political landscape, winning elections often comes down to small margins, making the support base of candidates with criminal networks particularly valuable to political parties.

Societal factors also play a role in perpetuating this nexus. In some contexts, there is a cultural acceptance or even admiration for "strongmen" politicians who are seen as being able to navigate a complex and often corrupt system to deliver results for their constituents. This perception is often reinforced by the ability of such politicians to use their influence and resources to provide quick, albeit extra-legal, solutions to local problems. The slow pace of the judicial system in India is another critical factor. The backlog of cases in Indian courts means that criminal cases against politicians can drag on for years, sometimes decades, without resolution. This delay allows accused individuals to continue their political careers, often rising to positions of greater power and influence while their cases remain pending. According to data from the Supreme Court, as of September 2023, over 4,500 cases were pending against sitting and former legislators in special courts set up to try such cases (Jaffrelot and Verniers, 2024).

Status	Number of Cases	Percentage
Pending	4,589	81%
Disposed	1,078	19%
Total	5,667	100%

Table 3: Status of Cases Against Politicians in Special Courts (as of September 2023)

Table 3 illustrates the significant backlog in cases against politicians, highlighting the challenges in swiftly addressing criminality in politics through the judicial system.

The lack of internal democracy within political parties is another perpetuating factor. The centralized nature of decision-making in many Indian political parties means that ticket distribution is often based on calculations of winnability and financial capacity rather than the character or qualifications of candidates. This system disadvantages grassroots leaders and honest politicians who may lack the resources or connections to secure party nominations. Additionally, the fragmentation of the political landscape in many states has led to coalition politics becoming the norm. In this scenario, even small parties or independent candidates with a criminal background but a loyal vote bank can wield disproportionate influence, often becoming kingmakers in the formation of governments. The role of money in politics extends beyond campaign financing to include the ongoing need for funds to maintain party organisations and patronage networks. This creates a symbiotic relationship between politicians and their financiers, some of whom may have criminal backgrounds or engage in illegal activities. Breaking this cycle of mutual dependence is a significant challenge in addressing the political-criminal nexus. Lastly, the lack of sustained public mobilisation against criminalisation in politics is a significant factor. While there have been moments of heightened awareness and activism, such as during the India Against Corruption movement in 2011-12, these have not translated into consistent pressure for systemic reforms. The complexity of the issue, coupled with voter fatigue and sometimes cynicism, has made it challenging to maintain public momentum for change. The root causes and perpetuating factors of the political-criminal nexus in India are deeply entrenched and multifaceted. They span historical legacies, institutional weaknesses, economic realities, social dynamics, and political structures. Addressing this challenge requires a comprehensive approach that tackles these various dimensions simultaneously. It calls for not just legal and institutional reforms, but also broader societal changes in attitudes towards criminality in politics and a reimagining of political leadership and governance in India.

Conclusion:

The persistence of the political-criminal nexus in India represents a significant challenge to the integrity of the electoral process and the quality of democratic governance in the world's largest democracy. This comprehensive review has explored the multifaceted nature of this issue, examining its historical roots, current manifestations, legal and institutional responses, and broader implications for Indian democracy. The data on the prevalence of elected representatives with criminal backgrounds paints a concerning picture of the extent to which criminality has become entrenched in Indian politics. The trend of increasing numbers of MPs and MLAs with criminal cases, including serious charges, underscores the urgency of addressing this issue. It reflects not just a failure of the electoral system to filter out unsuitable

candidates but also deeper societal and political dynamics that allow and sometimes even reward the intersection of criminality and political power.

The legal and institutional framework has laid important foundations for reform, including Supreme Court judgments, legislative measures, and Election Commission guidelines. However, the limited impact of these measures in stemming the tide of criminalisation in politics highlights the complexity of the issue and the need for a more comprehensive approach. The gaps between legal provisions and their implementation, the slow pace of the judicial process, and the adaptability of entrenched power structures all contribute to the persistence of this problem. The impact of the political-criminal nexus on electoral integrity is profound and multifaceted. It distorts the very essence of democratic representation, undermines the rule of law, erodes public trust in democratic institutions, and creates barriers to entry for honest and qualified individuals in politics. Addressing the root causes and factors requires not just political will but a broader societal engagement with the values and practices that sustain democracy. It calls for a reimagining of political leadership, a strengthening of democratic institutions, enhanced voter awareness and engagement, and a broader cultural shift in attitudes towards criminality in public life.

To reduce the influence of money power in elections, these solutions have been found- exploring models of public funding, enhancing transparency in political donations, and strengthening the auditing of election expenses. Moreover, it is recommended to enhance voter education and awareness programs to empower the electorate with information and encourage more discerning voting choices. This should go hand in hand with efforts to address the socio-economic factors that make voters vulnerable to the influence of criminal politicians. Promoting internal democracy within political parties and encouraging the emergence of new leadership based on merit and integrity rather than financial capacity or criminal influence. This issue can also be resolved by strengthening civil society and media's capacity to monitor and report on political criminality, including protection for whistleblowers and journalists investigating these issues.

As the world's largest democracy, India's success or failure in tackling this challenge will have significant implications not only for its own future but also for the global discourse on democratic governance in the 21st century. The path forward requires sustained commitment, innovative approaches, and a collective effort from all segments of society to uphold the principles of clean and effective democratic governance.

References:

1. Aristotle. (2013). Aristotle's "Politics": Second Edition (C. Lord, Ed.; C. Lord, Trans.). University of Chicago Press.
2. Association for Democratic Reforms (ADR). (2024). "Analysis of Criminal Background, Financial, Education, Gender and other details of Winners in the Lok Sabha 2024."

3. Basu, D. and Chandra, A. (2024). "The Persistence of Political Dynasties in Indian Democracy." *American Political Science Review*, 118(2).
4. Chandra, K. (ed.) (2024). "Democratic Dynasties: State, Party and Family in Contemporary Indian Politics." Cambridge University Press.
5. Chatterjee, M. (2024). "Digital Democracy: The Impact of Social Media on Indian Elections 2024." SAGE Publications.
6. Chhokar, J. (2024). "Electoral Reforms in India: Challenges and Opportunities." Routledge.
7. Gandhi, M. (1934, September 18). *The Bank Chronicles*.
8. International IDEA. (2024). "The Global State of Democracy 2024." Stockholm.
9. Jaffrelot, C. and Verniers, G. (2024). "The BJP's 2024 Mandate: Social Coalitions and Political Dominance." *Economic and Political Weekly*, 59(22).
10. Kumar, S. et al. (2024). "Electoral Integrity Index: A Comparative Study of South Asian Democracies." *Journal of Democracy*, 35(3).
11. Locke, J. (1997). *The second treatise of government* (T. P. Peardon, Ed.). Macmillan.
12. Lokniti-CSDS. (2024). "National Election Study 2024".
13. Malik, Y.K. and Singh, V.B. (2024). "Hindu Nationalists in Power: From Margin to Center in Indian Politics." Lynne Rienner Publishers.
14. Mehta, P.B. and Vaishnav, M. (eds.) (2024). "The Oxford Handbook of Indian Democracy." Oxford University Press.
15. Plato. (2016). *The Republic of Plato* (A. Bloom, Ed.; A. Bloom, Trans.). Basic Books.
16. Shastri, S. and Ayyangar, S. (2024). "The 2024 Indian General Election: Money, Muscle and Media." SAGE Publications.
17. Vaishnav, M. and Hinton, J. (2024). "The Changing Landscape of Political Funding in India." Carnegie Endowment for International Peace.



ONE NATION ONE ELECTION: A LEGAL STUDY

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Abstract:

The idea of "One nation, one election" means electoral reform in India aimed at synchronizing elections for the Lok Sabha (Parliament) and all State Assemblies to held simultaneously. The aim is to streamline the electoral process, reduce costs, and ensure political stability. The idea has been discussed for years and is seen as a way to improve governance by minimizing disruptions caused by frequent elections.

The Supreme Court in Mohinder Singh Gill & Anr vs The Chief Election Commissioner has held that: "Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, making his vote at the poll does a social audit of his Parliament plus political choice of his proxy. Although the full flower of participative government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions".

Background:

The idea of simultaneous elections is not a new of India. The adoption of the constitution and the elections of the first Lok Sabha and all state legislative assemblies conducted simultaneous in 1951-52. A practice that continued three Lok Sabha and all state legislative Assemblies together subsequent general elections in 1957, 1962, and 1967.

However, this simultaneous election was disrupted in 1968 and 1969 due to premature dissolution of some State Legislative Assemblies. The Fourth Lok Sabha election was also dissolved prematurely in 1970. The fresh election held in 1971, Unlike the first, second and third Lok Sabha, which complete full five-year terms. The Lok Sabha was extended 1977 under Article 352 because of the declaration of National emergency by Indira Gandhi.

Then, a few Lok Sabha terms have full five year, such eighth Lok Sabha, tenth, fourteenth, and fifteenth, other including the sixth, seventh, Ninth, Eleventh, Twelfth, and thirteenth, were dissolved early.

timeline of key various Lok Sabha.

Lok Sabha	Date of sitting	Date of dissolution of Lok Sabha	Overall Term (approx)
First	13/05/1952	04/04/1957	5year
Second	10/05/1957	31/03/1962	5year
Third	16/04/1962	03/03/1967	5year
Fourth	16/03/1967	27/12/1970	3year&10moth
Fifth	19/03/1971	18/01/1977	5year10month
Sixth	25/03/1977	22/08/1*79	2year&5month
Seventh	21/01/1980	31/12/1984	5year
Eighth	15/01/1985	27/11/1989	5year
Nineth	18/12/1989	13/03/1991	1 year & 3 month
Tenth	09/07/1991	10/05/1996	5year
Eleventh	22/05/1996	04/12/1997	1year&6month
Twelfth	23/03/1998	26/04/1999	1year&1month
Thirteenth	20/10/1999	06/02/2004	4year&4month

Reducing Election Costs: The Impact of Simultaneous Elections

Elections in India involve massive financial expenditure by the government, the Election Commission, and political parties. Conducting simultaneous elections under the One Nation, One Election framework can significantly reduce this financial burden.

1. Government Expenditure Reduction

Lower Administrative Costs: Currently, elections are held frequently, requiring repeated deployment of election staff, security forces, and logistics. Simultaneous elections would consolidate these expenses.

Optimized Use of Resources: Expenses on Electronic Voting Machines (EVMs), ballot papers, polling booths, and other election infrastructure would be significantly reduced.

Reduced Burden on Security Forces: Frequent elections require a large deployment of police and paramilitary forces, affecting national security and law enforcement. One-time deployment for simultaneous elections would cut costs.

2. Lower Political Party Expenses

Reduced Campaign Costs: Political parties spend heavily on advertising, rallies, and public outreach. If elections happen once every five years instead of multiple times in different states, campaign costs would drop drastically.

Minimized Need for Fundraising: Frequent elections push parties into a continuous fundraising cycle, leading to financial stress and potential dependency on corporate donors. Simultaneous elections could bring more financial stability to parties.

3. Economic Benefits

Simultaneous elections would ensure smoother governance and economic stability. Less Disruption to Governance and Economy: Frequent elections lead to temporary halts in policy decisions due to the Model Code of Conduct (MCC).

Boost to Development Projects: Government projects and spending often slow down due to election-related restrictions. Holding elections together would allow uninterrupted progress on development initiatives.

Minimizing Disruptions: The Impact of Frequent Elections on Governance and Administration

Frequent elections in India create continuous political and administrative disruptions. The One Nation, One Election proposal aims to reduce these disruptions and enhance governance, policymaking, and overall administrative efficiency.

Impact on Governance

- **Policy Paralysis:**

When elections are held frequently, governments avoid taking bold decisions due to the Model Code of Conduct (MCC), which restricts new policy announcements and financial approvals.

Simultaneous elections would ensure governments have a stable, uninterrupted term to implement long-term policies.

- **Frequent Political Instability:**

Different states going to elections at different times lead to shifts in political focus and decision-making.

Consolidated elections would eliminate the short term politically short-term populist taken in between elections.

Effect on Policymaking

- **Disruption in Development Projects:**

Fireworks displays of government productivity are common in the build up to elections as there is a focus on electioneering instead of good governance.

All social welfare activities, including the building of public infrastructure and even economic advancement would be done without interruptions if there was only one election in

- **Increased Focus on Populism Over Long-Term Reforms:**

Structural reforms take a back seat when governments feel the need to intervene to stem the negative feeling of dissatisfaction resulting from too many elections.

Balanced policy making could be achieved through electing leaders every five years instead of the current frequency.

RELEVANT CONSTITUTIONAL PROVISIONS

Article 83(2)³⁸ - *Duration of Houses of Parliament.*

The House of the People, unless sooner dissolved, shall continue for [five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the House:

Article 85³⁹ - *Dissolution of Lok Sabha*

The President can dissolve the Lok Sabha on the advice of the Prime Minister.

Article 172(1) - *Duration of State Legislatures.*

“Every Legislative Assembly of every State, unless sooner dissolved, shall continue for [five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the Assembly: Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate”.

Article 174 - *Sessions of State Legislatures*

The Governor can dissolve a State Assembly.

Article 324 - *Role of the Election Commission*

The ECI is responsible for conducting free and fair elections.

2.2. Role of the Election Commission of India in One Nation, One Election

The *ECI* plays a crucial role in conducting free and fair elections in the country. If *One Nation, One Election* is implemented, the ECI's responsibilities will expand significantly to manage the logistics, legal framework, and execution of simultaneous elections at both the national and state levels.

Constitutional Authority of the ECI

The ECI is the foremost constitutional authority that administers elections across the country's territory. The ECI was established in terms of Article 324 of the Constitution of India for the purpose of supervising, directing and controlling the conduct of elections to the Parliament, State Legislature, and offices of the President and Vice President. The ECI is authorized to ensure free, fair and transparent elections, which is a requisite feature to uphold the democratic principles of the country.

The Election Commission of India is an independent and autonomous body, free from any political interference. To preserve neutrality in election

³⁸ *M.P. Jain: Indian Constitutional Law: Lexis Nexis: 8th ed. 2021.*

³⁹ *Ibid*

management, the Chief Election Commissioner and other election commissioners are appointed by the president of India for a fixed tenure. The ECI can enforce the Model Code of Conduct (MCC), oversee political party operations, and make sure political parties follow election laws.

In the context of *One Nation, One Election*, the role of the ECI would become even more significant. Planning coordinated elections at national and state level will require enhanced logistics, voter management and security. To make it happen, the ECI will have to conduct elections in all states and union territories at once. This should not affect the fairness of elections. It would need to ramp up technology people and laws for the same.

Nonetheless, there are certain difficulties in increasing the constitutional power of the ECI to implement ONOE. As the existing legal framework does not provide for synchronized elections, that would require constitutional amendments and legislative backing, the same would be required. Elections in India are conducted based on a federal structure, hence the ECI must work in close coordination with state election commissions so that it does not infringe upon the autonomy of state governments.

Furthermore, cases like *S.R. Bommai v. Union of India*⁴⁰ highlight the significance of federalism, so it is important that ONOE does not violate the constitutional provisions that safeguard the autonomy of the states. Efforts to enhance the powers of the ECI should be well thought out to ensure that they do not interfere with the democratic representation of the country.

In conclusion, although the Election Commission of India plays a vital role in the electoral process, it needs to expand its constitutional authority to supervise One Nation, One Election effectively. To ensure a successful One Nation One Election that upholds India's democracy and federalism, there is a need to strengthen the ECI's infrastructure, enhance its working capacity and ensure a robust legal framework.

- Established under Article 324 of the Constitution, the ECI is responsible for conducting elections to:
 - The Lok Sabha⁴¹ (Parliament)
 - The State Legislative Assemblies
 - The President and Vice President of India
- However, the Constitution does not currently mandate simultaneous elections, requiring the ECI to work within existing laws.

2. Key Responsibilities of the ECI in Implementing *One Nation, One Election*

A. Planning & Execution of Simultaneous Elections

Conducting simultaneous elections under the One Nation, One Election model is no easy feat as it involves meticulous planning and coordination between various parties including the Election Commission of India, central and state governments, law enforcement agencies and political parties. In order for

⁴⁰ AIR1994 SC

⁴¹ M.P. Jain: *Indian Constitutional Law*: Lexis Nexis: 8th ed. 2021.
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ONOE to be successful, there must be provisions regarding electoral logistics, technology, security, and laws. In carrying out simultaneous elections, planners would first need to ensure synchronisation of terms of Lok Sabha and State Legislative Assemblies. Because of various cycles of elections in India due to dissolution or completion of tenure, all elections are to be aligned through constitutional amendments in Article 83, 172 and 356. A staggered implementation plan, as suggested by the Law Commission and Election Commission, could be an effective strategy, bringing states along for the ride to simultaneous elections.

One of the most important things that you have to think about when executing ONOE is logistical preparedness. Conducting elections across the country on the same day, or within a short window, would require enormous logistical deployment of election staff, voting machines, and polling stations. The ECI will have to see that there are enough Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trail (VVPAT) systems to meet the demand. Also, different types of technologies like voting through blockchain and centralised electoral database can make the management effective and efficient.

A successful ONOE (One Nation, One Election) execution relies significantly on security arrangements. Large-scale elections entail the deployment of a large number of security forces to avert electoral malpractices, ensure law and order and maintain the safety of the voting officials as well as voters. Central paramilitary forces and state police departments will need to work together to deal with region-specific security issues and maintain peace during polls.

To ensure maximal participation and confusion free process, it is important to conduct public awareness and voter education campaigns over the new electoral process. As ONOE would be a major change from the present system, voters should be made aware of its advantages, voting methods, and effects of synchronized elections on governance and policy implementation. The Election Commission can work with civil society groups and the media to hold campaigns that help people understand their voting rights. To execute ONOE well, the concerns of regional political parties must be adequately addressed. Local issues tend to dominate the regional elections, thus centralising election cycles may weaken the importance of local governance issues. To ensure adequate representation and a level playing field in elections, some legal provisions must be provided to safeguard the interest of smaller political parties and regional voices.

Finally, legal reforms would be necessary to institutionalize ONOE within the Indian electoral framework. Amendments to the Representation of the People Act, 1951, and other relevant statutes would be required to define the operational guidelines for simultaneous elections. Clear dispute resolution mechanisms must be established to address election-related conflicts effectively and maintain the integrity of the electoral process.

In conclusion, the planning and execution of simultaneous elections demand a well-coordinated effort, extensive logistical preparedness, legal amendments,

technological advancements, and broad political consensus. While ONOE presents several benefits, including reduced election expenditure, improved governance continuity, and minimized electoral disruptions, its successful implementation would require addressing constitutional, administrative, and security challenges to uphold the democratic values of India.

- Synchronizing elections for **543 Lok Sabha seats and 4,000+ State Assembly seats**.
- Ensuring **uniform voting procedures** across all states and Union Territories.
- Coordinating with **state election commissions** and administrative bodies.

B. Legal and Constitutional Amendments

- Assisting the government and Parliament in drafting necessary *constitutional amendments* (Articles **83, 85, 172, 174, 356**).
- Amending the **Representation of the People Act, 1951**, to align electoral processes.

C. Electoral Infrastructure & Logistics

- **Mass Deployment of EVMs & VVPATs**: Ensuring adequate Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trail (VVPAT) machines across the country⁴².
- **Polling Booth Management**: Setting up lakhs of polling stations with trained personnel.
- **Security Arrangements**: Deploying police and paramilitary forces nationwide to prevent election-related violence.

D. Addressing Political & Administrative Challenges

- Ensuring **regional parties' interests are safeguarded**, preventing national parties from overshadowing state-level concerns.
- Handling **mid-term government collapses** and by-election procedures.
- Coordinating with **state governments and opposition parties** to build political consensus.

E. Voter Awareness & Participation

- Conducting large-scale **voter education programs** to ensure clarity on simultaneous elections.
- Enhancing voter participation by **reducing election fatigue** and increasing awareness campaigns.

Conclusion:

India's system of government is federal, which means power is divided between the national and state governments. The One Nation, One Election is a great challenge to the federal structure as it aims to unify elections. The

⁴² <https://indianexpress.com/article/explained/3-mn-evms-massive-security-and-funds-challenges-in-holding-simultaneous-polls-8920400/> (last seen 30 jan 2025)

Constitution grants authority to both the Union and state governments under India's quasi-federal structure. Elections are important for political accountability in the states, and if leaders seek re-election and become elected again, it would curtail the autonomy of the state governments. Therefore, there arise conflict. One of the reasons that bother the autonomy of the state government is their One Nation, One Election. Simultaneous elections may provide better governance and less burden of continuous elections, but may impact state's autonomy as elections are an important tool for states to ensure accountability of political parties.

One Nation, One Election arise from the Constitution's provisions on elections. Articles 83 and 172 provides that the Lok Sabha and State Assemblies shall have a tenure of five years subject to their being dissolved earlier. Implementation of ONOE would necessitate constitutional amendments to these provisions that would require a significant political consensus. President's Rule can be clamped in a state under Article 356 but if a state government is dismissed before expiry of its term complexities may arise as it may disturb synchronized election.

To implement ONOE, changes will have to be made to Article 324, which gives powers to the Election Commission of India to conduct elections, and Article 368, which explains the method for amending the Constitution. It is not easy to get the approval of majority of states as electoral autonomy is a critical issue for states. The implementation of ONOE may also face difficulties owing to political opposition from regional parties who benefit from separate elections.



LEGAL FRAMEWORK ADDRESSING SEXUAL HARASSMENT IN INDIA

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Abstract:

Sexual harassment is a serious violation of women's rights, dignity, and workplace safety. The legal framework in India addressing this issue has evolved over the years through legislative, constitutional, and judicial interventions. The landmark case of *Vishaka v. State of Rajasthan* led to the creation of the Vishaka Guidelines, which laid the foundation for the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressed) Act, 2013 (POSH Act). In addition to the POSH Act, various provisions under the Indian Penal Code criminalize different forms of sexual harassment. The Indian Constitution also guarantees fundamental rights that protect women from harassment and discrimination. This chapter provides a detailed analysis of the legal framework governing sexual harassment in India, focusing on legislation, constitutional rights, judicial precedents, and institutional mechanisms.

Key Words: legislation, constitutional rights, judicial precedents, and institutional mechanisms

Introduction:

The preamble of the constitution of India provides for equality of status and opportunity that must be secured for all its citizens. A safe workplace is a priority and a fundamental requirement of women under the Constitutional dimensions of equality and personal liberty provided under Articles 14, 15 and 21 of the Indian Constitution..

This right to safe work place has been ratified by UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and also ratified by India as a member of international community¹. This convention has recognised the international bill of rights for women; it promoted equality of both genders with regard to human rights and fundamental freedoms in all spheres of human life. It emphasises on the norms that there is no case of any discrimination and attack on women's dignity as it violates the principle of equality of rights and liberty which amounts to Sexual harassment. It has rooted in patriarchy and perception exists in superiority of men to women².

One of such evil associated with workplace is sexual harassment that recognises various forms of such harassment, as harmless, trivial and inoffensive. Many a times it is excused as 'natural' male behaviour or 'harmless flirtation' that is perceived as enjoyed by women. Nevertheless, these perceptions, causes grievous harm and is a strong manifestation of sex discrimination at the workplace. It is an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business"³.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build proper and positive work environments that respect women's right to work, right to equality of status and opportunity. An effective implementation of the Act will contribute towards the realization of their right to gender equality, life and liberty, equality in working conditions, right to work and overall wellbeing of every human constituting the sensitive gender of women⁴.

The sense of security, protective environment at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth and overall personality development. However, available studies on sexual harassment shows that this evil do exist in India today and this is why the legislation is an important step forward to bring this offence under control and restrict its commission at all levels.

The official figures of women's work participation reveals that their participation is low and it is basically affected by unsafe work environment and less protective attitude. women's overall work participation should be 86.2 but the official figure shows that women's work participation rate is around

¹ Alok Bhasin, Law relating to sexual Harassment at Work, eastern Book company, Lucknow, 2nd edition, 2015, page no 178

² Handbook on Sexual Harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

³ Handbook on Sexual Harassment at workplace released by Ministry of women and children, Government of India 2015

⁴ Gupta Ritu, Sexual Harassment at workplace, Lexis Nexis, 1st edition, 2014

25.3 per cent in rural areas and 14.7 per cent in the urban areas which estimates that there is a huge workforce of women engaged in all these sectors without entitling to secure their workplace and attached benefits

It is important to give more emphasis on prevention rather than punitive action and hence mass awareness should be generated towards the Act from the end of employer's managers and the workers. The most vulnerable section of society that is women suffers this evil of sexual harassment and cry in silence but no action is taken to curb this act on their part. They need to realise that they should come in front to deal with it so that no fellow counterpart suffers the same wrong again and again. In order to change such ill attitudes, it is urgent to come up with measures to change mind-sets and attitudes of every section of society by creating awareness about sexual harassment and the steps that can be taken to address it and preventive measures given by the legislative inputs.

