

ELECTORAL REFORM, ISSUES AND CHALLENGES IN INDIA: A CRITICAL STUDY

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Abstract

This paper has been described the principle, concepts and roll of democracy in democratic country. Government is the fiction of law for running state affairs. Every political parties who achieve the mandates of people then they can made the government. Democracy is the expression of inner conscience of respective people for participating the making to government, Political parties achieve mandates through set up by their wining candidates in the election and election is the process of selection their choice between two or more things in which choose any one. If, in the process of selection involved undue influence, coercion, mistake, fraud and biasness, the result not to be free and fair. In a democracy, sovereignty is vested in the people of that country and through the process of election, people elect their representatives. In order to preserve the sovereignty of the people, democracy and adult franchise, the election process must be transparent, equitable, free and fair. In the case Rambabu Singh Thakur v. Sunil Arora¹, Supreme Court directed to ECI through political parties shown criminal history and ground of selecting their each candidate in general election published data upon social media platforms and others print media. This paper highlights problems of election, election processes and reliability of ballot paper, conducting election through EVM and VVPAT.

Keywords: *Democracy, Government, Political Parties, Mandates, Sovereignty, Adult Franchise, Ballot Paper, EVM, VVPAT.*

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1. INTRODUCTION

The every democratic country is governed by the law of land, law of land refers such types of documents derived the power for governing whole affaires of democratic country. The democracy is a principle and their menace 'for the people', 'by the people' and 'of the people' governance in country. The spirit of democracy securing through the free and fair election system and the election system governed to the electoral law. Under the constitution of India, 1950 lay down independent authority election commission of India and adult franchise for the purpose of electoral through conducting elections. If there the election would not be fair, where the result of election should be biased and such biased result of election to be very harmful for the democracy. In the other words, democracy is lived if the election is to be free and fair, when the election is to be the biased then democracy is died through lack of election conducting authority.

In the law of the land lay down provision relating to election of the authorities and their elections members, election divided in to two manner 1st general election and 2nd special election. General election refers to the direct will of people elected to their representative². Special or secret election refer to mean such persons elected by the direct will of people for their representation, election of any other person by the representative will neither nor direct will of the people.³

Election is the act of choosing a person to hold public office, usually through the free will of the people in a representative democracy. The word election is derived from the Latin verb "Legere" meaning "to choose".⁴

According to Chamber's Law Dictionary, "election" means the public choice of a person for office, usually by the votes of a constituent body.

According to Webster's Dictionary, election connotes the act of choosing a person to fill an office or position by vote.

According to Black's Law Dictionary, "election" means the process of selecting a person to occupy a position or office usually public office.

² The Constitution of India, arts. 80, 170 (1).

³ *Ibid.*, arts. 55 (3), 66, 80, 171(4).

⁴ Electoral Reform: An Approach to Effective Democracy, *available at*: <https://www.legalservicesindia.com/article/1198/Electoral-reform:-An-approach-to-effective-democracy.html> 2019 SCC Online MP 928, decided on 27-05-2019 (last visited on May 3, 2020).

In India, the history of election may be divided in three phases, first phase of election was based upon succession of hereditary⁵ e.g. in election of kingship, often king's son had only been entitled becoming king for in future. Second phase of election was depend with reform on residence and property, the Government of India Act, 1935 was passed to create official responsibility towards the people by introducing the system of direct elections. The said Act, which was amended twice in 1916 and 1919, also prescribed the qualifications for being a voter which included academics, payment of taxes, etc., ultimately being amended by the Government of India Act, 1935 was enacted as a result of which electoral rolls were prepared on the basis of residence and property ownership⁶. And third phase of election have based on Indian Constitution, 1950 after independent, Free and fair elections are one of the basic elements/pillars of any democratic country, to achieve this goal the constitutional advisors submitted their first draft in October, 1947, under which the draft was related to elections in XI. Later, after a detailed study of the draft by the Drafting Committee, they prepared a revised version of it in which Part XIII dealt with 'Elections', which provided all the necessary powers to the Commission to conduct elections⁷.

