

## ESSENTIALITY OF FREE AND FAIR ELECTIONS IN DEMOCRACY AND INDIAN CONSTITUTIONAL COMMITMENT TOWARDS THIS

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### Abstract

*The constitution has declared India as a 'Democracy where only citizen can elect the government. Democracy will be futile without active participation of its citizens. The chief essence of democracy is Free and Fair elections. However election could be very notorious as it witness power drifts and clashed for the seat which could kill the essence of the fairness and freeness of election therefore a watch dog is required to check this menace so that every citizen could get its right. Thus to ensure a free and fair election, an autonomous body was created to meet the need of time. This autonomous body is insulated from executive influence and political pressures. However organizing election is not easy, it faces huge challenges. Targeting the aforesaid situation the research has been made on doctrinal model of research relying on secondary sources. It aims to determine the essentiality of free and fair elections in democracy and the constitutional structure that commits towards elections being free and fair. It further tries to acknowledge the judicial intervention in the electoral process throughout the history and what it presently controls in terms of elections.*

**Keywords:** Constitution, Democracy, Free and Fair Elections.

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### 1. INTRODUCTION

Democratic Nations are primarily participatory where the people's elected officials are made responsible for the country's governance. Democracy has been acknowledged unanimously as a complex mechanism that keeps the political consciousness alive and engaged. Democracy, another word for equality of faith and belief, and eventual intellectual development, is the root and pillar of human beliefs.

"A democratic person is one who is friendly regardless of his wealth or social status," Lord Bryce rightly observes. "Democracy was described by Aristotle as "the rule of many". President Lincoln of the United States gave the most agreed concept of "a government of the people, by the people, and for the people." It was described by Seeley as "a government in which everyone has a share." It was seen by Dicey as "a form of government in which the governing body is a relatively large fraction of the whole nation." Bryce described it as that form of government in which a state's governing power is largely consigned, not in any single community or class, instead in the members of the community en bloc.

**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 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 machinery.

Among the other two components, namely the electorate and the political parties and candidates, 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.

## 2. INDIAN DEMOCRACY

Democracy may be a term common to everyone, nonetheless it is a notion still misinterpreted and misrepresented. There are times when rulers, single-party governments, and military coup leaders equally proclaim widespread support by claiming the shroud of democracy. Nevertheless, over a long and tumultuous past, there has prevailed the influence of the democratic principle, and democratic government continues to grow and thrive around the globe, amid continuing challenges.

Derived from the Greek word *demos*, or citizens, democracy is essentially characterised as a government in which the people are vested with supreme power. Democracy may be practised directly by the people in many forms. They can either be directly the people or their elected agents in large societies. Or, in memorable expression, democracy is “government of the people, by the people, and for the people”, as stated by President Abraham Lincoln.

Equality and democracy are sometimes used interchangeably, but there is no synonymy between the two. Democracy is actually a set of free notions and values, but it also contains traditions and processes that have been influenced by a lengthy, often tortuous background. The institutionalisation of liberty is democracy.

Ultimately, citizens living in a democratic social order should be the supreme custodians of their own liberty and should forge their own route to the principles set out in the preamble of the **United Nations’** Universal Declaration of Human Rights: “Recognition of the inherent

dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world”.

In the case of Indian democracy, we need to begin the tale of modern Indian democracy from the colonial era, like so many other features of modern India. You have just read about the many systemic and cultural shifts that were consciously brought about by British colonisation. In an unintended way, some of the changes that came about occurred. It was not intended by the British to incorporate them. For example, to establish a Western educated Indian middle class that would assist the colonial rulers to maintain their rule, they tried to incorporate Western education. A Western-educated segment of Indians has arisen. But they used Western liberal ideals of democracy, social justice and nationalism to oppose colonial rule instead of aiding British rule.

This does not, however, mean that there are purely western democratic principles and democratic institutions. Our ancient epics, our complex folk tales, are full of dialogues, debates and opposing roles, from one corner of the world to another. Think of any folk tale, enigma, folk song, or storey from any epic that shows various points of view? We are just drawing from an illustration of the epic Mahabharata.

Social change, however, is not just about Indian or western ideas in modern India. It is a mixture of Western and Indian ideas as well as a reinterpretation of them. In the case of the Social Reformers, we saw that. We saw both new definitions of equality and conventional concepts of justice being used. No exception is democracy. The undemocratic and unequal administrative practise of British colonialism in colonial India contrasted sharply with the vision of independence promoted by Western theories of democracy and read by Western educated Indians. In India, the extent of poverty and the strength of social inequality have also contributed to a more serious questioning of the nature of democracy. Is democracy all about equality in politics? Or is it about economic liberty and social justice as well? Regardless of caste, religion, race and gender, is it not about equal rights for all? And if that is so, how in an unequal society can such equality be realised?