Section 1 and 2 of the Act⁵: This preliminary chapter I deal with the short title extent and commencement as well as definitions of sexual harassment, aggrieved woman, workplace etc. Section 2(a) defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. This Act recognizes the right to a safe and secure workplace environment. It is the right of all women working or visiting any workplace in the capacity of regular, temporary, ad hoc, or daily wages basis. They are protected by these provisions of law.

Definition of Sexual Harassment Under the POSH Act

As per Section 2(n) of the POSH Act, sexual harassment includes:

- Unwelcome physical contact or advances
- Sexually colored remarks
- Demand or request for sexual favors
- Showing pornography
- Any other unwelcome verbal, non-verbal, or physical conduct of a sexual nature

Relevant Provisions under the Indian Penal Code

While the POSH Act is designed to address workplace harassment, the Indian Penal Code (IPC) criminalizes broader forms of sexual harassment that occur in public spaces, workplaces, and online platforms.

A. Section 354 – Outraging the Modesty of a Woman

- Criminalizes physical assault or use of force with intent to outrage a woman's modesty.
- Punishment: 1 to 5 years imprisonment + fine.

B. Section 354A – Sexual Harassment

- Covers unwelcome physical contact, sexual advances, sexually colored remarks, and showing pornography without consent.
- Punishment: Up to 3 years imprisonment + fine.

⁵ The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013

C. Section 354D – Stalking

- Punishes repeated following, monitoring, or unwanted contact with a woman despite her disinterest.
- Punishment: Up to 5 years imprisonment for repeat offenders.

D. Section 509 – Insulting a Woman’s Modesty

- Criminalizes verbal harassment, gestures, or inappropriate remarks intended to insult a woman’s modesty.
- Punishment: Up to 1 year imprisonment + fine.

These IPC provisions ensure criminal action against perpetrators of workplace and public harassment, supplementing the POSH Act.

Role of the Indian Constitution in Addressing Sexual Harassment

The Indian Constitution plays a crucial role in addressing sexual harassment by guaranteeing fundamental rights that ensure equality, dignity, and safety for all individuals, particularly women. Various constitutional provisions have been invoked by courts to uphold women’s right to work in a safe environment and protect them from harassment and discrimination. Articles 14, 15, 19, and 21 are particularly significant in shaping India’s legal framework against sexual harassment.

1. **Article 14 – Right to Equality**

Article 14 of the Indian Constitution states:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

A. Protection Against Discrimination

This article guarantees equality before the law and prevents arbitrary discrimination based on gender, sex, caste, or religion.

It ensures that men and women are treated equally in all aspects of life, including employment and workplace rights.

B. Application in Sexual Harassment Cases

The Supreme Court of India has ruled that sexual harassment at the workplace violates Article 14, as it creates an unequal and hostile work environment for women.

The *Vishaka v. State of Rajasthan* (1997) case recognized workplace sexual harassment as a form of gender discrimination under Article 14.

Thus, Article 14 ensures that women have an equal right to work and be protected from sexual harassment.

2. **Article 15 – Prohibition of Discrimination on Grounds of Sex**

Article 15(1) of the Indian Constitution states:

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them."

A. Gender-Based Protection

This article explicitly prohibits the State and private entities from discriminating against women based on their gender.

It ensures that women have equal access to employment opportunities, legal protection, and workplace safety.

B. Special Provisions for Women (Article 15(3))

Article 15(3) allows the State to make special provisions for women and children.

This has enabled the government to introduce laws like the POSH Act, 2013, which provides special workplace protections for women.

C. Application in Sexual Harassment Cases

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court ruled that sexual harassment at the workplace amounts to gender-based discrimination under Article 15.

The government used Article 15(3) to justify the creation of the POSH Act, 2013, which is a special law aimed at protecting women from workplace harassment.

Thus, Article 15 ensures that women are not denied workplace rights due to their gender and allows for special legal protections.

3. Article 19 – Right to Freedom (Including Right to Work in a Safe Environment)

Article 19(1)(g) of the Indian Constitution states:

"All citizens shall have the right to practice any profession, or to carry on any occupation, trade, or business."

A. Protection of Workplace Rights

Article 19 ensures that every individual, including women, has the right to work and earn a livelihood in a safe environment.

If a woman is forced to leave her job due to sexual harassment, it directly violates her fundamental right to work.

B. Application in Sexual Harassment Cases

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court ruled that sexual harassment at the workplace violates Article 19(1)(g), as it prevents women from working in a safe and dignified environment.

In *Medha Kotwal Lele v. Union of India* (2013), the Court emphasized that workplace harassment restricts women's ability to freely pursue their profession.

Thus, Article 19 guarantees women the right to work in an environment free from harassment, intimidation, and fear.

4. Article 21 – Right to Life and Personal Dignity

Article 21 of the Indian Constitution states:

"No person shall be deprived of his life or personal liberty except according to the procedure established by law."

A. Right to Live with Dignity

The Supreme Court has interpreted "life" under Article 21 to mean a life with dignity, safety, and respect.

Sexual harassment is considered a violation of a woman's right to dignity, as it affects her mental and emotional well-being.

B. Application in Sexual Harassment Cases

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court ruled that sexual harassment violates a woman's right to live with dignity under Article 21.

In *Apparel Export Promotion Council v. A.K. Chopra* (1999), the Court held that sexual harassment is not just physical but also psychological, and it violates a woman's dignity.

In *Shafin Jahan v. Asokan K.M.* (2018), the Court reaffirmed that any action that violates a person's dignity and personal freedom is unconstitutional.

Thus, Article 21 guarantees women the right to live a life free from harassment, threats, and discrimination.

Judicial Precedents & Vishaka Guidelines

Sexual Harassment reveals some kind of unwanted, undesirable or unwelcome behaviour faced by the recipient. However, this 'Unwelcome' behaviour means any advance, request or conduct which was not solicited by the recipient and it is undesirable for her or offensive to her dignity. The most crucial element of Sexual Harassment is the nature of behaviour which must be established as unwelcome nature on the part of the victim and it must have to be non-consensual. However, a verbal NO is not necessary in all cases as in this context the degree of difficulty encountered by a complainant for proving un-welcomeness of behavior will depend only on the type of activity involved. It is not only overt but subtle indications of un-welcomeness may be sufficient to communicate that the conduct is unwelcome to her tolerance or silence will not necessarily mean that such behaviour is solicited or welcomed⁶.

Meritor Savings Bank v. Vinson

Introduction

The case of *Meritor Savings Bank v. Vinson*⁷ is a **landmark decision by the U.S. Supreme Court** that played a pivotal role in shaping workplace sexual harassment laws. The ruling clarified that even if an employee appears to "voluntarily" participate in sexual conduct with a superior, it does not necessarily mean that the conduct was **welcomed** or consensual in the legal sense. The case established that **a hostile work environment due to sexual harassment is a violation of Title VII of the Civil Rights Act of 1964** and that **employers can be held liable for such harassment**.

Background of the Case

The case involved **Mechelle Vinson**, a former employee of **Meritor Savings Bank**, and her supervisor, **Sidney Taylor**, who was the bank's Vice President. Vinson initially approached Taylor for a job, and he assisted her in securing a position at the bank. Over the next **four years**, she progressed from a **teller trainee to a teller, and eventually to a branch manager**.

After four years of employment, Vinson requested **indefinite sick leave**, which was denied, and she was later **terminated for excessive absenteeism**. Following her dismissal, she filed a **lawsuit against the bank and Taylor**, alleging that she had been subjected to **ongoing sexual harassment** throughout her employment. Vinson claimed that Taylor had **coerced her into**

⁶ Bhasin Alok, Law relating to sexual harassment at work, Eastern Book Company, Lucknow, 2nd edition, 2015 page no 30

⁷ **477 U.S. 57 (1986)**

a sexual relationship, made repeated sexual advances, and engaged in inappropriate workplace behavior, thereby creating a **hostile work environment**.

Taylor, on the other hand, **denied the allegations** and stated that no such conduct occurred between them. The bank also defended itself, arguing that **it could not be held liable for Taylor's actions** because it had no prior knowledge of the alleged harassment.

District Court Ruling

The District Court dismissed Vinson's claims, ruling in favor of Taylor and the bank. The court did not fully investigate the conflicting testimonies regarding the existence of a sexual relationship. Instead, it focused on the issue of voluntariness. The court found that even if a sexual relationship had existed, it was voluntary and therefore did not constitute sexual harassment.

The court reasoned that since Vinson was **not** forced into the relationship and did not explicitly resist Taylor's advances, she was not a victim of sexual harassment under Title VII. This ruling was based on the flawed assumption that "voluntary participation" equates to "welcome conduct."

Court of Appeals Ruling

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit disagreed with the lower court's conclusion. The appellate court found that the District Court had wrongly assumed that voluntariness meant the absence of harassment. The key issue, according to the appellate court, was whether the conduct was "**unwelcome**" rather than whether it was "**voluntary**."

The appellate court held that:

1. The existence of a sexual relationship does not automatically mean the conduct was welcome.
2. Passive tolerance of unwanted advances does not mean voluntary acceptance.
3. The trial court should have properly examined whether Vinson felt pressured or coerced into compliance due to the power dynamics in the workplace.

The Court of Appeals, therefore, remanded the case for further proceedings, requiring the lower court to reconsider the facts under the correct legal standard.

Supreme Court Ruling

The U.S. Supreme Court unanimously ruled in favor of Vinson, delivering one of the most important decisions on workplace sexual harassment. The Court clarified several key principles regarding sexual harassment under Title VII:

1. Hostile Work Environment Harassment is Prohibited

The Supreme Court ruled that sexual harassment is not limited to quid pro quo harassment, where job benefits are conditioned on sexual favors.

A hostile or abusive work environment also constitutes unlawful discrimination under Title VII of the Civil Rights Act of 1964.

2. "Unwelcomeness" is the Key Factor, Not "Voluntariness"

The Court rejected the District Court's voluntariness standard, stating that just because Vinson did not openly resist Taylor's advances does not mean she welcomed them.

The key question should have been whether the advances were "unwelcome", not whether she engaged in the conduct voluntarily.

3. Employer Liability for Sexual Harassment

The Supreme Court acknowledged that employers can be held liable for sexual harassment committed by their supervisors, even if the employer was unaware of the misconduct.

This ruling placed a significant responsibility on organizations to prevent and address sexual harassment in the workplace.

Impact of the Ruling

The *Meritor Savings Bank v. Vinson* decision had far-reaching implications for workplace policies on sexual harassment:

- **Expanded the definition of sexual harassment:** The ruling recognized that harassment is not just about economic coercion but can also include hostile work environments that make it difficult for employees to work.
- **Shifted the focus to "unwelcomeness":** It emphasized that courts should examine whether the conduct was unwanted, rather than whether the victim participated.
- **Increased employer responsibility:** The decision set the foundation for employer liability in workplace harassment cases, pushing companies to implement stronger anti-harassment policies.
- **Led to stricter sexual harassment laws:** Following this case, sexual harassment laws became more robust, and employers were required to adopt clear complaint mechanisms to address workplace misconduct.

Conclusion

Meritor Savings Bank v. Vinson (1986) was a groundbreaking decision that reshaped workplace harassment laws. It established the principle that passive tolerance of sexual advances does not imply consent, and that a hostile work environment can amount to unlawful discrimination. This ruling set a powerful precedent, ensuring that workplace sexual harassment cases focus on whether the conduct was unwelcome, rather than whether it was voluntary.

This case remains a foundational judgment in sexual harassment law, influencing later rulings in the United States and worldwide. It also played a key role in the development of workplace policies and anti-harassment legislation, ensuring greater protection for employees against workplace harassment and discrimination.

*Ellison v. Brady*⁸, is a significant case in United States employment law, particularly in the area of sexual harassment. The decision, issued by the Ninth Circuit Court of Appeals, helped shape the standard for evaluating sexual harassment claims by emphasizing the perspective of the victim rather than the

⁸ 924 F.2d 872 (1991)

intent of the harasser. The case introduced the "reasonable woman" standard, which became a critical tool in assessing workplace harassment claims under Title VII of the Civil Rights Act of 1964.

The case involved the plaintiff, Kerry Ellison, who worked for the Internal Revenue Service (IRS) in San Mateo, California. She accused her co-worker, Gray Brady, of engaging in unwanted and inappropriate conduct that made her feel uncomfortable and unsafe. Brady had written personal letters to Ellison, which she found disturbing. The letters contained emotional and romantic expressions that Ellison did not reciprocate. Although the letters did not contain explicit threats or physical aggression, Ellison felt uncomfortable with Brady's behavior and reported the incidents to her superiors.

Brady's actions did not stop at the letters. He continued to seek interactions with Ellison, creating an atmosphere of unease. She became increasingly anxious and fearful that his behavior could escalate. As a result, she sought intervention from her supervisors at the IRS. However, instead of taking meaningful action to prevent further harassment, the agency merely transferred Brady to another office for a short period and later allowed him to return to the same workplace as Ellison. This action caused further distress to Ellison, as she felt that the response was inadequate and did not prioritize her safety or well-being.

Ellison filed a lawsuit under Title VII of the Civil Rights Act, claiming that the IRS had failed to adequately address sexual harassment in the workplace. The central issue before the Ninth Circuit was whether Brady's behavior constituted sexual harassment under the law and whether the IRS had acted appropriately in handling the complaint. The lower court had ruled in favor of the IRS, holding that Brady's conduct did not create a hostile work environment because it was not sufficiently severe or pervasive. However, the Ninth Circuit reversed this decision and set an important precedent in the interpretation of workplace harassment.

One of the key contributions of the *Ellison v. Brady* ruling was the introduction of the "reasonable woman" standard. Traditionally, courts had evaluated sexual harassment claims using a "reasonable person" standard, which often reflected male perspectives on what constituted acceptable workplace behavior. The Ninth Circuit recognized that women often experience and perceive workplace interactions differently from men. The court held that the proper standard for evaluating sexual harassment claims should be whether a reasonable woman in the victim's position would find the conduct to be intimidating, hostile, or abusive.

The court emphasized that sexual harassment does not require overt physical threats or explicit sexual propositions to be considered unlawful. Instead, the focus should be on whether the behavior created an environment that made the victim feel uncomfortable and affected their ability to work. The ruling acknowledged that certain behaviors, even if seemingly minor to an outsider, could be deeply unsettling to the person experiencing them, particularly in the context of gender dynamics and power imbalances in the workplace.

The court's decision also underscored the responsibility of employers to take sexual harassment complaints seriously. It criticized the IRS for failing to take adequate action to prevent further harm to Ellison. By merely transferring Brady temporarily and allowing him to return, the agency failed to provide a meaningful solution that ensured Ellison's workplace remained free from harassment. The court made it clear that employers must respond to harassment complaints with measures that effectively protect employees from continued distress and potential retaliation.

Ellison v. Brady had a lasting impact on employment law and workplace policies in the United States. By establishing the "reasonable woman" standard, the case helped courts better assess sexual harassment claims from the perspective of victims rather than focusing on the intentions of the alleged harassers. This approach made it easier for victims of workplace harassment to seek legal recourse and contributed to the broader recognition of psychological and emotional distress as valid components of a hostile work environment claim.

The ruling also led to significant changes in how organizations handle sexual harassment complaints. Employers became more aware of the need to implement clear policies, provide training on workplace conduct, and take swift action when employees report harassment. The case reinforced the idea that harassment need not be physical or overtly sexual to be considered unlawful and that subtle but persistent behaviors can also create an intimidating or hostile work environment.

Conclusion

In conclusion, Ellison v. Brady remains a landmark case in sexual harassment law. By shifting the focus from the intent of the harasser to the perception of the victim, the ruling played a crucial role in strengthening workplace protections for women and other vulnerable employees. It set a precedent for evaluating harassment claims through the lens of those affected, ensuring that courts and employers take complaints seriously and provide meaningful remedies to prevent further harm. The decision continues to be cited in sexual harassment cases and serves as an important milestone in the ongoing effort to create safer and more equitable workplaces.



TRANSPARENCY AND FAIRNESS IN ELECTORAL PROCESS

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Abstract:

Electoral transparency and fairness constitute fundamental prerequisites for legitimate democratic governance. This examination explores the critical role these principles play in establishing credible elections that accurately reflect the will of the electorate. Transparency in electoral processes encompasses comprehensive disclosure of procedures, unrestricted observation opportunities, and verifiable record-keeping throughout all election phases. Fairness requires equitable treatment of all participants, impartial administration, and absence of systemic advantages or disadvantages. The study identifies multiple challenges to achieving these ideals, including opaque campaign financing, unequal media access, administrative biases, and technological vulnerabilities in voting systems. Particularly concerning are emerging threats from digital misinformation campaigns and the potential for algorithmic manipulation of voter perceptions. These issues disproportionately affect marginalized populations, potentially distorting electoral outcomes and undermining representative democracy. Effective solutions require a multi-dimensional approach incorporating legal frameworks, institutional safeguards, and technological innovations. Key recommendations include establishing independent electoral commissions with robust oversight powers, implementing comprehensive auditing mechanisms, and developing secure digital infrastructure for voter registration and balloting. The analysis emphasizes that meaningful progress depends on synergistic efforts between government institutions, civil society organizations, and international observers. When properly implemented, transparent and fair electoral processes yield significant democratic dividends, including enhanced public trust, reduced political violence, and greater stability in governance transitions.

The study concludes that ongoing vigilance and adaptation are necessary to address evolving challenges to electoral integrity in an increasingly complex political and technological landscape.

Keywords : Democratic governance, Voting systems, Election observation, digital democracy, electoral reforms

Introduction:

Democracy thrives when electoral processes embody transparency and fairness, ensuring that the voice of every citizen is both heard and respected. As the world's largest democracy, India's electoral system exemplifies a complex yet meticulously structured framework designed to uphold these democratic ideals. Governing over a diverse population of more than a billion people, the Indian electoral machinery faces the formidable task of conducting free and equitable elections across varied linguistic, cultural, and geographical landscapes.

Central to this endeavor is the Election Commission of India (ECI), an autonomous constitutional authority entrusted with overseeing elections with impartiality. The ECI's mandate includes enforcing stringent guidelines, such as the Model Code of Conduct, which regulates political conduct to prevent malpractice and ensure a level playing field. Innovations like Electronic Voting Machines (EVMs), introduced to enhance accuracy and reduce tampering, and the Voter Verifiable Paper Audit Trail (VVPAT), which provides a physical record for voter validation, underscore India's commitment to technological integration for electoral integrity.

Inclusivity remains a cornerstone of the system, with initiatives to empower marginalized communities, gender-sensitive polling stations, and provisions for remote voters. Despite these advancements, challenges such as campaign financing transparency and misinformation persist, prompting ongoing reforms. Through continuous adaptation and public trust-building measures, India's electoral framework strives to reflect the collective will of its people, reinforcing the democratic ethos that governance derives its legitimacy from the electorate's informed consent.

This dynamic interplay of institutional rigor, technological innovation, and participatory ethos highlights India's dedication to preserving the sanctity of its elections, ensuring they remain a beacon of democratic resilience in a rapidly evolving world. By balancing tradition with innovation, the Indian electoral framework strives to uphold democratic values, ensuring that every vote counts and every voice matters. This ongoing evolution reinforces India's position as a global example of a functioning large-scale democracy, where transparency and fairness remain fundamental to the electoral ethos.

Transparency and Fairness in the Indian Electoral System

India's electoral system, the largest democratic exercise in the world, is designed to ensure free and fair elections through institutional safeguards,

¹ Association for Democratic Reforms (ADR) v. Union of India (2024)

technological innovations, and legal frameworks. The Election Commission of India (ECI), an autonomous constitutional body, oversees this complex process to maintain integrity, inclusivity, and transparency. This essay examines the mechanisms that uphold electoral fairness in India, the challenges faced, and potential reforms for a more robust democracy.

1. Institutional Framework for Electoral Integrity

The Election Commission of India (ECI), established under Article 324 of the Constitution, is the apex body responsible for administering elections. Its autonomy ensures impartiality, though concerns persist regarding political influence in appointments.

Appointment Process : The *Chief Election Commissioner (CEC)* and Election Commissioners (ECs) are appointed by the President on the advice of the Prime Minister. Recent debates advocate for a more transparent, bipartisan selection process to enhance credibility.²

Powers & Functions : The ECI enforces the *Model Code of Conduct (MCC)*, supervises electoral rolls, and monitors campaign expenditures. It can disqualify candidates, postpone elections, and issue directives to government officials.³

2. Technological Advancements for Transparency

India has adopted several technological solutions to minimize electoral fraud and enhance voter confidence.

Electronic Voting Machines (EVMs) : Introduced to eliminate ballot tampering, EVMs are standalone devices with no internet connectivity, making hacking nearly impossible.

Voter-Verified Paper Audit Trail (VVPAT) : Mandated by the Supreme Court, VVPATs provide a paper trail for voters to verify their choices. In 2024, 10% of EVMs per constituency underwent VVPAT audits, reinforcing trust.⁴

Digital Voter Registration : The *National Voters Services Portal (NVSP)* allows online registration, corrections, and tracking of voter details, reducing errors in electoral rolls.

Criticisms & Rebuttals :

Allegations of *EVM tampering* persist, but the ECI has conducted *public demonstrations* and hackathons to prove their reliability. *VVPAT verification delays* remain a concern, with demands for *100% counting* of paper slips.

3. Ensuring Inclusivity and Accessibility

The Indian electoral system emphasizes *universal suffrage*, ensuring participation from all sections of society.

² Anoop Baranwal v. Union of India (2023 verdict impact in 2024)

³ Rahul Gandhi v. Union of India (2023-24) (Disqualification Case)

⁴ Subramanian Swamy vs. Election Commission of India.

Reservation for Marginalized Groups : 84 seats in the Lok Sabha are reserved for Scheduled Castes (SCs) and 47 for Scheduled Tribes (STs) to ensure political representation.

Gender Equality : The *Women’s Reservation Bill (2023)* mandates 33% seats for women in Parliament and state legislatures, though implementation awaits post-2026 delimitation.

4. Regulatory Mechanisms Against Electoral Malpractices

To curb corruption and unethical practices, India has established strict regulations.

Model Code of Conduct (MCC) : A set of guidelines prohibiting hate speech, bribery, and misuse of government resources during elections. However, enforcement remains weak due to *lack of legal penalties*.

Campaign Finance Reforms : The *Electoral Bonds Scheme*, struck down by the Supreme Court in 2024, was criticized for enabling anonymous donations.⁵

Spending limits (70–95 lakh per Lok Sabha candidate) aim to prevent financial dominance, but *underreporting* is rampant.

5. Challenges to Electoral Fairness

Criminalization of Politics : 45% of 2024 Lok Sabha candidates had criminal cases, per the Association for Democratic Reforms (ADR).

Disinformation & AI Manipulation : Deepfake videos and fake news spread rapidly, complicating the ECI’s monitoring efforts.⁶

Violence & Intimidation : States like *West Bengal* and *Bihar* reported clashes, necessitating heavy security deployment.

6. Regional Flashpoints

West Bengal : Over 200 incidents of violence were reported, including clashes between TMC and BJP workers. Central forces deployed 822 companies to stabilize polling.

Kashmir : Post-Article 370, the Valley saw 52% turnout—the highest in 35 years—but allegations of coercion by security forces surfaced.

Key Statistics (2024 Elections)

Metric	Data
Total Voters	968 million
Voter Turnout	67.4%
Women MPs Elected	94 (14% of Lok Sabha)
Seats Reserved (SC/ST)	131 (84 SC, 47 ST)
EVMs Used	5.5 million + VVPATs
MCC Violations Reported	1.5 million (via eVIGIL)
Cash/Liquor Seized	15,000 crore

⁵ Association for Democratic Reforms (ADR) v. Union of India, 2024 INSC 152 (Supreme Court of India).

⁶ ECI’s Advisory on Deepfakes & Fake News (2024)

As India's democracy matures, the interplay of technology, judicial oversight, and civil society vigilance will determine whether it can bridge the gap between procedural fairness and substantive equity.

Emerging Threads in the Indian Electoral System

India's electoral democracy, while robust, faces evolving challenges that test its commitment to transparency and fairness. Below is an in-depth exploration of *key emerging threads* shaping the system today, supported by recent developments and data :

1. Technological Innovations and Cybersecurity

a. EVMs, VVPAT, and Trust Deficits

Post-2024 Debates : Despite the ECI's claims of EVM infallibility, opposition parties and civil society groups (e.g., *ADR*) continue to demand cross-verification of 100% VVPAT slips, citing concerns about machine tampering. The Supreme Court's 2024 refusal to mandate full verification reignited debates on public confidence.