India being a democratic country, individuals in the country are allowed to form political parties. To form the government of the country, residents have to choose their representatives from among the political parties available in the country. Election is an official cluster decision making process by which people select a person to hold public office. Elections have been the common means by which modern representative democracies have functioned since the 17th century. Elections can fill the ranks of the legislature, sometimes the executive and judiciary, and regional and local government. This process is also used in many other private and business official houses, from clubs to charitable associations and corporations. Our discussion is limited to Part XV of the Constitution of India which deals with Articles 324 to 329.⁸

India is a constitutional democracy with a parliamentary system of government, and at the core of this system lies a commitment to holding regular, free and fair elections. These elections determine the structure of the government, membership of both houses of parliament, and local authorities. Article 83(2)⁹ and Article 172(1) of the Constitution of India provides for a term of

⁵ *Ibid.*

⁶ *Supra* note 4.

⁷ *Ibid.*

⁸ Abhishek Rajesh Bhattacharjee, "Constitutional Provisions for Elections in India" 1 Issue 2 *IJLSI* 2(2019). *available at*: <https://www.ijlsi.com/wp-content/uploads/2019/07/Constitutional-Provisions-for-Elections-in-India.pdf> (last visited on May 7, 2020).

⁹ *Supra* note 2, art. 83(2).

five years for the House of the People and the State Legislative Assembly respectively from the date of its first meeting, unless earlier dissolved. Article 83(2) of the Constitution provides that when a Proclamation of Emergency is in force, the term of the House may be extended by Parliament by law for a period not exceeding one year at a time and in no case cannot be increased more than a period of six months after the coming into force of the Proclamation. A similar provision exists for the State Legislative Assembly under the provision of Article 172(1) of the Constitution¹⁰. Article 85 (2) (b) of the Constitution of India provides the President with the power to dissolve the House of the People. Similar provision for dissolution of State Legislative Assemblies by the Governor of the State is provided under Article 174 (2) (b) of the Constitution.

The Constitution of India protected the rights of the voter. Constitutional provisions provide protection as well as freedom of choice to every voter. Article 14¹¹ of the constitution of India read with Article 326¹² gives equality to the voter in the form of one person one vote. When we talk about electoral reforms, we are not only talking about the fundamental right of millions of voters to have free and fair elections, but we are also bringing forward the collective right of those citizens to have a leader whose credibility is not tarnished. The urgency of electoral reforms is violating the fundamental rights of millions of citizens.

In India every five years after the previous conducted election contested the general election for the members of parliament, members of legislative assembly of the states, government of village and municipalities by the election commission of India through itself and their respective states commission of election. The cost of conducting election fulfilled, supplement and paid in to revenue by the government and each election invest to apart of economic of Indian revenue investing in election of MP, MLA¹³ and election of village Panchayat¹⁴ and municipalities¹⁵ and vacant seat of MP, MLA and other elections of vacant seat through casualties. A lot of investment of money in conducting elections burden upon the revenue of India, such election is very costly and unhealthy to the country and their publics. After the elections, increase uncontrolled rates of commodities its unnecessary burden to be on the nation and their public, thus the types of activities called in general 'Mehangai'.

¹⁰ *Supra* note 2, art. 172.

¹¹ M. P. Jain, *Indian Constitutional law* 47 (LexisNexis, Haryana, India, 8th edn., 2018).

¹² *Supra* note 11 at 983.

¹³ *Supra* note 2, arts. 81, 171(1).

¹⁴ *Supra* note 2, art. 243-C (2) of Part IX.

¹⁵ *Supra* note 2, art. 243-R of Part IX-A.

The purposes of election diluted involvement to the some elements such as follow use of money, misuse of powers, interference of the criminals and crime and use of technical assistances etc. the election reform has securing to lose money, which is the unnecessarily use in the time of election named such as 'cost of election'. When the criminal history sheeted person participated in election as a candidate then the more probability made such candidate use fear and criminal force for wining their election because the election not to be free and fair. 'The several incidents' committed lack of election authorities should not done works properly and fair often that the election results affected by such types of incidents thus the reason election is not to be free and fair.