Many of these questions were considered long before India became open. A vision of what Indian democracy should look like came into being even as India struggled for its independence from British colonialism. As far back as 1928, a constitution was drawn up for India by Motilal Nehru and eight other Congress leaders. The Indian National Congress resolution at the Karachi session in 1931 concentrated on how autonomous the constitution of India could get. In order to have a genuine democratic society, the Karachi Resolution represents a vision of democracy that meant not only a structured holding of elections but a significant rework of the Indian social system.

The Karachi Resolution clearly spells out the vision that the nationalist movement in India had of democracy. It articulates the ideals that have been further articulated thoroughly in the Indian Constitution. You can see how the Indian Constitution Preamble aims to guarantee not only constitutional justice, but also social and economic justice. You may also

remember that equality is not only about equal political rights, but about status and opportunity as well.

At many levels, democracy works. We started with the vision of the Indian Constitution in this paper because this is the basis on which democracy rests in India. Significantly, within the Constituent Assembly, the Constitution emerged from lively and open debates. Thus, it was democratic in its vision or ideological substance, as well as in the process or method by which it was created. The next segment looks at the topic of free and fair elections in India.

### **3. FREE AND FAIR ELECTIONS IN INDIA**

The core of democracy is elections. They empower individuals to choose their political leaders and then keep them accountable<sup>1</sup>. 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 any people are excluded from voting.

An ideal is defined by the 8 standards that follow. The majority of countries meet them imperfectly. However, an election represents the will of the people more accurately as more standards are met.

A free election is one where all voters can vote for the contestant of their choosing, and a fair election is one where all votes have equivalent influence and are correctly tallied. In order to certify that an election is free and fair, there are requirements that governments need to follow before, during, and after an election<sup>2</sup>. As follows, the eight criteria are:

- i) Voters have access to reliable information.
- ii) Citizens are able to register to vote.
- iii) Citizens can run for office.
- iv) All voters have access to the method of voting; i.e. access to polling place.
- v) People voting are free from intimidation.
- vi) Voting is free from fraud.
- vii) Correct results are announced after counting of the ballots accurately.
- viii) The results of the election are respected.

In India, let's talk about free and fair elections. We get to hear a lot about unfair voting practises. Such accusations are sometimes alluded to by newspapers and television reports. These studies are mainly on the subsequent:

- Exclusion of genuine names and inclusion of false names in the voters' list;
- Excessive use of money by big parties and rich candidates;
- Misuse of government facilities and officials by the ruling party; and
- Rigging and intimidation of voters on the polling day.

There are several of these reports that are accurate. When we read or see such news, we feel sad. Luckily, though, their scale is small otherwise it would have defeated the very aim

<sup>1</sup>Taylor, S. L., Shugart, M. S., Lijphart, A., & Grofman, B. (2014). A different democracy: American government in a 31-country perspective. Yale University Press.

<sup>2</sup>Stephens, O. H. (2006). Encyclopedia of American civil rights and liberties. Greenwood press.

of the elections. This becomes clear when we ask a simple question: can a party come to power by winning an election through electoral malpractice, instead of that having widespread support? That's a critical issue here. Let us discuss different sides of this issue carefully.

Looking at who is running the elections is a quick way to verify whether or not elections are fair. Are they independent of government? Or will they be manipulated or coerced by the government or the governing party? Will they have ample authority to be able to hold fair and free elections? Do they practice this authority in reality?

For our country, the response to all of these questions is very positive. An autonomous and very powerful Election Commission conducts elections in our country (EC). It enjoys the same kind of independence enjoyed by the judiciary. The President of India is appointed by the Chief Election Commissioner (CEC). When appointed, however, the Chief Election Commissioner is not accountable to the President or to the government. It is almost impossible for the ruling party or the government to abolish the CEC, even though it does not like what the Commission does.

Such wide-ranging powers are wielded by very few election commissions in the world as India's Election Commission. The EC takes decisions from the election announcement to the result declaration on any aspect of the conduct and control of elections. The Code of Conduct is enforced and any candidate or faction that violates it is disciplined. The EC may order the government to obey certain guidelines during the election cycle, to avoid the use and abuse of government power to increase its chances of winning elections, or to move certain government officials. Government officers operate under the supervision of the EC and not the government while on election duty.

Over the last fifteen years or so, the Election Commission has begun to exercise and even extend all its powers. It is now very common for the Election Commission to reprimand their lapses against the government and administration. When election officials come to the view that polling in certain booths or even an entire constituency was not fair, they order a re-poll. Sometimes, the ruling parties don't like what the EC does. Yet they must comply. If the EC was not autonomous and strong, this would not have occurred.