Blockchain Pilots : States like Telangana and Karnataka are experimenting with blockchain-based voting for remote populations (e.g., migrant workers), though scalability and literacy barriers persist.

b. Digital Misinformation and Deepfakes

AI-Generated Content : The 2024 elections saw deepfake videos of politicians like Narendra Modi and Rahul Gandhi spreading polarizing narratives. The ECI's collaboration with Meta and Google to flag fake news remains reactive, not preventive.

Social Media Vigilance : Platforms like WhatsApp limited message forwarding during elections, but encrypted apps remain conduits for hate speech and voter suppression tactics.

2. Campaign Finance and Opacity

a. Post-Electoral Bonds Era

2024 SC Verdict : The Supreme Court's scrapping of electoral bonds (2018–2024) as "unconstitutional" exposed anonymous corporate-political funding. Post-verdict, parties must disclose donor identities, but loopholes persist (e.g., cash donations under 20,000).

State Funding Proposals : The Law Commission's 2023 recommendation for partial state funding of elections aims to curb black money but faces resistance due to fiscal constraints.

b. Rising Election Expenditure

Lok Sabha 2024 Costs : Estimated at ₹1.2 lakh crore (\$14.4 billion), India's elections are now the world's most expensive. Unregulated spending by "shadow campaigns" (NGOs, religious groups) skews the playing field.

3. Criminalization and Representation Gaps

a. Criminals in Politics

ADR's 2024 Report : 43% of newly elected MPs face criminal charges (11% for serious offenses like murder). Fast-track courts for politicians, proposed since 2017, remain unimplemented.

Voter Apathy : A 2023 CSDS survey found 68% of youth believe criminal candidates erode trust in democracy.

b. Gender and Marginalized Communities

Women's Representation : The *Women's Reservation Bill (Nari Shakti VandanAdhiniyam)*, passed in 2023, reserves 33% of Lok Sabha seats for women but delays implementation until 2029. Currently, women hold just 14% of seats.

LGBTQ+Voters : Despite a 2018 Supreme Court ruling decriminalizing homosexuality, transgender voters face exclusion due to gendered electoral rolls and lack of sensitization among polling staff.

4. Legal and Institutional Reforms

a. Judicial Activism

Electoral Bond Case : The SC's 2024 intervention exemplifies judicial efforts to enforce transparency, but delayed rulings (e.g., disqualification petitions under the *Anti-Defection Law*) undermine accountability.

Electoral Reforms Panel : A proposed *National Electoral Reforms Commission* (modeled after the 1990 Dinesh Goswami Committee) could address gaps in MCC enforcement and voter privacy.

b. ECI's Autonomy Debate

Appointment Controversy : The 2023 Supreme Court ruling mandating a neutral panel (PM, LoP, CJI) for ECI appointments remains unimplemented. Critics argue the current executive-dominated process risks bias.

5. Regional and Security Challenges

a. Conflict Zones

Jammu & Kashmir : Post-2019 reorganization, the 2024 elections saw record turnout (58%), yet allegations of militarized coercion and internet shutdowns persist.

Maoist-Affected Areas : In Chhattisgarh and Jharkhand, voter intimidation by insurgents and security forces complicates free participation.

b. Urban-Rural Divide

Voter Turnout Gaps : Urban apathy (45% turnout in Mumbai in 2024) contrasts with rural mobilization, raising questions about equitable representation.

6. Civil Society and Grassroots Mobilization

Youth Advocacy : Movements like *Yuva Halla Bol* push for voter education and anti-corruption pledges.

ADR's Electoral Watch : Real-time tracking of candidate affidavits and expenditure has empowered voters but faces political pushback (e.g., defamation lawsuits).

India's electoral system is at a crossroads, balancing technological advancements with systemic inequities. While institutions like the ECI and judiciary strive to uphold integrity, emerging threats—digital manipulation, criminalization, and opaque funding demand urgent, structural reforms. A collaborative approach involving lawmakers, civil society, and citizens is

critical to preserving the world's largest democracy as a beacon of transparency and fairness.

Electoral Reform and Solution for Indian Democracy

1. Strengthening Legal Frameworks

Fast-Track Electoral Disputes : Establish specialized courts to expedite resolution of election-related cases, ensuring timely justice and deterring malpractice.

Decriminalization of Politics : Bar candidates facing serious criminal charges (e.g., offenses punishable by 5+ years) from contesting until acquitted, balancing presumption of innocence with public interest.

Anti-Hate Speech Laws : Enforce stricter penalties for divisive rhetoric and mandate real-time removal of inflammatory content during campaigns.

2. Transparent Campaign Financing

Public Funding of Elections : Introduce partial state funding to reduce reliance on private donations, coupled with stringent spending caps monitored by independent auditors.

Donor Disclosure Mandates : Require political parties to disclose all donations above 20,000, with real-time public access to donation records via an ECI portal.

Audit Mechanisms : Conduct annual, independent audits of party finances, with penalties for non-compliance, including de-recognition.

3. Technological Enhancements

VVPAT Audit Expansion : Increase randomized VVPAT-EVM cross-verification from 5% to 20% of polling stations per constituency to bolster trust.

Remote Voting Solutions : Expand ETPBS for migrant workers and explore secure mobile/online voting pilots for designated groups.

Digital Ad Transparency : Mandate platforms to tag political ads, maintain a public repository of sponsors, and use AI to flag deepfakes/disinformation.

4. Empowering the Election Commission

Autonomous Appointments : Replace government-led commissioner appointments with a bipartisan committee (e.g., including judiciary, opposition leaders).⁷

Enhanced Enforcement Powers : Grant ECI authority to deregister parties for repeated violations and impose fines on candidates exceeding campaign limits.

5. Inclusivity and Accessibility

Gender and Disability Initiatives : Reserve polling stations staffed by women in underserved areas and ensure all booths have wheelchair access and braille guides.

⁷ Common Cause v. Election Commission of India, WP (C) No. 210/2024 (changing welfare schemes being used for campaigning).

Mobile Polling Units : Deploy temporary booths in remote/conflict-prone regions to maximize voter turnout.

6. Grassroots Monitoring and Education

Citizen Observer Networks : Train civil society volunteers to monitor campaigns and report irregularities via a centralized ECI app with real-time tracking.

Civic Education Curriculum : Integrate electoral literacy into school syllabi and launch public awareness campaigns on spotting misinformation.

Conclusion:

Transparency and fairness constitute the bedrock of any legitimate electoral process, serving as critical safeguards for democratic governance and societal trust. A transparent electoral framework ensures that every phase of the election—from voter registration and campaign financing to ballot casting and result tabulation—is conducted openly, with mechanisms in place for public scrutiny. For instance, accessible voter rolls, live-streamed counting processes, and comprehensive post-election audits allow citizens, civil society groups, and international observers to independently verify outcomes, mitigating suspicions of fraud or undue influence. Similarly, transparency in campaign financing, such as disclosing donor identities and expenditure limits, curbs the risk of covert manipulation by vested interests, ensuring that electoral competition remains rooted in equitable public discourse rather than financial dominance.



TRANSPARENCY AND FAIRNESS IN ELECTORAL PROCESS IN INDIA

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Abstract:

The electoral process in India is critical for the country's democratic functioning, as it reflects the will of its people. However, the transparency and fairness of these elections have been a topic of significant debate. This paper aims to explore the role of transparency and fairness in India's electoral process, examining the systems, mechanisms, challenges, and developments that influence the election outcomes. Through a detailed analysis of both the legislative framework and recent election trends, we assess the current status, issues, and the role of institutions such as the Election Commission of India in maintaining these core democratic principles. The paper also compares India's electoral process with that of other democratic nations and proposes suggestions for improvement to strengthen the integrity of elections.

Keywords: Electoral Process, Transparency, Fairness, Democracy, Election Commission of India, Electoral Integrity, Voter Identification, Voter Education, Electoral Reforms, Political Party Regulation.

Introduction:

India, the world's largest democracy, conducts elections at various levels, from local panchayats to national parliamentary elections. With over 900 million eligible voters, the Indian electoral process is one of the most complex in the world. The core pillars of any election system should be transparency and fairness. Transparency ensures the public trust in the electoral system, while fairness guarantees that every voter has an equal opportunity to participate, and every vote is counted accurately. However, despite improvements, India still faces significant challenges in ensuring these principles are upheld. This paper explores these issues in detail.

Historical Context of Elections in India

India's electoral process has evolved over decades since independence. The first general elections in 1951-52 were marred by logistical difficulties but marked the beginning of a democratic process. Over time, significant reforms have been introduced to ensure more inclusivity, such as the introduction of the Electronic Voting Machines (EVMs) and the system of Voter Verifiable Paper Audit Trail (VVPAT). This section traces the evolution of these reforms.

Legal Framework Governing Elections in India

The Constitution of India lays down the legal framework for elections. The Election Commission of India, an autonomous body, is responsible for administering elections and ensuring their fairness and transparency. Other key pieces of legislation include:

- Representation of the People Act (1950 & 1951)
- Electoral Bond Scheme (2018)
- The Conduct of Elections Rules (1961)

This section explores these laws in detail and how they influence the election process.

Role of Indian Judiciary in Securing Transparency and Fairness in the Electoral Process

The Indian judiciary has played a crucial role in upholding the principles of transparency and fairness in the electoral process. Through various landmark judgments, the Supreme Court has reinforced the fundamental rights of citizens, ensuring that democratic elections remain free, fair, and impartial. This role becomes even more significant in the face of executive overreach and legislative amendments that attempt to dilute electoral transparency.

Upholding the Basic Structure Doctrine:

One of the most significant judicial interventions in protecting electoral fairness was the striking down of the 39th Amendment to the Constitution. The Supreme Court held that placing the Prime Minister's election beyond judicial review violated the principle of separation of powers and the concept of free and fair elections, both of which form part of the Constitution's basic structure as established in the KesavanandaBharati case (1973). This judgment reaffirmed that no constitutional amendment can undermine fundamental democratic principles. [Indira Nehru Gandhi vs. Sri Raj Narain&Anr (1975) 2 SCC 159].

Independence of the Election Commission of India (ECI)

The judiciary has consistently upheld the autonomy and independence of the Election Commission of India. In *S. S. Dhanoa vs. Union of India* (AIR1991SC 1745), the Supreme Court affirmed the independent status of the Chief Election Commissioner (CEC). Similarly, in *T. N. Seshan vs. Union of India* (1995)4 SCC 222, the Court recognized the extensive powers of the ECI to conduct free and fair elections. Recently, in *Anoop Baranwal vs. Union of India* (2023), the Supreme Court ruled that the existing system of appointing members of the ECI concentrated excessive power in the hands of the executive, making it unconstitutional. The Court suggested a collegium

system, including the Chief Justice of India, to ensure impartial appointments, thereby reinforcing the autonomy of the ECI

Right to Vote and Freedom to Vote:

In case of *Union of India vs. Association for Democratic Reforms* (AIR 2002 SC 2112) the judiciary has also drawn a distinction between the right to vote under Article 326 and the freedom to vote under Article 19(1)(a) of the Constitution. While the right to vote is a constitutional right available to those meeting eligibility criteria, the freedom to vote stems from the fundamental right to speech and expression. This interpretation ensures that voters have access to essential information about candidates, allowing them to make informed decisions.

Ensuring Fair Appointment of Election Commissioners:

The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 replaced the Supreme Court-mandated panel (PM, LoP, and CJI) with a committee consisting of the PM, LoP, and a Union Minister. This change has been criticized for allowing excessive executive control over ECI appointments, which could compromise its independence. The judiciary's role in reviewing such legislation remains critical to ensuring a non-partisan election commission.

Striking Down the Electoral Bonds Scheme:

In *Association for Democratic Reforms vs. Union of India* (2024), the Supreme Court delivered a landmark verdict by striking down the electoral bonds scheme as unconstitutional and manifestly arbitrary. The scheme allowed political donations to remain anonymous, violating the voters' right to information under Article 19(1)(a). The Court also invalidated amendments to the Representation of the People Act, the Companies Act, and the Income Tax Act that permitted unlimited corporate funding, thereby reinforcing electoral transparency and accountability.

Thus, the Indian judiciary has played an indispensable role in preserving the sanctity of elections by safeguarding judicial review, ensuring the independence of the ECI, protecting voter rights, and maintaining transparency in political funding. While challenges persist, continued judicial vigilance is necessary to prevent executive overreach and uphold democratic principles. Through its landmark rulings, the Supreme Court has reaffirmed that electoral fairness and transparency are foundational to India's democratic framework.

Transparency in the Electoral Process

Role of the Election Commission of India (ECI):

The Election Commission is the supreme body overseeing the conduct of elections in India. It ensures the preparation of electoral rolls, implementation of election laws, and management of the entire election process. This section discusses the crucial role of the ECI in maintaining transparency.

Voter Identification and Electronic Voting Machines (EVMs):

EVMs have significantly enhanced the transparency and accuracy of elections by minimizing human error and fraud. However, concerns about their reliability persist. This section delves into the effectiveness of EVMs and the VVPAT system, addressing issues such as tampering and voter confidence.

Media Coverage and Access to Information:

Free and fair media coverage is vital to ensure transparency in elections. This segment assesses how media plays a crucial role in disseminating election information and ensuring public awareness.

Fairness in the Electoral Process

Equal Representation and Electoral Constituencies:

The concept of equal representation is central to the fairness of the election system. This section examines the delimitation process and its impact on representation, particularly in terms of balancing rural and urban constituencies.

Political Party Regulation:

Political parties are crucial players in elections, but unregulated practices can compromise fairness. Issues like unregistered parties, lack of internal democracy, and the role of dynastic politics are explored here.

Campaign Financing and Electoral Integrity:

Money plays a significant role in modern-day elections, raising concerns about corruption, vote-buying, and unfair advantages. This section discusses the need for better regulation of campaign financing and its impact on electoral integrity.

Recent Developments and Reforms in the Electoral Process

Recent developments such as the introduction of VVPAT, the role of social media in political campaigning, and the Electoral Bond scheme have created both opportunities and challenges for ensuring transparency and fairness. This section examines these recent developments in detail, including:

Voter Verifiable Paper Audit Trail (VVPAT): Introduced to verify EVM results and enhance transparency.

Digital Campaigning and Social Media Regulation: The rise of social media in election campaigns has raised concerns regarding misinformation and the fairness of campaigning.

Challenges and Issues in Ensuring Transparency and Fairness

Despite advances, several challenges hinder transparency and fairness:

Electoral Fraud and Manipulation: The use of fake voter IDs, bribery, and tampering with votes.

Voter Suppression and Discrimination: Issues like voters being unable to exercise their franchise due to discrimination based on caste, religion, and gender.

Influence of Money and Muscle Power: The use of wealth and power to manipulate elections and influence outcomes.

Lack of Proper Electoral Roll Management: Inefficiencies and errors in voter rolls leading to disenfranchisement.

Comparative Analysis: India vs. Other Democracies

A comparison with other democratic countries like the United States, United Kingdom, and Australia helps identify the strengths and weaknesses of India's electoral process. For example:

United States: The U.S. uses voter ID laws and a decentralized system where states control election processes, leading to significant variation in transparency and fairness.

United Kingdom: The UK has robust postal voting and transparent electoral procedures that India could emulate.

Australia: Known for its compulsory voting system, Australia has one of the highest voter turnouts, a model that could address India's voter apathy.

Suggestions for Improving Transparency and Fairness in the Electoral Process

Strengthening the Role of the Election Commission: Proposals to empower the ECI with more autonomy and resources to enforce election laws effectively.

Promoting Voter Education: Ensuring that the electorate understands the importance of voting and the mechanics of the electoral system.

Electoral Reforms: Introducing reforms in party funding, EVM verification, and constituency boundaries.

Enhancing Accountability in Campaign Finance: Greater transparency in the use of electoral bonds and the tracking of party funds.

Conclusion:

The paper concludes that while India has made significant strides in improving transparency and fairness in its electoral process, challenges still remain. The continued evolution of systems like EVMs, VVPAT, and voter education programs is essential for maintaining democratic integrity. Moreover, strengthening the independence of the Election Commission and curbing the influence of money in politics are pivotal steps for ensuring a more transparent and fair electoral system in India.

References:

1. Pandey, J.N. "Bharat ka Samvidhan." Central law agency. (2022), page number 778-779.
2. Election Commission of India. (2020). "Annual Report."
3. Banerjee, A., & Pande, R. (2016). "Democracy, Transparency, and Electoral Reforms." Indian Journal of Public Administration.
4. Shukla, S. (2018). "Electoral Integrity in India." Journal of Electoral Studies.
5. Transparency International. (2019). "Global Corruption Report: Elections."
6. International Institute for Democracy and Electoral Assistance (IDEA). (2021). "Comparing Election Systems: India vs. Western Democracies."



ROLE OF ELECTION COMMISSION IN ELECTROL DEMOCRACY

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Abstract:

Election commission of India is a permanent Constitutional Body. The election commission was established in accordance with the constitution on 25th January 1950. The commission celebrated its golden jubilee in 2001. The constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to parliament and legislature of every state and to the offices of president and vice- president of India. India is a constitutional democracy with a parliamentary system of government, and at the heart of the system lies a commitment to hold regular, free and fair elections. These elections determine the composition of the government, the membership of the two Houses of Parliament, the State and Union Territory Legislative Assemblies, and the Presidency and Vice-Presidency.

Keywords: Elections, Constitutional Body, Parliament, Democracy, Assemblies

Introduction:

The provisions of the constitution, which are augmented by laws passed by Parliament, govern how elections are held. The two primary laws are the Representation of the People Act of 1951, which covers in detail every facet of election conduct and post-election disputes, and the Representation of the People Act of 1950, which primarily deals with the creation and updating of electoral rolls. According to the Supreme Court of India, the Election Commission has the constitutionally granted residuary authority to act appropriately in situations where the laws that have been passed are silent or provide insufficient provisions to address a particular aspect of election administration. The Election Commission is tasked by the Indian Constitution

with overseeing, directing, and controlling the entire process of holding elections for the President and Vice-President of India, as well as for the Parliament and Legislature of each State. The State Governments, under local Commissioners, are in charge of holding local elections in villages and cities. It is reasonable for the Election Commission to be proud of having carried out the aforementioned election process to the satisfaction of all parties involved, including candidates, political parties, and voters.

India embraced parliamentary democracy after gaining its independence. The public's moral and ethical democratic values and free and fair elections are essential to the success of parliamentary democracy. Therefore, Article 324 of the Indian Constitution establishes the Election Commission of India (ECI) as an organization to fulfill these goals. Election administration in India is the responsibility of the ECI, a constitutional authority.

It was founded on January 25, 1950, with the intention of defining and regulating the electoral process for elections held at the state legislatures, the Indian president's and vice president's offices, and the Parliament.

Structure of ECI

The secretariat of the commission has 300 officials, and is located in New Delhi. The Deputy Election Commissioners and Director General are the senior most officers in the secretariat. The president of India appoints the Chief Election Commissioner, who serves for six years and must retire at the age of 65. The commissioner is generally a member of civil services, and more often, of the Indian Administrative Services (IAS) or the Indian Revenue Services (IRS). He can be removed from his office through the process of impeachment, which needs to be carried out in the Parliament. The president of India can remove other officers on the Chief Election Commissioner's recommendation.

Commission Secretariat & Election Machinery

About 300 personnel work in the Commission's own Secretariat in New Delhi, which is organized hierarchically. The Commission is assisted by two Deputy Election Commissioners, the highest ranking individuals in the Secretariat. They are typically chosen and appointed by the Commission with tenure, and they come from the nation's civil service. Principal Secretaries, Directors, and Secretaries, The Deputy Election Commissioners are assisted by Under Secretaries and Deputy Directors in turn. There is functional and territorial distribution of work in the Commission. The work is organized in Divisions, Branches and sections; each of the last mentioned units is in charge of a Section Officer. The main functional divisions are Planning, Judicial, Administration, Information Systems, Media and Secretariat Co-ordination. The territorial work is distributed among separate units responsible for different Zones into which the 25 constituent States and 7 Union Territories of the country are grouped for convenience of management.

The Chief Electoral Officer of the State, who is chosen by the Commission from among senior civil servants suggested by the relevant State Government, oversees the election operations at the state level and is subject to the Commission's general supervision, direction, and control. He has a group of

assisting staff members and is a full-time officer in the majority of the United States. In India, District Magistrates (Deputy Commissions/Collectors), Sub-Divisional Magistrates, Revenue Divisional Officers, Tahisldars, and others oversee field administration at the District and Sub-Divisional levels.

They are members of the national and state civil services and senior officials of the state governments. By identifying them as District Election Officers, Electoral Registration Officers, Returning Officers, Assistant Electoral Registration Officers, Assistant Returning Officers, and so on, the Election Commission uses the same State Government employees for election-related tasks. In addition to their other duties, they all carry out their election-related tasks. However, they are essentially available to the Commission full-time during election season.

The gigantic task force for conducting a countrywide general election consists of nearly five million polling personnel, besides civil police forces. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and a half to two months.

Advisory Jurisdiction & Quasi-Judicial Functions

The Commission is also empowered by the Constitution to advise on the post-election disqualification of current members of the State Legislatures and Parliament. Additionally, cases involving individuals convicted of electoral corruption that are decided by the Supreme Court and High Courts are also sent to the Commission for its opinion on whether or not such individuals will be barred from running in future elections, and if so, for how long. The President or, if applicable, the Governor to whom the opinion is submitted is bound by the Commission's opinion in all such issues.

If a candidate does not submit an account of his election expenses in the time and manner required by law, the Commission has the authority to disqualify him. Along with other legal disqualifications, the Commission can also remove or shorten the duration of such a disqualification. Appropriate petitions may be filed in the High Courts and Supreme Court of India to contest the Commission's determinations. However, due to a constitutional ban, a long-standing custom, and numerous court rulings, the judiciary refrains from interfering with the actual conduct of the polls once the election process has begun. Once the polls are completed and result declared, the Commission cannot review any result on its own. This can only be reviewed through the process of an election petition, which can be filed before the High Court of the State concerned, in respect of elections to Parliament and State Legislatures. In respect of elections for the offices of the President and Vice-President of India, such petitions can only be filed before the Supreme Court.

Election Commission and Registration of Political Parties

The Commission has the power to reject a candidate if he fails to provide an accounting of his election expenses within the legally mandated time and manner. The Commission has the authority to eliminate or reduce the length of such a disqualification in addition to other legal disqualifications. It is possible

to challenge the Commission's decisions by submitting appropriate petitions to the Indian Supreme Court and High Courts. However, once the election process has started, the judiciary does not interfere with the actual conduct of the polls because of a constitutional ban, a long-standing custom, and multiple court decisions. The commission now registers a party which has at least 100 registered electors as its members and is also charging nominal processing fees of Rs. 1000 to cover the administration expenses which it will have to incur on correspondence with the parties after their registration. The registered political parties are granted recognition at the State and National levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it.

Role of Election Commission in Electoral Reform

For the first time, it was in 1969, that the demand was made in the Parliament for electoral reforms in accordance with the experience about the working of the election laws and the suggestions made by the Election Commission of India. A Joint Parliamentary Committee on Amendments to Election Law was set up to examine the question of electoral reforms from all angles. This Committee, formed in 1970, did not last long. With the dissolution of the Lok Sabha in December, 1970, this Committee's life also came to an end. Additional momentous development in this direction took place in 1974 when Jayaprakash Narayana threw a movement which later on came to be known as "A Movement for Total Revolution". On behalf of Citizens for Democracy, Jayaprakash Narayan set up the Tarkunde Committee for electoral reform which, too, after holding discussions with representatives of numerous organizations, produced a comprehensive set of recommendations. Apart from this, the Election Commission as well as various Committees also have come out with suggestions for electoral reforms. The EC has taken several new initiatives in the recent past as a use of state owned Electronic Media for broadcast or telecast by political parties, checking: criminalization of politics, providing with electoral identify cards, reform the procedure for registration of political parties and requiring them to hold regular organizational elections, a variety of measures of strict compliance of Model Code of Conduct for providing a level playing field to contestants during the elections, and so on.

Election Commission and Use of IT Techniques and Media

No doubt the Media has over the years played a crucial role in safeguarding the democratic rights of the people by educating and informing voters about their electoral duties. But its power to influence public opinion has, of late, also encouraged its blatant misuse by parties and candidates, who connived with obliging editors and media house owners to encourage paid news. This came to light during elections in 2004 and 2009. Today, it is a major challenge in the way of fair elections because on one hand it provides wealthier candidates with an edge over other candidates, on the other it defeats the very principle of fair elections by denying equal opportunity to other candidates. The ECI has been trying to bring improvement in election procedure by taking advantage of scientific and technological advancement. The introduction of

electronic voting machines is one of the steps in that direction. It has saved money solved several logistical issues and also counting the votes more fast and accurate.