In the case **Rambabu Singh Thakur v. Sunil Arora**¹⁶ Supreme Court directed to ECI through political parties shown criminal history and ground of selecting their each candidate in general election published data upon social media platforms and others print media.

Recently in this case **Ashwinbhai Kamsubhai Rathod v. Bhailalbhai Kalubhai Pandav**¹⁷ the High Court of Gujarat at Ahmedabad the election of 58-Dholka Constituency of Gujarat conducted in December 2017 and their result declared void and unconstitutional by the court. The brief fact of the case it is that the General Election to the Gujarat Legislative Assembly held in December 2017, for 58-Dholka constituency. Shri Ashwinbhai Kamsubhai Rathod (Petitioner) was a candidate fielded by the Indian National Congress Party. Shri Bhupendrasinh Manubha Chudasama (respondent no. 2) was the candidate fielded by the Bharatiya Janata Party. The said election was held on 14.12.2017. The counting of votes took place on 18.12.2017 and the result of the said election was declared on the same date. As per the result of the said election, Shri Bhupendrasingh Manubha Chudasama (Respondent No. 2) is the elected candidate by securing a total of 71530 votes, out of which 71189 votes were received through EVM and 341 votes were received through postal ballots. The petitioner received a total of 71203 votes, out of which 70675 votes were received through EVMs and 528 votes were received through postal ballots. The margin of victory of respondent no. 2 over the petitioner is 327 votes.

The petitioner has challenged the election result on several grounds such as illegal rejection / exclusion of postal ballot papers, systematic manipulation of election records by the returning officer. Violation of mandatory directives issued by Election Commission like counting of votes, preparation of records and declaration of result as well as misuse of public office.

¹⁶ *Supra* note 1

¹⁷ *Ashwinbhai Kamsubhai Rathod v. Bhailalbhai Kalubhai Pandav*, available at: https://www.livelaw.in/pdf_upload/pdf_upload-374695.pdf (last visited on Jun 6, 2020)

2. ISSUES AND CHALLENGES RELATING TO THE ELECTORAL REFORM

In the electoral reform have been several issues taken place like, “*free and fair election, fair election process, polling booth capturing, tampering of instruments and impact of criminal history sheeted candidates*”. Every election is the expression of the peoples will for does something their future betterment. Therefore this reason election ought to be free and fair. Fair election process denotes such process initiated in election should transparent, not ambiguous. Polling booth capturing is the technique, initiated in election for fulfilling own wishes. It is the serious nature of offence in election laws. Tampering process used in machine/instruments or similar devices for manipulating their functions.

Impact of criminal history sheeted candidate, visualized in the every election directly and indirectly they are created fear in the public for the purpose of winning their election e.g. recently in the case **Jamuna v. Secretary to Government**.¹⁸ The high court of Madras asked to representative of central government “*Why not the Central government enact a law to prohibit candidates with criminal background contesting the election to the parliament as well as state legislatures as suggested by the Constitution Bench of the hon’ble Supreme Court on 25/09/2018 in Public Interest Foundation v. Union of India?*” 2019 (3) SCC 224. The picture has been crystal clear, such types of candidate hits purity of election.

Recently in the case, the High Court of Gujarat, held the election of 58-Dholka Constituency of Gujarat conducted in December 2017 and their result declared void and unconstitutional on the basis malpractice of concerned authorities¹⁹.

In the case **Umesh Kumar Bohare v. Union of India**,²⁰ The high court of Madhya Pradesh, It was observed that it was clear that the public issue being raised here was in relation to the alleged incident of disappearance of 19 lakh EVMs (Electronic Voter Machines) during the 2019 parliamentary elections. The court further said that however this is a serious matter. What was noteworthy was that the information collected by the petitioner was based on unconfirmed, unverified and unreliable newspaper reports. The petitioner made a representation to the Election Commission of India regarding his above mentioned complaint. The court held, “*court is of the considered view that pleadings herein lack bare essential material to impel this court to initiate the process of*

¹⁸ *Jamuna v. Secretary to Government*, available at: https://www.livelaw.in/pdf_upload/pdf_upload-380283.pdf (last visited on Aug. 23, 2020).