The enthusiasm in engagement of the people in the process is another way to check the efficiency of the election process. If the election process is not free or fair, individuals will not continue to participate in the exercise. The participation of people in elections is generally calculated by electoral turnout statistics. The number of registered voters who actually cast their vote is shown by turnout. Turnout in Europe and North America has fallen over the last fifty years. The turnout has either remained steady in India or has actually risen<sup>3</sup>.

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<sup>3</sup>Diwakar, R. (2008). Voter turnout in the Indian states: An empirical analysis. *Journal of elections, public opinion and parties*, 18(1), 75-100.

In India, in contrast to the wealthy and affluent industries, the poor, illiterate and underprivileged people vote to a greater extent. In comparison to western democracy, this is. For instance, poor people, African Americans and Hispanics vote far less in the United States of America than rich and white people do<sup>4</sup>.

In India, common citizens attach a lot of significance to elections. They believe that they can put pressure on political parties to implement policies and initiatives beneficial to them through elections. They also feel that in the way things are run in the country, their vote matters<sup>5</sup>.

Over the years, the participation of voters in election related events has grown. More than one third of the electorate took part in campaign-related events during the 2004 elections. Over half of the people listed themselves as close to one political party or the other. A member of a political party is one out of every seven voters<sup>6</sup>.

The result itself is one final measure of the equality and fairness of elections. The result still favours the dominant if elections are not free or equal. The dominant parties should not lose elections in such a situation. The losing party usually does not recognise the result of a rigged election.

The result of the elections in India speaks for itself. In India, the ruling parties consistently lose elections at the national and state levels. In reality, the ruling party has lost every two out of three elections held in the last fifteen years. An elected incumbent or 'sitting' representative seldom loses an election in the US. Around half of the sitting MPs or MLAs in India lose the vote. Candidates who are perceived to have spent a lot of money on 'purchasing votes' frequently lose elections, and those with known criminal ties. The electoral results are generally recognised as 'the people's decision' by the losing side, except for a few contested elections.

All of this leads to a clear conclusion: in India, elections are fundamentally free and fair. The party that wins an election and forms a government does so because it has been selected by individuals over its rivals. For every electorate, this might not be valid. On the sole basis of cash power and unfair means, a few candidates can win. Yet public preference also represents the final decision of a general election. In the past fifty years in our country, there have been very few exceptions to this law. This is what makes it democratic for Indian elections.

Yet if we ask deeper questions, the picture looks different: Are people's preferences based on real knowledge? Will the electorate have a real choice? Is the election really a fair playing field for all? Can an ordinary citizen have any hope of winning elections? Questions of this kind bring to our attention the many shortcomings and difficulties of Indian

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<sup>4</sup>Mathew, G. (2004). Local Democracy and Empowerment of the Underprivileged—An Analysis of Democratic Decentralization in India. The World Bank.

<sup>5</sup>Singhal, K., Agrawal, B., & Mittal, N. (2015). Modeling Indian general elections: sentiment analysis of political Twitter data. In Information Systems Design and Intelligent Applications (pp. 469-477). Springer, New Delhi.

<sup>6</sup>Yadav, Y. (2004). "The elusive mandate of 2004".Economic and Political Weekly, 5383-5398.



elections. Their victory may not be assured for candidates and parties with a lot of resources, but they enjoy a significant and disproportionate advantage over smaller parties and independents. Candidates with criminal links have been able to force others out of the electoral race in certain parts of the country and to win a 'ticket' from major parties. Some families tend to control political parties; tickets from these families are allocated to relatives. Too frequently, elections give ordinary people little alternative, since both major parties, both in strategy and practise, are very close to each other. Compared to bigger parties, smaller parties and independent candidates face a significant disadvantage.

Not only in India, but also in many developed democracies, these problems exist. For those who believe in democracy, these more fundamental concerns are a matter of concern. That is why, in our political system, people, social movements and organisations have been demanding changes.

#### **4. INDIAN CONSTITUTION AND FREE AND FAIR ELECTIONS**

Elections provide an opportunity to ascertain the popular will in a constitutional democracy, regarding the governance of the country. The role of the legal system is substantial in ensuring free and fair elections. In India the provisions for ensuring free and fair elections are generally incorporated in the Constitution itself. There also exist other elaborate statutory provisions and rules. The legal provisions prescribe detailed rules regarding the system of election, delimitation of constituencies, qualifications and disqualifications of electors and candidates, structure, powers and functions of the authority charged with the duty to conduct elections, procedure for the conduct of election and declaration of results, manner of preparation of the electoral rolls, and the forum and procedure for remedying election-related grievances.