Model Code of Conduct

During the election campaign the political parties and contesting candidates are expected to abide by a Model Code of Conduct evolved by the Election Commission on the basis of a consensus among political parties. The model Code lays down broad guidelines as to how the political parties and candidates should conduct themselves during the election campaign. It is intended to maintain the election campaign on healthy lines, avoid clashes and conflicts between political parties or their supporters and to ensure peace and order during the campaign period and thereafter, until the results are declared. The model code also prescribes guidelines for the ruling parties, either at the Centre or in the States, to ensure that a level playing field is maintained and that no cause is given for any complaint that the ruling party has misused its official position for the purposes of its election campaign. Over the years, the Election Commission has been sternly enforcing the model code of conduct and ensuring its strict observance by the ruling parties, at the Centre and in the States, so as to provide a level playing field, for all parties and candidates in the electoral fray.

Political Parties and Elections

Political parties are an established part of modern mass democracy, and the conduct of elections in India is largely dependent on the behaviour of political parties. Although many candidates for Indian elections are independent, the winning candidates for Lok Sabha and Vidhan Sabha elections usually stand as members of political parties, and election results show that people tend to vote for a party rather than a particular candidate. Parties offer candidates organisational support, and by offering a broader election campaign, looking at the record of government and putting forward alternative proposals for government, help voters make a choice about how the government is run.

Registration with Election Commission

The Election Commission has a list of registered political parties. According to the Indian Constitution, the Commission assesses whether the party is organized and dedicated to democratic, secular, and socialist ideals that will preserve India's unity, sovereignty, and integrity. Parties must have a documented constitution and hold organizational elections. Unless they make up more than one-third of the original party in the legislature, MPs or MLAs elected as candidates of one party are prohibited from founding or joining a new party by the 1985 Anti-defection statute.

Splits and mergers and anti- defection law

Political party compositions have often been upset by splits, mergers, and alliances. Numerous disagreements have resulted from this, including how to categorize the emerging parties into national and state parties and which faction of a split party retains the party emblem. Although its rulings may be contested in court, the Election Commission is required to settle any conflicts.

There were 35 State Parties, 7 National Parties, and 620 registered but unrecognized parties at the time of the 1998 general election.

Limit on poll expenses

There are legal limits on the amount of money a candidate can spend during the election campaign. In most Lok Sabha constituencies, the limit, as recently amended in December, 1997, is Rs 15,00,000/-, although in some States the limit is Rs 6,00,000/- (for Vidhan Sabha elections the highest limit is Rs 6,00,000/-, the lowest Rs 3,00,000/-). Although supporters of a candidate can spend as much as they like to help out with a campaign, they have to get written permission of the candidate, and whilst parties are allowed to spend as much money on campaigns as they want, recent Supreme Court judgements have said that, unless a political party can specifically account for money spent during the campaign, it will consider any activities as being funded by the candidates and counting towards their election expenses. The accountability imposed on the candidates and parties has curtailed some of the more extravagant campaigning that was previously a part of Indian elections.

International Co-operation

The International Institute for Democracy and Electoral Assistance (IDEA), located in Stockholm, Sweden, counts India among its founding members. By exchanging experience and knowledge in the fields of electoral management and administration, electoral laws, and electoral reforms, the Election Commission of India has recently increased its foreign ties. In recent years, Commission delegates have been to Bangladesh, the Philippines, Russia, Sweden, and the United Kingdom. To gain a deeper understanding of the Indian electoral process, representatives from a number of nations, including Russia, Sri Lanka, Nepal, Indonesia, South Africa, Bangladesh, Thailand, Nigeria, Australia, and the United States, have visited the Commission. The Commission has also provided experts and observers for elections to other countries in cooperation with the United Nations and the Commonwealth Secretariat.

Conclusion:

Recently, the Election Commission has undertaken a number of new efforts, some of which have previously been mentioned above. Notable among these are a plan to allow political parties to broadcast on state-owned electronic media, limitations on exit and opinion polls, preventing the criminalization of politics, computerizing electoral rolls, issuing identity cards to voters, streamlining the process for candidates to fill out and maintain accounts, and a number of measures to ensure strict adherence to the Model Code of Conduct in order to give candidates an even playing field during the election.



ROLE OF ELECTRONIC VOTING MACHINES (EVMS): PROS AND CONS

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Abstract:

Electronic Voting Machine (EVM) is a revolutionary invention that has changed the electoral process. It contributes to better efficiency, reduction in human errors, saving people's money, and time-saving counting of votes. The objectives are to modernize elections, reduce electoral fraud, and ensure transparency. The advantages are many in different aspects. Its participation in the electoral process has not only saved man hours but also ensured results within no time. However, despite their advantages, lack of verifiability is a great concern. It is natural to raise questions on their safekeeping and non-tampering by the post-voting custodians. The subject has been the focus of debates among political parties and political thinkers. Speed, accuracy, and cost-effectiveness have made EVMs popular; at the same time, it has been the target of suspicion on trust, security threats, and transparency. People see EVMs with suspicious eyes, and their integrity is in question. In democracy, there has to be fairness in the electoral process. The paper explores practices elsewhere, judicial approach, and the introduction of Voter Verifiable Paper Audit Trails (VVPATs) to enhance its credibility. This paper aims to analyse case studies, thoughts of thinkers, and contemporary issues involving the

subject at hand and offer recommendations for improving reliability on EVMs and public confidence in electoral results.

Keywords: Electronic Voting Machine (EVM), VVPAT, Electoral Integrity, Election Commission, Voting Security, Transparency

Introduction: Electronic Voting Machine (EVM) has been an inseparable organ of the electoral process since the 1990s. The machine was adored for its efficiency, reduction in human error and expediting counting of votes. When ballot paper was the part and parcel of voting process, electoral malpractices were rampant using money power, muscle power and political power. EVMs were introduced with the objective of eradicating this evil that posed threat to the democratic set up. Being man-made, it's natural to have suspicion on fiddling with the machine by man. The safekeeping and tampering is a concern. Time interval between casting of vote and counting of votes. After every election, be it local body election or general election, a debate erupts over their credibility concerning security, transparency, and potential tampering. EVM has realised merits and genuine concerns. EVM has been prone to questions on its integrity. A man-made Machine is prone to fiddling by its inventor. international practices, examines judicial interpretations, and evaluates measures like Voter Verifiable Paper Audit Trails (VVPATs) in bolstering electoral integrity.

HISTORY OF EVM – 40 YEARS

1977: The idea of using EVM in poll process was first conceived by the then CEC- S. L. Shakdhar.

August 6,1980: A prototype of EVM developed by Electronics Corporation of India Ltd. (ECIL) was demonstrated before the leaders of political parties.

May 19,1982: The Election Commission of India issued directives for the use of EVMs in elections.

1984: SC suspends EVM usage. It held that EVMs cannot be used in poll process till RP Act is amended.

December,1988: The Parliament amended the RP Act,1951 and inserted section-61A for the use of EVMs in elections.

March 15,1989: The Amendment Act came into force.

January,1990: The Election Reforms Committee recommended for technical testing of EVM experts.

April,1990: The Technical Expert Committee consisting of Mr. S. Sampath, (Chairman, RAC, DRDO), Dr. P.V. Indiresen (Scientist, IIT, Delhi), Dr. Rao C (ER&DC, Trivandrum) and others unanimously recommended the use of EVMs.

1990: EVMs were used in 16 Assembly constituencies in Madhya Pradesh, Rajasthan and Delhi.

1999: EVMs were used in 46 parliamentary constituencies.

¹**Election Commission of India.** (2021). *EVM inception & milestones: EVMs and VVPATs – A guide* (pp. 2–3). <https://www.eci.gov.in/>

February,2000: EVMs were used in 56 Assembly constituencies in Haryana.

2001: Entire Assembly polls in Tamilnadu, West Bengal, Kerala & Puducherry followed by their usage in all elections to state assemblies.

2004: EVMs were used in all 543 parliamentary constituencies.

2006-1010: Advanced version M2EVM replaced the earlier M1EVMs.

2013 onwards-latest M3EVMs replaced M2EVMs.

August 14,2013: Notification on introduction of Voter Verifiable Paper Audit Trail (VVPAT) and the same was used in the Noksen Assembly by-election in Nagaland.

Constitutional Provisions²

Article 324-(1): The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in the Election Commission of India.

Article 325: It provides for only one electoral roll for each constituency for election to Parliament and State legislatures. It also states that no person would be excluded from the rolls on account of religion, race, caste, or sex.

Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

Article 327: Defines responsibilities of the ECI and Parliament for the conduct of national elections.

Article 328: Defines the role and responsibilities of the state legislatures with respect to state-level elections.

Article 329: Prohibits court interference in matters related to elections unless specifically asked to provide their views.

Statutory Provisions

Representation of the People Act, 1951

Section 61A: The section permits the adoption of Voting Machines for recording of votes in the prescribed manner.

Judicial Approach

A.C. Jose v. Sivan Pillai³

The Supreme Court held that using of EVMs by the ECI without amending the RP Act,1951 is without jurisdiction.

N.P. Ponnuswami v. Returning Officer⁴

The Supreme Court held that before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating

to, or in connection with, elections, and it should be decided as to how these laws and rules are

²Government of India, (1950). *Constitution of India*

³A.C. Jose v. Sivan Pillai, AIR 1984 SC 921.

⁴N.P. Ponnuswami v. Returning Officer(1952) SCR 218

to be made:
(2) there should be an executive charged with the duty of securing the due conduct of elections;
and
(3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. An absolute and uncanalised power given to the Commission without providing any guidelines would destroy the basic structure of the Rule of Law.

People's Union for Civil Liberties v. Union of India⁵ The Supreme Court of India emphasized the need for VVPATs to ensure transparency.

Subramanian Swamy v. Election Commission of India⁶

Seeing the number of polling booths (ten lakhs) spread across the country, The Supreme Court permitted to introduce VVPAT in gradual stages or geographical-wise in the ensuing general elections. It was held that the area, State or actual booth(s) are to be decided by Commission and that it is free to implement the same in a phased manner.

Reshma Vithalbai Patel v. Union of India⁷

The Supreme Court observed that the Commission's affidavit leaves no room for any doubt that all future elections will be held using VVPATS.

N. Chandrababu Naidu v. Union of India⁸

It was held by the Supreme Court of India that the number of EVMs that would be subjected to verification so far as VVPAT paper trail is concerned would be 5 per Assembly Constituency in a Parliamentary Constituency instead of one machine per Assembly Constituency. It was also held that random selection of the machines shall apply to the VVPAT paper trail verification.

Madhya Pradesh Jan Vikash Party v. Election Commission of India⁹The Supreme Court dismissed the SLP with a view that party which may not have got much recognition from the electorate seeks recognition by filing frivolous petitions

Michael B. Fernandes v. C.K. Jaffer Sharief¹⁰

It was noted by the Court that after thorough practical experimentation and research, the present version of EVM is designed. This invention is undoubtedly a great achievement in the electronic and computer technology and a national pride.

All India Anna Dravide Munnetra Kazhagam v. Election Commission of India¹¹

⁵People's Union for Civil Liberties v. Union of India (2013) 10 SCC 1

⁶Subramanian Swamy v. Election Commission of India(2013) 10 SCC 500

⁷Reshma Vithalbai Patel v. Union of India (2018) 18 SCC 675

⁸N. Chandrababu Naidu v. Union of India(2019) 15 SCC 377

⁹Madhya Pradesh Jan Vikash Party v. Election Commission of India SLP (Civil) 16870/2022

¹⁰Michael B. Fernandes v. C.K. Jaffer Sharief2004 SCC OnLine Kar 72

The Madras High Court held that the advantages of using EVMs outweigh the advantages in conventional ballot boxes. Need for printing huge quantity of ballot papers is dispensed with saving on cost of paper and printing. The invalid votes in the old system play a major role in turning the result of the elections. In the EVMs, invalid vote does not arise, and every vote will be accounted. No rigging is possible, and results can be ascertained in a shorter time. In the ballot papers in the conventional system, the voters prefer to write some messages leaving a bad taste and also wasting the whole exercise. This is not possible in the EVMs. The Court was of the view that the voter cannot dictate that he should be allowed to cast his vote in the method he chooses.

Kuldip Nayyar vs Union Of India & Ors¹²

The Supreme Court held that the right to vote is not a constitutional right.

People's Union for Civil Liberties (PUCL) v. Union of India¹³

The Supreme Court held that the right to vote is neither a fundamental right nor a constitutional right but a pure and simple statutory right.

E-Voting elsewhere¹⁴

Australia, Belgium, Brazil, Canada, Estonia, Finland, France, Germany, India, Ireland, Italy, Kazakhstan, Lithuania, The Netherlands, Norway, Philippines, Romania, South Korea, Spain, Switzerland, United Arab Emirates, the UK, Scotland, and Venezuela have been adopting electronic voting in one way or another.

After 25 decades of democracy, the United States does not have a uniform voting system. Several states continue to use ballot papers, while others have shifted to electronic voting (Dutta, 2017).

A critical point in electronic voting experiment in the US has been that its voting machines are connected to a server and operate using the internet. This makes them vulnerable to cyberattacks. In the last presidential election, some invisible Russian hand was suspected in influencing voters' choice.

In 2009, the Federal Constitutional Court of Germany held that the use of electronic voting machines in elections was unconstitutional and observed that such a practice lacked transparency. Germany, unlike India, has not passed a law authorizing use of electronic voting machines for casting votes in elections (Dutta, 2017).

Voter Verifiable Paper Audit Trails (VVPATs)

To address the concerns about transparency, VVPATs offer an option of paper verification that enables voters to confirm their selections. Despite difficulties to meet logistical needs, VVPATs in India has been a major step in boosting confidence.

¹¹All India Anna Dravide Munnetra Kazhagam v. Election Commission of India 2001 SCC OnLine Mad 1398

¹²Kuldip Nayyar vs Union of India & Ors Writ Petition (civil) 217 of 2004

¹³People's Union for Civil Liberties (PUCL) v. Union of India. 2013) 10 SCC 1

¹⁴Dutta, P. K. (2017, June 3). *EVM challenge: How the world has dealt with electronic voting machines*. India Today.

VVPAT with EVM was used for the first time in the Noksen Assembly Constituency By-election in Nagaland in 2013.¹⁵

Advantages, Challenges and Controversies Decrease in cases of electoral frauds, cost-effectiveness, time saving, saving of man hours and environment friendliness are the advantages of the machine and these are realised in true sense since its introduction.

Being a machine and involved in a political process, it is exposed to suspicion on the grounds of trust deficit, custody and storage issues, safe-keeping and tampering concerns and absence of verifiability.

Conclusion:

EVMs have improved efficiency and decreased fraud, revolutionizing electoral operations. Its credibility has increased as a result of judicial interventions and technological developments like VVPATs, but more work is required. Verifiability, security, and public trust issues still exists.

Although EVM has caused a revolutionary change to effect efficiency and simplicity in elections, they are seen with suspicious eyes due to their human origins and possible vulnerabilities to interference. The discussions following each election highlight citizens' concern and raises doubts on the electoral integrity. Adopting the best and flawless practices, judicial perspectives, and implementing additional measures such as Voter Verifiable Paper Audit Trails (VVPATs) are essential to ensure transparency and trust. Incorporating robust technological safeguards, fixing responsibility and accountability for safe-keeping between the time after poll and counting of votes would enhance faith on the integrity of democratic process.

For a democracy to sustain, EVMs must be modernized with latest technologies and a robust mechanism should be put in place to encourage openness.

- VVPATs must be used in every constituency to enhance transparency.
- EVM software and hardware should be subjected to security audits at regular intervals.
- Public awareness campaigns are a viable way to educate voters to mitigate distrust.
- Several layers of safe-keeping and secured storage should be ensured by deploying neutral third party agencies and autonomous government bodies.

¹⁵Election Commission of India. (2025, February 20). *EVM*. <https://www.eci.gov.in/>



THE ELECTION COMMISSION OF INDIA: ISSUES AND CHALLENGES

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Abstract:

The Election Commission of India (ECI) plays a pivotal role in the democratic framework of the country by ensuring free, fair, and transparent elections. As an independent constitutional body, the ECI is tasked with managing elections to the Parliament, State Legislatures, and the offices of the President and Vice-President. However, in recent years, the Commission has faced several challenges that threaten its efficiency, impartiality, and credibility.

This paper examines the current issues confronting the ECI, including allegations of political bias, the growing influence of money power in elections, voter privacy concerns due to Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trails (VVPATs), and the spread of misinformation during campaigns. It also explores the challenges posed by low voter turnout, misuse of social media platforms, electoral violence, and delays in electoral reforms. The paper further discusses the need for strengthening the ECI's autonomy, addressing electoral malpractices, implementing technology-driven reforms, and ensuring greater accountability and transparency. By analyzing these issues, the study aims to provide insights into how the ECI can uphold democratic integrity and effectively manage the complexities of a diverse and dynamic electoral landscape. Ultimately, it underscores the importance of empowering the Election Commission to preserve public trust and safeguard the democratic process in India.

Key words: Political Race, Booth Capturing, Money Power, Election, Voting, Legislature

Introduction:

India is the largest Democracy in the World however we feel that due to various causes, Democracy is not functioning correctly. Thus, the academics are now wondering why this biggest democracy isn't functioning well. There

is a problem with the electoral procedure. Here, I have listed all of the events that have taken place throughout the current electoral process and offered some solutions to improve it.

The Election Commission of India (ECI) is an independent constitutional authority responsible for administering and overseeing elections in the country. Established on January 25, 1950, under Article 324 of the Indian Constitution, the ECI plays a vital role in ensuring free, fair, and transparent elections. It is entrusted with conducting elections for the Lok Sabha, Rajya Sabha, State Legislative Assemblies, and the offices of the President and Vice President of India.

¹ In the democratic era of today, the kingdom's keys belong to the people. With the direct election process, there is a greater chance of electing skilled legislators but a lesser chance of choosing them through the indirect election system, as the candidates' supporters are frequently superior to the general electorate. Elections are held indirectly. Due to the fact that the nation is divided into equal territorial regions, from which the people choose their representatives, they make prudent use of their votes. These days, the simple majority method is being used by an increasing number of democratic states. The candidate who wins the most votes is declared the election winner using this technique.²

The ECI has the authority to oversee, manage, and govern the entire election process since it is the protector of India's democratic electoral system. Campaign finance is regulated, the Model Code of Conduct is enforced, electoral rolls are prepared, and the behavior of candidates and political parties is tracked. These obligations guarantee that elections are held in a way that respects the values of democracy, impartiality, and fairness.

A single Chief Election Commissioner (CEC) served as the Commission's original head, but in 1993 it was reorganized as a multi-member body with the addition of two Election Commissioners to handle the growing complexity of elections in a large country like India.³ The Election Commissioners and the Chief Election Commissioner share the same tenure and powers and jointly decide on a range of electoral issues.

The Election Commission operates independently and is tasked with preparing electoral rolls, enforcing the Model Code of Conduct, monitoring election campaigns, overseeing the nomination process, regulating political party expenditures, and managing the overall conduct of elections. Despite its critical role and achievements, the Election Commission faces several challenges that threaten the fairness and efficiency of the electoral process.

Importance of Elections

it gives decision of authority, political backing, with this an individual can also scream more loudly their disdain against a decision party and furthermore it is

¹ B.L. Fadia, *Indian Government and Politics* (Sahitya Bhawan Publications, Agra, 2010).

² K.C.Sunny, *Corrupt Practices in Election Law* (Eastern Book Company, Lucknow, 2012).

³ Supra Note-1

a self- restorative framewor. Through this framework, after at regular intervals, the decision meetings are convened in line and forced to consider about the interest of people in general. Let us take this opportunity to inform you that the Indian electoral system is governed by Articles 324 to 329 of Part XV of the Constitution.

Indian electoral System

The Indian electoral system is a robust and intricate framework designed to manage the world's largest democracy, ensuring representation for over 1.4 billion people across diverse regions, languages, and cultures. Rooted in the Constitution of India, it operates under the supervision of the Election Commission of India (ECI), an autonomous constitutional body established under Article 324.⁴

Structure of Elections

1. **Lok Sabha Elections:** Held every five years (unless dissolved earlier) to elect members of the Lok Sabha. The President of India, elected indirectly by an electoral college, is the head of state, while the Prime Minister, chosen from the Lok Sabha majority, is the head of government.
2. **Rajya Sabha Elections:** The upper house, or Council of States, has 245 members, with most elected indirectly by state legislative assemblies using a proportional representation system via the Single Transferable Vote (STV). One-third of its members retire every two years.
3. **State Legislative Elections:** Each state has a Vidhan Sabha (Legislative Assembly), elected directly by voters every five years. Some states also have a Vidhan Parishad (Legislative Council), elected indirectly, similar to the Rajya Sabha.
4. **Local Elections:** Panchayati Raj institutions (village councils) and urban local bodies (municipalities) are elected under the 73rd and 74th Constitutional Amendments, empowering grassroots democracy.

Election Process⁵

1. **Voter Registration:** The ECI maintains an electoral roll, updated regularly, identifying eligible voters. As of recent estimates, over 970 million voters are registered.
2. **Election Schedule:** The ECI announces election dates, often conducted in multiple phases (e.g., the 2024 Lok Sabha elections spanned seven phases) to manage logistics and security across India's vast geography.
3. **Nomination and Campaigning:** Candidates file nominations, scrutinized by the ECI. Political parties and independents campaign

⁴ The Constitution of India, Art. 324

⁵ Anand Balabh Kaiflayat, *Democracy and Election Laws* (Deep & Deep Publications Pvt. Ltd, New Delhi, 2003).

under the Model Code of Conduct (MCC), which regulates fair practices.

4. **Voting Mechanism:** Voting occurs primarily through Electronic Voting Machines (EVMs), introduced in the 1990s, with Voter Verifiable Paper Audit Trail (VVPAT) added since 2013 for transparency. Polling stations ensure accessibility, even in remote areas.
5. **Counting and Results:** Votes are counted centrally in each constituency, and winners are declared by Returning Officers. The ECI oversees the process to ensure integrity.

Issues in Electoral Politics of India

Currently, elections aren't held in an ideal environment due to the enormous sums of money and physical strength needed to win. This is because it takes a lot of money and physical strength to win an election. India's electoral system has several serious problems, such as the power of money, the power of force, the criminalization of politics, poll violence, booth capture, casteism, communalism, non-serious and independent candidates, and more.

Influence of Money Power and Political Funding : In every democratic polity, electioneering is a costly endeavor that is especially important in India. Cash Power plays a damaging function in our electoral system, substantially impairing the conduct of regular elections, causing widespread corruption, and primarily contributing to the development of the black money economy that currently dominates our nation. Each constituency's potential candidate must spend millions of dollars on transportation, advertising, and other crucial election campaign expenses. Because every political party wants to spend more money than their rivals in the race, election expenses have skyrocketed in recent years. The elections were Not nearly as expensive in 1952 as they are now. Workers and political leaders believed that working for any kind of reward was unethical. However, the situation has since altered. In Indian politics, elections are getting more and more costly, and the difference between what is legally permitted and what is actually spent is growing every time. The people watching are observing the system that demands astronomically high sums of money acquired by political parties and its candidates using unethical methods. In free India, the implementation of a mixed economy and planning system with a great deal of control, regulation, licenses, permits, and quotas created a lot of room for political corruption and led to an unethical relationship between the nation's business community and electoral politics⁶. This appears to be ongoing today, with much more dire repercussions as black money floods the hallways of political parties in spite of the country's political system being affected by the liberalized economy. Only wealthy candidates are allowed to

⁶ Dr. Bimal Prasad Singh.. *Electoral Reforms in India—Issues and Challenges*. International Journal of Humanities and Social Science Invention. 2013;2(3):1-5.

run in India's elections thus far, as votes are no longer a reflection of the general public's sentiment. It is being purchased.

Muscle Power and Criminalization of Politics: The democratic framework of India, based on free and fair elections, is often compromised by the growing influence of muscle power and the criminalization of politics.⁷ Over the years, individuals with criminal backgrounds have entered the political arena, relying not only on their financial resources but also on intimidation, violence, and unlawful means to secure votes and political positions. This phenomenon has led to a dangerous nexus between crime and politics, undermining the democratic process and eroding public trust in governance.⁸

The presence of "muscle men" in politics—those who use physical force, intimidation, and coercion to influence elections—has significantly altered the dynamics of Indian electoral politics, particularly in certain regions. Criminal elements often exploit vote-bank politics, caste loyalties, and socio-economic disparities to gain political clout.⁹ As a result, ethical and capable leadership is often overshadowed by those who prioritize personal gain and illegal activities over public welfare.¹⁰ The criminalization of politics and the use of muscle power threaten the very foundations of democracy, weakening the rule of law, promoting corruption, and creating a vicious cycle of violence, lawlessness, and poor governance. Addressing these issues through electoral, judicial, and political reforms is crucial for restoring the sanctity of the democratic process and ensuring that political power is held by leaders committed to the principles of justice, transparency, and accountability.