¹⁹ *Supra* note 17

²⁰ 2019 SCC On Line MP 928, decided on 27-05-2019], available at: <https://www.scconline.com/blog/Post/2019/06/08/mp-hc-allegations-regarding-theft-of-evms-must-be-based-upon-essential-material-to-impel-court-to-initiate-djudication/> (last visited on May 5, 2020).

adjudication of the alleged public cause and therefore, this court declines interference.” Therefore, the petition was dismissed, giving liberty to the petitioner to present his case before the Election Commission of India.

A group of former senior civil servants have alleged serious irregularities in the conduct of the 2019 Lok Sabha elections “there is no doubt that the mandate of 2019 has been thrown into serious doubt.” The issues raised in the letter that serious violations of the Model Code of Conduct by the Ruler, those that were ignored by the election authority, such as allegations of voter exclusion; blatant media violations, including the rise of Namo TV and doubts of bias in the election, raise many concerns related to electronic voting machines. The perception has become entrenched that our democratic process is being distorted and undermined by the powerful constitutional authority to protect its sanctity.²¹

3. CHALLENGES

In the present time, several challenges arisen the electoral reform in India, they are some as given below:

- Prohibition of criminals in the election,
- Conducting the free and fair election,
- Prevent money and mescals power in election,
- Control of irregularities of election administration and
- Protection of voter’s rights etc.

Election reform is where the electoral systems we use are improved to help the public express their wishes at the polls. The most prominent form of electoral reform is where the voting system (how votes are converted into seats) is changed. Yet, electoral reform is broader than just the voting system. This also includes improving vote counting procedures, constituency boundaries, eligibility to vote, voter protection and election workers, the financing of election and referendum campaigns, how ballot papers are designed and what voting equipment is used and how candidates and political parties can nominate and get their names on the ballot papers. In India, the group most pressing for reform in the way our elections are run is the Electoral Reform Society.²²

²¹ “National” *The Hindu*, July 04, 2019.

²² Electoral Reform, *available at*: <https://www.tutor2u.net/politics/reference/electoral-reform> (last visited on May 5, 2020)

4. LEGAL LEGISLATIONS, COMMISSION AND COMMITTEES

In India, there are various laws related to the conduct of elections. Both central and state elections are conducted in different ways. But, there are almost similarities in the laws governing the conduct of elections to Parliament and State Legislature. These are the given below:

- The Representation of the People Act, 1950
- The Representation of the People Act, 1951
- The Registration of Electors Rules, 1960
- Conduct of Election Rules, 1961
- The Conduct of Election Rules (Amendment), 2013
- The Conduct of Election Rules (Amendment), 2016
- Election Symbols Order, 1968
- Presidential and Vice-Presidential Rules, 1974
- Anti-defection Law, 1985

All recent committees on politics and electoral reforms have almost unanimously observed the criminalization of our political system. The criminalization of politics takes many forms, but perhaps the most worrying among them is the large number of elected representatives who have criminal charges pending against them. The topic of electoral reforms has recently been raised by several government committees, including, but not limited to:

- Committee on Electoral Reforms (1990)
- Vohra Committee Report (1993)
- Gupta Committee on State Funding of Elections (1998)
- Law Commission Report on Reform of the Electoral Laws (1999)
- National Commission to Review the Working of the Constitution (2001)
- Election Commission of India – Proposed Electoral Reforms (2004)
- The Second Administrative Reforms Commission (2008)

5. JUDICIAL PRONOUNCEMENTS

Indian judiciary is the guardian of Indian Constitution and played the role of protector our fundamental, constitutional and legal rights. The courts have protected the constitutional-legal rights relating to voters and their candidature. Apex judiciary has pronouncement verdict from

time to time in some important cases, which is case relating to election and electoral reform. These are some important cases given below namely-