Since the first general elections, many contentious problems and controversies have arisen. A challenge before the Supreme Court was to settle the conflicts so as to represent the true spirit of democracy. By providing dynamic meaning to the provisions of law, the court has made a significant contribution to the growth of election law. In addition, efforts to reform electoral legislation that would have included weakening democratic principles have been resisted. There are several aspects of election legislation in which innovative contributions have been made by the court.

The reassessment of a democratic arrangement is its capacity to guarantee an electoral process that is free and equal. It is critical that the election structure is unbiased and transparent if democracy is needed to be rendered into practise on the ground. The election system must also allow the electorate's desires to find valid expression through the electoral results.

In addition to defining the electoral system, the Constitution addresses two fundamental questions regarding elections: Who's eligible to contest elections? Who are the voters? Our Constitution complies with well-established democratic traditions in all these respects.

We recognise that democratic elections involve all of the nation's adult people to be able to vote in the elections. This is considered the universal grant for adults. People have had to

fight long fights with monarchs in many countries to get this right. Women have been able to get this right only late in many countries and only after battles. One of the significant resolutions of the drafters of the Constitution of India was to ensure the right to vote for every adult citizen in India.

An adult Indian, until 1989, meant a 21 or more years old Indian citizen. In 1989, a Constitutional amendment lowered the age of citizenship to 18. The adult grant guarantees that all people will engage in the selection procedure of their representatives. This is in line with the philosophy of non-discrimination and equality. A lot of people felt, and countless still believe so, that it was not fair to grant everybody the right to vote regardless of educational qualification. But in determining what is right for society, the community and their own constituencies, our Constitution makers believed strongly in the capacity and value of every adult person as equal.

Similar is the case of the right to contest elections as in the case of right to vote. All citizens are eligible to contest election and become the people's representative. Dissimilar lowest age conditions for standing for elections exist, however. For instance, a candidate must be at least 25 years of age so as to contest election in the Lok Sabha or the Assembly. There are some other limitations as well. There is a legal requirement, for example, that an individual who has been imprisoned for 2 or more years for a crime is excluded from standing for elections. However, the right to contest elections does not have any limits on income, education, or class or gender. Our election system is, in this sense, available to all people.

In India, many attempts have been made to safeguard a free and fair electoral structure and procedure. The most notable of these is the establishment of a sovereign election commission to monitor and administer elections. As for the world, still there is a lack of an impartial system for holding elections in many countries.

**Article 324: (1)<sup>7</sup>:**

*"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)".*

## **5. ELECTION COMMISSION OF INDIA**

Article 324 of the Indian Constitution provides for the supervision, direction and regulation of the electoral roll and conduct of elections in India by an independent Election Commission (EC). These terms are very significant in the Constitution, because they impart the EC a definitive influence in almost anything that has to do with elections. With this reading of the Constitution, the Supreme Court has decided.

In every state, there is a Chief Electoral Officer to help the EC of India. It is not the responsibility of the Election Commission to hold elections for local bodies. The operations

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<sup>7</sup>In. Const. art.324, § 1.



of State Election Commissioners are independent of the EC of India, and each one operates within their own boundaries.

India's EC can be either a multi-member or a single member organisation. The EC served as a single member until 1989. The body became multi-member as 2 Election Commissioners were appointed, just before the 1989 general elections. The EC returned to its single member status shortly after the elections. Two Election Commissioners were reappointed in 1993 and the EC became multi-member and has since continued to be multi-member. There were at first several hesitations surrounding the multi-member Commission. The then Chief Election Commissioner and the other Commissioners had a sharp difference of opinion about who had how much authority. The Supreme Court had to decide the matter. There is now a common agreement that a multi-member EC is more suitable as authority is distributed and transparency is superior.

The EC is presided over by the Chief Election Commissioner (CEC), however it has no more authority than the other Election Commissioners. To take all decisions relating to elections, the two Election Commissioners and the CEC have equivalent authority as a single body. They are named on the recommendation of the Council of Ministers by the President of India. Therefore, it is possible for the ruling party to nominate to the Commission a partisan person who would support them in the elections. This anxiety has directed many to propose that there must be a shift in this practice. A number of individuals have proposed that a particular path should be taken, which includes discussion with the Chief Justice of India and the Opposition Leader for the selection of Election Commissioners and CEC.

The Constitution guarantees that the term of the Election Commissioners and CEC is safeguarded. They are named or stay until the age of 65, whichever is older, for a six year term. The CEC can be withdrawn by the President before the expiry of the term if, with a special majority, such a recommendation is made by both Houses of Parliament. This is done to make sure that a governing party does not expel a CEC when in elections it declines to support them. The President of India will suspend the Election Commissioners.