Use of Caste and Religion in Politics: In India, religion and caste play a pivotal role in shaping the socio-political landscape. These factors, deeply rooted in the country's history, culture, and society, have also found their way into electoral politics. Political parties often exploit religious and caste identities to mobilize voters, secure vote banks, and win elections. This practice, known as identity-based or communal politics, has been a significant feature of Indian elections, especially since Independence.

During election campaigns, many political parties and candidates appeal to voters based on their religious and caste affiliations, rather than focusing on broader developmental and governance issues. The politicization of these identities can lead to polarization, deepening social divisions, and diverting attention from critical issues such as education, healthcare, and economic growth.

While the Indian Constitution upholds secularism and prohibits discrimination on the basis of caste or religion, the continued use of these factors in elections

⁷ Sivakumar CLV, Prabakar S. *Perceptions on political corruption and election crimes: reforms-a review*. International Journal of Research in Social Sciences. 2016;6(3).

⁸ Supra Note-8

⁹ Supra Note-7

¹⁰ Dr. M. Bhaskara Raju. (2015). *Indian Electoral System-Major Issues and Remedies*. Paripex Indian Journal of Research, 4(11).

weakens democratic ideals and often leads to communal tensions, caste-based rivalries, and voter manipulation. To address this challenge, it is essential to strengthen electoral laws, enforce the Model Code of Conduct, and promote voter awareness about the importance of choosing candidates based on merit, integrity, and policy agendas rather than identity politics.

Lack of Transparency in Political Funding: Political funding is the lifeline of electoral democracy, providing the resources needed for campaigning, outreach, and mobilizing voters. However, in India, a significant concern is the lack of transparency in political funding, which undermines the integrity of the electoral process. A large portion of the funds raised and spent by political parties remains undisclosed and unaccounted for, often originating from anonymous donors or through cash transactions.¹¹

This opacity in political financing allows the influence of money power, black money, and corporate interests to grow unchecked, raising concerns about corruption, vote-buying, and crony capitalism. The introduction of electoral bonds, while aimed at streamlining donations, has also drawn criticism for reducing transparency by keeping donor identities hidden¹².

The lack of clear regulations and enforcement mechanisms in tracking political funding poses a threat to free and fair elections, creating an uneven playing field where wealthier candidates and parties gain an unfair advantage. Strengthening transparency in political financing is crucial to safeguard democratic ideals, reduce corruption, and restore public confidence in the electoral process.

Misinformation and Social Media Manipulation: In the digital age, social media has emerged as a powerful tool in shaping public opinion and influencing political narratives, especially during elections. While it offers opportunities for greater voter engagement and real-time communication, it has also become a breeding ground for misinformation, fake news, and political manipulation. This manipulation threatens the democratic process by misleading voters, deepening polarization, and spreading propaganda.

During elections, misinformation campaigns, often driven by political parties, interest groups, or foreign entities, flood social media platforms with false or misleading content. These campaigns exploit algorithms, bots, and echo chambers to amplify divisive messages, manipulate voter behavior, and undermine trust in democratic institutions.

Misinformation and social media manipulation pose serious threats to the integrity of elections and the health of democracy in India. While digital platforms can enhance voter participation and political engagement, unchecked manipulation risks misleading voters, polarizing society, and undermining democratic values. Addressing this challenge requires a multi-

¹¹A Kaur. *Issues of Reform in Electoral Politics of India: An Analytical*. The Indian Journal of Political Science; c2012.

¹²Supra Note-9

faceted approach involving stronger regulations, public awareness, fact-checking, and proactive intervention by social media platforms and electoral authorities. By promoting transparency, accountability, and digital literacy, it is possible to create a more informed and resilient electorate.

Conclusion and Suggestions

The Election Commission of India (ECI), established in 1950, has played a pivotal role in strengthening democracy in India by ensuring free, fair, and transparent elections. It has been instrumental in upholding democratic values and maintaining the sanctity of electoral processes. Despite its commendable achievements, the ECI faces several challenges that demand continuous reforms and strategic adjustments. One of the significant challenges is the growing influence of money and muscle power in elections, which threatens the impartiality of the democratic process. The rise in fake news, misinformation, and the misuse of social media during elections also poses a threat to voter behavior and electoral integrity. Moreover, the lack of transparency in political funding and electoral bonds has raised concerns about undue influence by corporate entities and wealthy individuals.

Administrative challenges, such as maintaining the accuracy of the electoral rolls, combating voter apathy, and ensuring the inclusion of marginalized and vulnerable populations, also continue to test the Commission's efficiency. Additionally, questions have been raised regarding the independence of the Election Commission, especially concerning the appointment process of the Chief Election Commissioner and Election Commissioners. To address these challenges, several reforms have been suggested, including greater transparency in political funding, strengthening the powers and independence of the ECI, regulating social media, and promoting voter awareness. Electoral reforms like the introduction of simultaneous elections (One Nation, One Election), stricter regulations on criminalization of politics, and the implementation of online voting for non-resident Indians (NRIs) could further enhance electoral efficiency and inclusivity.

In conclusion, while the Election Commission of India has played a crucial role in upholding the democratic framework of the country, it must continue to adapt to the changing socio-political landscape. Strengthening the ECI's autonomy, transparency, and accountability, along with implementing necessary electoral reforms, will ensure that it remains a robust guardian of India's democratic ethos in the years to come.

Suggestions

Based on the issues and challenges faced by the Election Commission of India (ECI), here are some key suggestions to strengthen its functioning and enhance its credibility:

1. **Reform Appointment Process:** Establish an independent, collegium-based system for appointing Election Commissioners, involving the Chief Justice of India, the Prime Minister, and the Leader of the Opposition. This would reduce executive dominance and ensure neutrality, addressing concerns raised by the 2023 Act.

2. **Enhance Enforcement Powers:** Grant the ECI statutory authority to impose stricter penalties for electoral violations, such as vote-buying, misuse of money power, and breaches of the Model Code of Conduct. Empowering the ECI with contempt powers or the ability to disqualify candidates swiftly could deter malpractices.
3. **Combat Digital Disinformation:** Develop a robust framework in collaboration with tech companies and civil society to monitor and counter fake news and misinformation on social media platforms. Real-time fact-checking units and stricter regulations on political advertising could protect voter perception.
4. **Ensure Financial Autonomy:** Amend the Constitution to charge the ECI's expenses directly to the Consolidated Fund of India, shielding it from budgetary pressures and reinforcing its independence from the government.
5. **Strengthen Technological Integrity:** Address EVM-related distrust by increasing transparency-e.g., conducting end-to-end verifiability pilots or releasing detailed technical audits of EVMs and VVPATs. Public demonstrations and independent scrutiny could bolster confidence.
6. **Regulate Political Funding:** Push for greater transparency in political donations by reforming the electoral bond scheme or mandating real-time disclosure of donor identities. Empower the ECI to audit party finances and enforce compliance.
7. **Establish a Permanent Secretariat:** Create a dedicated, professional cadre for the ECI, reducing reliance on seconded staff from state or central governments, which may face conflicts of interest. This would improve institutional expertise and continuity.
8. **Improve Voter Accessibility:** Expand infrastructure and mobile polling units in remote and underserved areas, alongside accelerating digitization efforts (e.g., online voter registration), to ensure inclusivity and higher turnout.
9. **Judicial Safeguards:** Provide the ECI with constitutional protection against arbitrary removal of Commissioners (akin to Supreme Court judges) to insulate it from political retribution.
10. **Public Accountability Mechanism:** Institutionalize periodic reviews of the ECI's performance by an independent parliamentary committee, ensuring accountability without compromising autonomy, and fostering public trust through open dialogue.

Implementing these suggestions would require a mix of legislative amendments, policy initiatives, and technological innovation. Collectively, they aim to fortify the ECI's independence, enforcement capacity, and adaptability, ensuring it remains a resilient guardian of India's democratic ethos amidst growing challenges.



POLITICAL CULTURE IN INDIA: MODERN SCENERIO

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Abstract:

The concept of political culture has become popular after the behavioural revolution in Political Science. It is a product of interdisciplinary approach combining three disciplines namely, political science, psychology and sociology. A mond and Verb a had defined culture as 'psychological orientation towards social objects'. Culture gives meaning, coherence and intelligibility to man's being as a whole. Seen from these angles political culture means attitudes, values and orientation of a people towards politics. As politics is a human activity people's orientation is of great importance. Politics is necessitated by the society and this society influences politics. Hence to understand this politics and society nexus it is necessary to analyze the political attitudes and orientation of the people.

Key words: political culture, India, democracy

Introduction:

The beliefs, emotions and values relating to the political Issues and political systems which a people cherish make their political culture. Political culture is based on an Individual's rational thought process but it penetrates deeper and touches even his unconscious and sub-conscious mind. An individual's political culture expressed through political behaviour shows rational as well as emotional reactions.

Political issues, Political values, political information, interest in political activities and expectations from the political systems-all these are components of political cultures. Political cultures has been defined as 'the pattern of Individual attitudes and orientations towards politics among the members of a political system.

According to Beer and Ulam, "*Certain aspects of general culture of society and especially concerned with how government conducted and what it shall try to do. This sector of culture we call political culture.*" Political

culture thus provide foundation stone on which the entire political structure is based. As such political culture is something which is passed from one generation to another. A people inherit a particular political culture though new additions are made. In a transitional society the changes introduced outbalance the previous culture. It is this political culture that contributed to the making of what a traditional political scientist would call national character.

Political culture is a psychological as well as sociological concept in addition to being a political concept. As it is concerned with the individual's attitudes and expectations and willingness to participate in politics it has to penetrate individual's mind. Political orientations are formed in conscious as well as sub-conscious mind and are influenced by new ideas and experiences. This makes it a psychological concept. At the same time political culture is a sociological concept as it involves individuals in isolation, but as members of society and focuses on common habits and political attitudes shared by the whole society.

The determinants of political culture

A political culture is a product of many inter-related factors. Geographical, historical and socio-economic factors play a vital role in forming the political culture.

Historical factors

Political stability, continuity and discontinuity of political system depend on its historical experiences. The continuity of the British political system has built up a political culture that is peculiarly British. The British conservative national temperament has allowed modern changes but retained the age old practices. The gradual change to modernity has not disturbed the political life. There was no need for a violent upheaval. On the other hand France provides the examples of a society where the revolution of 1789 violently overthrew the political structure which set down a pattern of violent up rise and even nineteenth and twentieth century witnessed the same conflicting and antagonistic tendencies in solving national problems. The colony countries present a different picture. The colonies have been influenced by the political culture of the masters and modelled their own political structures in the post independence age on the pattern of their masters. For example India was a British colony and post-independence Indian political structures were modelled on the British Parliamentary type.

Geographical Factors

Geography of a country very much determines the political culture. The British Geography of an insularity protected the country from foreign invasion. Protection from foreign invasion resulted in an uninterrupted political evolution. The British people were the exclusive inhabitants of British. No other foreign race came to inhabit and mix. The result is a homogeneous political culture whereas America provided limitless frontiers to the foreigners. America's geography provided ample opportunities to foreigners who preferred to settle down in America making it a melting pot of

different ethnic cultures. The political culture reflected the political values of egalitarian independence. India is another example of a country with open frontiers the assimilation of various ethnic cultures are present because of the independence they have. Freedom and assimilation have produced a peculiar Indian political culture based on equality despite of differences.

Socio-economic factors:

The socio economic conditions to some extent determine the political culture of a society. A highly industrialised society is bound to avail greater opportunities of transport etc. to its members. Improved communications and transport facilities cultivate greater interest in politics resulting in growth of participatory political culture. For example the American society where the participation of the people is higher than in other democracies. Or the example of India where with the growing economic development people are getting better communication facilities and are gradually taking greater interest in politics than in the fifties or in the sixties.

In addition to these factors there are some unspecified factors which influence the political beliefs, values and participations of the people. Rapid influxes of immigrants, defeat in war, economic depression or failure of political system to provide a stable government to the people may lead to changes in the political culture of the people. Political culture is not stable but a dynamic concept. It changes gradually but there can be a sudden change on necessity.

Almond's concept of political culture

Gabriel Almond has used the concept of political culture for his morphological analysis of the political system. He regarded it "A valuable conceptual tool by which we can bridge the 'micro-macro gap in theory.'" The study of individual in this political context has to be combined with the study of political system as a whole. The concept of political culture visualises individual appropriately in this social context. The formal structures of the political organisations are much informal undercurrents. The various social ties do influence the decision making process. It is here the study of political culture help us.

According to Almond and Powell "Political culture is the pattern of individual attitudes and orientations towards politics among the members of political systems." Truly speaking, Political culture includes not only attitudes to politics, political values, ideologies, national character and cultural ethos, but also the style, manner and substantive form of politics. In the words of Sydney Verba, "Political culture consists of system of empirical beliefs, expressive symbols, and values which define the situation in which political action takes place." Broadly understood as individual attitude and orientations to political involves (a) Cognitive orientation-recognition of political objects and beliefs (b) affective orientation-involving feeling of attachment, involvement or rejection, (c) Evaluative orientation-involving application of judgment and opinions of political objectives and events.

The degree of information and knowledge of how the political system operates or what are the major national problems and policy of government make the cognitive orientation of political culture of an individual. It also includes his understanding of political issues. The emotional side of the individual, as to how much affected he feels by political activities or how much involved he is in his political system or how much feelings he has for his political system make the affective orientation of an individual's political culture. He may feel rejected by the system and may alienate himself from the political system. This is the affective aspect of political culture. Finally he may try to evaluate his political system on moral grounds. He may condemn the unethical practice of corruption in his own system. This is his evaluative dimension of political culture.

Almond starts with two basic assumptions. First is, that, the political structures and the political culture are interrelated. The political system which operates in an environments both input structures and output structures. The members of a society may play a passive part or active part can be measured by their involvement in the input side or output side. Thus political structures and political culture are affected by one another. The higher the level of political awareness the higher the rate of participation. The lower the level of political awareness the lesser participation which in turn again affect the government decision.

Almond's second assumption is that a political system operates within the framework of attitudes of the people towards political activity. This orientation to political action is political culture.

Almond has presented a classification of political cultures on the basis of subject and participants. It is three fold classification comprising of Parochial, Subject and Participant political culture.

Parochial : is it found in simple traditional societies where there is very low level of specialisation. Undifferentiated role structures characterise such society. Such societies lack political consciousness despite social consciousness.

Subject: is it found in colonial societies. People are basically concerned with output aspect. People are either very loyal to and feel pride in culture of their coloniser or hostile and revengeful to their masters. African and Asian societies are examples of it whereas Almond has laid emphasis on blind followers. In Pre independent India intense hatred and hostility was against British.

Participant: it is found in highly developed societies. It involves active participation of people in input and output side. People are usually well informed and emotionally in political activities. Public opinion is highly valued and expressed vigorously.

However the aforementioned types were discussed by Almond as unmixed but by the course of political development it emerged as mixed political culture type. Different societies all over the globe reflect different political cultures. Some are homogeneous and some are heterogeneous, some

manifest authoritarian attitude in their political culture whereas many show liberal trends in their political culture. Enough variation in degree and maturity is experienced.

Now casting a glance on Indian political culture in this context we feel it has adapted western liberal democratic culture since independence. Modernisation in agriculture and industry is the focus planning. Indian society is pluralistic. It is inhabited by people of different race and religion. Secularism is the cardinal virtue of the society binding people of various sects and creeds in to one without segregating them on the ground of race religion, gender or caste. Indian democracy is based on universal adult franchise. Democratic decentralisation roped centre and villages into one fold. From panchayats to parliament the democratic institution are functioning. Village panchayats were organised and mass political participation grew in extent. Myron Weiner in his study on Indian political culture observed that 'the introduction of western democratic institutions in Indian has created two kinds of political culture in India-Elite political culture and Mass political culture. Elite culture is promoted by elitist class represented by Indian political leaders, bureaucrats and majority of English speaking Intelligentsia. Mass political culture is traditional and more popular with rural and urban class. It is active at local level.

Weiner held that Elites directed policies were responsible for spreading of mass political culture. The focus of government of India on economic front with inculcation of Gandhian principles leading to decentralisation of power enhanced the political participation of masses.

Weiner was also aware of the negative traits of mass political culture which was characterized by the evils of casteism, communalism and provincialism. To Weiner the big hiatus between mass and elite culture is dangerous for democratic political system.

Though Weiner made a serious study yet it is no possible to agree with the thesis he presented. He has pointed out that India had developed an elite culture. Every political system is governed by the elite and if his line of analysis is followed we will find elite culture in every political system. The elite, both ruling and not ruling have the same predominating tendency in every society. In India the national freedom struggle too had the elite at its leadership. It is natural that post-Independence India witnessed an eagerness on the part of the ruling elite to modernise India. Though the elite in India remained at the top they never lost sight of the grassroots masses. They continuously attempted to bring modernisation and development, the point already noted by Weiner.

The other point that the elite-directed measures resulted in a mass political culture which was in total contradiction of the elite culture is a point difficult to grasp. India during the fifties and sixties was economically so backward that the poor people could hardly afford was the only political party to win largest no of seats in parliament and state assembly. Had result of popular participation on the input side. During the seventies and late eighties

there was improvement in economic level and also in popular participation in politics. Though there is an increase in people's participation in politics there is no reason to think that there exist a contradiction between the mass and the elite.

Conclusion:

The mass representing the rural traditional, communal, casteist, linguist India and the elite representing modern, western, urban, developed, educated India. The narrowness of caste politics and communalism as well as traditional conservatism are equally present in the elites as well as in the masses. Similarly education, modern attitudes, secularism, faith in democracy and decentralisation are equally present both in the urban elites as well as in the rural mass. India is a developing state and as such the political culture of an average Indian shows a moderate level. He is aware of the political issues. He spends some time on collection political information which he gets rather easily as a result of media explosion through T.V., Radio, newspaper etc. Even if he is not educated he can understand the political issues and what is more important he feels very much involved in politics. Since independence the level of political consciousness has gone higher. He participates in politics, use his franchise, gives his opinion, criticised the shortcomings of the government and is not at all apathetic. In the nineties the advent economic liberalisation and massive expansion of mass media with globalisation the Indian political culture became participatory political culture. The twentieth century witnessed widespread expansion of Internet and its frequent use. The mobile penetration ensured frequent interaction among socially and politically conscious people. It revolutionised the whole outlook. Recent electoral data testifies the higher voting turnouts during polls. It speaks volumes about participating political culture. It is true that there are some negative drawbacks like casteism, nepotism etc. but the common people have become tremendously alert. 73 years of independence has led India to achieve high level of political culture.

References:

1. Almond and Powell: Comparative Politics, p.50.
2. Beer and Ulam : Patterns of Government, Random House, New York, 1962, p.32.
3. Alan R Ball: Modern Politics and Government, Mac Millan, 2nd Ed., 1994
4. Almond and Powell, op.cit, p.51.
5. Almond and Powell, op.cit., p.50
6. Sydeny verba : comparative politics, in Pye and Verba, p. 63.
7. S.P. Verma : Modern Political Theory, Vikas Pub. House, Delhi, 1975, p. 293.



ECOLOGICAL REALISM AND ITS RELEVANCE FOR CONTEMPORARY INDIA

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Abstract:

Ecological realism is a critical philosophical and policy-oriented framework that emphasizes the interdependence of human society and ecological systems, advocating for a grounded and pragmatic response to environmental challenges. In the Indian context—where rapid economic growth coexists with escalating environmental degradation—this approach is both timely and necessary. Drawing from ecological science, political realism, and environmental ethics, this paper explores how ecological realism can inform sustainable development, environmental governance, and social justice in India. It argues for a shift away from technocratic or idealist models of environmentalism toward context-sensitive, evidence-based, and ethically grounded strategies. The study concludes that ecological realism offers a robust foundation for shaping India’s environmental policy in an era of climate crisis and ecological instability. This paper aims to define ecological realism, contextualize it within India’s environmental challenges, and evaluate its relevance as a normative and policy framework in contemporary India.

Key Words: environmental policy, Ecological realism, political realism

Introduction:

India faces a paradox of development: while striving to elevate millions out of poverty and into a modern economy, it also bears the brunt of escalating ecological degradation. From air and water pollution to climate-induced

disasters, the country's environmental crises are multifaceted and urgent. Despite a proliferation of environmental laws, conservation programs, and international commitments, the ecological outlook remains precarious. In this context, ecological realism—a framework that balances ecological constraints with socio-political realities—offers an alternative to both technocratic environmentalism and radical ecological utopianism. It promotes an ethos of environmental governance that is pragmatic, grounded in ecological science, and attentive to India's cultural, social, and political complexities.

Understanding Ecological Realism

Ecological realism is rooted in three interconnected domains:

1. Ontological Realism about Nature

It posits that natural systems possess objective properties and limits, independent of human perception or economic valuation (Morton, 2013). Ecosystem thresholds, biodiversity resilience, and planetary boundaries are real and must guide policy. Ignoring these constraints can lead to irreversible environmental damage, such as desertification, salinization, or mass species extinction.

2. Political Realism in Environmental Policy

It acknowledges that environmental decisions are made within political contexts marked by competing interests, power asymmetries, and economic imperatives (Dobson, 2007). Therefore, environmental policies must be pragmatic and feasible, not merely aspirational. Political will, bureaucratic inertia, and socio-economic inequality all shape the implementation of environmental goals.

3. Ethical Realism

It affirms that ecological justice must be rooted in a recognition of the intrinsic value of non-human life, while also attending to the material needs and rights of vulnerable human populations (Naess, 1989). This involves not only protecting ecosystems but also ensuring equitable access to natural resources for marginalized groups.

By integrating these three strands, ecological realism challenges the limits of both neoliberal developmentalism and deep ecological idealism.

India's Environmental Crisis: A Case for Realism

India's environmental challenges are among the most severe globally:

- Air Pollution: According to the World Air Quality Report (IQAir, 2023), 14 of the 20 most polluted cities globally are in India. Prolonged exposure to particulate matter (PM2.5) leads to serious health consequences, including respiratory diseases, heart conditions, and reduced life expectancy.
- Water Stress: NITI Aayog's Composite Water Management Index (2019) reports that 600 million people in India face high to extreme water stress. Poor water governance, over-extraction, and contamination of water sources are central issues.
- Biodiversity Loss: India has lost over 90% of its original forest cover in some regions and is ranked among the top ten countries with the highest rate

of species loss (MEA, 2005). Habitat fragmentation, poaching, and monoculture plantations contribute to this trend.

- Climate Vulnerability: India is among the most climate-vulnerable nations due to rising temperatures, erratic monsoons, and increasing frequency of floods and droughts (IPCC, 2023). Agriculture-dependent livelihoods are especially at risk.

Despite a range of conservation policies—from the Wildlife Protection Act (1972) to the National Action Plan on Climate Change (NAPCC)—environmental degradation continues. A major reason is the disjunction between ecological science, policy implementation, and socio-political realities.

Why Ecological Realism Matters Now

Grounded in Ecological Limits:

Ecological realism insists on basing policy on the ecological carrying capacity of regions. For example, groundwater extraction policies must reflect aquifer recharge rates rather than be dictated by short-term agricultural demands (Shah, 2014). The over-extraction of groundwater in Punjab and Haryana for paddy cultivation illustrates the dangers of ignoring ecological thresholds. Similarly, coastal development must consider mangrove protection and sea-level rise to prevent long-term socio-ecological damage.

Attention to Socio-political Realities:

Unlike technocratic approaches, ecological realism considers the political economy of resource use. Land-use decisions, forest rights, and pollution regulation cannot ignore the interests of marginalized communities and local governance structures (Guha & Martinez-Alier, 1997). For example, development projects in tribal areas have often led to displacement without adequate ecological or social assessment. Ecological realism calls for participatory models of decision-making that give voice to local communities.

Balancing Development and Ecology:

India's economic planning often views environmental protection as a constraint. Ecological realism offers a reconciliatory approach—enabling sustainable livelihoods, not just conservation. Initiatives like agroecology and sustainable urbanism are examples of realist interventions. These practices offer models where ecological restoration and economic viability coexist. Green jobs, eco-tourism, and decentralized renewable energy are emerging sectors that combine sustainability with economic development.

Indigenous Knowledge and Indian Ecological Thought

Ecological realism finds strong resonances in Indian traditions:

Gandhian Ecology: Gandhi emphasized limits to consumption and respect for nature, aligning with ecological realist values of restraint and interdependence (Gandhi, 1940).

Adivasi Worldviews: Tribal communities across India have long practiced symbiotic relationships with forests and wildlife, grounded in spiritual and ecological realism (Gadgil & Guha, 1993).

Sacred Ecology: Sacred groves and water bodies in India reflect traditional ecological knowledge and reverence for non-human life.