The rule of law and free and fair elections are the basic features of a democracy (*Kihoto Hollohan v. Zachillhu*).²³ The Supreme Court of India has time and again fortified the essence of free and fair elections in a democracy (*Indira Nehru Gandhi v. Raj Narain*)²⁴. Elections in India have caused a great deal of concern in the legislature, the judiciary, and the executive alike. In *Common Cause (A Registered Society) v. Union of India*²⁵ the Court dealt with election expenses incurred by political parties and held that purity of election is fundamental to democracy and the Commission can ask the candidates about the expenditure incurred by the candidates and by a political party. The Supreme Court's judgment in 2013 in the *Subramanian Swamy v. ECI*²⁶ case stated that it is necessary that in elections conducted through EVMs, a system of voter verifiable paper audit trails should be implemented so that the voters can satisfy themselves that His vote was correct and recorded. The court judgment and the need for voter confidence and transparency in the election process gave rise to mechanisms for random cross-verification of EVM and VVPAT counts. This was to detect any technical glitch or wrong programming of the EVMs. The case *Rambabu Singh Thakur v. Sunil Arora*²⁷, Supreme Court directed to ECI through political parties shown criminal history and ground of selecting their each candidate in general election published data upon social media platforms and others print media. The case *Ashwinbhai Kamsubhai Rathod v. Bhailalbhai Kalubhai Pandav*²⁸ the High Court of Gujarat at Ahmedabad the election of 58-Dholka Constituency of Gujarat conducted in December 2017 and their result declared void and unconstitutional by the court on the basis malpractice of concerned authorities.

6. CONCLUSION AND SUGGESTION

When we come to the conclusion on the above fact mentioned, our study finds that the characteristic of democracy is the basic structure of the Indian Constitution as declared by the Supreme Court in the case of *Kihoto Hollohan v. Zachillhu*²⁹. About election one most important think is should be free and fair, our lawmakers framed several laws for achieving the goal of free and fair election but recently several incidents have taken place in general election

²³ AIR 1993 SC 412.

²⁴ (1975) 2 SCC 159.

²⁵ 1996 (2) SCC 752.

²⁶ 2013 (10) SCC 500.

²⁷ *Supra* note 1.

²⁸ *Supra* note 17.

²⁹ *Supra* note 23.

e.g. EVMs missing matter, criminalizes political parties system and malpractice committed by concerned authorities thus, the reasons of electoral reforms is to be necessary. Requirements related to elections which are enshrined in the Constitution. Electoral reform describes the process of introducing fair electoral schemes where they are not applicable or improving the fairness or efficacy of existing systems. Psychology is the study of results and other data related to elections (especially with a view to predicting future outcomes). Election means “to choose or decide”, and so sometimes other types of voting such as referendums are denoted as elections, especially in India.

Today we are needed to be healthy and fair election but when we are looked the election is not to free and fair it has been combination of healthy and unhealthy election. Election are effected some reasons e.g. misuse of power and money, breach of duty, pressures of political persons and other sources who effect directly or indirectly (criminal activities). Then we are called it unhealthy election. There is the reason why need to electoral reform.

Recently some important cases discussing needs, issues and challenges of electoral reforms like, **Umesh Kumar Bohare v. Union of India**³⁰, 19 Lakhs EVM missing related case state of Madhya Pradesh, **Rambabu Singh Thakur v. Sunil Arora**³¹, publication of candidate criminal history on social media and print media related case of Supreme Court, **Ashwinbhai Kamsubhai Rathod v. Bhailalbhai Kalubhai Pandav**³², corrupt practice of election authorities related case state of Gujarat and **Jamuna v. Secretary to Government**³³, Ministry of Home Affair and others, prohibit criminal background candidates related case state of Madras.

This paper suggested to government and concerning authorities of electoral reform take necessary action for preventing such types of phenomenon and not repeated in future.

³⁰ *Supra* note 20.

³¹ *Supra* note 1.

³² *Supra* note 17.

³³ *Supra* note 18.