There are a wide variety of roles for the Election Commission of India. It oversees the preparation of a list of up-to-date voters. It makes all efforts to confirm that the list of voters has no mistakes, such as the absence of registered voters' names or the presence of non-existent or non-eligible names. The scheduling of the elections is also decided and the election timetable is prepared. Notification of elections shall be included in the election timetable, the date on which nominations may be submitted, the last date on which nominations may be filed, the last date of scrutiny, the last date of pulling out, the date of voting and the date of totalling and the statement of outcomes. Throughout this whole procedure, the EC has the authority to take decisions to make certain that polling is free and fair. Elections may be delayed or cancelled in the whole nation or in a particular constituency or state on the ground that the environment is vitiated and that free and fair elections might not be practicable. The Commission is also adopting, for parties and

candidates, a model code of conduct. In a particular electorate, it can order a re-poll. When it thinks that the counting procedure has not been entirely fair and just, it may also order a recount of votes. The Election Commission gives political parties recognition and allocates each one of them with symbols.

The EC has its own very small personnel. With the assistance of the administrative machinery, it performs the elections. However, once the election process has started, as far as election related work is concerned, the commission has power over the administration. Election-related responsibilities are allocated to the central governments and state administrative officers during the election process, and the EC has complete authority over them in this respect. The Election Commission may transfer or avoid the transfer of officers; it may take action against them for failure to behave in an unbiased way.

In order to ensure justice in the election process, the EC of India has developed over the years as an autonomous agency that has affirmed its authority. In order to uphold the sanctity of the democratic process, it operated in an impartial and unbiased manner. The records of the Election Commission also indicate that no legal or constitutional reform is needed for any improvement in the functioning of institutions. It is generally accepted that the Commission for Elections is now more assertive and independent as compared to what it was 25 years ago. This is not because the Election Commission's statutory security and powers have improved. The EC has begun to use the powers it has always had in the Constitution more effectively.

Seventeen Lok Sabha elections have been held since 1951–52. The Election Commission has held several more state assembly elections and by-elections. The Election Commission has confronted numerous challenging circumstances, for example, conducting elections in areas plagued by violence, such as Punjab, Assam, and Jammu and Kashmir. Also in the middle of 1991, when, during the campaign, former Prime Minister Rajiv Gandhi was assassinated, it tackled the challenging situation of having to delay the electoral procedure. The EC confronted another crucial situation when elections had to be held in 2002 and the Gujarat Assembly was dissolved. Then, the EC found that extreme violence had made it difficult for the State to hold immediate elections that are free and fair. The EC agreed to delay, by a few months, the elections to the State Assembly. The Supreme Court upheld the Election Commission's ruling.

The success of democracy depends on the proper conduct of elections, in order to ensure that the true common will is expressed. With this in mind, the Supreme Court has formulated well-defined guiding principles to decide whether or not a specific activity may be regarded as corrupt practice, while interpreting the provisions of law describing the corrupt practices of bribery, undue control, appeal on the ground of faith, publishing of false statements and procuring the assistance of government servants. The court has explored the reasons for treating a specific action as corrupt election activity when formulating these principles, demonstrating the theoretical basis of different definitions in electoral law. In addition to alleviating the evil effects of the lethargy of political leadership,

the Supreme Court, through judicial activism, has diluted its suspicious behaviour in enforcing law changes in some regions, such as election expenses. In a related case<sup>8</sup>, the court's ruling clearly establishes that the protector of democracy in India is not the legislative wisdom but the wisdom of the country's highest court. One may assume that in the coming century, too, the Supreme Court will continue to guard our democracy.

## **6. INDIAN LEGISLATION ON FREE AND FAIR ELECTIONS**

Many laws have been passed in the legislature to ensure the freeness and fairness of the elections that are held in India. Some of them are discussed below.

- **The Representation of the People Act, 1950**

In the context of free and fair elections, the Parliament has enacted the Representation of the People Act (RPA), 1950. The main provisions of the Act are: the establishment of procedures for the demarcation of constituencies; the allocation of seats in the Legislative Assemblies, Legislative Councils of States and the House of the People; the establishment of procedures for the preparation of electoral rolls and the manner in which seats are filled; and the qualification of voters.

- **The Representation of the People Act, 1951**

This Act provides for the conduct of parliamentary and state legislature polls, qualifications, disqualifications, different crimes, different doubts and conflicts, etc. Some of the rules laid down under this Act are: anybody or organisation wishing to stand as an election candidate must register with India's Election Commission. The Election Commission should be communicated with any change in the name and address of the political party; if a person is not qualified to vote, he does not represent the people in either Rajya Sabha or Lok Sabha.

- **The Registration of Electors Rules, 1960**

The rules found in this section apply to the planning, periodic updating and revision of the electoral rolls. This Act also provides for the registration process for registered voters and the issuance of voter ID cards containing a picture of a voter. Inclusion in the electoral rolls of eligible and registered voters and exclusion of non-eligible and non-existing voters shall be included in this Act. During the polls, the election commission prepares the electoral rolls containing the voter's name, photograph and other information because of the rules referred to in this Act.