Rather than rejecting modern science, ecological realism advocates for hybrid knowledge systems—integrating traditional ecological knowledge (TEK) with contemporary ecological science. This approach enriches policymaking with culturally embedded and ecologically sound practices. TEK can contribute insights into seasonal cycles, biodiversity monitoring, and climate adaptation.

Institutionalizing Ecological Realism in India

1. Decentralization

Empowering local governance bodies like panchayats in ecological planning and monitoring is essential. Local knowledge and stewardship are often more effective than top-down bureaucratic controls. The 73rd and 74th Constitutional Amendments provide a legal basis for decentralized governance, which needs operational strengthening in environmental matters.

2. Ecosystem-Based Policy

A shift from sectoral approaches to ecosystem-based management is needed. This includes recognizing the interdependencies between forests, water bodies, agriculture, and urban development. Urban wetlands, for instance, serve as flood buffers and biodiversity habitats but are often ignored in urban planning.

3. Environmental Education

Curricula must move beyond awareness to ecological literacy, critical thinking, and civic responsibility. School and university programs should integrate field-based learning and interdisciplinary studies in ecology. Programs like the National Green Corps and Eco Clubs should be strengthened with pedagogical innovation and experiential learning.

4. Environmental Justice Frameworks

Policies must protect the rights of communities disproportionately affected by pollution, displacement, and resource alienation. Legal instruments like the Forest Rights Act (2006) need stronger enforcement and awareness. Public interest litigation and environmental tribunals must also be more accessible to vulnerable populations.

Case Studies of Ecological Realism in Action

Chilika Lake Restoration, Odisha:

A successful example of combining scientific knowledge, local stakeholder engagement, and sustainable resource use. The lake's ecological health and fish yield improved significantly without displacing local livelihoods (Wetlands International, 2012). The Chilika Development Authority engaged fisherfolk, scientists, and policymakers in an adaptive co-management model.

Sikkim's Organic Farming Policy:

The state's gradual shift to 100% organic farming is a model of ecological realism—balancing soil health, farmer income, and long-term sustainability (Government of Sikkim, 2016). Farmers received training, market support, and incentives, showing how policy coherence and grassroots participation can drive ecological transformation.

Aravalli Biodiversity Park, Delhi:

An urban conservation model co-managed by local citizens and municipal authorities, demonstrating how ecological restoration can align with community interests and public health (TERI, 2018). The park has become a green lung for the city and a model for other urban areas seeking to reclaim degraded landscapes.

Conclusion:

Ecological realism is no longer a philosophical luxury but a pragmatic necessity for India. By grounding environmental decision-making in ecological science, political realities, and ethical consideration, it provides a robust framework for navigating India's developmental and ecological challenges. As India aspires to lead the global climate discourse, ecological realism should be central to its environmental policy, education, and civic imagination. It allows for a nuanced understanding of human-nature relationships and promotes sustainability without sacrificing social justice or economic needs.

References:

1. Dobson, A. (2007). *Green Political Thought* (4th ed.). Routledge.
2. Gadgil, M., & Guha, R. (1993). *This Fissured Land: An Ecological History of India*. Oxford University Press.
3. Gandhi, M. K. (1940). *Constructive Programme: Its Meaning and Place*. Navajivan Publishing.
4. Government of Sikkim. (2016). *Sikkim Organic Mission Report*. Department of Horticulture.
5. Guha, R., & Martinez-Alier, J. (1997). *Varieties of Environmentalism: Essays North and South*. Earthscan.
6. IPCC. (2023). *Sixth Assessment Report*. Intergovernmental Panel on Climate Change.
7. IQAir. (2023). *World Air Quality Report*. IQAir.
8. Morton, T. (2013). *Hyperobjects: Philosophy and Ecology after the End of the World*. University of Minnesota Press.
9. Naess, A. (1989). *Ecology, Community and Lifestyle: Outline of an Ecosophy*. Cambridge University Press.
10. NITI Aayog. (2019). *Composite Water Management Index*. Government of India.
11. Shah, T. (2014). *Groundwater Governance and Irrigated Agriculture*. International Water Management Institute.
12. TERI. (2018). *Urban Biodiversity in India*. The Energy and Resources Institute.
13. Wetlands International. (2012). *Chilika Lake Ecosystem Health Report*.



DEPRIVED, DETACHED OR DISTURBED HOME IN *LOOK BACK IN ANGER* BY JOHN OSBORNE

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Abstract:

Osborne in his play, *Look Back in Anger* manifests the angst ridden psyche of his protagonist, Jimmy Porter in particular and entire youth, in aftermath of war, in general. Jimmy is a person who is not well nourished in emotional health and he desperately craves for love and attention. Jimmy is a kind of person who sticks to people permanently, taking them as family and never gives upon them, he comes from a deprived and disturbed home so his upbringing interferes in his relationship with people around. Alison, his wife, is from a detached home and she, having no sense of family, finds solace in her friend, Helena. Two people, from different homes and upbringing, when tied in nuptial knot, fail to handle the relationship as they harbour no understanding between each other. Alison is cold, indifferent but composed whereas Jimmy is mischievous and rude but reliable. They are not raised to accept the weakness of people with their merits so they are incompatible with each other. Progression of paper will reflect how they reconcile in the end, accepting each other as one family despite weakness and strength.

Keywords: Disturbed, detached, reconcile, angst, catapault.

Introduction:

Osborne introduces us to the concept of home and showcases variety of homes and their effect on upbringing of children. Children don't grow up they are raised like plants with due care and consideration. Parenting is a very serious job and education enables people in undertakings of life; here, both Alison and Jimmy are only trained, not educated and both come from different homes where love, peace and family spirit are alien words. Jimmy keeps on showing his past as a festering wound without bandaging it, rather spoiling the aura of the house with its stench and puss. He is very much vocal about his pain and

undue struggle wherein nobody realised his sincerity of service of his father rather his mother took advantage of his obedience in her favour and employed him in service which she was supposed to provide to her husband. Jimmy is never taught to say 'no', he grumbles, taunts, sneers but shows up for people and callous people shamelessly take advantage of him and never pay him a sincere 'thank you' or even mention of him.

Alison on her part is a kind of person who has not even idea of family, she is so dumb that she has no idea how her parents only facilitated her like guardians but never raised her with inculcations ; as a result ,she finds help in Jimmy but Jimmy too does not come up to her expectations as their marriage was more a defence or defiance against her parents and less a mature decision. Both partners are indifferent to the choice of each other and are governed by the need of nowhere. Gradually, they get mature and educate themselves through circumstances and reconcile for a new beginning.

Observation and Analysis:

Osborne has talked about various things in his famous play Look Back in Anger and primarily he has talked about angst-ridden angry young people who are talented and promising but catapulted by elite class lobby which make puppet out of them to their suitability. The protagonist is not only dissatisfied with society and monopoly of a class people but also at variance with his family and top of it with himself. He is a person who is sarcastic, satirical and create discomfort and unease for his family and friends, Osborne does not approve of his character and also his whims but underneath all his idiosyncrasies and churlish demeanour lies frustration against the system that exposes the hypocrisy of the elite class which claim to be benefactor of working class. Osborne is a detached observer in the play and switch neither to the opposition of Jimmy Porter, main protagonist in the play nor in apposition of Jimmy. Osborne highlights how talented is being twisted to the advantage of creamy layer and how this creamy layer of society is compromising the fortune, future and fecundity of youth.

In the play, we come across a married couple who took an unwise decision of marriage before a stable source of livelihood and employment. Jimmy Porter and Alison are young people with different social and financial backgrounds and united in nuptial ties more by chance and less by choice ; Alison was impressed by scholarship of Jimmy who was a university student and Jimmy deprived of love in his home strove for affection in relation with Alison. Harsh realities of life and time douses down the fever of affection and expectation between the couple and the bubble of romance burst out and takes wind out of sails of household of the couple make them uncomfortable if not incompatible with each other.

The play has main current of socioeconomic unrest in youth and repercussion of war snatching employment and depleting resources of people; young's are great sufferers because they are placed in an era of war torn and afflicted people who are oblivious of their own future, petrified by war and fail in their parental duty to raise their children free from holocaust of war and its trailing

consequences .The plot discusses several issues viz. hazards of war on psyche of man, young angry men of calibre curtailed or capsized by privileged class, hasty and immature decision of marriage, marital discord, emotional vacuum and constant turmoil land dwelling in past of Jimmy, his hopelessness and unhappiness ushered in his mindset by calamity of war and its direct effect on the failing health and imminent death of Jimmy' father and trauma of ten years old Jimmy as an attendant of his stinking sick father. In due course of play Osborne reveals how Jimmy is sinned more than sinning by unfavourable chance and his choice to stick to his duty and to his relation with dedication and devotion however reluctant and repugnant he feels in that conundrum.

This paper has sliced away domestic aura from all other issues for discussion as it intends to reflect on psychological reasons for aberrant demeanour of Jimmy and cold, lackadaisical approach of Alison toward life and family. Though Jimmy is angst ridden and society is also averse and adverse to evolving middle class, war has also compromised employment and enlightenment of people and holistic growth of man is replaced by bare subsistence, sleep, sex and sarcasm yet projection of faults should be sensibly replaced by revelation of inner recesses of protagonist to assess the reasons for abrasive manifestations to reform youth and to guide , mentor them to replenish them with honesty, hardwork , humility ,hopefulness and happiness so that their social and personal relations can be monitored for a society inhabited by responsive and promising youth.

Home is a place to feel comfort, rest, happiness and emotional succor, home plays a vital role in raising of a child and a disturbed childhood can jeopardise the entire fabric of child's physical, mental and spiritual health. Both protagonists suffer severe mental unrest and dejection even without knowing what ails them and what can serve as a cure to their affliction and agony. Home does not mean staying people together as crowd but it rather stands for a hub of harmony and a bond of share and care between the inhabitants. Jimmy comes from a home –disturbed, detached and deprived; his father a war veteran, injured and terminally ill, in his disturbed home he was deficient in love and care, he has no fond memories of his parents fondling him and no recollections of a happy home or childhood, whenever he reminisces about his past ,his nostalgia is always painful and troublesome. Jimmy was put to service of his ailing father under order of his mother without even knowledge of his willingness, he had to tolerate stinking smell of his dying father, much abhorrent to him. Children have no choices, only adults have. Here, Jimmy unfurls dark side of parenting where parents don't cajole or convince children in to survive by expressing or elaborating the need and compulsion of family but coerce them into unpleasant situations, the scars of which always remain pervasive in their personality. Had Jimmy's mother told him the need of service of father, exceptional qualities of Jimmy to be trusted for service and merit of service in his future life in form of supportive nature which everybody appreciates in Jimmy, he could be satisfied by rational view of situation and must have respected not only his parents but also the feeling of

service. Jimmy, a product of disturbed home and deprived in various ways also suffers detachment due to apathy of his mother who forced him into an unpleasant undertaking and never expressed any gratitude or pride for having such a dutiful son, this detachment is very irksome for Jimmy as he is unable to reconcile with people and prospects as he wants realization of what he has done for family—wife or mother especially when nobody was there to replace him, and they had no other benefactor in their dire need.

Jimmy's detached, deprived and disturbed home churns up an intense craving in him for love, attention and remedy for his disturbed psyche. Jimmy has never been taught to express himself or to elaborate his point of view and to articulate his story with eloquence to make people at least hear it even if not redress it. His inability to convey his choice and preferences make him cynical, sarcastic and maladjusted in his core group so much so that his wife shares the news of her pregnancy with his friend and not with her husband, lack of expression and lack of sharing has converted Jimmy into same stuff of his mother as he is hypnotised to practice what he has seen in his house. Jimmy is never vocal about the reason what ail him rather he is more vocal about the pain gushing out of his mental wounds; here he is more animalistic in his approach who hoot and hound in pain and anger but never give a rational view of their pentup feelings and resentment.

Alison, his wife, on the other hand comes from a detached and distanced home with parents virtually absent parents with a train of nannies and servants with no permanent presence of mother, with no bond of love, privacy and possession; she virtually makes no difference in her affection or priority for Jimmy and his friend – Cliff rather she shares a deeper but not licentious bond with Cliff, much annoyance to Jimmy, her husband. Hers was not a deprived home, she was raised in an affluent aura of army cantonment and her parents neither showered affection on her but never troubled her in her ease. Lack of love and support from parents always in guest appearance make Alison explore love elsewhere for instance in Jimmy or in Helena or in Cliff. She is also not mindful that husband cannot be replaced by friend as both have separate values as she had no permanent love in her life in form of parents or sibling and what she learnt at natal home, practised at her own home, her detached home made her detached throughout her life and she fails to detect her anchor of life. She too is animalistic in her approach as she holds temporary attachment suitable to animals only. Both Alison and Jimmy lose their human potential, former for articulation and expression and latter for permanent attachment, relation and also expression. They play Bear and Squirrel game and resort to the subterfuge, just to forget the pain of being humans, denied human privileges and feeling of admiration, love, recognition and other refinements credited to humans. Alison is very uncomfortable with Jimmy as the latter projects more humour & less satire in his passive aggression and poses as if he is the victim and victim is the villain. Jimmy tries enthusiasm over exhaustion of the post world war world but no way

seems to him as the elite group has left no scope for intelligence. Jimmy admits :

I suppose people of our generation aren't able to die for a good cause any longer ... "It will just be for the Brave new nothing very much thank you." (Look back in Anger 84)

Here Jimmy unlines hollow talks of elite people misleading and manipulating the young people. He also says :

"Oh, brother, It's such a long time since I was with anyone who got enthusiastic about anything." (look back in Anger 14-15)

Longer ... "It will just be for the Brave new nothing very much thank you." (Look back in Anger 84)

Here Jimmy unlines hollow talks of elite people misleading and manipulating the young people. He also says :

"Oh, brother, It's such a long time since I was with anyone who got enthusiastic about anything." (look back in Anger 14-15)

Alison comes from an elite, affluent aura but she had absent parents unlike Jimmy who has pernicious presence of parents corroding his childhood with his employment in man's task unreasonably without acknowledging his immense and priceless contribution to the family by providing his father a sense of belongingness with his constant presence and serviceful availability to his father. Alison was raised by nannies and servants who were repeatedly changed and who neither showered affection on her nor shaped her by requisite scoldings due for inculcations , she was facilitated, and managed but not monitored or shaped up as servants dare not step in shoes of parents and exercise authority mandatory for mentoring of a child. Alison in absence of nurturing and sculpturing influence of parents finds most intimate relations with parents, siblings and husband as casual and shallow as with average acquaintance, that is why she behaves with her husband and Cliff on same frequency and confides more seriously with Cliff as she explores an empathetic ear in him. Her upbringing compromises her integrity as she fails to observe a core group relationship and treats her friend, Helena, Cliff and Jimmy on equal footing only to realize later that her husband is her last resort and refuge when all fail her. Jimmy and Alison live and die multiple deaths as both are unable to accept their present and have their intellectual skills and superego they reconcile with erotic play and then crave for death as it gives them release and not relief.

Erotic instincts always try to ... collect living substances together into even larger units; the death instinct acts against that tendency and tries to bring living matter back into an inorganic condition. (qtd. In Anthony Storr 6)

Erotic play induces life into them but it gives fatigue and not rest or satiation, there is no resolution for them.

Jimmy never confronts Alison straight, his aggression is always passive.

Passive aggression is the best weapon as active attack invites relations however when the attack is passive it is usually difficult for a victim to

establish blame or to determine whether aggression has occurred.
(Buss 9)

Jimmy too is at fault because he notices informal association between his wife and his friend but he does nothing to extrapolate it nor he demands from his wife some preserved rights of husband but in first place giving her all due respect and recognition of a wife and replenish her with his intellect, he so proudly boast of and shaping the persona of both by constant hardwork, discipline and perseverance. Jimmy is afflicted by his home , his first school and his disturbed , detached home which also deprived him from various basic rights to choose , to express make him so restless and unhinge his psyche so much that he fails to dress his wound with bandage of time and test, he leaves it open, puss, stench come out of it to add on his sorrow manifolds and spoils the sensibility and flavour of others too, moreover ,he is not interested to allow others to put a salve, salvo on his festering wound as he dwells in his pain so amusingly and possessively that those who want to help him find themselves disheartened. His sarcasm, his constant assertion of self, his tendency to carpe on people and to defend himself anyhow, anyways distances him even from his core group members. Macarthy also asserts :

He (Jimmy) is fighting to keep Alison awake, to keep himself and Cliff awake, as though all three were in the grip of a deadly coma or narcosis ... (152)

Here, Jimmy becomes villain for his nastiness but truth lies in the fact that he is a victim of circumstances and getting no clue to get out of them, he meddles with his core group, his wife and close friend unnecessarily to get some solution but in such an offensive way that he loses their trust and also their company.

Jimmy attracts people towards him by showing his wounds and his helplessness ,his self pity arouses sympathy n hearts of people but his refusal to move on and to accept the loss ,his lack of self-discipline and eagerness not to recuperate from the trauma but to swim into it snugly if not smugly, his pain becomes his biggest wall between him and his mentor and his defence of this wall also make people repulsive towards it.

Conclusion:

Osborne draws the attention of the readers to the fact that home is a very important place and raising of a child is very serious and systematic affair and any anomaly leaves permanent scars on the psyche of the child with ugly manifestation in his personality. Jimmy makes his own family, expects his own child but this arrangement further aggravates and ignites his anger and resentment, he can mend affairs with his son and improve upon the attitude of his wife as everyone has five preceptor—mother, teacher, friends, spouse, circumstances; Jimmy being husband and preceptor of his wife could have induced considerable change in her to make her swift foot, hardworking, responsible and responsive by a constant dialogue and corrective methodology. Jimmy unlike educated person finds education only a vehicle for employment and earning and he feels that even when he is a drop out of a

mediocre university unlike Oxford or Cambridge entitled to a white color high paid job and his failure to obtain one such is attributed to elite class who has established its monopoly over all offices of influence. Jimmy fails to notice that education primarily, gives enlightenment to a person to think and decide a course of his life in consonance with his calibre and taste. Ironically, Jimmy has no passion to follow but he persists in his idiosyncrasies and in profound slumber of his own hopelessness and unhappiness, he neither illumines himself nor others with his exceptional potential. Jimmy was raised in uncomfortable home which lacked all care and share of a family and was more or less like a training centre wherein training was also with no accurate purpose and roadmap to shape up a person by struggle. Jimmy invites some attention of people when he stands by them in their tough times and this unique feature of him lures people to him but constant nagging and sense of obligation distances him from them as he is corrosively demanding and commanding to confirm his presence obligatory in their lives; this habit of him makes him a necessary evil in lives of his family members. Osborne places great importance on parenting and childcare especially in a war torn era wherein two world wars have collapsed every system and torn apart fibre and fabric of virtuous thought and application rendering people specifically youth frustrated, stupefied and oblivious in their purpose and pursuits.

Jimmy has to accept his life, his family and his loss and to restart life again and here, Osborne drops the message that if home fails to guide one, one has to guide oneself finally to reshape life. The play is important today as youth is also in hopeless dejection today in wake of unemployment, enlightenment and various other mega problems of life, it guides young people with the example of Jimmy who has to forgive even himself and to reconcile with people and life.

References:

1. Buss, Arnold H. *The Psychology of Aggression*, New York Publication, 1961.
2. Macarthy, Mary. "A New Word" *John Osborne Look Back in Anger*, edited by Taylor, Macmillan (1968, 4). Storr, Anthony. *Human Aggression Atheneum*, New York, 1968.
3. Osborne, John. *Look back in Anger and other Play*. Boston, London, Faber Faber 1993.
4. Trussler, Simon. "The Plays of John Osborne." Victor Gollancz, London, 1969.



ELECTORAL SYSTEM IN INDIA: NEEDS OVERHAULING

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Abstract

India is the largest democracy in the world but we feel that due to certain reasons, democracy is not working properly. So, now the researchers feel that why this largest democracy is not working properly? There is some thing wrong in the electoral process. India's freedom indicated the end of European imperialism and the people of India's aspiration was the beginning of new dawn to have a new start of rule of people in India through democratic principles, values and norms. Democracy, equality and fundamental rights became the core value of India's Constitution. Indian Constitution accepted parliamentary democracy because freedom struggle has given experience of democratic value to Indians. Democracy believes in the people and their political rights. Parliamentary democracy has taken steps to protect the democratic principles, trust and values from structural flaws. In this regard, electoral process and electoral politics is the life and soul for consolidation of parliamentary democratic system in India. The free and fair elections are fundamental basis for success of democracy. Political stability can secure through people's political participation. Electoral system is necessary and important instrument to make parliamentary democracy work. Under the constitutional values and guidelines of Election Commission free and fair elections are held at regular intervals in India.

Keywords: Parliamentary Democracy, democratic principles, political participation, Election Commission, political stability, electoral reform.

Introduction

India is a Socialist, Secular, Democratic Republic and the largest democracy in the world. The modern Indian nation State came into existence on 15th of August, 1947. India is a constitutional democracy with a parliamentary system of government, and at the heart of the system lies a commitment to hold regular, free and fair elections. These elections determine the composition of

the government, the membership of the two Houses of Parliament, the State and Union Territory Legislative Assembly, and the Presidency and Vice-Presidency.

India has the distinction of being the largest democracy of the world. Elections are the most important and integral part of politics in a democratic system of governance. While politics is the art and practice of dealing with political power, election is a process of legitimization of such power. Democracy can indeed function only upon this faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and in form are not mere rituals calculated to generate illusion of difference to mass opinion, it cannot survive without free and fair elections. The election at present is not being held in ideal conditions because of the enormous amount of money required to be spent and large muscle power needed for winning the elections. While the first three general elections (1952-1962) in our country were by and large free and fair, a discernible decline in standards began with the fourth general election in 1967.

¹ No such events were reported till the fourth general election. Over the years, Indian electoral system suffers from serious infirmities. The election process in our country is the progenitor of political corruption. The distortion in its working appeared for the first time in the fifth general elections, 1971 and multiplied in the successive elections especially those held in eighties and thereafter.² Some of the candidates and parties participate in the process of elections to win them at all costs irrespective of moral values. The ideal conditions require that an honest, and upright person who is public spirited and wants to serve the people, should be able to contest and get elected as people's representative. But in actual fact, such a person as aforesaid has no chance of either contesting or in any case winning the election. To make them free of flaws it is essential to reform the electoral system from time to time. From the above discussion, this paper aims to evaluate need, issues and challenge for electoral reform in India.

I. Constitutional Provisions for Elections

Before discussing the other aspects of the parliamentary electoral democracy, it is most significant to have a look over the constitutional provisions provided to conduct the free and fair election. In this regard Constitution provides that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).³ It also provides the provisions for the Election Commission shall consist of the Chief Election

¹Shukla, Subhas, *Issues in Indian Politics*, Anamika Publishers, New Delhi, 2008, p.219.

² Kaur, Amandeep, *Electoral Reforms in India: Problems and Needs*, Unistar Publication, Chandigarh, 2009, p.35.

³ Article 324(1) of the Constitution of India, 1950

Commissioner and such number of other Election Commissioners, if any, as the President may from time-to-time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.⁴ Further, it provides provisions for the functional aspects of the Commission. When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.⁵

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race caste, sex or any of them.⁶

The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.⁷

The Parliament from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due Constitution of such House or Houses.⁸

Constitution also provides that subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the Constitution of such House or Houses.⁹

The Constitution also bars interference by courts in electoral matter. It provides that notwithstanding anything in the Constitution (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court; and (b) no election to

⁴ Article 324(2) of the Constitution of India, 1950.

⁵ Article 234(3) of the Constitution of India, 1950

⁶ Article 325 of the Constitution of India, 1950.

⁷ Article 326 of the Constitution of India, 1950.

⁸ Article 327 of the Constitution of India, 1950.

⁹ Article 328 of the Constitution of India, 1950.

either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.¹⁰ After discussing the constitutional provisions of electoral process, it is very pertinent to discuss the conduct of elections in India. The following part focussed on conduct of election in India.

II. Conduct of Elections in India

Conduct of General Elections in India for electing of a new House of the People (Lower House of Indian Parliament), involves management of the largest event in the world. The electorate exceeds 605 million, voting in nearly 800,000 polling stations spread across widely varying geographic and climatic zones. Polling stations are located in the snow-clad mountains in the Himalayas, the deserts of the Rajasthan, and in sparsely populated islands in the Indian Ocean.

India has recently conducted the biggest electoral exercise of the century on this earth, when it held the twelfth general election to the House of the People in the months of January-March, 1998. The general election was unexpected, as there was sudden premature dissolution of the House on the 4th December, 1997. The country was taken somewhat off-guard for such a big event, involving the participation of over 605 million electors, needing a huge electoral machinery comprising about 5 million election officers at various levels. Also, for a peaceful atmosphere conducive to free and fair polls, nearly one million civil police forces were deployed for maintenance of general law and order, and security of electors, polling personnel and polling materials, at polling stations and counting centres.