- **Conduct of Election Rules, 1961**

This Act deals in depth with each and every step of election behaviour. It shall provide for the issuance of written notices concerning the conduct of elections, the filing of nominations, the review of nominations and the withdrawal of candidates. The counting of votes and taking of polls also regulates this law. Ultimately, this provision also classifies the constitution of the Houses on the basis of the findings. Several changes to this provision

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<sup>8</sup>Indira Nehru Gandhi v Raj Narain. (1975). Supp SCC 1.

have been made, such as the Conduct of Election Rules (Amendment), 2016 and the Conduct of Election Rules (Amendment), 2013.

- **Presidential and Vice-Presidential Rules, 1974**

This Act is expressly intended to hold elections for both the President and the Vice-President. This act consisted of a total of 41 parts and provides for the entire electoral process, such as: adjournment of the poll in emergencies; voting by voters in preventive detention; place and time to count the votes; protection of voting secrecy; recounting; production and review of election papers; copies of the return of the election.

- **Anti-defection Law, 1985**

The 52nd Constitutional Amendment enacted the Anti-defection Law during the term of Rajiv Gandhi and which is included in the Tenth Schedule of the Constitution. Contrary to the direction of his political party, if a member of a House belonging to a specific party willingly gives up the membership of his political party or votes or refrains from voting, or if, after the election, an individual member enters a political party, that particular member will fall into a defective situation.

From the above mentioned various acts, it appears that the legislature has also tried to keep the statute of free and fair elections with time as the situations and circumstances arose. Some of the amendments are essentially correlated to the judiciary judgements.

If we talk about recent events, it is the Narendra Modi government's innovative step of introduction of electoral bonds for donation to political parties to bring transparency in political funding. Though, the same "transparency" is in question as the donor's identity is kept anonymous in this system.

Even though the government in power and an opposition party are not coming forward to pass legislation to curb the criminalization, it is a fact that till the conviction is not completed, no one can be addressed as a criminal in the eyes of democracy. India still requires strong legislations to make election freer and fairer. But due to some constitutional limitation of fundamental rights and political reasons to procure and preserve the power, legislature is not going proactive on this subject.

## **7. INDIAN JUDICIARY AND FREE AND FAIR ELECTIONS**

Apart from its original jurisdiction, the Supreme Court (SC) of India is the watchdog of the Indian constitution. Judicial review of legislative action, administrative action, and the judicial decisions itself has been given to the Supreme Court of India with additional authority. Article 32 of the Indian Constitution authorises the SC to enforce the rights granted pursuant to Part III of the Constitution; the SC shall have authority to issue instructions or guidelines or orders in the form of prohibition, habeas corpus, certiorari, mandamus, and quo warrantum which may be necessary for the enforcement of those rights. The Supreme Court, under the authority of judicial review, shall uphold a balance between the different statutory bodies and shall respect the jurisdictions of other bodies. Many individuals are approaching the Supreme Court for justice; under different petitions directed by India's Supreme Court election commission for various reforms, the

role played by the judiciary is very important to address this role in depth right from the beginning of the Indian Constitution.

A role of *Sin qua non* is played by the Supreme Court of India in the nation's progress and growth. The Supreme Court is the protector of the Indian constitution, so it is the Supreme Court's responsibility to balance the state organs. If a state organ or any legislative body acts in compliance with the mandate of the Indian constitution, these bodies may be directed by the Supreme Court. India's Election Commission is also a legislative body; there are plenty of instances in which the Supreme Court has set criteria for electoral reforms, and certain cases are resolved as follows by the Indian Supreme Court.

Hon'ble Supreme Court of India laid down very important guidelines in a landmark case<sup>9</sup>. They are as follows:

The Election Commission of India shall request information on the affidavit by issuing, in the exercise of its competence under Article 324<sup>10</sup> of the Constitution of India, the required order from any candidate seeking election to parliament or to a state legislature as a necessary part of his nomination document. Providing details on the subsequent facets relating to his candidacy there:

- Criminal history of the contender: if the contenders in the past have been convicted/acquitted/accused of any criminal offense-if any, if they are punished with incarceration or fine? Under this rule, the SC of India directed to get information on the criminal record of the candidates, the contender must include the said affidavit information while filling the election file form. This knowledge is for public purposes, so that the country's people can select a better representative for their constituency. If a candidate has a criminal record, voters will determine the candidate's destiny.
- Criminal charges against a candidate: within 6 months of completion of the nomination, if the contender is charged in any unresolved case with any crime punishable by imprisonment for a period of 2 years or more and with which the candidate is charged is framed or cognized by the court, if detailed. Under this guidance, the Supreme Court of India ordered the Election Commission of India to collect information on criminal proceedings against candidates in order to prevent them from entering the political arena. Is it the right of people to know if the candidate's history was prosecuted by any court? It is a great help to preserve a clean and balanced political arena for the defence of democratic values.
- Financial status of the candidate: the properties of the candidate and his/her spouse (immovable, movable, bank balance, etc.) and that of the dependents. It is observed that after winning the election, politicians become wealthier, it is a matter of great threat to current democracy. The financial condition of the candidate should be

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<sup>9</sup>Union of India v. Association for Democratic Reform.(2002) 5 SCC 294 AIR 2002 SC 2112.

<sup>10</sup>In. Const. art. 324.

tested and balanced; does that mean that the candidate must not obtain property? They can't, but with their official profits proportionate to that. The Supreme Court set the electoral commission guidelines and then enforced them through India, and in the Indian scenario, it is a great electoral reform.

- Candidate financial liabilities: liabilities if any, particularly if there are over-deposits in any public financial institution or government dues. The Indian Supreme Court set down the guideline that it is compulsory to include an affidavit listing the financial liabilities of the nominee at the time of filling out the nomination form for the contesting election. No fee certificate shall be issued by such person at the time of filling the electron nomination.
- Candidate's educational background: The nation's leadership must be visionary, deciding the nation's destiny, growth, and creation. But there are no provisions for educational qualifications in the Indian constitution. It is also mandatory for all candidates to include details on their educational history. Such that people may choose highly skilled national administration members.

## **8. INDIAN CIVIL SOCIETY, ELECITONS AND DEMOCRACY**

Civil society's position in polls also takes the form of support for the electoral structures of democratic elections, in addition to the more practical creation of a democratic electorate. However, civil society does have a part to play in decreasing the complexities of conflict linked to elections and fostering a stable democratic climate. Organisations of civil society have an important part to play in improving the standard of democracy at large.

Civil society, described as “the realm of organised social life that is open, voluntary, self-generating, at least partially self-supporting, autonomous from the state and bound by a legal order or set of shared rules”<sup>11</sup>, is distinguished from “society” in general on the basis that it consists of people acting collectively in the public sphere to express their desires, to influence policy and policy. Specified this position, civil society is considered one of the key gauges of democratic consolidation<sup>12</sup> and, in view of its capacity to pool individual capital with the aim of improving institutions, infrastructure, and the quality of life of society, is linked to development objectives<sup>13</sup>.

Civil society has been acknowledged as having an important part to play in fostering amity in the sense of elections and, in particular, election-based conflicts, as it is less limited by mandates, capable of speaking to many parties without losing legitimacy, and capable of dealing directly with the grassroots population<sup>14</sup>. Similarly, with respect to election conflict dynamics, civil society has a recognised role to play. Anna Jarstad, Kristine Hoglund, and Mimi Soderberg Kovacs (2009) established a theoretical framework to define different

<sup>11</sup>Diamond, L. (1999). *Developing democracy: Toward consolidation*. JHU Press.

<sup>12</sup>Linz, J. J., & Stepan, A. C. (1996). *Toward consolidated democracies*. *Journal of democracy*, 7(2), 14-33.

<sup>13</sup>Diamond, L. (1999). *Developing democracy: Toward consolidation*. JHU Press.

<sup>14</sup>Orjuela, C. (2003). *Building peace in Sri Lanka: A role for civil society?*. *Journal of Peace Research*, 40(2), 195-212.



conflict-causing factors in the election context in a paper titled “The plight of elections in war-torn societies”. These variables are grouped into three clusters: electoral process actors, election institutions, and electoral stakes<sup>15</sup>.

Cluster electoral institutions are understood to be institutions that are important during electoral processes, to the control and manage violence, including electoral, police and military management bodies. The influence of this cluster on conflict dynamics is shown by Höglund et al because it affects the understanding of polls as valid and because it can deliver or restrict the opportunities and space for conflict actions<sup>16</sup>.

What Stanley Nider Katz, Benjamin Gidron, and Yeheskel Hasenfeld (2002) refer to as 'peace/conflict resolution organisations (P/CROs)' often occur within this cluster, which they identify as citizens' voluntary/non-governmental organisations promoting reconciliation/peace/coexistence between the main conflict contenders on the basis of use of dispute resolution strategies and/or mutual recognition as a means of addressing conflict<sup>17</sup>.