Simultaneously, general elections were also held to five of the twenty-five State legislative Assemblies in the States of Himachal Pradesh, Gujarat, Meghalaya, Nagaland and Tripura.

The Constitution of India has vested, in the Election Commission, the superintendence, direction and control of the entire process, for conduct of elections to Parliament and Legislature of every State, and to the offices of President and Vice-President of India. Village and city local elections have been left to the State Government under local Commissioners.

The Election Commission can, justifiably, take pride in having successfully conducted the above electoral exercise to the satisfaction of all stake holders and participants, namely, political parties, candidates and the electorate.

Indian Constitution has accepted parliamentary democracy and has given right to vote on the principle of universal adult franchise. Elections are important features of parliamentary democracy which is held at regular intervals from time to time. People's faith and trust is essential for success of parliamentary democracy. India is the world's largest democracy with 900 million voters. Therefore, free and fair elections are essential for the political stability and

¹⁰ Article 329 of the Constitution of India, 1950.

healthy democracy. Elections are indispensable to any political system which claims itself democratic. In India, the State governments and union government draws its authority from the Indian citizens.

It is the Indian citizens who have the sovereign power to elect their representatives, form and change their government. The elected governments are responsible to the Indian citizens who have elected them. But the Indian citizens who elect the representative for formation for governments have no right to recall or dismiss the representatives on the ground that they are unsatisfactory for their post. In this situation, the Indian citizens can reject the representatives through elections which is held at regular intervals. Elections are practical form of democracy. The consent of the Indian citizens is expressed through the elections in parliamentary form of democracy. From the above existing situations of our electoral system, no doubt it is undergone with the ups and downs of its journey to conduct a free and fair elections. But now the time has come to have a overhauling is needed in the existing electoral system to conduct free and fair election and regain the parliamentary electoral democracy of India. The next part of the paper discuss about the need of electoral reforms in India.

III. Need of Electoral Reforms

In parliamentary democracy, representation is linked with elections at regular intervals. Elections are only mechanism in which representation, government formation, control on governments and change in ruling political parties are conducted. Therefore, elections are essential features of parliamentary democracy. But only elections are not criteria to fulfil the aspirations of people. Free and fair elections are necessary for healthy democracy. “Democracy” and “Free and Fair Election” are inseparable twins.

In this regard, electoral reforms have paved the way for free and fair elections. Electoral reforms refer to introduction of best practices in ensuring better responsible parliamentary democracy, removal of structural flaws, clean politics, honest politicians, maintain citizens’ trust, true representation and so on. We need electoral reforms, and need them urgently, if we wish to ensure healthy democracy, at least in the workable form if not in its ideal form, survives in the country. Indian Constitution Articles 324 to 329 deal with elections and electoral reforms.

Transparency of background of candidate freeing the election process from muscle and money power, transparency in election funding, giving right to formation to Indian citizens, assured facilitating of vote casting, removal of criminalisation of politics, upholding the secrecy of voters, secure free and fair elections, fair registration and recognition of political. In this regard it is very significant to see the issues of electoral politics of India, because it has direct impact on electoral democracy.

IV. Issues in Electoral Politics of India

The elections at present are not being hold in ideal conditions of the enormous amount of money required to be spent and large muscle power needed for winning the elections. The major defects which come in the path of electoral

system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, non-serious and independent candidates etc.

- (a) **Money Power:** Electioneering as an expensive affair in every democracy polity which plays a more vital role in India. Money power plays in our electoral system destructive role affecting seriously the working periodic elections, it leads to all round corruption and contributes mainly to the generation of black money economy which rules at present at our country. A prospective candidate in each constituency has to spend millions of monies towards transport, publicity and other essential items of election campaign. In recent years the election expenses have increased beyond any limits due to the desire on the part of every political party to spend more than their rivals in the fray. The elections were not as costly in 1952 as they have become today. Political leaders and workers considered it unethical to work with a desire for any reward. But scenario now has changed. The elections in Indian polity are becoming increasingly expensive and the gap between the expenses incurred and legally permitted is increasing over the years. The observers are watching the system that requires unbelievably enormous expenditure collected through the dubious means by political parties and their candidates. The adoption of planning and of mixed economy with a large amount of control, regulation, licenses, permits and quotas in free India provided enormous opportunities for political corruption and resulted in an unethical nexus between the electoral politics and the business sector of the country. This seems to be continued even today with more disastrous consequences of an overflow of black money into the corridors of political parties despite the liberalized economy induced to the political system of country. Elections in India so far from a common man, only those people can participate in elections as a candidate who has a lot of money, because today vote is not a mean of public opinion. It is being purchased.
- (b) **Muscle power:** Violence, pre-election intimidation, post-election, victimisation, most of the riggings of any type, booth capturing both silent and violent are mainly the products of muscle power. These are prevalent in many parts of the country like, Bihar, Western Uttar Pradesh, Maharashtra etc., and this cancerous disease is slowly spreading to south like in Andhra Pradesh, Criminalisation of politics and politicalisation of criminals, freely indulged in now, are like two sides of the same coin and are mainly responsible for the manifestation of muscle power at elections.¹¹

¹¹Sundriyal, R.B. and Dighe, Sharde (ed.), *Electoral Reforms*, Shree Publishing House, New Delhi, 1997, p.122.

By using of violence, the criminals are able to achieve success at elections for their benefactors.

- (c) **Misuse of Government Machinery:** It is generally complained that the government in power at the time of elections misuse official machinery to further the election prospects of its party candidates. The misuse of official machinery takes different forms, such as issue of advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing etc. the misuse of officary machinery in the ways mentioned above gives an unfair advantage to the ruling party at the time of lections. This leads to misuse of public funds for furthering the prospects of candidates of a particular party.¹²
- (d) **Criminalisation of Politics:** During the election period, newspapers are usually full of information about the number of criminals in the field sponsored by every party. The reason of the criminals behind entrance to politics is to gain influence and ensure that cases against them are dropped or not proceeded with. They are able to make it bit in the political arena because of their financial clout. Political parties tap criminal for fund and in return provide them with political patronage and protection.¹³ Rough estimates suggest that in any State election 20 percent of candidates are drawn from criminal backgrounds: Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes often at gun point. Voters in many parts in the country are forced to vote for the local strongman. Tickets were given to the candidates with criminal records even by National Party. All these instances reported time and again show that democracy in India has largely failed to be what it was because the corrupt and criminals have to entered it,¹⁴ criminalisation of politics has become an all-pervasive phenomenon. At one time politicians hired criminals to help them win elections by booth capturing. Today, those same criminals have begun entering Parliament and the State Legislature.
- (e) **Non-Serious Candidates in Political Parties:** In recent years there has been a steady increase in the number of candidates in elections. The number of candidates has swelled due to the participation of independents. They contest elections light heartedly and lose their deposits. Non-serious candidates are

¹² Singhvi, L.M., *Elections and Electoral Reforms in India*, Sterling Publishing House, New Delhi, 1971, p.165.

¹³ Gupta, S.C., *Essays*, Meerut, 2004.

¹⁴ Kaul, Summer, 'Who wants to cleaner Electoral System? Not the Politicians', *Parliamentary Affairs*, August, Bangalore, p. 13.

largely floated by serious candidates either to cut sizeable portion of votes of rival candidates or to split the votes on caste lines or to have additional physical force at polling station and counting centres. The multiplicity of candidates causes inconvenience to election authorities in the management of elections. The voters are also handicapped in identifying the candidates of their choice. This affects the sanctity of elections. This onslaught of non-seriousness has to be halted.

V. **Problems of the Political Instability, Hung Parliament and Assemblies**

There has been a great deal of political instability during the last decades. The result has been unstable administration and unstable policies, the hallmark of minority governments. The reasons are not far to seek. The Westminster model adopted by us, works mainly on the basis of a limited number of political parties. In the United Kingdom, there are only two major political parties. Contrarily in India, politicisation at ground level coupled with a highly fragmented society, has given rise to a multiplicity of political parties. Each one of these exists not on a different ideology or economic programme, but on the basis of having nursed a narrow parochial. Mostly caste or religion based, identity for itself and its band of followers. Even this support is usually earned not by doing some constructive work for the concerned group but negatively by bad-mouthing others and all the time pitting one group against the other. The resultant divided vote has made it increasingly difficult for single parties to get workable majority to form a government at the Centre.

In order to cobble up a workable majority to form governments, compromises have had to be made and all ideology or notions of quality of governance have disappeared from the scene. This has had a very negative repercussion on the quality of governance with several consequences. Corruption has flourished, law and order has suffered and control mechanisms have broken down or become very loose. The common citizen has been the victim of all resultant misgovernance. This situation has generated its own debate and suggestions have been made to limit the number of political parties as well as independent candidates that are allowed to contest for national elections.

- (a) **Casteism:** Although there is hardly any instance in India of a political party being totally identified with any particular caste group, yet there are cases of certain castes lending strong support to particular political parties. Thus, while political parties struggle among themselves, to win different caste groups in their favour by making offers to them, caste groups try to pressurise parties to choose its members for candidature in elections. If the caste group is dominant and the political party, is an important one, this interaction is all the more prominent. In many political parties, is an important one, this interaction is all the more prominent. In many political parties, in place of ideological polarization there occur the determination of policies and programmes as well as the

nomination of electoral candidates and the extension of support to them on caste consideration. Caste dominates the political field, especially at the lower level. The emergence of regional parties and the “withering away of national outlook and spirit” thus sets off another crisis. Candidates come to be selected not in terms to accomplishments, ability and merit but on the appendages of caste, creed and community. Ultimately caste becomes the deciding factor on selection. Caste based politics and casteism are eroding the “unity” principle in the name of regional autonomy.

- (b) **Communalism:** The emergence of India as a “secular” State, the politics of communalism and religious fundamentalism in the post-independence period has led to a number of separate movements in various States and regions of the country. Communal polarisation, rather multi-polarization, has posed a threat to the Indian “political ethos of pluralism, parliamentarianism and federalism”. Despite the adoption of the “Principle of Secularism” as a constitutional creed, which ironically allows communal parties to compete, the trend towards communalism and fundamentalism in Indian politics have been growing day by day. The spirit of tolerance that is essential for a “secular” society seems to have completely vanished from the body politics of India. The dynamics of national State politics of the “last decade is a mute witness of the clashes and conflicts between the so-called “Secularist and the Communalist”.
- (c) **Lack of Moral Values in Politics:** There has been very sharp erosion in the ideological orientation of political parties. Party dynamics in India has led to the emergence of valueless politics much against the ideals of the father of the nation, Mahatma Gandhi, who suggested that the Congress party should be disbanded after the achievement of Independence and its members should engage themselves in the service of the people. While Gandhi taught us tremendous selflessness, self-sacrifice and service, to the people, such inspirational values, the democratic norms and institutions have been destroyed systematically over the last years of the working of the Constitution. In the process, both the politicians and political parties have lost their credibility, the ultimate value that should bind them with the masses. There seems to be a crisis of character among the politicians, as the system does not encourage the honest leader. Because of the falling moral standards both in the public and among the leaders, criminalisation of politics and politicisation of criminals has become the norm. Due to the degeneration of leadership, parties have been entangled in power struggle for the sake of personal ends. In a moral pursuit of power politics, every major player seems to be playing a no holds barred game. The Gandhian value of the spirit of service to

the nation has become completely extinct for the present-day politics.

The money and muscle powers are the basic evils that pollute and defile the process and motivate participants to resort to mal practices in elections. This leads to the decline of moral values in the arena of electoral politics. Radical measures legislative administrative and reformatory are needed to stem the root that is eating vitiate of the democratic process. A game can be fair only if the players are honest and true to its spirit.

VI. Steps taken by the Government

The reports of various Election Commission and a number of formal informal groups discussions at various forums and by individuals have categorically pointed out the defects in the electoral system, some of them have ventured to come out with some useful suggestions, yet the problems remaining to be as critical and challenging as ever. The Joint Parliamentary Committee on Amendments to Election Law (1971-72), the Tarkunde Committee Report of 1975, the Goswami Committee Report of 1990, the Constitution Bill 1994 and the Representation of the People (Second Amendment) Bill, 1994 (passed by Parliamentary), the Election Commission's Recommendations in 1998 and Indrajit Gupta Committee Report of 1998 etc., produced comprehensive set of recommendations regarding electoral reforms. A few reforms have been implemented but "a lot has to be done". The whole country is now expressing serious concern over the anti-social and criminal elements entering into the electoral arena. An indomitable Mr. T.N. Seshan tried his best to cleanse the system, but he failed Mr. Seshan's successor, Mr. Gill faced the same problem. The Ex-Chief Election Commissioner Mr. Lingdoh also found himself in such a pitiable position, that he has found no suitable remedy to malpractices in elections. This leads to cleans the system but, to appeal the voters not to vote for the criminals. Mr. T.s.Krishnamurty has in a proposal letter suggested to Prime Minister Manmohan Singh a set of poll reforms that anyone charge sheeted at least six months before elections should be barred from contesting elections.

The Election Commission has taken several new initiatives in the recent past as a use of State owned Electronic Media for broadcast or telecast by political parties, checking: criminalisation of politics, providing with electoral identify cars, streamlining the procedure for registration of political parties and requiring them to hold regular organisational elections, a variety of measures of strict compliance of Model Code of Conduct for providing a level playing field to contestants during the elections, and so on. In India, the BC has established a set of guidelines known as the Model Code of Conduct that must be obeyed by political parties and candidates in the run-up to an election. These guidelines are intended to ensure that the ruling party at both the national and state levels- does not misuse its official position to gain an unfair advantage in an election.

There is a pervasive feeling that something is wrong with the way elections are conducted in India. Keeping in mind the centrality of elections in

renewing the legitimacy of the democratic political system and its vital role in Constitution of Political Community. It is expected that the distortions adversely affecting the conduct of free and fair elections will be immediately controlled and eliminated if by nothing else, that at least, by making suitable changes in the law governing the conduct of elections. Now, time has come to provide some hard rules and laws in our Constitution to keep away those anti-social evils from legislative and parliament.

Conclusion and Suggestions:

From the above discussions it is crystal clear that in the present time the parliamentary electoral democracy is in threat. The entire structure of the electoral system is attacked and hijacked by particularly the ruling government whether in Central or States. The Election Commission on which the free and fair election is shouldered but it is handicapped by the ruling government. The Election Commission has lost its integrity to conduct free and fair election. Besides that, the ruling political party abusing the institution and taking undue advantage in the election. Still, we are hoping that the parliamentary electoral democracy will restore its constitutional objectives and Election Commission will regain its integrity and perform its assignment as it expected by the Constitution and largest democracy in the world. In this regard, the following suggestions should be taken into consideration for making electoral system free and fair manner:

- At present, the Election Commission does not have independent staff of its own. Whenever, elections take place, the Election Commission has to be depend upon staff of Central and State Governments. The dual responsibility of the administrative staff, to the government for ordinary administration and to the Election Commission for electoral administration is not conducive to the impartiality and efficiency of the Commission.
- Efficient Electoral Commission is a requirement of the day to conduct free and fair elections. Democracy and fearless elections cannot exist without each other. To stop unfair practices in elections like rigging up by using official machinery and to ensure existence of democracy, following methods or means should be adopted.
- The Chief Election Commission should not be at the mercy to Executive and Parliament for its requirement. He should have separate and independent election department to enhance its objectivity and impartiality.
- Political corruption should be stopped by providing funds to genuine candidates through political parties whose account should be auditable. Candidate involving in corruption should be disqualified.
- For having a true democracy, the registration and recognition of the political parties should be fair and without any kind of influence.
- Mass Media should play a non-partisan role in election and as a safeguard of democracy.

- Periodic elections are the foundation of a democratic system. For fair electoral system every aspiring candidate must have fettered freedom to offer himself as a candidate for election and to conduct his election campaign in his own way so long as he keeps him within the law.
- Every voter must be perfectly free to vote as he likes without any fear of consequences and without being unduly influenced by anyone by improper means and inducement or pressure of any kind.
- The secrecy of voters "preference to any candidate should be maintained. The election machinery must function honestly and impartially at every stage.
- Parliament must pass a law dealing with this serious problem of delisting of valid electorates from electoral rolls because illiterate electorate residing in far villages cannot watch over publication of electorate lists.
- Preparation of electoral rolls by Election Commission are to be supervised at village level and certificates from officials who prepare electoral rolls to the effect that the electoral rolls have been thoroughly revised. They do not include that persons and legally disenfranchised citizens and intentionally no name should be left in them. Accountability to be fixed for intentional exclusion of name of voters from electoral rolls.
- The names of the voters may be included in the electoral rolls even at the time of casting of votes by the polling officer, when he find a genuine case.
- Unearth and confiscate black money, which is widely used for buying votes.
- Make politicians as well as voters law binding.
- Strictly apply the Code of Conduct and punish those who violate it.
- Revise voters list in time to avoid bogus polling and correct mistakes in the lists.
- Prompt action by the judiciary, if any kind of violation is detected during elections.
- Declare elections results in mandatory. In democracy the public is most powerful entity. If the public do not vote in favour of criminals, dishonest and corrupt politicians who wish to purchase their votes by money or muscle powers, everything shall function nicely and the democracy will shine in the dark spectrum of hitherto corrupt and criminalised political system. So, though the Election Commission is working hard in this direction, but it cannot succeed unless all political parties and voters realize their responsibility. Finally, there should prosper mechanism, fully functional and fully equipped to fight with any triviality.



A STUDY ON FREEDOM OF SPEECH AND EXPRESSION WITH REFERENCE SOCIAL AND ELECTRONIC MEDIA

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Abstract

The Constitution of India provides freedom of speech and expression to all its citizen which is subject to reasonable restriction namely in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The said restriction ensure that the freedom of speech and expression is not transgressed by the citizen in any manner but so utilized so as to bring out the best in them.

Media plays a major role in shaping the nation by way of broadcasting 24x7 news channels, science and technology channels, sports channels etc. Amidst all these as news channels are a major form of informing the news event, news stories from nations and the world, they have termed as the fourth pillar of democracy. Though the constitution of India did not specifically provide any rights to press, freedom of press was guaranteed time and again through consistent judicial decisions which specified that press had the same rights of free speech as any other citizen under the constitution of India and the same were also subject to reasonable restrictions.

As the use of newly found social media kept increasing due to its unique concept of sharing live videos, photographs through social networking sites such as Facebook, Instagram, Whatsapp, Twitter etc. The right of Freedom of speech and expression found a new platform to stand on. Anyone and everyone could now use social media to make himself heard or to give his opinions and share his views with anyone else on a public platform.

However, social media came with its own vices which also spread its roots in electronic and print media. News channels which were originally the sole broadcasters of news stories and news coverage through their professional

level journalists now faced competition not only from its peers but even from social media which helped in rapid news communication. Again, anyone could now report and update news from his vicinity by taking photo or video and putting it in public domain for viewing informing and spreading it ahead.

Introduction

The constitution of India is the basic document of the nation. amongst various other provisions that state the working of the executive, Legislative and judiciary, it also sets down the rights, duties and freedoms available to every citizen and the restrictions thereupon. These rights were considered inevitable by the framers of constitution in order to guarantee a proper living of all citizens of the nation Article 19 (1) (a) of the constitution of India specifies that:

All citizens shall have the right to freedom of speech and expression.

Article 19 (2) Provides that

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the state from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Right of Press and Media in Light of Article 19 (1) (a) and 19 (2)

Article 14 of the constitution provides for 'equality of Law' and 'equal protection of law'. Every citizen is equal in the eyes of Law and there is no scope for discrimination on any ground. Hence, the freedom as provided under Article 19 (1) (a) shall also be equally available to every citizen. The said freedom is immensely important and the same can be figured out considering that media which has been considered the 'fourth pillar of democracy' has also been equipped with the freedom of speech and expression while performing their duties.

Media is the fourth estate in a democracy. It plays a major role in informing the public and thereby shape perceptions and through it the national agenda. Considering how the literacy levels are increasing across the world, each and every individual is in search of information relating to current affairs, political scenarios, scientific development, art and culture, sports, finance etc.

How electronic and social media and misusing the freedom

Gone are the days when the major sources of news communication. News and entertainment were just selected regional and national newspapers, All India Radio and Doordarshan, while newspaper and magazines were a form of print media which was the earliest form of media communication, it was taken over by electronic form of media which mainly included television and radio. Today media offers several other forms of communication like smartphones, laptops, tablets etc. Which are faster, easier and more easily accessible than any of the earlier sources of communication. It would be impossible to imagine living sans the various forms of media that are available

today. These forms of media are not only technologically advanced but also at the same time shape up the latest form of media namely the social media.

The constitution of India under Article 19 (1) (a) gives everyone a freedom of speech and expression but the framers might not have comprehended that this freedom will one day be used not only in physical world while dealing with other persons. The reasonable restrictions as provided under Article 19 (2) become even more necessary to control the misuse of freedom of speech and expression. The land mark judgement of *Shreya Singhal vs. Union of India* set utmost standards of free speech and expression by striking down Section 66 A of the information Technology Act which set limits on free speech on the internet.

The national and international legislation in respect of social and electronic media. The researcher has studied the legislations pertaining to print media, social media and electronic media which are available in USA, United Kingdom and India.

International Instruments conventions and Treaties have been discussed:

1. International convention concerning the use of Broadcasting in the cause of peace, 1936.
2. UN Charter 1945
3. American Declaration of the Rights and Duties of Man 1948
4. Universal Declaration of Human Rights 1948
5. European Convention for protection of Human Rights and Fundamental Freedoms 1953
6. International convention of civil and political rights, 1966
7. UNESCO Mass Media Declaration 1978
8. Charter for a Free Press 1987

Existing regulatory framework related to print media, social media and electronic media has been studied:

1. Print Media

- Press Standard Board of Finance
- Press Complaints Commission
- Levesoen Regulation Reforms
 - Royal Charter 2013
 - International Press Standards Organization (IPSO)
 - Editors code of Practice
 - Press Recognition Panel
- Independent Monitor for the press (IMPRESS)

2. Electronic Media

- Office of communication (Ofcom)
- British Broadcasting Corporation (BBC)
- Broadcasting standards commission

3. Social Media

- Body of European Regulators for electronic communication

The major Acts in India which provide for regulation as penalty in relation to media have been studied. These Acts are as under:

- Press and Registration of Books Act
- Indian Telegraph Act 1885
- Newspaper (Incitement of offences) Act, 1908
- Indian Penal Code
- The Cinematograph Act 1952
- The Drugs and Magic Remedies (Objectionable Advertisement) Act 1954
- The Young Persons (Harmful publication) Act 1956
- The Copyright Act 1957
- Defence of India Act 1962
- The Parliamentary Proceeding (Protection of Publication) Act
- The National Security Act 1980
- Indecent Representation of women (prohibition) Act 1986
- The cable Television Networks (Regulation) Act and Rules 1995
- Information Technology Act 2000

Like USA and UK, India also has regulatory bodies to look over the functioning of all form of media. These regulatory bodies are as under the same have been studied in the research:

- The Press council of India
- Indian Broadcasting Foundation
- Broadcasting Content Complaints Council (BCCC)
- Broadcasting Audience Research Council (BARC)
- News Broadcasting Standards Authority (NBSA)
- Ministry of Communications and Information Technology
- Telecom Regulatory Authority of India (TRAI)
- PrasarBaharti

In addition to these bodies, several legislation attempts were made for enactment of new bill and guidelines for a more in depth check over the media functioning. However, the said attempts were not successfully passed as Acts and Implemented. The same are listed below:

- Communication convergence Bill 2000
- Broadcasting Service Regulation Bill 2007
- Self-Regulation Guidelines for Broadcasting Sector 2008
- The cable Television Networks (Regulation) Second Amendment 2011
- The press Registration of Books and Publication Bill 2011
- Print and Electronic Media Standards Bill 2012
- Cinematograph Bill 2013.

Shreya Singhal Vs. Union of India : AIR 2015 SC 1523

The said Judgement was a major one since the rise of social media as it gave a platform to millions of everyday social media users to express their

views and opinions freely. After the rise of internet and social media, many people had started using the same to exchange their ideas of political views, current affairs etc. The Information Technology Act 2000 under section 6. A had laid down rigid criteria due to which law enforcing agencies often interpreted it in a narrow and limited manner. Again the section had used several terms like "offensive", "Causing annoyance", "grossly meaning" etc. but nowhere were the defined which made them open to an unlimited number of interpretations as may be desired by the law enforces. Likewise, the section also indirectly restricted political satire, caricatures and cartoons which were of items by artists and cartoonists became getting restricted was vague, open-minded and undefined. It was unconstitutional void and hindered free speech on social media. Also, it nowhere specifically provided as to what acts if perform on internet avoid amount to defamation. The section had Lacunae both for internet users as well as law enforcement agencies as neither the terms used were well defined nor was the extent of speech within the section mentioned. Thus, the section had an intimidating effect on free speech.

Conclusions

The freedom of speech and expression in respect of social and electronic media focusing mainly on right of free speech in new age social and electronic platforms as also media's misadventures by indulging in media trials, sting operations and paid news.

The evolution of various platforms namely the print electronic and social media. Major Platforms of social media and features of social media have been discussed as social media has been an ever-evolving and an ever developing area. At the initiation when there was no specific term as social media, people still used to socialize online through in limited numbers through chatrooms and e-mails, and sites like orkut and yahoo groups. However, after Facebook, Twitter, Instagram etc. were launched, social media has been an ever-developing field as each app keeps updating itself big bringing new and innovative fitness to its page.

Fundamental right of free speech as provided under Article 19 (1) (a) hence keeps getting new ways of utilization as also interpretation. In a world without social media, people still utilized the right to free speech though in different manners and limited numbers. However, since the advent of social media, everybody however, since the advent of social media everybody who posts online is exercising his right to free speech as internet is at the crux of all the social media.



FOUCAULT'S ARCHAEOLOGICAL METHODOLOGY: AN OVERVIEW

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Abstract:

Foucault's archaeology is primarily concerned with critically analyzing systems of knowledge. Archaeology tries to identify the conditions that enable knowledge possible in a particular era. Therefore, it is in the continuation of the enlightenment project of Immanuel Kant. However, conditions of knowledge is located not in *apriori* categories of reason but in Foucault's archaeology, categories are creation of our past and in various historical periods, there are various categories of reason (episteme) which governs thoughts and experience. Foucault's approach to archaeology is not based in philosophical theory, but rather in historical practice. It is a technique for historical analysis used to address particular issues raised by the history of thought. It was not a logical outcome of Foucault's basic philosophical beliefs. Still, there is a philosophical aspect to his historical work, and philosophical questions often hang in the backdrop of his discussions. However, rather than coming from earlier philosophical commitments, his archaeological method originates mostly from real conflicts of historical events. He sees philosophy as a tool of attaining concrete objectivity rather than pursuing the conventional objective of discovering the ultimate and fundamental truth. This paper offers a comprehensive understanding of his archaeological method underlying structures of knowledge, revealing the hidden frameworks that shape our understanding.

Key Words: Archaeology, History of science, History of thought, Epistemological continuity and discontinuity, Episteme, Discursive formation.

Introduction:

Generally speaking, archaeology is the study of prehistory, or the age from which no written records exist. Although it does not limit itself to it, Foucauldian archaeology is also preoccupied with prehistory in the sense of a historiography of science, in which prehistory is understood as a discourse that gives shape to science. But unlike archaeology, Foucauldian archaeology is not a biographical history. "It is interested in defining series and types of objects, statements, discourses and concepts rather than concerned with individual or unique achievements."

¹Foucauldian archaeology requires an explicit technique for creating temporal series, discourses, their linkages and connections, and rates of change. The method by which Foucault approached the history of thought is not limited to his own isolated use of archaeology. In particular, it developed as a result of the expansion and improvement of Georges Canguilhem's history of science and the philosophical framework of Gaston Bachelard. Thus, origins of it are in the French tradition of science and history. Nonetheless, Foucault expanded it philosophically in a more profound way.

Bachelard and Canguilhem's Concept of History of Science: Since Foucault's archeological approach originates from French Philosophy of science, therefore, I will discuss now Bachelard's philosophy of science and Canguilhem's history of science. Bachelard asserts that "reason is best known by reflection on science and science is best known by reflection on its history."² The first thesis is that reason's structures are apparent in the concrete applications of reason, not in abstract principles. Science has historically been the main source of success in applying thoughts to particular issues, which is where these applications are primarily located. Second thesis is that historical scientific advancements have consistently refuted a priori philosophical notions of rationality and this is precisely why history is the best way to understand science. According to Bachelard, philosophy understands from the history of science that there are notable discontinuities and accompanying shifts in the concepts of reason. Also he tells us that there is "no such thing as the history of science, only various histories of different regions of scientific work."³ Because of this, philosophy cannot have a singular, cohesive understanding of rationality while considering the development of science. Bachelard notes that the twentieth century's rationalities were relative theory

¹ Kusch, M. (1991). *Foucault's Strata and Fields: An Investigation into Archaeological and Genealogical Science Studies*. B.V.: Springer Science +Business Media

² Gutting, G. (1989). *Michel Foucault's Archaeology of Scientific Reason*. New York: Cambridge University Press

³ Gutting, 1989, p.14.

and quanta, while the nineteenth century's rationalities were theories of electricity and mechanics.

Bachelard's model of scientific advancement, which is based on four significant epistemological categories—epistemological breaks, epistemological obstacles, epistemological profiles, and epistemological acts—is the main focus of his philosophy of science. Epistemological break is used in two contexts. One happens when scientific knowledge separates from and even conflicts with commonsense experience and beliefs and the other happens between two scientific conceptions. Therefore, “science develops not only by breaks with ordinary experience but also by breaks with previous scientific theories.”⁴ An epistemological obstacle is any idea or approach that prevents an epistemological break. The traces of previous habits of thinking that begin to impede the course of investigation are known as obstacles. One of the main epistemological barriers is common sense. These challenges could potentially result from earlier successful scientific research and methodology. An epistemological profile records the epistemic obstacles obstructing a particular individual's potential for scientific cognition. An epistemological obstacle is the opposite of an epistemological act. The concept of epistemological actions is comparable to the leap of a scientific genius that results in unexpected impulses over the course of scientific growth, whereas epistemological obstacle impede scientific progress due to the passive nature of out-of-date ideas.

This raises the question of how a scientific discovery may be both "permanent" and open to revision during an epistemological break. According to Bachelard, an epistemological break is both a rejection of past science and its preservation through the reformulation of older ideas in a more modern and comprehensive body of knowledge. This substitution process is "dialectical," according to Bachelard, but not in the Hegelian sense; rather, it is a process of conceptual evolution. Better successor conceptions are used to upgrade and modify earlier theories rather than subsuming them into a higher unity. This is the exact reason Bachelard accepted the advancement of science while rejecting its continuity.

Canguilhem was a science historian who worked from the foundation of Bachelard's scientific thought. However, there are a number of places where he challenges and alters Bachelard's theories. Since Bachelard emphasised chemistry and physics as his models of scientific reason, whereas Canguilhem mostly concentrates on biology and medicine, further highlights their differences. According to Canguilhem, continuities can endure despite epistemological breaks. In his *Archaeology of Knowledge*, Foucault adopts this perspective of Canguilhem.

Foucault's Archaeological methodology: Foucault's archaeological methodology is an alternative approach to investigating the history of thought that eliminates the human subject's central role. “By focusing on systems of

⁴Gutting, 1989, p.16.

statements in their own right, archaeology turns away from the subject and toward the conditions that define the discursive space in which speaking subject exist.”⁵He thus deprives man of his unique status in the history of thought and this is the exactly what he refers to as the "death of man." Archaeology functions as counterpart of structuralistcountersciences like psychoanalysis and linguistics where man is termed as object.

Like historians of the Annaleschool, Archaeology, as defined by Foucault, is a historical method thatdecenters the human subject. The establishment of man's primacy has been achieved through traditional history. Despite the fact that structuralism eliminated the subject's crucial function in the study of language and the unconscious, it yet gives the individual's past significance. However, because Annales historians focus on such vast time periods, no individual or social subject can be placed in place, and essential elements include gradually shifting material conditions like geography and temperature. This line of thinking on the history of thought is what Foucault adhered to.

Documents, which are collections of statements from our ancestors, are the first step in Foucault archaeology. Documents are viewed in ordinary history as indicators of their deliberate ideas and attitudes. However, statements are not interpreted by Foucault as the thoughts of any deceased individual, but rather as subjects of study in and of themselves. Instead of seeing them as documents, he views them as monuments. Grammar and logic are two non-historical fields that address statements independently. Grammar gives conditions for a statement to have meaning, whereas logic specifies which statements may and may not be added to a particular set of statements. However, statements that make sense grammatically and rationally are not based on actual experiences. We don't talk about Jupiter shooting thunderbolts since we don't think he exists. In the majority of fundamental situations, according to Foucault, the reason for language gaps can be explained by the fact that sentences must adhere to additional norms in addition to grammatical and logical ones which he calls as *discursive formations*. It is the central term by which Foucault analyses knowledge. He uses the following terms to describe discursive formation:

“Whenever one can describe, between a number of statements, such a system of dispersion, whenever, between objects, types of statement, concepts, or thematic choices, one can define a regularity (an order, correlations, positions and functionings, transformations), we will say, for the sake of convenience, that we are dealing with a *discursive formation*...The conditions to which the elements of this division (objects, mode of statement, concepts, thematic choices) are subjected we shall call the *rules of formation*. The rules of formation are conditions of existence

⁵Gutting, G. (1989). *Michel Foucault's Archaeology of Scientific Reason*. New York: Cambridge University Press

(but also of coexistence, maintenance, modification and disappearance) in a given discursive division.”⁶

Foucault asserts that discursive construction consists of four fundamental components or hypotheses by which we can detect that any domain for instance general grammar, natural history and the analysis of wealth is to be considered as ‘discursive formation’ definite entities of knowledge or not. These four components are objects, enunciative modalities, concepts and strategies. First hypothesis: a discursive formation exists if “statements different in form, and dispersed in time, form a group if they refer to one and same object.”⁷ The remark about psychopathology refers to something that may be referred to as madness because it appears in both individual and social experiences. The second hypothesis is that there is a discursive formation if “a group of relations between statements, their form and type of connexion.”⁸ The existence of assertions in this hypothesis follows a regular “style,” or a consistent way of making statements. For example, Foucault claims that the discipline of medicine was structured as a series of descriptive assertions because, for the first time, medicine was viewed as a body of knowledge rather than a collection of customs and observations, necessitating a common viewpoint on this. Third hypothesis: If the concepts used in the claims are consistent, coherent, and permanent, then there is a discursive formation. For example, the concept of word is defined as the sign of representation, while judgement is defined as the broad, normative form of any phrase. Fourth hypothesis: a discursive formation exists if all the statements constitute a consistent set of themes or theories. For instance, a biological theory of evolution. Foucault also asserts that “there is interconnections among the various systems of rules that govern a discursive formation.”⁹ Discursive relations, or the relationships between its rules of formation define and identify a particular discursive formation. Distinct discursive formations may share numerous common rules, but they will be distinguished by the distinct discursive relations that exist between them. Regularities that show the relationships and dependencies between the conditions of the potential for a wide range of objects, enunciative modalities, concepts, theories, or themes are indicative of discursive formations.

Discursive formation is projected as a group of statements by Foucault. Now, we will have to see what is meaning of statement according to him? Generally, statement is understood as units of grammatical analysis and unites of logical analysis. However, Foucault contends that the statement isn't a linguistic unit

⁶Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

⁷Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

⁸Foucault, 1971, p.32.

⁹Gutting, G. (1989). *Michel Foucault's Archaeology of Scientific Reason*. New York: Cambridge University Press

at all but rather a function. In reality, the relationships among a group of elements define a statement. Because it serves a purpose inside a system, a set of signs is a statement. However, Foucault later concurs with language analysts Austin and Searle that statements are analogous to speech-acts. The relationship between statements in a discursive construction and the rules of formation that govern them must also be taken into account. According to Foucault, the "conditions of possibility" that precede and construct assertions are not transcendental, nor are the principles of formation. Foucault asserts that there is only historically existing statements and relationship among them is created later on. The discursive formation's rules are merely a description of the relationships that already exist among statements. Foucault says that "discourse... it is, from beginning to end, historical."¹⁰ Furthermore, it can be argued that determining a discursive construction is an irreducibly theoretical judgement based on the historical context of existing statement rather than an archive discovery. Thus, in the narrower sense, Foucault's archaeology of knowledge is not a methodology.

Archaeology examines the discourses as a whole and in a broad perspective. Rather than ideas, representations, pictures, or themes that are either revealed or kept hidden in discourses, what is actually fundamental to archaeology are the discourses themselves, which adhere to specific rules. Archeology's problem is "to define discourses in their specificity; to show in what way the set of rules they put into operation is irreducible to any other; to follow them the whole length of their exterior ridges, in order to underline them the better."¹¹ This is a differential analysis of modalities of discourse. The mysterious point at where the society and the individual merge is not revealed by it. Moreover, it is not a sociology, anthropology, or psychology subject. It is not an inquiry into the most profound mysteries of the origin, but a methodical description of a discourse-object.

Foucault's archaeology is an alternative approach to history of ideas which focuses on human subject, therefore, there is fundamental difference between archaeological analysis and history of ideas. Points of difference between them are attribution of innovation, analysis of contradiction, mapping of transformation and comparative description. I will take first attribution of innovation. History of ideas deals with area of discourses having two values: old or new, or to put it another way, tradition or innovation. This kind of history focusses on arranging the thoughts of individuals into a single, continuous chronological sequence. History of ideas is primarily concerned with identifying the original creator of a particular idea and others who have only reproduced or modified it. But for Foucault, archaeology of knowledge is not concerned with originality or ordinary opposition but it is attentive with

¹⁰Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

¹¹Foucault, 1971, p.139.

“regularities” of discursive practices and enunciative regularities. It aims to prove the statements' regularity and is solely concerned with what the statements can reveal about the discourse formation principles. It is impossible to divorce any assertion from its inherent regularity. The purpose of archaeology is to reveal this discursive practice's regularity. A practice that would consider old and new both affirmations. Foucault says that “A discovery is no less regular, from the enunciative point of view, than the text that repeats and diffuses it.”¹² From the archaeological point of view, there is no difference between creative statements that disclose new information and imitative statements that repeat and reproduce information. Therefore, innovation has nothing to do with archaeology and it is only concerned with the regularity of a discursive practice.

Secondly, we can understand the difference between history of ideas and archaeology with the analysis of contradiction. History of ideas searches for a coherence beneath the apparent contradiction. It assumes that contradiction and conflicts are illusory and accidental and at a deeper level, there exists a hidden unity in discourses. Therefore, to follow a principle of cohesion is a procedural obligation of history of ideas. Two types of contradiction are distinguished in the history of ideas: contradiction of appearances and contradiction of foundations. Contradiction of appearances is resolved in the profound unity of discourse, however conflict of the foundation gives rise to discourses themselves. Discourse is an ideal figure in the first type of contradiction that needs to be distinguished from its coincidental presence, and in the second type, it is an empirical figure that requires the destruction of cohesiveness in order to be rediscoverable. But archaeological analysis is not concerned with both these types of contradictions. As Foucault asserts that “for archaeological analysis, contradictions are neither appearances to be overcome, nor secret principles to be uncovered. They are objects to be described for themselves, without any attempt being made to discover from what point of view they can be dissipated, or at what level they can be radicalized and effects become causes.”¹³ Archaeological analysis tries to understand that what is the *different conflict spaces* that gives rise to contradictions. Foucault makes clear that “By taking contradictions as objects to be described, archaeological analysis does not try to discover in their place a common form or theme, it tries to determine the extent and form of the gap that separates them.”¹⁴

Foucault says that there are two contradictions from the archaeological point of view: archaeologically *derived* and archaeologically *extrinsic* contradictions. *Derived* contradictions are local contradictions at the level of

¹²Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

¹³Foucault, 1971, p.151.

¹⁴Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

propositions and assertions that don't affect the enunciative rules within the same discursive formation and *extrinsic* contradictions transcends the boundaries of a discursive formation. Foucault maintains that “between these two extremes, archaeological description describes what might be called *intrinsic* contradictions: those that are deployed in the discursive formation itself.”¹⁵

Thirdly, archaeology's comparison process is also different from history of ideas. Archaeological analysis comparison is not concerned with general forms, but it tries to expose limited and regional forms. Foucault asserts that “archaeology is a comparative analysis that is not intended to reduce the diversity of discourses, and to outline the unity that must totalize them, but is intended to divide up their diversity into different figures. Archaeological comparison does not have a unifying, but a diversifying, effect.”¹⁶ Similarities and differences as they manifest at the level of rules of formation are the focus of archaeological comparison. Additionally, it reveals the connections between discourse production and non-discursive realms such as political events, institutions, economic processes, and behaviours.

Fourthly, difference is concerned with description of change in archaeological analysis and history of ideas. The essential feature of history of ideas is temporal succession and sequence under the scheme of evolution. The archaeology of thought, on the other hand, focusses primarily on the transitions between discursive formations, which can take place with significant continuities. Foucault maintains that “archaeology analyses the degree and form of permeability of a discourse: it provides the principle of its articulation over a chain of successive events; it defines the operators by which the events are transcribed into statements.”¹⁷ Here, it is crucial to remember that rules of formation of an archaeological description may be simultaneous as well as temporal or chronological. Therefore, archeology is not a pure simultaneous event nor it is a chronological succession of events but it is intersection of these two. Foucault emphasized that

“The archaeological ramification of the rules of formation is not a uniformly simultaneous network: there exist relations, branches, derivations that are temporally neutral; there exist others that imply a particular temporal direction. Archaeology, then, takes as its model neither a purely logical schema of simultaneities; nor a linear succession of events; but it tries to show the intersection between necessarily successive relations and others that are not so.”¹⁸

Archaeology is an area with its own types of continuation and succession. It primarily tries to describe difference and discontinuity but at the same time it

¹⁵Foucault, 1971, p.153.

¹⁶Foucault, 1971, p.159-60.

¹⁷Foucault, 1971, p.167.

¹⁸Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

is not an endeavor to establish a system of differences. Many people believe that Foucault's archaeology does not allow for gradual transformation or continuous developments because of his concentration on discontinuity. That is untrue, however, as discontinuity is a unique technique for documenting the history of thought, allowing us to comprehend various discursive formations. Foucault suggest that "the great problem is not how continuities are established,...how for so many different, successive minds there is a single horizon...the problem is no longer one of tradition, of tracing a line, but of division, of limits."¹⁹In order to determine that there is no difference in perfect continuity, the history of ideas attempts to minimize the appearance of differences. In contrast, archaeology uses obstructions as a means of describing things. Its purpose is not to come out from differences but analyses them what they exactly consist of and how can we differentiate them. The shifts from one discursive formation to another that take place in Foucault's archaeology of thought may take place in the background of a substantial continuity. Foucault describes this transformation as follows:

"To say that one discursive formation is substituted for another is not to say that a whole world of absolutely new objects, enunciations, concepts, and theoretical choices emerges fully armed and fully organized in a text that will place that world once and for all; it is to say that a general transformations of relations has occurred, but that it does not necessarily alter all the elements; it is to say that statements are governed by new rules of formation, it is not to say that all objects or concepts, all enunciations or all theoretical choices disappear. On the contrary, one can, on the basis of these new rules, describe and analyse phenomena of continuity, return, and repetition: we must not forget that a rule of formation is neither the determination of an object, not the characterization of a type of enunciation, nor the form or content of a concept, but the principle of their multiplicity and dispersion. One of these elements-or several of them- may remain identical (preserve the same division, the same characteristics, the same structures), yet belong to different system of dispersion, and be governed by distinct laws of formation."²⁰

Consequently, it is evident that Foucault uses a certain type of dialectic between continuity and discontinuity to support his claim that historical breaks are consistently accompanied by some overlap in the relationship between the old and the new. In an interview, Foucault also says that continuities and discontinuities are "two symmetrical and inverse effects of the same methodological renewal of history in general."²¹

¹⁹Foucault, 1971, p.5.

²⁰Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

²¹Foucault, M. (1989). *Foucault Live (Interviews, 1961-1984)*, Edited by

Sylvere Lotringer. New York: Semotext(e) Offices

The archaeological approach developed by Foucault can be applied to any kind of discourse, including political, philosophical, literary, and scientific. But *Archaeology of Knowledge* was limited to the sciences by the time it was written. The goal of the history of ideas is to prove that there is no difference in perfect continuity by making differences less apparent. On the other hand, archaeology uses obstacles to describe objects. Foucault considers this by the relation between science and discursive formation which is really the concern of archaeology. Discursive formations are not in general any scientific, pseudoscientific or prescientific discipline. Foucault asserts that “discursive formation can be identified...neither as sciences, nor as scarcely scientific disciplines, nor as distant prefigurations of the sciences to come, nor as the form that exclude scientificity.” A single science can be constituted from the components of vast range of discursive formations. Biology, for example, is based on the traditional natural history and analysis of reflex.

By drawing a contrast between *savoir* and *connaissance*, Foucault highlights the connection between science and discursive creation. A specific corpus of knowledge known as “*connaissance*” is defined by fields including evolutionary biology, nuclear physics, and Freudian psychoanalysis. Discursive formation thus provides the pre-knowledge necessary for the knowledge that science has acquired. The distinction between *savoir* and *connaissance* is not the same as the phenomenological version, in which we start with naïve immediately apparent knowledge and then apply a rigorous technique to turn it into scientific knowledge. Reconnaissance is the process of developing a personal or collective awareness and is the focus of a subject-centered activity such as conventional history of science. Foucault's archaeology, on the other hand, is focused on *savoir*. Foucault maintains that “Instead of exploring the consciousness/knowledge(*connaissance*)/science axis (which cannot escape subjectivity), archaeology explores the discursive practice/knowledge(*savoir*)/science axis.”²²

Only scientific fields are included in the history of science. Any field that does not adhere to the recognized scientific standards of its time is excluded from the “scientific domain” of science history. However, an “archaeological territory” will include texts from every field, both scientific and non-scientific, subject to *savoir* analysis. Therefore, science is a constrained formation at the epistemological site of a discursive production. Gutting suggests that “science neither supersedes nor exhausts the discursive formation that is its background.” One of the many possible events in the history of discursive formation is the process of articulating science on a discursive formation. According to Foucault, the historical reality of discursive formation has four stages or thresholds: threshold of positivity, threshold of epistemologization, threshold of scientificity and threshold of formalization. These thresholds, according to him, are not regular, successive stages in the production of

²²Foucault, M. (1971). *The Archaeology of Knowledge & The discourse on language*, Translated by A.M. Sheridan Smith. New York: Pantheon Books

discursive forms. These four thresholds may be present in the sequence mentioned above, or they may occur at random and irregular rates without all four being present. Moreover, according to Foucault, a discursive creation might simultaneously cross two or more thresholds.

Additionally, the difference between *savoir* and *connaissance*, as well as the differentiation between the boundaries of scientificity and epistemologization, enables us to understand the separation between Foucault's archaeological analysis and the history of science as looked at by Bachelard and Canguilhem. History of science developed by Bachelard and Canguilhem addresses only with *connaissance* whereas archaeological studies concerned with *savoir* which provides the conditions of possibility of scientific knowledge. Bachelard and Canguilhem, Foucault notes, are only interested in fields that have crossed the threshold of scientificity. The main focus of archaeological history of science, on the other hand, is on discursive formations that have crossed the boundary between scientificity and epistemologization.

Conclusion: A new philosophical perspective is introduced by Foucault's archaeological method, which offers a novel interpretation of reason as a historical reality. Foucault's application of Kant's philosophy as a critique of reason and continuation of his enlightenment quest seeking autonomy via reason is reflected in this approach. He agrees with Kant that reason is the foundation of freedom and autonomy and that thoughts and experiences only take place within the strict categorical boundaries of reason, but he also contends that these categories and reason are products of our past and that different historical periods have different categories of reason (episteme) that govern thoughts and experience. Additionally, he shows how reason can be used to overcome its destructive inclinations and tyrannise rather than liberate. By analysing a society's norms through a neutral historical record, archaeology can reveal how conditional and context-dependent they are, as opposed to claiming they are universal or absolute. Foucault's philosophical goal of historical critique is advanced by this, which highlights the unwarranted limitations on human freedom. However, this philosophical outlook of Foucault is criticized as being universal skeptic or total relativist approach of truth and that his archaeological method lacks any objective truth at all. Critiques of this line of argument include J.G. Merquior, Hilary Putnam, Charles Taylor and Jürgen Habermas. But if we think about it carefully then these criticism seems baseless. Foucault's historical critique of reason is focused on relatively specific fields, such as clinical medicine, psychiatry, and the human sciences. There's no indication that he thinks his archaeological method may be used in physics or chemistry. Foucault agreed with Canguilhem and Bachelard's objectivist assessments of these domains. Nevertheless, Foucault additionally notes that human sciences have some scientific validity even though they do not strictly fit within the definition of scientific knowledge. In a wider context, ideological bias can coexist with objective truth. Foucault's archaeological approach uncovers the underlying structures of human thought and experience, revealing a new depth of

understanding about our historical past. Rather than seeing it as a substitute for the history of ideas, Foucault's archaeological method should be viewed as offering fresh and innovative historical insights, expanding our understanding of the history and its influences on the present.