In civil society, P/CROs are officially organised voluntary groups of citizens. In addition to social justice and democratic institutional growth, they also foster peace, reconciliation and coexistence. The approaches they use include mutual acknowledgment of the opposing parties' rights and the use of strategies for dispute resolution, such as negotiation and dialogue. Operating within civil society, they are capable of serving the interests of people through questioning the control of the state by different means, like delivering substitute facilities that can compete with, replace or complement state services, and challenging state policies by advocacy and mobilisation of constituencies<sup>18</sup>. Resembling “non-governmental organisations” (NGOs) at large, through network building and the power of association, they can generate social and cultural capital. “Cultural capital” includes the institutionalisation of norms and values and “Social capital” includes networks that enable political mobilisation and.

Civil society in Independent India, except in the years before and after the emergency, could never have been as involved as it is today. It has played an important role in improving democracy and deepening it. Great work has been done on introducing transparency and raising awareness of voters. A brief analysis of developments since Independence shows that the number of parties has increased considerably along with crime and money. It became possible to win elections with a lower share of the vote, as the number of parties, making it easier for big money to control or purchase a smaller fraction

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<sup>15</sup>Höglund, K., Jarstad, A. K., & Kovacs, M. S. (2009). The predicament of elections in war-torn societies. *Democratization*, 16(3), 530-557.

<sup>16</sup>Höglund, K., Jarstad, A. K., & Kovacs, M. S. (2009). The predicament of elections in war-torn societies. *Democratization*, 16(3), 530-557.

<sup>17</sup>Hasenfeld, Y., Gidron, B., & Katz, S. N. (Eds.). (2002). *Mobilizing for Peace: Conflict Resolution in Northern Ireland, Israel/Palestine, and South Africa*. Oxford University Press.

<sup>18</sup>Hasenfeld, Y., Gidron, B., & Katz, S. N. (Eds.). (2002). *Mobilizing for Peace: Conflict Resolution in Northern Ireland, Israel/Palestine, and South Africa*. Oxford University Press.

of votes. As the population has increased, an elected MP now represents an average of over 15 lakh voters and an MLA of over 2 lakh. This is the greatest number anywhere in the world by far. The data on the criminal and economic record of candidates and elected officials shows that the odds of winning increase dramatically for candidates with more money. Sadly, it also illustrates that people with substantial criminal charges pending against them also have a better chance of winning. Rs.1.37 crores is the average wealth of over 62,800 candidates, which goes up to Rs.3.8 crores for winners, Rs.2.47 crores for runners up, Rs. 2.03 crores for third-place candidates, Rs.4.27 crores for criminal record winners, and Rs.4.38 crores for serious criminal case winners. So far, there are gaps in the positions played by civil society and certain strategic decisions it needs to make. Shift is possible if this is done well.

### 9. CONCLUSION AND SUGGESTIONS

Democracy is the most liberal governance system but at the same time it is important for citizens to be equally responsible with their participation in the system. As discussed above, it is established and accepted that elections are one of the most crucial instrument for the establishment of democracy. Going ahead with governance if the elections are not proper, transparent and peaceful as per the prescribed statutes and rules, it can't be called a democracy in its real meaning. Therefore, there is the essentiality of the free and fair elections. As for determining the freeness and fairness of elections, in a very simple manner elections can be called free and fair if:

- There are distinct and proper statute and rules for elections and fairly-powered implementing authority for conduction of the election process.
- Right to vote is common and equal, and every voter is using their right to vote.
- Voter registration is an easy process.
- The poll process along with accessibility to polling stations is comparatively easy. Voters are free to vote anyone without any apprehensions.
- Election staff is well trained, impartial, strict and friendly with the voters and possess helping nature within the bounds of rules and overall framework.
- The results of the elections are respected by every party and stakeholders involved in the process.

In one line, it can be said elections are required to be celebrated like a festival, a festival of democracy. Citizens of India are fortunate that the Constitution has provided them with enough laws and constitutional articles for free and fair elections.

Still, there are some shortcomings which can be addressed with time. Some suggestions on the same are listed below:

- There should be timely amendments in the Constitution as the time passes and new problems appear on the surface which restricts the purity, freeness and fairness of elections.

- Indian legislation is comparatively subdued while passing necessary reforms to make elections freer and fairer citing them being very bold steps for the time being.
- The Election Commission of India is the only constitutional agency with considerable power but still requires more of it so that the election process is free and fair in its absolute form.
- Indian judiciary is mostly vigilant on the topic of election process, related evil and corrupt practices, and criminality politics but it also needs quick disposal of the election disputes by adding special benches for petitions related to elections.
- The utmost responsibility is of the political parties. Undoubtedly, winnability of the representatives is a critical factor, but they should not forget that after all, this whole exercise of election is for survival and strengthening of the democracy, which we have achieved after crossing so many difficulties.
- Finally, the general public must be aware that democracy is proven to be the best governing system. The future of our country's democracy and development has to be aware of the issues that can destroy the piety and fairness of the democracy and take us away from it.

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